



# REQUEST FOR PROPOSAL

## Blue Stake Inspector Services

April 19, 2024

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### **INTRODUCTION AND PROJECT BACKGROUND:**

The City of Logan desires to retain the services of a Company to provide Blue Stake Inspector services during the heavy construction season through October 2024. With this Request for Proposal (RFP) the City will require the services of an inspector experienced in advanced technical and complex location and marking of all underground utilities maintained by Logan City Public Works and Light & Power Departments. City utilities generally include storm drain lines, irrigation lines, water lines and services, sewer lines and laterals, fiber optics and communication lines, underground electric, along with all related appurtenances. Proponent shall have experience equivalent to three (3) years in the location and marking of utilities and must be familiar with the hazards of construction sites and capable of safely accessing and traversing through sites of this nature. The inspector will need to have the ability to communicate effectively in written and verbal communication to City staff, contractors, developers, and the general public.

### **RESPONSIBILITIES:**

- Locate and mark utility infrastructure (Blue Staking) owned and maintained by the Logan City Public Works and Light & Power Departments.
- Coordinate with contractors, homeowners, other utilities, and others who request location of utilities.
- Interpret maps, GIS data and other Public Works records to determine location of utilities.
- Own and Operate utility locating equipment suitable for the work.
- Collect and organize field data related to utility infrastructure.
- Coordinate with City Engineer and Public Works utility personnel as needed to locate utilities.
- Develop and maintain electronic records of blue stake requests and activities.
- Operate GPS equipment (survey and mapping grade) to locate and/or collect utility location data.
- Ensure electronic data collected in field is updated in City's software and GIS systems.
- Maintain electronic documentation and records of completed work.

### **KNOWLEDGE, SKILLS, AND CHARACTERISTICS:**

Knowledge of and/or ability to learn the use of electronic equipment (i.e. computers, tablets, smart phones, mapping equipment, and utility location equipment, etc).

Knowledge in the use of materials and their placement in construction.

Knowledge of the practices, equipment, tools, and materials used in the installation of Public and Private infrastructure.

Skill in the interpretation and explaining construction codes, plans, standards and specifications.

Skill in establishing and maintaining cooperative working relationships with those contacted in the course of business.

Skill in communicating clearly and concisely, both orally and in writing.

**PROPOSAL REQUIREMENTS:**

Each proposal shall include the following:

- Staff proposed for this project that has experience on similar projects.
- Qualifications of each individual proposed to participate in this project. Each individual listed must include the following information (a resume is preferred):
  - Name, education, and years of experience.
  - Lists of projects each staff member has completed similar to this one.
  - Copies of relevant professional certifications and licenses. A copy of current licensure shall be included for each staff member proposed for this project.
- Fee based proposal for services, see Appendix A. Hours are based on estimate of inspector working 2 days a week for 8 hours a day. Please list each proposed staff member.
- References of projects similar to the size, type of construction, and scope of this project. Include client contact information for each reference.
- Proof of ability to provide and maintain insurance requirements in accordance with Appendix B.
- Acceptance of or requested changes to the Standard Professional Services Agreement included as Appendix C.
- Claim of Business Confidentiality - The Government Records Access and Management Act (GRAMA), Utah Code Ann., Subsection 63G-2- 305, provides in part that certain records are protected if properly classified. Proposers are responsible for determining which pages, if any, should be classified as protected under a Claim of Business Confidentiality, and are responsible for taking appropriate action to do so.

To protect information under a Claim of Business Confidentiality, the Proposer must:

- 1) Provide a written Claim of Business Confidentiality at the time the proposal is provided to Logan City; and
- 2) Include a concise statement of reasons supporting the Claim of Business Confidentiality (Subsection 63G-2-305). See Appendix D.

To ensure the information is properly protected, the City asks the Proposer to clearly identify in the body of the proposal (by clearly marking the applicable pages as confidential) any specific information for which a Proposer claims business confidentiality protection as "PROTECTED". If no statement is provided, it is assumed that the information is not protected.

**PROPOSAL FORMAT:**

The firm must submit an itemized list of proposed fees using the table in Appendix A.

The interested firm may provide a list of additional fees that are not included in the table in Appendix A. Fees for additional services must be submitted as separate line items but may be used by the City in the Evaluation and Selection process. These additional items should be relevant to the scope of the project that may be unforeseen in this Request for Proposal.

Include other information that shows the firm's experience and expertise working on this type of project.

**CLOSING DATE FOR SUBMITTING PROPOSALS:**

Proposals may be submitted by email to Lori Mathys, lori.mathys@loganutah.org or delivered to her attention at City Hall, 290 North 100 West, Logan UT, 84321. **Proposals must be received by 11:00 am, April 29, 2024.**

**PROPOSAL EVALUATION CRITERIA AND SELECTION PROCESS:**

**Evaluation Criteria:**

The contract may be awarded to a qualified applicant based on the following criteria:

- Depth of experience of staff proposed to work on this project
- Demonstrated understanding of the work to be performed
- Adequate past performance, verifiable through references
- References
- Fee based proposal

**Selection:**

Final selection will be based on review of proposals submitted. Selection will consider the company's understanding of the project, qualifications of personnel proposed to work on the project, experience of staff proposed to work on this project, staff licensure, experience on similar projects, and proposed fee-based cost.

**QUESTIONS:**

Questions, in writing, may be directed to:

Darren Farar, City Engineer, at darren.farar@loganutah.org. Deadline for questions or inquiries is 5:00 p.m., April 24, 2024.

A copy of all questions and their response will be posted on our website at [https://www.loganutah.org/government/departments/finance/purchasing/bid\\_and\\_proposal\\_requests.php](https://www.loganutah.org/government/departments/finance/purchasing/bid_and_proposal_requests.php).

APPENDIX A

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Initial Month Project estimate

Item No.	Description	Rate	Hours	Total
1	Field Blue Stake Inspector		512	
2				
3				
4				

Total Estimated Proposed Cost	\$
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## APPENDIX B

### CITY OF LOGAN INSURANCE AND BOND REQUIREMENTS

**FOR: Blue Stake Inspector Services  
April 2023**

The Contracting party shall procure and maintain for the duration of the contract insurance and bonds against claims or liability which arises out of or in connection with the performance of the work hereunder by the Contracting party, his agents, representatives, employees or subcontractors. The cost of such insurance and bonds shall be included in the Contracting party's bid or proposal.

#### **A. MINIMUM LIMITS OF INSURANCE**

Contracting party shall maintain limits not less than:

1. **GENERAL LIABILITY:** \$2,000,000 combined single limit per occurrence, personal injury and property damage, \$3,000,000 aggregate. Broad Form Commercial General Liability is required. (ISO 1993 or better) to include Products - Comp/OP aggregate of \$2,000,000. Limits to apply to this project individually.
2. **PROFESSIONAL LIABILITY:** \$2,000,000 per occurrence.
3. **AUTOMOBILE LIABILITY:** \$2,000,000 per occurrence. "Any Auto" coverage is required.
4. **WORKERS' COMPENSATION and EMPLOYERS LIABILITY:** Workers' Compensation statutory limits as required by the Workers Compensation Act of the State of Utah and Employers Liability limits at a minimum of \$100,000 per occurrence.
5. **PAYMENT and PERFORMANCE BONDS:** Not applicable.

#### **B. ACCEPTABILITY OF INSURERS**

Insurance and bonds are to be placed with insurers admitted in the State of Utah with an A. M. Best rating of not less than A-: IX, and in the limits as listed in this document, unless approved by the City's Risk Manager, or his designee, **a minimum of five (5) business days prior to bid or proposal deadline.**

#### **C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retention exceeding 5% of the policy limits must be declared to and approved by Logan City. At the option of Logan City, either (1) the insurer may be required to reduce or eliminate such deductibles or self-insured retention as respects Logan City, its officers, officials and employees; or (2) the Contracting party may be required to procure a bond guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

#### **D. NOTICE OF INCIDENT OR ACCIDENT**

Contracting party shall agree to promptly disclose to Logan City, all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

**E. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

I. General Liability and Automobile Liability Coverages

A. Logan City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the contracting party; products and completed operations of the Contracting party; premises owned, leased, hired or borrowed by the Contracting party. The coverage shall contain no special limitations on the scope of protection afforded to Logan City, its officers, officials, employees or volunteers.

B. The Contracting party's insurance coverage shall be a primary insurance as respects to Logan City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Logan City, its officers, officials, employees or volunteers shall be in excess of the Contracting party's insurance and shall not contribute with it.

C. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Logan City, its officers, officials, employees or volunteers.

D. The Contracting party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

II. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Logan City.

