

City of Evans
Public Works Department

REQUEST FOR PROPOSALS

**DIGITAL ORTHOPHOTO
IMAGERY AND PLANIMETRIC DATA**

RFP CLOSING DATE
January 25, 2013
4:00 P.M.

I. INTRODUCTION

The City of Evans is seeking proposals from qualified contractors to provide new 2013 three-inch resolution natural color digital orthophotos in the City of Evans as well as rural areas surrounding the city that are of interest. From this photo capture, Evans will require planimetric feature acquisition and contour generation in areas determined by the City of Evans prior to the photo mission. The geographic extent of each product is illustrated in *Attachment A*. These products will be used by the City of Evans as base map layers in the City's Geographic Information System (GIS) and AutoCAD software.

Interested parties must submit a written proposal to perform the **Project Objectives and Scope of Services** as outlined below in **Section II**. The City of Evans will consider alternative methods for obtaining the desired output products outlined below, including descriptions of methodologies and pricing for all options requested. Alternative methods proposed by the Consultant shall be clearly labeled as such with a description of the proposed alternative methodology and associated pricing.

The final date for submittal of a brief written proposal shall be **Friday, January 25, 2013 at 4:00 p.m.**, Mountain Standard Time (our clock). Six (6) hard copies of proposal statements (no faxes or e-mails) must be submitted.

The City of Evans has the right, in its sole and absolute discretion, to reject any or all of a candidate firm's proposal. The City of Evans has the right to modify any of the information provided with this request for proposal and the City has the right to provide the candidate firms with additional information at any time during the selection process.

The candidate firm shall review this Request for Proposal and all materials provided with this RFP, and shall prepare all materials for submittal and all presentations at their sole cost and expense, and the City of Evans shall in no event be responsible for any cost or expense incurred by the candidate firms in such reviews and preparations.

A standard formal agreement will be executed between the Consultant and the City. A copy of the City's standard professional services agreement is included in *Attachment C* for reference. By submitting a proposal, the Consultant agrees to sign and be bound by the terms of the attached agreement. The contract will be awarded on the basis of professional qualifications, experience with similar projects, price and other factors.

II. PROJECT OBJECTIVES and SCOPE OF SERVICES

A. Photo Coverage Area

Area A: The area to be photographed includes all land within Evans' city limits, as well as those undeveloped areas adjacent to the city within the city's Urban Growth Area. The photograph boundaries should include 95th Avenue on the

west, Weld County Road 44/Colorado State Highway 256 on the south, Weld County Road 47 on the east, and approximately 3500 feet north of US Highway 34 to the north. The entire photograph acquisition area includes approximately 74.4 square miles. See the area in green in *Attachment A* for reference.

B. Aerial Photography

Cameras, lenses, camera mounts and photographic windows utilized in this project shall meet or exceed those standards set forth by the American Society of Photogrammetry and Remote Sensing (ASPRS) for use in aerial photography.

It shall be the responsibility of the Consultant to obtain snow and leaf-free color aerial photography between March 30, and April 30, 2013. For quality assurance purposes, photography shall be undertaken when skies are clear and free from excessive dust, smoke, fog, or haze; when cloud cover is minimal and clouds do not cast visible shadows which can be seen on the photographs and; when lighting and contrast is sufficient enough to provide crisp surface detail and well defined images can be resolved. The ground shall be free from standing water and/or snow. Photography shall be flown only during that portion of the day when the sun is 30 degrees or more above the horizon.

Excessive crab, drift and/or tilt shall be cause for rejection. All reflights shall be the responsibility of the Consultant at no cost to the City of Evans.

Images shall be radiometrically balanced with uniform color, contrast and brightness from image to image. Images will be free of spots, scratches, stains, foreign artifacts and other blemishes.

Flight lines shall be laid out to produce the most cost effective solution. Ground control will be performed that is sufficient to support the orthophoto production.

The City of Evans shall be notified at least one-hour prior to when the flight and photo acquisition takes place.

C. Digital Orthophotography

It is the City's desire to obtain digital orthophoto images that meet ASPRS standards for Class I vertical and horizontal standards. Digital orthophoto resolution shall be such to produce images with three (3)-inch pixel resolution. Orthophotos shall be tiled in a manner that best suits the business needs of the City. Orthophotos shall be natural color (RGB) but may include an optional near infrared band as well.

