



**CITY OF LOGAN, UTAH  
JANUARY 2019  
DIGITAL ORTHOPHOTOGRAPHY  
REQUEST FOR PROPOSAL (RFP)**

**Distributed by:  
City of Logan GIS Department  
290 N 100 W  
Logan, Utah 84321**

**January 11, 2019**

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## **1.0 INTRODUCTION**

The City of Logan is requesting sealed proposals in support of the acquisition of digital orthophotography for Spring 2019. The purpose of this document is to provide interested parties with enough information to enable them to prepare and submit a proposal for digital orthophotography. The City of Logan will use the results of this process to award a Professional Services Contract for complete digital orthophotography services.

Once developed, the digital orthophotography will be employed to enhance the City of Logan's GIS data by providing an updated base layer to directly support parcel and centerline maintenance, asset management, community planning, economic development, public works, and many other GIS applications.

## **2.0 BACKGROUND INFORMATION**

The following background information has been provided in support of the City of Logan's digital orthophotography project. Additional information about the City of Logan can be found on the Internet at [www.loganutah.org](http://www.loganutah.org).

### **2.1 City of Logan GIS Program Overview**

In 1996, the City of Logan selected Environmental Systems Research Institute, Inc. (ESRI) as a citywide GIS software platform. Two years later, in 1998, the City purchased orthophotography and quickly made it available to all City departments by centrally placing the images on a GIS data server. After the introduction of these two components, GIS quickly became a useful tool for visualizing planning scenarios and inventorying City infrastructure.

In 2004, the City implemented an enterprise GIS program and subsequently purchased additional orthophotography. In 2008, Logan City purchased orthophotography and ESRI's Image Server. In 2010, Logan City purchased more orthophotography and now uses ESRI's Image Server to display scanned historic aerial photos, along with our high quality orthophotography (1998, 2004, 2008, 2010, 2013, 2015 & 2017), in both desktop and web applications.

## **3.0 RESPONSE SUBMISSION REQUIREMENTS**

The following administrative requirements shall govern the preparation and submission of every proposal response.

### **3.1 Response Submission Deadline**

Two (2) copies of your response clearly marked "City of Logan: 2019 Digital Orthophotography RFP Response", must be received by the Purchasing Department no later than **February 1, 2019 @ 5:00 P.M.**

Responses should be addressed to the following:

Lori Mathys, Purchasing Agent  
Purchasing Department  
290 N 100 W  
Logan, Utah 84321  
Phone: (435) 716-9655

Responses may be mailed or hand-delivered. Technical and price responses must be shipped in one box or package. The Respondent shall be responsible for the timely delivery of any response sent by mail or commercial express service. All responses become the property of the City of Logan. The content of all responses will be held confidential and sealed until after the submission deadline.

### **3.2 Late Responses, Modification, or Withdrawal**

Responses received after the date and time indicated will not be considered and will be returned unopened if the Respondent is identified on the response envelope.

Responses may be withdrawn or modified in writing prior to the response submission deadline. Responses that are resubmitted or modified shall be sealed and submitted to the previously identified City of Logan Purchasing Department prior to the response submission deadline.

### **3.3 Packaging and Format**

Each response must be sealed to provide confidentiality of the information prior to the submission date and time. The City of Logan will not be responsible for premature opening of responses not properly labeled. Clearly mark one response copy as the “Master Proposal”, and enclose originals of the required forms. Each response sent shall be accompanied by a transmittal letter signed in ink by an authorized company representative, empowered with the right to bind the Respondent.

Each response must contain the following information:

*Cover Letter:* Include the original signed cover letter with the original proposal and a copy of the cover letter with each copy of the proposal. The cover letter should provide the following: a.) brief statement of the Respondent’s understanding of the project, b.) name, title, phone number, fax number, e-mail address, and street address of the company representative, and c.) highlights of the Respondent’s qualifications and ability to perform the project services.