**F. VERIFICATION OF COVERAGE**

Contracting party shall furnish Logan City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms acceptable to Logan City before work commences. Logan City reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

**G. SUBCONTRACTORS**

Contracting party shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**APPENDIX C**

**CITY OF LOGAN**

**Standard Contract Terms and Conditions for Professional Services**

**Project: Blue Stake Inspector Services**

- 1. PARTIES:** This Standard Contract Terms and Conditions for Professional Services (“Agreement” or “Contract”) is made and entered into as of the \_\_ day of \_\_\_\_\_ 2024, by and between the City of Logan, a Utah municipal corporation, hereinafter referred to as the “CITY”, and \_\_\_\_\_, hereinafter referred to as “CONSULTANT”.
- 2. CONTRACT DOCUMENTS:** This Contract incorporates by reference the Proposal dated \_\_\_\_\_, the Certificate of Liability Insurance, and the Proposal dated \_\_\_\_\_.
- 3. AUTHORITY:** This Contract is entered into and authorized by Logan Municipal Code 3.04, and related statutes which permit the CITY to purchase certain specified services, and other approved purchases for the CITY.
- 4. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Logan, in the First Judicial District Court for Cache County.
- 5. LAWS AND REGULATIONS:** CONSULTANT and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, and State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
- 6. RECORDS ADMINISTRATION:** The CONSULTANT shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to the CONSULTANT for costs authorized by this Contract. These records shall be retained by the CONSULTANT for at least four years after the Contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONSULTANT agrees to allow State and Federal auditors, and CITY staff, access to all the records to this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
- 7. TIME:** The CONSULTANT shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.
- 8. TIME IS OF THE ESSENCE:** For all work and services under this Contract, time is of the essence and CONSULTANT shall be liable for all damages to the CITY and anyone for whom the CITY may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
- 9. PAYMENT:**

9.1 Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate CITY official, the CONSULTANT may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

9.2 The contract total may be changed only by written amendment executed by authorized personnel of the parties. Unless otherwise stated in the Contract, all payments to the CONSULTANT will be remitted by mail or electronic funds transfer.

9.3 The acceptance by the CONSULTANT of final payment without a written protest filed with the CITY within ten (10) working days of receipt of final payment shall release the CITY from all claims and all liability to the CONSULTANT for fees and costs of the performance of the services pursuant to this Contract.

**10. PROMPT PAYMENT DISCOUNT:** CONSULTANT may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. CONSULTANT shall list Payment Discount Terms on invoices. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

**11. CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.

**12. DOCUMENT OWNERSHIP:** CONSULTANT agrees that any work/services and all Deliverables prepared for the CITY, to the extent to which it is eligible under copyright law in any county, shall be deemed a work made for hire, such that all right, title and interest in the work and Deliverables reside with the CITY. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, CONSULTANT agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to the CITY. CONSULTANT further agrees to provide all assistance reasonably requested by CITY in the establishment, preservation and enforcement of its rights in such work and deliverables, or subsequent amendments or modifications to such work and deliverables, without any additional compensation to CONSULTANT. CONSULTANT agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and deliverables, or subsequent amendments or modifications to such work and deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use.

**13. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify," only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

#### 13.1 Status Verification System



(1) CONSULTANT certifies as to its own entity, under penalty of perjury, that the named CONSULTANT has registered and is participating in the Status Verification System to verify the work eligibility status of the CONSULTANT's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302.

(2) The CONSULTANT shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

(3) The CITY will not consider a proposal for award, nor will it make any award, where there has not been compliance with this Section.

(4) Manually or electronically signing the Proposal is deemed the CONSULTANT's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code Ann. Section 63G-12-302.

### 13.2 Indemnity Clause for Status Verification System

CONSULTANT (includes, but is not limited to any CONSULTANT) shall protect, indemnify and hold harmless, the CITY and its officers, employees, agents, representatives and anyone that the CITY may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) CONSULTANT; (b) CONSULTANT's subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the CONSULTANT or Subcontractor may be liable.

**14. CONFLICT OF INTEREST:** CONSULTANT represents that none of its officers or employees are officers or employees of the CITY, unless disclosure has been made. CONSULTANT also represents that it has no conflict of interest in performing the services for the CITY under this Contract, unless such conflict of interest has been disclosed to the CITY and approval to proceed, notwithstanding the conflict, has been obtained from the CITY in writing.

**15. CONSULTANT AN INDEPENDENT CONTRACTOR:** The CONSULTANT shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the CITY to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the CITY, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONSULTANT by the CITY. The CONSULTANT shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from the CITY for these contract services. Persons employed by the CITY and acting under the direction of the CITY shall not be deemed to be employees or agents of the CONSULTANT.

**16. INDEMNITY CLAUSE:** The CONSULTANT agrees to indemnify, save harmless, and release the CITY, and all its officers, agents, volunteers, and employees from and against any and all claims, loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Contract which are caused in whole or in part by the wrongful acts or negligence of (a) the CONSULTANT, (b) the CONSULTANT's officers, agents,

volunteers, or employees, (c) the CONSULTANT's subcontractors or subconsultants at any tier, or (d) anyone for whom CONSULTANT may be liable but not for claims arising from the CITY's sole negligence. The parties agree that if there are any Limitations of the CONSULTANT's Liability, including a limitation of liability for anyone for whom the CONSULTANT is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

**17. EMPLOYMENT PRACTICES CLAUSE:** The CONSULTANT agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONSULTANT agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place. CONSULTANT also agrees to abide by any laws and policies of the CITY regarding any of the above mentioned prohibitions in this paragraph.

**18. PERFORMANCE EVALUATION:** The CITY may conduct a performance evaluation of the CONSULTANT's services, including specific personnel of the CONSULTANT. References in the Contract to CONSULTANT shall include CONSULTANT, CONSULTANT's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the CONSULTANT.

**19. WAIVERS:** No waiver by the CITY or CONSULTANT of any default shall constitute a waiver of the same default at a later time or of a different default.

**20. SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

**21. RENEGOTIATION OR MODIFICATIONS:** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.

**22. SUSPENSION/DEBARMENT:** The CONSULTANT certifies that neither it nor its principals, agents, officers, employees, or representatives are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract), by any governmental department or agency in the United States, including any federal, state or local agency. If the CONSULTANT cannot certify this statement, attach a written explanation for review by the CITY. The CONSULTANT must notify the Purchasing Agent within 30 days if suspended or debarred by any governmental entity during the contract period.

**23. TERMINATION:**

23.1 Unless otherwise stated in the Additional Terms and Conditions of the CITY, if applicable, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon

sixty (60) days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

23.2 In the event of such termination, the CONSULTANT shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The CONSULTANT agrees that in the event of such termination for cause or without cause, CONSULTANT's sole remedy and monetary recovery from the CITY is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the CONSULTANT having to terminate contracts necessarily and appropriately entered into by the CONSULTANT pursuant to this Contract. CONSULTANT further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by CONSULTANT under this Contract up to the date of termination are the property of the CITY and shall be promptly delivered to the CITY.

**24. INSURANCE:**

24.1 To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the CONSULTANT shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah and with an A.M. Best rating as approved by the CITY Risk Manager.

24.2 The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract:

(1) Worker's Compensation Insurance and Employers' Liability Insurance. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.

(2) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.

(3) Any other insurance described in the solicitation for this Contract, if applicable.

(4) The policies are to contain, or be endorsed to contain, the following provision: Logan City, its officers, officials, employees and volunteers are to be covered as additional insureds.

24.3 Any type of insurance or any increase of limits of liability not described in this Contract which the CONSULTANT requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at CONSULTANT's own expense.

24.4 The carrying of insurance required by this Contract shall not be interpreted as relieving the CONSULTANT of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.

**25. STANDARD OF CARE:** The services of CONSULTANT and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their

respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The CONSULTANT shall be liable to the CITY for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another CONSULTANT's claim against the CITY), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.

**26. CITY REVIEWS, LIMITATIONS:** The right of the CITY to perform plan checks, plan reviews, other reviews and/or comment upon the services of the CONSULTANT, as well as any approval by the CITY, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by the CITY or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the CITY of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the CONSULTANT shall be and remain liable to the CITY in accordance with applicable law for all damages to the CITY caused by the wrongful acts, errors and/or omissions of the CONSULTANT or its subcontractors or subconsultants at any tier, if any.