Digital Terrain Modeling

The City desires to acquire a 1-foot contour DTM and 1-foot contour line development for the project area. The final DTM should meet a 0.34-foot (10.25 cm) RMSE as per ASPRS standards. The proposer should define the process proposed for the generation of the DTM and contours. Breaklines should be captured to meet the 1-foot contour accuracy; breaklines should also be collected to support hydro flattening. The area of interest for contour generation is shown in orange in *Attachment A*. The area includes the entire Evans city limits and adjacent area along the South Platte and Big Thompson Rivers. The entire area includes approximately 42.6 square miles.

Planimetrics

This project will include the collection of building roofprints and transportation features utilizing stereo imagery. Specifically, the City desires the planimetric features and associated attributes that are listed in *Attachment B*. Optionally, the City is interested in the collection of poles (utility and light) and hydrologic features. The proposer shall provide pricing for each planimetric data product, including those considered optional, by the square mile.

It is the City's desire for the new planimetric data to be seamless with the City of Greeley's planimetric data that was created as part of a 2012 aerial and planimetric data project. A significant portion of the City of Greeley's planimetric data lies within the city limits of Evans, therefore the area for collection is smaller than the area requested for contours. The entire area for the Evans planimetric data collection includes approximately 26.25 square miles. This area is shown in is shown in blue in *Attachment A*.

Greeley's data was created to meet ASPRS Class 1 standards for 100' scale mapping. Coordinate System shall be NAD 1983 State Plane Colorado North FIPS 0501 (Feet) with preferred delivery as an ArcGIS10.1 file geodatabase. Please note, it is the City of Evans desire to obtain data created to **meet ASPRS Class 1 standards for 50' scale mapping**. We realize that there will be some concern in matching the two datasets since they are at different scales but we believe that this goal can be achieved.

The specifications in *Attachment B* are the City of Greeley's specifications for structure roofprints, roads, parking, driveways and sidewalks, patios and other significant paved slabs.

The planimetric deliverables need to meet 1"=50' map scale accuracy (NMAS). The following compilation requirements apply:

- 1) Edge matching—All digitized features must be both visually and geometric edge matched at model breaks or other artificial boundaries within a tile.
- 2) Common Boundaries—All graphic features that share a common boundary, regardless of digital map layer, must have the exact same digital representation of that feature in all common layers.
- 3) Connectivity—Where graphic elements visually meet, they must also digitally meet. All confluences of line, area, and polygon data must be exact mathematically; that is, no “overshoots,” “undershoots,” or “offsets” or “pseudo nodes” are permitted. Lines that connect polygons must intersect those polygons precisely; that is, every end point must be an intersection point of the respective polygon.
- 4) Line Quality—A high quality cartographic appearance is required. Transitions from straight line to curvilinear line segments shall be smooth, and without angular inflections at the point of intersection. The digital representation must not contain extraneous data at a non-visible level. There shall be no jags or hooks or zero length segments. Curvilinear graphic features shall be smooth with a minimum number of points. When appropriate, line-smoothing programs may be used to minimize the angular inflection in curvilinear lines. Any lines that are straight, or should be straight, should be digitized using only two points that represent the beginning and ending points of the line.
- 5) Segmentation—The digital representation of linear elements must reflect the visual network structure of the data type. An element should not be broken or segmented unless that segmentation reflects a visual or attribute code characteristic, or unless the break is forced by database limitations.
- 6) Area and Polygon Closure and Centroids—For area features being digitized, the last coordinate pair must be exactly (mathematically) equal to the first coordinate pair.

D. Deliverables

One (1) set of aerial imagery. Tiling of imagery shall be made in consultation with the City. The City currently uses JPEG2000 with associated world files but will consider other image formats as long as the Consultant-recommended file formats are compatible with ArcGIS 10.1 and AutoCAD 2012.

The DTM shall be in Esri file geodatabase format; 1' contours, planimetric data in Esri file geodatabase (ArcGIS 10.1 compatible) and optionally, AutoCad v2012 drawing file format; FGDC compliant metadata shall be created for the imagery and GIS data.

OPTIONAL: In the past, the City of Evans has purchased mounted photographs for office display. The scale depends on the ability to produce 4' x 8', or larger mounted pictures. The City of Evans currently has 4' x 8' pictures at a scale of 1" = 600' which encompasses an area of approximately 60 square miles. The City of Evans is considering purchasing up to thirteen (13) such mounted photographs. Pricing for each mounted print, as well as a description of the mounted print (i.e. prints mounted on ½" black edged gator board) must be provided.

III. REQUIRED QUALIFICATIONS

The Consulting firm shall agree not to refuse to hire, discharge, promote, demote or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, religion, creed, color, sex, national origin, ancestry, or physical or mental disability.

The successful proposing Consultant and its employees will operate independently and will not be considered an employee of the City of Evans.

IV. FORM OF PROPOSAL

The candidate's proposal must include a scope of work the company believes is appropriate to achieve the purposes of the project as stated above. **Please limit proposals to 35 pages or less.**

The proposal shall include the following items in the order listed herein:

- A. **Cover letter** indicating interest in the project.
- B. **Experience of the Firm / Statement of Qualifications.** The Consultant may include up to three (3) pages of information on recent, relevant similar projects, specifically targeted to projects on which key staff have worked, particularly projects completed for public agencies. The Consultant shall specify which key individuals worked on each project and their respective roles in the project. This information shall also include a reference list of a minimum of five (5) clients for whom the company has completed similar projects for including contact names and telephone numbers.
- C. **Detailed Project Approach.** The selection team will review the Consultant's project approach to ascertain the Consultant's understanding of the project and issues, to assure that a proper effort will be devoted to the project, and to entertain the Consultant's special perspectives on approach, techniques, and work efforts.
- D. **Detailed description and list of deliverables to be provided.** In general, the City typically requires a description of all services, tasks, and deliverables,

(including those listed as optional in the RFP) potential cost calculations, recommendations and estimated time lines, and copies of all correspondence.

- E. **Staffing.** The company shall prepare an organizational staffing chart, and shall list major staff assignments to the project. Brief resumes or experience summaries of key individuals shall be included, with emphasis on previous experience on similar projects in similar roles.
- F. **Fee.** The Consultant shall submit an estimated “not to exceed” amount of the total fees within their proposal for the project, including production and other expenses. The proposal shall include the time and cost of the work described in the RFP.
- G. **Project Schedule.** Specifically, the Consultant will indicate their requirements in calendar days to perform the various aspects to fly the area, generate the orthophotography and create the contours and planimetric data.
- H. **Standard Contract.** The Consultant shall review the standard contract and state a willingness to enter into this contract, subject to amendments necessary for the firm to comply with the proposal and listed as "Proposed Special Provisions to the City of Evans Standard Contract." Specific statements must be made concerning contract issues. General statements such as "... in general agrees with all of contractual provisions...", "... have identified some minor items to resolve...", "...do not anticipate any difficulty in negotiating these issues..." are not considered acceptable responses to paragraph V.H. All contractual issues must be clearly identified in this portion of the proposal. Failure to do so may result in cancellation of contract award. The Consultant will be judged upon the thoroughness of review of the standard contract and the specificity of comments and changes. The scope of services of the standard contract will be modified to reflect the project specific scope of services arrived at by the City and the Consultant.

It is recognized that some of this information has been previously conveyed in the Statement of Qualifications. In their proposal submittal, the Consultant may revise, amplify, or modify previously conveyed information as appropriate, but the proposal should be generally consistent with the Qualification Statement.

V. **CONTRACTING / SELECTION PROCESS**

A. **Review and Assessment**

Professional firms will be evaluated on the following criteria. These criteria will be the basis for the review of the written proposals and, if necessary, interview session (not anticipated).

The rating scale shall be from 1 to 5, with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating.

Weighting Factor	Qualification	Standard
2.0	Scope of Proposal	Does the proposal show an understanding of the project objectives, methodology to be used and the results that are desired from this project?
2.0	Availability	Can the work be completed in a timely manner? Can target start and completion dates be achieved? Are other qualified personnel available to assist in meeting schedules if required? Is the team available to attend meetings as required by the scope of work?
1.0	Motivation	Is the firm interested and enthusiastic about working with the City of Evans? Does quality and attention to detail show up in their proposal and the questions they ask?
2.0	Firm Capability	Does the firm have the support capabilities the assigned personnel require? Has the firm done previous work of this nature with adequate results?
3.0	Cost & Work Hours	Do the proposed cost and work hours compare favorably with the available budget? Are the work hours presented reasonable for the effort required in each task or phase?

B. Reference Evaluation (Top Ranked Firm)

The project manager will check references using the following criteria. The evaluation rankings will be labeled Satisfactory/Unsatisfactory.

Qualification	Standard
Overall Performance	Would you hire this professional firm again? Did they show the skills required for this project?
Timetable	Was the original scope of work completed within the specified time? Were interim deadlines met in a timely manner?
Completeness	Was the professional firm responsive to client needs? Did they anticipate problems? Were problems resolved quickly and effectively?
Budget	Was the original scope of work completed within the project budget?

VI. METHOD OF SUBMITTAL

Proposals shall be submitted in hard copy form, with six (6) identical copies each. All copies shall be submitted to:

City of Evans - Department of Public Works
Attn: Jake Freier, GIS Coordinator
1100 37th Street
Evans, CO 80620
RE: RFP - City of Evans Orthophoto and Planimetric Project

Submittals must be received prior to **4:00 p.m. on Friday, January 25, 2013**. No faxes or e-mails will be accepted. All proposals submitted shall become the property of the City of Evans and will become public record. For questions regarding the RFP, you may contact Jake Freier at (970) 475-1122 or jfreier@ci.evans.co.us.

VII. PROJECT PROCESS AND SCHEDULE

- | | | |
|----|---|-------------------------------|
| A. | RFPs issued | <i>Dec. 18, 2012</i> |
| B. | Proposals Due | <i>Jan. 25, 2013</i> |
| C. | Review Team completes evaluation of proposals | <i>Jan.28 – Feb. 8, 2013</i> |
| D. | Negotiate final contract with selected vendor | <i>Feb. 8-13, 2013</i> |
| E. | Award of Contract by Evans City Council (tentative) | <i>Feb. 19, 2013</i> |
| F. | Notice of Award | <i>Feb. 20, 2013</i> |
| G. | Notice to Proceed (tentative) | <i>Feb. 27, 2013</i> |
| H. | Photographic Coverage | <i>Mar. 30 – Apr.30, 2013</i> |
| I. | Project Completion | <i>Sept. 1, 2013</i> |

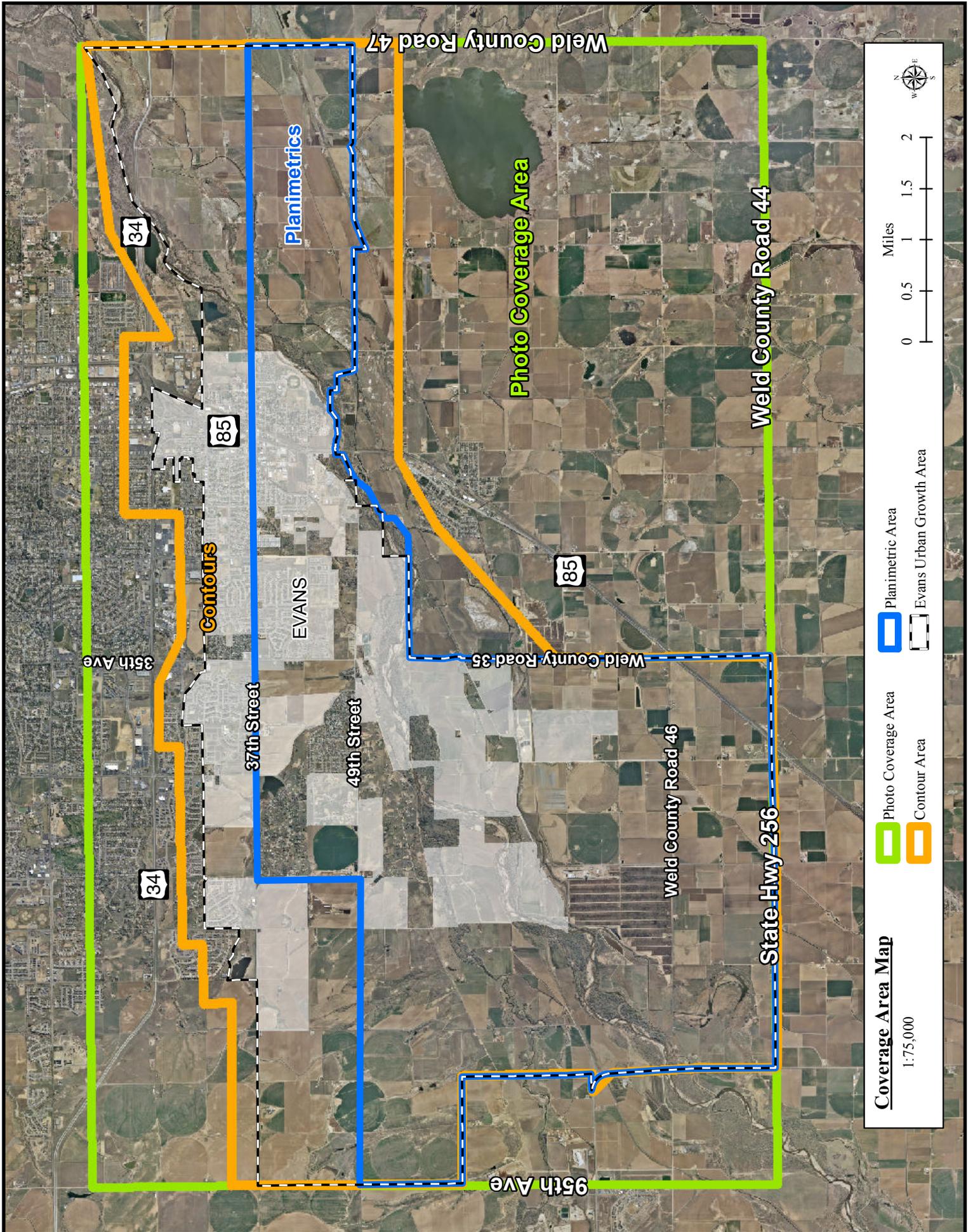
VIII. PROGRESS REPORTS

The Consultant and the City’s project manager shall hold progress meetings as often as necessary, but in no case less than once per month until the orthophotos are acceptable to staff.

As a minimum, the Consultant shall hold one orientation meeting with City staff to outline the project and time line.

IX. SCOPE OF SERVICES

As a part of the contract negotiations, the final candidate company shall prepare a Scope of Services that will become a part of the contract agreement between the City of Evans and the company. This Scope of Services shall include the aforementioned aspects of this RFP as well as any other items that are proposed in the successful candidate's proposal.



Attachment B: Planimetric Specifications

It is the City’s desire for the new planimetric data to be seamless with the City of Greeley’s planimetric data that was created as part of a 2012 aerial and planimetric data project. Greeley’s data was created to meet ASPRS Class 1 standards for 100’ scale mapping. Coordinate System shall be NAD 1983 State Plane Colorado North FIPS 0501 (Feet) with delivery as an ArcGIS10.1 Geodatabase is preferred. Please note, it is the City of Evans desire to obtain data created to **meet ASPRS Class 1 standards for 50’ scale mapping.**

The specifications for the City of Greeley’s data are as follows.

- **Structure roofprints**
 - To include an integer “HEIGHT” attribute, representing the highest point of each structure, measured in feet above surrounding mean ground elevation.

CODE	DESCRIPTION	<i>Description</i>	<i>Capture Rules</i>
1	Building	Polygon enclosing all erect (not under construction) buildings; i.e. houses, apartments, outbuildings, commercial. Building must have at least 1 side 10’ or greater to be compiled.	Collect as closed polygon with building to the right.
2	Under Construction Building	Polygon enclosing all buildings under construction or in ruins. Building must have at least 1 side 10’ or greater to be compiled.	Collect as closed polygon with the approximate building to the right.
4	Miscellaneous Structure	Minor buildings with at least 1 side 10’ or greater that include tool storage sheds, loading docks, decks. Structures within substations, industrial air conditioning units that are not on top of buildings (not residential air units), etc.	Collect as a closed polygon with the structure to the right.

- **Roads**

CODE	DESCRIPTION	<i>Description</i>	<i>Capture Rules</i>
1	Paved Road	Defined as edge of Road Pavement.	Collect as a closed polygon with road surface to the right.
2	Unpaved Road	Unpaved road over 100’ long, or 10’ in width. Unpaved surfaces will include dirt, gravel or other compact surface.	Collect as closed polygon with the unpaved surface to the right.
4	Paved Shoulder	Pavement between edge of traveled way and edge of total paved surface. Curb and guardrail have precedence over shoulder.	Collect as closed polygon with the paved surface to the right.

CODE	DESCRIPTION	<i>Description</i>	<i>Capture Rules</i>
5	Unpaved Shoulder	Unpaved area between edge of traveled way and edge of total paved surface.	Collect as closed polygon with the unpaved surface to the right.

- Parking

CODE	DESCRIPTION	<i>Description</i>	<i>Capture Rules</i>
0	Paved Parking	Commercial and/or Residential paved surfaces used primarily for parking vehicles. Must have at least 1 side that is 10' or greater to be compiled.	Collect as a closed polygon with paved parking areas to the right. All visible Paved parking lots where at least one (1) side of the parking lot is 10-feet or greater will be digitized.
1	Unpaved Parking	Commercial and/or Residential unpaved surfaces (dirt, gravel, grass, other) used primarily for parking vehicles. Must have at least 1 side that is 10' or greater to be compiled.	Collect as a closed polygon with unpaved parking areas to the right. All visible unpaved parking lots where at least one (1) side of the parking lot is 10-feet or greater will be digitized.

- Driveways and Sidewalks

CODE	DESCRIPTION	<i>Description</i>	<i>Capture Rules</i>
0	Paved Driveway	Paved commercial and/or residential driveway. This could also include golf cart paths.	Collect as a closed polygon with driveway to the right.
1	Unpaved Driveway	Unpaved commercial and/or residential driveway. This could also include golf cart paths.	Collect as a closed polygon with driveway to the right.
2	Sidewalk	All visible paved sidewalks, greater than 3'x10' in area, intended exclusively for pedestrian traffic.	Collect as a closed polygon with the sidewalk to the right. Paved sidewalk extends through driveways and parking areas. Unpaved sidewalks do not extend through driveways and parking areas.

- Patios and other significant paved slabs. Includes paved athletic courts/recreation features.

CODE	DESCRIPTION	<i>Description</i>	<i>Capture Rules</i>
3	Concrete Pad	Any miscellaneous concrete slabs or pads. Includes concrete patios and/or pads around swimming pools.	Collect as a closed polygon with pad feature to the right.

City of Evans, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ___ day of _____, 20_____, by and between the City of Evans, State of Colorado (hereinafter referred to as the "City"), and _____ (hereinafter referred to as "Consultant").

RECITALS:

- A. The City requires professional services for the design of the _____ (hereinafter referred to as "Project").
- B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required services for the Project.

NOW, THEREFORE, it is hereby agreed, for the consideration hereinafter set forth, that Consultant shall provide to the City professional consulting services for the Project.

I. SCOPE OF SERVICES

Consultant shall furnish all labor and materials to perform the services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for the Project, which are described or reasonably implied from **Exhibit A**, which is attached hereto and incorporated herein by this reference.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

III. OWNERSHIP OF INSTRUMENTS OF SERVICE

The City acknowledges that the Consultant's documents are an instrument of professional service. Nevertheless, the documents prepared under this Agreement shall become the property of the City upon completion of the services. Any reuse of the

Consultant's documents is at the City's own risk.

IV. COMPENSATION

- A. In consideration for the completion of the services specified herein by Consultant, the City shall pay Consultant an amount not to exceed _____ (\$_____). Payment shall be made in accordance with the schedule of charges in **Exhibit B**, which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.
- B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the services performed by Consultant under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the City.
1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the City no later than the twenty-fourth (24th) day of each month for payment, pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment, pursuant to said late invoice, until the twenty-fourth (24th) day of the following month.
 2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice, as provided by this Agreement.
- C. The City has the right to require clarification on any Consultant invoice after receipt of the invoice by the City.
- D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the rate of twelve percent (12%) per annum compounded annually. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Consultant may terminate this

Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services unless this Agreement has been terminated.

- E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Consultant's written notification that services required herein by Consultant have been fully completed in accordance with this Agreement and with all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF SERVICES

Within seven (7) days of receipt from the City of a Notice to Proceed, Consultant shall commence services on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice. Except as may be changed in writing by the City, the Project shall be complete and Consultant shall furnish the City the specified deliverables, as provided in Exhibit A.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services which is different from or in addition to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective or paid, unless authorized by written amendment executed by the City. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

- A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, as required by law.
- B. The services performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of services in the applicable community.

- C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs it would not have otherwise incurred caused by errors and omissions which fall below the standard of professional practice.
- D. Approval by the City of drawings, designs, specifications, reports and incidental services or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the services. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.
- E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. COMPLIANCE WITH LAW

The services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

IX. INDEMNIFICATION

- A. **INDEMNIFICATION – GENERAL:** The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever, for any purpose whatsoever. Concerning claims, demands, suits, actions or proceedings of any kind which are not the result of professional negligence, the Consultant shall defend, indemnify and hold harmless the City, its mayor and City council, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, under this Agreement; provided, however, that the Consultant need not indemnify or save harmless the City, its mayor and City council, its officers, agents and employees from damages resulting from the

negligence of the City's mayor and City council, officials, officers, directors, agents and employees.

- B. INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE: For claims caused by or arising out of the negligent acts, errors or omissions of the Consultant, its employees, agents or subconsultants, or others for whom the Consultant is legally liable, the Consultant shall indemnify and hold harmless the City, its Mayor and City Council, and any of its officials, officers, directors, and employees from and against damages, liability, losses, cost and expenses, including reasonable attorney's fees, in the performance of professional services under this Agreement. The Consultant is not obligated under this subparagraph IX.B. to indemnify the City for the negligent acts of the City, its mayor or City council, or any of its officials, officers, directors, agents and employees.

- C. INDEMNIFICATION – COSTS: Consultant agrees, to the extent provided in Paragraphs A. and B., above, to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of Consultant or, at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with any such liability, claims or demands. Consultant also agrees, to the extent provided in Paragraph A. above, to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the City, its mayor and City council, officials, officers, directors, agents and employees, the City shall reimburse Consultant for the portion of the judgment attributable to such act, omission or other fault of the City, its mayor and City council, officials, officers, directors, agents and employees.

X. INSURANCE

- A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law.

Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section IX, Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

- B. Consultant shall procure and maintain, and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to Section IX, Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each claim, Five Hundred Thousand Dollars (\$500,000) disease - policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee.
 2. Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests provision.
 3. Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Consultant shall maintain such coverage for at least three (3) years from the termination of this Agreement.
 4. The policy required by Paragraph 2, above shall be endorsed to include the City and the City's officers, employees and consultants as additional insureds. Every policy required above shall be primary insurance, with the exception of Professional Liability and Worker's Compensation, and any insurance carried by the City, its

officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by Paragraph 1, above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the City shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Evans
1100 37th Street
Evans, Colorado 80620-2036
Attn: Risk Manager

6. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the City, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently One Hundred Fifty Thousand Dollars (\$150,000) per person and Six Hundred Thousand Dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev.

Stat. §24-10-101, et seq., 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the City, its officers or its employees.

XI. NONASSIGNABILITY

Neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the services in Section I are completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all services previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Consultant.

XIII. CONFLICT OF INTEREST

The Consultant shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Weld, State of Colorado.

XV. INDEPENDENT CONTRACTOR

Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform services under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the City for any purposes.

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibits A, B and C is the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XVIII. NOTICE

Any notice or communication between Consultant and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

The City: City of Evans
Attn: <Public Works Director>
1100 37th Street
Evans, Colorado 80620-2036

Consultant: _____

XIX. SPECIAL PROVISIONS

The "Special Provisions" attached hereto as **Exhibit C** and incorporated by this reference are made a part of this Agreement. For purposes of the Special Provisions, the Consultant shall be referred to as the "Contractor."

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate, as of the date first written above.

CITY OF EVANS, COLORADO

By: _____
<Mayor>, Mayor

ATTEST:

<City Clerk>, City Clerk

APPROVED AS TO FORM AND SUFFICIENCY:

<City Attorney>, City Attorney

APPROVED AS TO CONTENT:

<City Manager>, City Manager

CONSULTANT

By: _____

Title: _____

ATTEST:

By: _____

Title: _____