*Company Overview:* Include the following information about the Respondents firm: a.) company name, business address, phone number, fax number and Internet address, b.) year the firm was established and any former names of the firm if applicable, c.) type of ownership and parent company if applicable, d.) location of the office or offices that will provide the project services, and e.) brief statement of the firm’s background demonstrating longevity and financial stability.

*Project Services:* In this section, describe the Respondent’s expertise with, and understanding of, the methods necessary to produce the project deliverables and meet the identified specifications. Provide a clear indication that the specifications in Section 4 can be met.

*Project Team:* Include a project team organizational chart and clearly identify the project manager and project team. A resume for the project manager should be included for reference and a brief description of the project teams’ related experience should also be noted.

*Project References:* For up to 5 relevant projects, include a one or two paragraph project description that demonstrates capabilities in the project services, experience with similar clients, and/or local project experience. Include the name of the client organization and the name of the person there to contact for a reference.

*Proposed Fee:* Include the project cost and a time table for project completion.

*Delivery Schedule:* Include a detailed schedule for the completion of the project deliverables identified in the proposal. Include the proposed start and end dates and intermediate delivery dates. Describe your resource availability for the anticipated duration of the project.

*Additional Information:* Include any appropriate additional information such as an equipment list and other information that supports your proposal. Camera specifications and other related information should be included in this section.

### **3.4 Price Quotations**

All prices shall be quoted in U.S. dollars. Where uncertainty exists, quote estimated costs or a range of costs. Unless Respondents specifically note otherwise, any and all quoted prices will be firm. Additional purchases of all material may be required through one year from award date of this contract and shall be at the contract unit price. In case of error in the extension of prices in the response, the unit prices shall govern.

### **3.5 Acceptance of Response Content**

The City of Logan retains the right to reject all proposals. If a Respondent is chosen, conditions of this RFP and the contents of the successful response will be used for establishment of final contractual obligations. The City of Logan retains the option of retracting the award if the successful Respondent fails to accept such obligations. The City of Logan and the successful Respondent shall enter into a written contract for the work to be performed. It is expressly understood that this RFP and the Respondent's proposal may be attached and included by reference in an Agreement signed by the City of Logan and the successful Respondent.

### **3.6 Duly Authorized Signature**

The response must contain the signature of a duly authorized officer of the Respondent empowered with the right to bind the Respondent.

### **3.7 Response Costs**

The Respondent shall be responsible for all costs incurred in the development and submission of this response. The City of Logan assumes no contractual obligation as a result of the issuance of this RFP, the preparation or submission of a response by a Respondent, the evaluation of an accepted response, or the selection of finalists. The City of Logan shall not be contractually bound until the City of Logan and the successful

Respondent have executed a written contract for performance of the work.

### **3.8 Complete Services/Products**

The successful Respondent shall be required to (a) furnish all tools, equipment, supplies, supervision, transportation and other accessories, services, and facilities necessary to complete the work; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) perform and complete the work in accordance with good technical practice, with due diligence, and in accordance with the requirements, stipulations, provisions, and conditions of this RFP and the resultant agreement.

The Respondent shall represent and warrant that they and their agents, staff and consultants employed by Respondent are protected by worker's compensation insurance and the Respondent has insurance coverage as set forth in Exhibit A which is attached to this RFP. Successful respondent represents that they will enter into a contract with the City of Logan that indemnifies the City of Logan, its officers,

officials, employees and volunteers for any negligent acts, errors or omissions and adds the City of Logan as additional insureds on these policies.

### **3.9 Selection Criteria**

The City of Logan will use the following criteria to evaluate the RFP proposals. This is not a comprehensive list, nor does the arrangement imply order of importance.

*Compliance with RFP Instructions:* The proposal will be evaluated for compliance with the instructions set forth in Section 3 of the RFP. Significant non-compliance may be grounds for disqualification.

*Technical Expertise:* The proposal will be evaluated on the Respondent's demonstrated technical ability. Specific experience in ESRI's suite of products will also be evaluated.

*Quality Control:* The proposal will be evaluated on the basis of apparent effectiveness of the Respondent's quality control procedures, relevant to Section 4.0.