**27. NONAPPROPRIATION OF FUNDS:** The CONSULTANT acknowledges that the CITY cannot contract for the payment of funds not yet appropriated by the CITY Council. If the Council does not appropriate funds for paying the CITY's obligations on this Contract, or if funding to the CITY is reduced due to an order by the Mayor, or is required by State law, or if Federal funding (when applicable) is not provided, the CITY may terminate this Contract or proportionately reduce the services and purchase obligations and the amount due from the CITY upon 30 days' written notice to CONSULTANT. If this Contract is terminated, or services and purchase obligations are reduced due to nonappropriation of funds or reduction in funding, as described in the preceding sentence, the CITY will pay CONSULTANT for services properly performed, and will reimburse CONSULTANT for expenses incurred, as authorized under this Contract, through the date of cancellation or reduction, and this payment shall be CONSULTANT's sole remedy, and the CITY will not be liable for any future commitments, penalties, or liquidated damages.

**28. SALES TAX EXEMPTION:** The CITY's sales and use tax exemption number is 12238772-002-STC. The tangible personal property or services being purchased are being paid from CITY funds and used in the exercise of that entity's essential functions.

**29. PUBLIC INFORMATION:** CONSULTANT agrees that this Contract, related sales orders, and invoices shall be public documents, and shall be available for distribution. CONSULTANT gives the CITY express permission to make copies of this Contract, related sales orders, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). CONSULTANT also agrees that the CONSULTANT's response to the solicitation, if applicable, will be a public document, and copies may be given to the public under GRAMA laws. This permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

**30. PATENTS, COPYRIGHTS, ETC.:** The CONSULTANT will release, indemnify and hold the CITY, its officers, agents and employees harmless from liability of any kind or nature, including the CONSULTANT's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.

**31. ASSIGNMENT/SUBCONTRACT:** CONSULTANT will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the CITY.

**32. DEFAULT AND REMEDIES:**

32.1 Any of the following events will constitute cause for the CITY to declare CONSULTANT in default of this Contract:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Contract.

32.2 Should CONSULTANT be in default under any of the provisions under Subsection 32.1 above, the CITY will issue a written notice of default providing a ten (10) day period in which CONSULTANT will have an opportunity to cure. Time allowed for cure will not diminish or eliminate CONSULTANT's liability for damages. If the default remains after CONSULTANT has been provided the opportunity to cure, the CITY may do one or more of the following: (1) Exercise any remedy provided by law; (2) Terminate this Contract and any related contracts or portions thereof; (3) Impose liquidated damages, if liquidated damages are listed in the Contract; or (4) Suspend CONSULTANT from receiving future solicitations.

**33. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The CITY may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.

**34. PROCUREMENT ETHICS:** The CONSULTANT understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the CITY is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the CITY, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

**35. CONFLICT OF TERMS:** In order for any terms and conditions of the CONSULTANT to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of the CONSULTANT will apply to this Contract, including terms listed or referenced on a CONSULTANT's website, terms listed in a CONSULTANT'S quotation/sales order, etc.

**36. ENTIRE CONTRACT:** This Contract including all attachments and documents incorporated hereunder, and the related CITY solicitation documents, if any, constitutes the entire Contract between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Contract shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the CONSULTANT's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the CONSULTANT that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the CITY. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract

and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Contract.

**37. DISPUTE RESOLUTION:** In the event of any dispute under this Contract prior to any filing in any judicial proceedings, the parties agree to participate in good faith in the mediation of the dispute. The CITY, after consultation with the CONSULTANT, may appoint an expert or panel of experts to assist in the resolution of the dispute. If the CITY appoints such an expert or panel, CITY and CONSULTANT agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

OWNER:

CONSULTANT:

City of Logan

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

290 North 100 West  
Logan UT 84321

END OF DOCUMENT

**APPENDIX D– CLAIM OF BUSINESS CONFIDENTIALITY**

**Claim of Business Confidentiality**

Any person who provides a proposal (or information contained in any record) that he or she believes should be protected under UCA Subsection 63G-2-305 (1 - 4) shall provide with the proposal a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. The guidelines used by Logan City to grant business confidentiality are as follows:

- Trade secrets – if the submitted information includes a formula, pattern, compilation, program, device, method, technique, or process, that has actual or potential value by its non-disclosure to the general public, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
- Commercial information or non-individual financial information- if the submitted information contains commercial information or non-individual financial information the disclosure of which could reasonably be expected to result in unfair competitive injury to the person submitting the information, or would impair the ability of Logan City to obtain necessary information in the future, and the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

I, \_\_\_\_\_ do hereby claim that the pages identified below, which are contained within this submission as required by Logan City are confidential.

Signature\_\_\_\_\_

Date\_\_\_\_\_

The following pages of this Proposal are protected under a Claim of Business Confidentiality: