

CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (“Agreement”) is made this first day of December, 2022, by and between the Town of Prosper, Texas, a Texas home-rule municipality (“Town”), and Santos & Santos Ph.D., Inc., a Florida corporation (“Consultant”). The Town and Consultant may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. The Town is desirous of contracting with Consultant for implementation of stratified policing in order to better meet service level expectations and goals of the Town of Prosper and the Prosper Police Department through implementation of a policing model which focuses on effective and sustainable crime prevention and reduction strategies that are stratified through all ranks and divisions of the Department.

B. Consultant provides these services to the public; Consultant is the sole source available; and Consultant desires to provide these services to the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants included in this Agreement, the Parties agree as follows:

1. Term. Consultant shall provide the below described services to the Town from December 1, 2022, to September 30, 2023, inclusive (“Term”).

2. Services. Consultant shall undertake the duties and responsibilities and provide the services described in **Exhibit A**, Scope of Services, attached hereto and made a part hereof (“Services”). Exhibit A also includes the schedule for the Services. The Parties shall each designate a project manager for the Services and, as a general matter, the Parties shall communicate about the Services only through these designated project managers. Consultant shall provide all materials, labor and equipment necessary to perform the Services.

3. Payment; Rates and Invoices. The Town agrees to pay Consultant for the Services at the rates included in **Exhibit B**, Schedule of Charges, attached hereto and made a part hereof. Consultant shall bill the Town of Prosper by email to AP@prospertx.gov. The invoice shall include the following: date, invoice number, and fee amount. The Town shall pay the invoice within thirty (30) days following the Town’s receipt of Consultant’s invoice; however, payment shall be subject to verification as to the cost of materials used and the time spent in performance of the Services. The Town shall not be liable for payment for the Services or materials that do not conform to the requirements of this Agreement.

4. Qualifications on Obligations to Pay. No partial payment shall be final acceptance or approval of that part of the Services paid for or shall relieve Consultant of any of its obligations under this Agreement. Notwithstanding any other terms of this Agreement, the Town may withhold any payment (whether a progress payment or final payment) to Consultant if any one or more of the following conditions exists:

- a. Default. Consultant is in default of any of its obligations under this Agreement;
- b. Non-Performance. Any part of such payment is attributable to the Services which are not performed according to this Agreement. (The Town will pay for any part thereof attributable to the Services performed according to this Agreement);
- c. Failure to Pay. Consultant has failed to make payments promptly to any third parties used in the Services for which the Town has made payment to Consultant; or
- d. Remaining Compensation. The Town, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services or any task according to this Agreement. In such case, no additional payments will be due to Consultant until Consultant, at its sole cost, performs a sufficient portion of the Services so that the Town determines that the compensation then remaining unpaid is sufficient to complete the Services.

5. Defective Services.

- a. Notice. The Town reserves the right to decide all questions arising as to the proper performance of the Services and as to the quality of the materials used. In the event that the Town shall determine that the Services are not being performed in accordance with the terms of this Agreement, or, if the Services be wholly, or in part, negligently, or improperly performed, then the Town shall provide written notice of such defect or defects to Consultant.
- b. Default Not Remedied. In the event that such defect or defects are not remedied within a reasonable time from the date notice is given, the Town may, at its option, declare Consultant to be in default, either as to the particular Services declared to be defective or as to this entire Agreement. In the event that a default is declared as to particular Services, it is agreed and understood that such declaration of default shall not in any way relieve Consultant from any liability for non-performance of the remaining Services, but the same shall be and remain valid and binding obligations against Consultant. As to the Services *not* declared to be in default, Consultant agrees to complete the same under the terms of this Agreement. If the Town declares Consultant to be in default only as to the particular Services, then the costs incurred by the Town in consequence of such default may be applied in payment of any money due and owing to Consultant and the Town may re-let such portion of the Services. If there shall not be a sufficient sum due from the Town, then in such case, the costs incurred by the Town in consequence of the default shall be a just claim against Consultant and shall be recoverable in any court of competent jurisdiction.

6. Consultant's Duties.

- a. Abilities, Qualifications, Experience, and Best Efforts. Consultant shall perform the Services in a timely and professional manner consistent with the requirements set forth in the Scope of Work and in accordance with industry best practices. Consultant agrees to utilize its expertise and creative talents in timely completing the Services.
- b. No Conflicts. Consultant represents, covenants, and agrees that it has and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent it from the timely completion of the Services, loyally and strictly according to the best interests of the Town. In case of any conflict between the interests of the Town and any other entity, Consultant shall fully and immediately disclose the issue to the Town and shall take no action contrary to the Town's interests.
- c. Attendance at Meetings. Consultant shall attend such meetings on the work required by this Agreement as the Town requires. The Town will give reasonable notice of any such requirement to enable Consultant to schedule and attend such meetings.
- d. Efficiency. Consultant agrees to furnish efficient business administration and superintendence and perform the Services in the best, most expeditious, and most economical manner consistent with the interests of the Town.
- e. Books and Records. Consultant shall keep its books and records for the Services and reimbursable expenses according to recognized accounting principles and practices, consistently applied. Upon reasonable, advance request, Consultant shall make such books and records available for the Town's inspection and copying at all reasonable times. Consultant shall retain such books and records for at least three (3) years after completion of the Services.
- f. Permits and Licenses. Consultant shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of its Services under this Agreement.
- g. Payment of Bills. Consultant shall promptly pay all bills for labor and material performed and furnished by others in performance of the Services.

7. Confidential Information. Consultant may receive or have access to confidential data or information from the Town and/or confidential information that the Town may have access to and from Collin County and/or Denton County. Such confidential data or information, because of applicable law or other obligations with third parties, may be: (a) required to be kept confidential; (b) required not to be disclosed; or (c) not a public record under the Texas Public Information Act ("Confidential Information"). