

**TOWN OF PROSPER
CONTRACT FOR SERVICES
RFP NO. 2022-57-B
COMPREHENSIVE BROADBAND ANALYSIS**

This Contract is made by the **Town of Prosper, Texas**, a municipal corporation ("Town") and **Lit Fiber, LLC** ("Contractor"). The Town and Contractor agree:

1. **ENGAGEMENT OF THE CONTRACTOR.** The Town agrees to retain the Contractor, and the Contractor agrees to provide services relative to: **Comprehensive Broadband Analysis** (hereinafter referred to as "Services") in connection with the terms and conditions as set forth in Exhibit A, attached hereto and incorporated by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in Exhibit A. Deviations from the scope of work may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Contractor agrees to begin work promptly upon receipt of written authorization from the Town. Time is of the essence for this Contract and work is to commence immediately.
4. **CONTRACT PERIOD.** The contract period is for 12 months from date of award of contract. All pricing is to remain firm during the contract period.
5. **COMPENSATION.** Contractor's total compensation for services to be performed and expenses to be incurred is specified in Exhibit B.
6. **PAYMENTS.** Payments will be processed on a monthly basis with payment available within thirty (30) days after receipt of the invoice for the previous month's service or as set forth in Exhibit A.
7. **INVOICING.** Invoices should be prepared and submitted to the Town for payment in accordance with Exhibit A. Invoices should be mailed to Town of Prosper, Accounts Payable, P.O. Box 307, Prosper, TX 75078, or emailed to ap@prospertx.gov.
8. **RIGHTS OF WITHHOLDING.** After providing written notice of objection to Contractor, The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by the Contractor. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and will not be paid to the Contractor.
9. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to Contractor.
10. **INSURANCE.** Upon written request, the Contractor shall provide reasonable proof that it has obtained and will continue to maintain throughout the duration of the Contract the insurance requirements set forth in Exhibit A. Failure to maintain the required insurance may result in immediate termination of the Contract.

11. **INDEMNIFICATION.** As specified in Exhibit A.
12. **TRANSFER OF INTEREST.** Neither Town nor Contractor may assign or transfer its interests in the Contract without the written consent of the other party. Such consent shall not be unreasonably withheld. This Contract is binding on Town, Contractor, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.
13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Contractor shall make available to the Town for examination all of its records with respect to all matters covered by the Contract and will permit the Town to audit, examine and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to the Contract.
14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin, disability or any other protected characteristic. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin, disability or any other protected characteristic. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

The Contractor agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provisions will be binding upon each subcontractor, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.

The Contractor shall keep records and submit reports concerning the racial and ethnic origin(s) of applicants employment and employees as the law may require.

15. **TERMINATION OF CONTRACT.** Either party may terminate this Contract upon sixty (60) days' written notice to the party, except in the event (i) any party is in breach of this Contract or (ii) any party fails to comply with the terms of Exhibit A after written notice and expiration of the applicable cure period specified in the following sentence. If either of the foregoing conditions exists, the non-breaching party shall notify the other party and the alleged breaching party shall be given not less than ten (10) days (for breaches that pertain solely to payment, or thirty (30) days to cure any other breach or failure to comply. Should Contractor fail to cure to the satisfaction of the Town, Town may terminate this Contract upon written notice.

Furthermore, the Town retains the right to terminate this Contract at the expiration of each Town budget period (September 30) during the term of this Contract, even without prior notice as described in the preceding sentence.

In the event of any termination hereunder, Contractor consents to Town's selection of another Contractor to assist the Town in any way in completing the Services. Contractor further agrees to cooperate and provide any information requested by Town in connection with the completion of the Services.

Contractor shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that Contractor shall receive a portion of fees and expenses permitted under this Contract in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against Contractor that may be available under applicable law.

16. **CONTRACTOR'S REPRESENTATIONS.** Contractor hereby represents to Town that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required.
17. **TOWN APPROVAL FOR ADDITIONAL WORK.** No payment, of any nature whatsoever, will be made to Contractor for additional work without the Town's written approval before such work begins.
18. **PERFORMANCE BY CONTRACTOR.** All Services provided by the Contractor hereunder shall be performed in accordance with the highest professional standards and in accordance with Exhibit A, and Contractor shall be responsible for all Services provided hereunder whether such services are provided directly by Contractor or by any subcontractors hired by Contractor. The Contractor shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. Contractor shall not utilize subcontractors to perform Services without the Town's prior written consent.
19. **DAMAGE.** In all instances where Town property and/or equipment is damaged by the Contractor's employees, a full report of the facts, extent of the damage and estimated impact on the Contractor's schedule shall be submitted to the Town by 8 a.m. within two (2) Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Contractor must notify Police Dispatch immediately. The Contractor shall be fully liable for all damage to Town property or equipment caused by the Contractor's officers, employees or agents.
20. **TOWN OBJECTION TO PERSONNEL.** If at any time after entering into this Contract, Town has any reasonable objection to any of Contractor's personnel, or any personnel retained by Contractor, then Contractor shall promptly propose substitutes to whom the Town has no reasonable objection, and the Contractor's compensation shall be equitably adjusted to reflect any difference in the Contractor's costs occasioned by such substitution.
21. **COMPLIANCE WITH LAWS.** The contractor warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town's representative are followed.

22. **"ANTI-ISRAEL BOYCOTT" PROVISION.** In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Contract on behalf of the company verifies by its signature to this Contract that the company does not boycott Israel and will not boycott Israel during the term of this Contract.
23. **NON-BINDING MEDIATION.** In the event of any disagreement or conflict concerning the interpretation of this Contract, and such disagreement cannot be resolved by the Town and the Contractor, the Town and Contractor agree to submit such disagreement to non-binding mediation.
24. **ENTIRE CONTRACT.** This instrument together with Exhibit A attached hereto contains the entire Contract between the Town and Contractor concerning the Services. There will be no understandings or contracts other than those incorporated herein. The Contract may not be modified except by an instrument in writing signed by the parties hereto. In the event of a conflict between an attachment to this Contract and this Contract, this Contract shall control.
25. **MAILING ADDRESSES.** All notices and communications concerning this Contract to be mailed or delivered to the Town shall be sent to the address of the Town as follow, unless and until the Contractor is otherwise notified:

Town of Prosper
Attn: Jay Carter, Purchasing Manager
P.O. Box 307
Prosper, TX 75078
jcarter@prospertx.gov

All notices and communications under this Contract to be mailed or delivered to the Contractor shall be sent to the address listed below until the Town is otherwise notified:

Lit Fiber, LLC
Attn: Brian Snider, Chief Executive Officer
3500 Blue Lake Drive, Suite 225
Birmingham, Alabama 35243
brian@litcommunities.net

Any notices and communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date in the notice or communication is placed in the United States Mail or hand-delivered.

26. **APPLICABLE FEDERAL LAWS AND REGULATIONS GOVERNING GRANT FUNDS.** Contractor agrees and acknowledges that funds received by it from the Town of Prosper, Texas, are subject to certain federal grant restrictions, as noted and as applicable:

- (a) All provisions related to Nondiscrimination and Equal Employment Opportunities, as referenced in 28 C.F.R. Part 38; 28 C.F.R. Part 42 and 28 C.F.R. Part 54.
- (b) Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in United States Department of Labor regulations in 41 C.F.R. Part 60;
- (c) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Specifically, during the performance of this Contract, the Contractor agrees as follows:
 - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, color, or national origin. Such action shall include but not be limited to employment, upgrading, demotion or transfer, recruitment or retirement, advertising, layoff or termination, rates of pay or other forms of compensation, and selection training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.
 - 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, creed, color, sex, or national origin.
 - 3) The Contractor will send to each labor union or representative of workers with whom he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order Number 11246, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - 4) The Contractor will comply with all provisions of Executive Order Number 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - 5) The Contractor will furnish all information and reports required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - 6) In the event of the Contractor's non-compliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order Number 11246, as amended or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

- 7) The Contractor will include the provisions of Paragraphs 1 and 6 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order Number 11246, as amended, so that such provisions will be binding upon each subcontractor or purchase order, as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided however, that in the event the Contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.
- (d) No funds received by Contractor shall be utilized, either directly or indirectly, to support or oppose the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, including paying any person to influence, or attempt to influence, a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract or loan, or with respect to actions such as renewing, extending or modifying any such award. See 31 U.S.C. § 1352.
- (e) All provisions contained in the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148.
- (f) All contract work hours and selection standards, and all applicable provisions related thereto, pursuant to 40 U.S.C. §§ 3701-3708.
- (g) Rights to invention made under contract or agreement, and all applicable provisions related thereto, pursuant to 37 C.F.R. Part 401.
- (h) All provisions contained in the Clean Air Act, 42 U.S.C. §§ 7401-7671; the Energy Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387; and the Energy Policy Conservation Act, 42 U.S.C. § 6201.
- (i) Contractor hereby agrees and confirms that it is not debarred or suspended or otherwise excluded from or ineligible for participation in any federal assistance programs under Executive Order 12549.
- (j) Contractor must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct. Contractor acknowledges that any potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (2) the DOJ OIG hotline: (contact information in English and Spanish) at (800) 869-4499 (phone) or (202) 616-9881 (fax).
- (n) Contractor acknowledges that it may not require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or

restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information. The foregoing is not intended and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

- (o) Any other federal laws, regulations or guidelines related to the grant funds received by the Town of Prosper or by Contractor.
- (p) Any other federal laws, regulations or guidelines related to this award, including but not limited to any requirement contained in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Appendix II to Part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards."

- 27. **LEGAL CONSTRUCTION.** If any one or more of the provisions contained in the Contract for any reason is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been included.
- 28. **GOVERNING LAW.** The validity of this Contract and any of its terms or provisions as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue for this Contract shall be located in Collin County, Texas.
- 29. **COUNTERPARTS.** The Contract may be signed in counterparts, each of which shall be deemed to be an original.
- 30. **EFFECTIVE DATE.** This Contract shall be effective once it is signed by the Town and Contractor.

AGREED TO BY:

Lit Fiber, LLC

By: 
Brian Snider
Chief Executive Officer

Date: 9/10/23

TOWN OF PROSPER, TEXAS

By: _____
Bob Scott
Interim Town Manager

Date: _____