*Staff Qualifications:* The proposal will be evaluated on the basis of the Respondent's demonstrated staff qualifications.

*Similar Project Experience:* The proposal will be evaluated on the basis of similar project experience. Technical nature, complexity, and geographic size will be considered.

*Delivery Schedule:* The proposal will be evaluated to ensure project deliverables can be provided to the City of Logan in a timely manner. The Respondents production capacity will also be evaluated.

*Cost:* The proposal will be evaluated on the Respondent's quoted costs.

*Insurance Compliance:* Proof of ability to comply with insurance requirements as shown on Exhibit A.

*Contract Acceptance:* Acceptance of or requested changes to the Standard Professional Services Agreement included as Exhibit B.

#### **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 Exhibit C.

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.

## 4.0 PROJECT SPECIFICATIONS

The scope of work for the *Project Area* surrounds Logan City's current municipal boundary (See Exhibit B – Project Area Map).

**Any and all alternative processes that would promote a higher quality orthophotography product, or cost savings, are encouraged.**

### 4.1 Scope of Work

All deliverable products must comply with the following standards at a minimum.

The Respondent will provide the following products and services:

- Target placement and GPS field surveying for all required ground control points.
- Stereo color aerial photography flown at a ground sample distance (GSD) of .15'.
- Color orthorectified imagery, furnished in TIFF and MrSID formats at a .15' pixel resolution, furnished on DVDs or external hard drive.

#### Targeting and Field Surveying

Vendor will target and field survey all control necessary to achieve the mapping accuracies stated below. Horizontal and vertical control will be derived by GPS Surveying on the datum and coordinate system of NAD 83 State Plane Utah North US Survey Foot, adjusted to the current Geoid 12A. The State AGRC VRS/GPS Network will be used as the GPS survey correction source. Horizontal and vertical coordinates for all control points must be accurate to less than 0.10'. The Respondent will provide a control listing detailing horizontal coordinates and elevations for all surveyed points.

#### Aerial Photography

A large format film or digital camera equipped with forward motion compensation, airborne GPS and high-resolution optics will be required for the *Project Area*. A current camera calibration report will be submitted with the proposal. For film cameras, unexpired high resolution color film (AGFA X100) will be used. Aerial photography shall be obtained, when practical, during periods when deciduous trees are barren and the solar angle is above 35° from the horizon. Natural color stereoscopic coverage flown at a ground sample distance (GSD) of .15' will be taken of the *Project Area*. Cameras interfaced with IMU technology may be incorporated to further reduce the amount of required ground control.

#### Image Scanning (Film Cameras)

Aerial negatives will be scanned in a flatbed, transmissive light instrument specifically designed and manufactured for photogrammetric purposes (DSW700 or equivalent). The unit shall have a geometric resolution of 1mm, geometric precision of less than 2mm RMSE on each axis, resolution of at least 12.5mm and shall be capable of scanning the red, green and blue bands at 256 hue levels each.

#### Analytical Aerotriangulation

Fully analytical aerotriangulation will be used to extend full control for each stereomodel.

#### Orthorectified Imagery

Color orthorectified imagery will be provided for the *Project Area*. Imagery will be furnished on DVDs or portable hard drive in TIFF and MrSID formats at a pixel resolution of .15'. Associated .TFW and

.SDW world files will also be included. Each image file shall be accompanied by a text file that describes information associated with the imagery. This data shall include: date of photography, photo scale, horizontal datum, vertical datum, units, pixel size, and min/max X & Y coordinates. Files will be no larger than 200 MB in size and will butt-match with adjacent images. Files will be tone matched to optimize image quality throughout the *Project Area*.

#### Mapping Accuracy

All mapping data will meet or exceed National Map Accuracy Standards for 1' contours at a scale of 1"=50'. Well-defined planimetry visible and discernable in the ortho imagery will be horizontally accurate to within  $\pm 1'$ .

### **5.0 PROJECT TIMING**

The following is a high-level project timeline. More specific data delivery dates should be provided by the Respondent.

Request for Proposal Released - January 11, 2019  
Intent to Respond Due – January 22, 2019  
Questions Due – January 25, 2019  
Responses Due – February 1, 2019  
Selection of Vendor – February 8, 2019

**If your firm intends to respond to this Request for Proposal, the Intent to Respond Form, Appendix A, must be returned to the Project Contact by January 22, 2019.**

Time extensions will only be considered in circumstances beyond the Contractor or City's control.

### **6.0 CONTACT PERSONNEL**

Any requests for clarification and/or additional information shall be directed to the City of Logan GIS Administrator at the following address:

Mr. Chuck Shaw (GIS Administrator)  
290 N 100 W  
Logan, Utah 84321  
Phone: 435-716-9171 Fax: 435-716-9101  
Email address: [chuck.shaw@loganutah.org](mailto:chuck.shaw@loganutah.org)

Questions must be submitted by 5:00 P.M., January 25, 2019. Question and answer information can be found at [https://www.loganutah.org/bid\\_detail\\_T11\\_R123.php](https://www.loganutah.org/bid_detail_T11_R123.php)

### **7.0 OTHER RELATED MATTERS**

Upon completion of the digital orthophotography project, the Respondent must transfer the rights and use of all deliverable products. The commercial use of the digital orthophotos and associated products without the express, written consent of the City of Logan is strictly prohibited.

The City of Logan will openly entertain any value-added or cost saving alternative(s) provided by the Respondent.



## **APPENDIX A: INTENT TO RESPOND FORM**

The completion of this form indicates the Respondent's intent to respond to this Request for Proposal.

Firm Name:

Primary Contact Person:

Primary Contact Person Position:

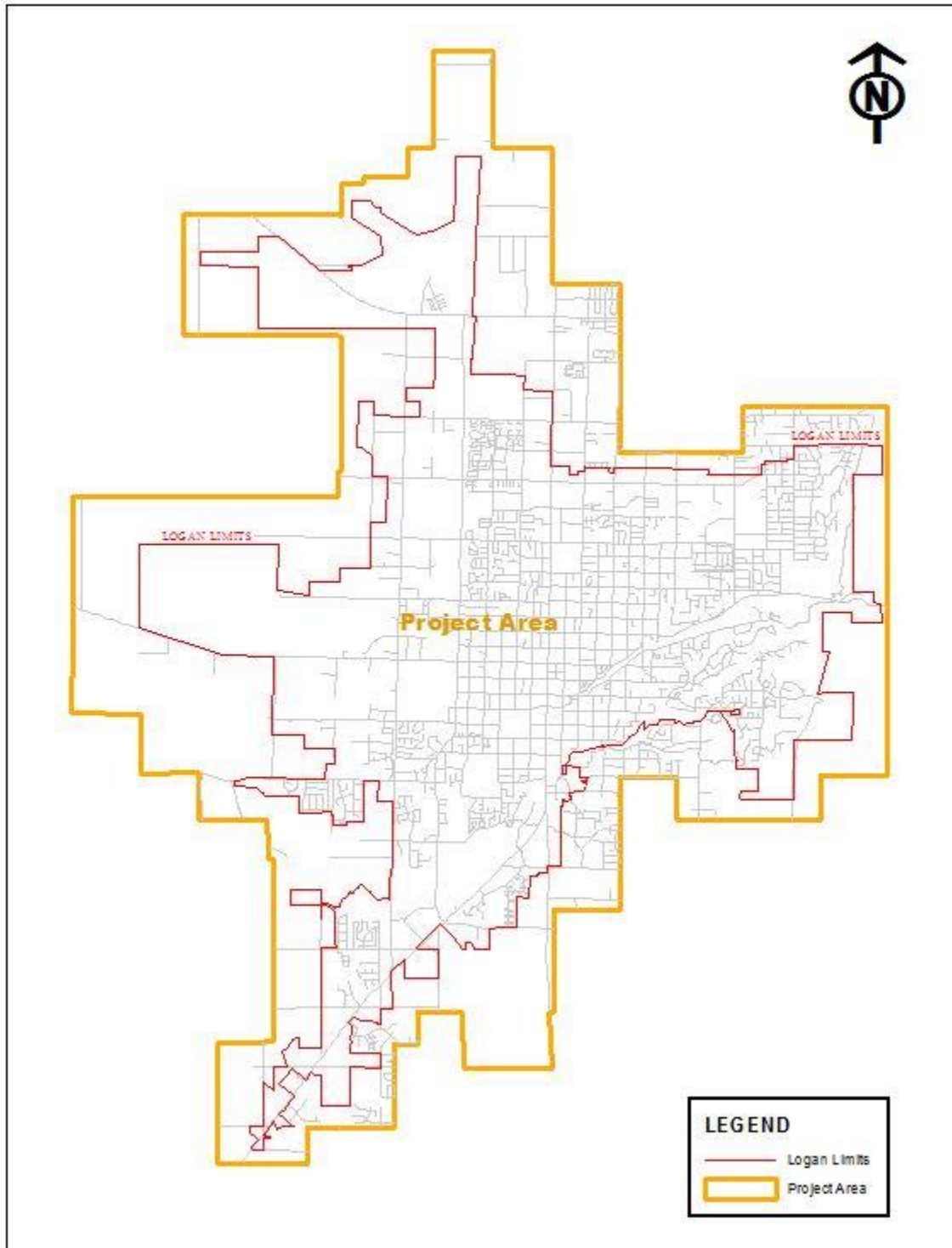
Address:

Telephone:

Fax:

## APPENDIX B: PROJECT AREA MAP

(Shapefiles can be downloaded from <https://bit.ly/2R6kQRQ>)



## **EXHIBIT A: INSURANCE AND BOND REQUIREMENTS**

### **FOR: Digital Orthophotography Contract January 2019**

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. TYPES AND MINIMUM LIMITS OF INSURANCE**

Contracting party shall maintain limits not less than:

1. **AVIATION LIABILITY to INCLUDE COMMERCIAL 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:** Not applicable.
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 ACCIDENT, INJURY, OR DAMAGE**

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.

**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.

## EXHIBIT B: SAMPLE CONTRACT

### Standard Contract Terms and Conditions for Professional Services

Project: 2019 Digital Orthophotography Service

1. **PARTIES:** This agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Logan, a Utah municipal corporation, hereinafter referred to as the “CITY”, and \_\_\_\_\_, hereinafter referred to as “CONTRACTOR”.
2. **CONTRACT DOCUMENTS:** This agreement incorporates by reference the Request for Proposal, which includes Insurance and Bond Requirements, dated \_\_\_\_\_ and the Proposal dated \_\_\_\_\_.
3. **AUTHORITY:** Provisions of this contract (“Contract”) are pursuant to the authority set forth in Logan Municipal Code 3.04, and related statutes which permit the City of Logan to purchase certain specified services, and other approved purchases for the City of Logan.
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:** The person or entity contracting with the City of Logan under this Contract (“Contractor”) 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 Contractor shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to the Contractor for costs authorized by this Contract. These records shall be retained by the Contractor 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 Contractor agrees to allow State and Federal auditors, and City of Logan 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 Contractor 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 Contractor shall be liable for all damages to the City of Logan and anyone for whom the City of Logan 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 Contractor 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 Contractor will be remitted by mail or electronic funds transfer.
  - 9.3 The acceptance by the Contractor of final payment without a written protest filed with the City of Logan within ten (10) working days of receipt of final payment shall release the City of Logan from all claims and all liability to the Contractor for fees and costs of the performance of the services pursuant to this Contract.
10. **PROMPT PAYMENT DISCOUNT:** Offeror 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. Contractor 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:** Contractor agrees that any work/services and all Deliverables prepared for City of Logan, 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 of Logan. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor 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 of Logan. Contractor further agrees to provide all assistance reasonably requested by City of Logan 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 Contractor. Contractor 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) Contractor certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor'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 Contractor 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 of Logan 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 Contractor'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

Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify and hold harmless, the City of Logan and its officers, employees, agents, representatives and anyone that the City of Logan 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) Contractor; (b) Contractor's subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

- 14. CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the City of Logan, unless disclosure has been made. Contractor also represents that it has no conflict of interest in performing the services for the City of Logan under this Contract, unless such conflict of interest has been disclosed to the City of Logan and approval to proceed, notwithstanding the conflict, has been obtained from the City of Logan in writing.
- 15. CONTRACTOR AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the City of Logan to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the City of Logan, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the City of Logan. The Contractor shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from the City of Logan for these Contract services. Persons employed by the City of Logan and acting under the direction of the City of Logan shall not be deemed to be employees or agents of the Contractor.

- 16. INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the City of Logan, 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 acts or negligence of (a) the Contractor, (b) the Contractor's officers, agents, volunteers, or employees, (c) the Contractor's subcontractors or subconsultants at any tier, or (d) anyone for whom Contractor may be liable but not for claims arising from the City of Logan's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor 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 Contractor 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 Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place. Contractor also agrees to abide by any laws and policies of the City of Logan regarding any of the above mentioned prohibitions in this paragraph.
- 18. PERFORMANCE EVALUATION:** The City of Logan may conduct a performance evaluation of the Contractor's services, including specific personnel of the Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the Contractor.
- 19. WAIVERS:** No waiver by the City of Logan or Contractor 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 Contractor certifies that neither it nor its principals 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 Contractor cannot certify this statement, attach a written explanation for review by the City of Logan. The Contractor 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 of Logan, 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 Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the City of Logan 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 Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract. Contractor 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 Contractor under this Contract up to the date of termination are the property of the City of Logan and shall be promptly delivered to the City of Logan.
- 24. INSURANCE:**

24.1 To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the Contractor 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 of Logan 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.

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

24.4 The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor 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 Contractor 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 Contractor shall be liable to the City of Logan for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against the City of Logan), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.

**26. CITY OF LOGAN REVIEWS, LIMITATIONS:** The right of the City of Logan to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by the City of Logan, 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 of Logan 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 Logan of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the Contractor shall be and remain liable to the City of Logan in accordance with applicable law for all damages to the City of Logan caused by the wrongful acts, errors and/or omissions of the Contractor or its subcontractors or subconsultants at any tier, if any.

**27. NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the City of Logan 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 of Logan's obligations on this Contract, or if funding to the City of Logan 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 of Logan may terminate this Contract or proportionately reduce the services and purchase obligations and the amount due from the City of Logan upon 30 days written notice to Contractor. 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 of Logan will pay Contractor for services properly performed, and will reimburse Contractor for expenses incurred, as authorized under this Contract, through the date of cancellation or reduction, and this payment shall be Contractor's sole remedy, and the City of Logan will not be liable for any future commitments, penalties, or liquidated damages.

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

**29. PUBLIC INFORMATION:** Contractor agrees that this Contract, related sales orders, and invoices shall be public documents, and shall be available for distribution. Contractor gives the City of Logan 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). Contractor also agrees that the Contractor'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 Contractor will release, indemnify and hold the City of Logan, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor'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:** Contractor 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 of Logan.

**32. DEFAULT AND REMEDIES:**

32.1 Any of the following events will constitute cause for the City of Logan to declare Contractor 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 Contractor be in default under any of the provisions under Subsection 32.1 above, the City of Logan will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the City of Logan 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 Contractor 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 of Logan may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.

**34. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the City of Logan 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 of Logan, 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 Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of the Contractor will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc.

**36. ENTIRE CONTRACT:** This Contract including all attachments and documents incorporated hereunder, and the related City of Logan 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 Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor 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 of Logan. 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 of Logan, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of the dispute. If the City of Logan appoints such an expert or panel, City of Logan and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

OWNER:

CONTRACTOR:

City of Logan

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

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

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

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

Address for giving notices:

Address for giving notices:

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290 North 100 West

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Logan UT 84321

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END OF DOCUMENT

## **EXHIBIT C: 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: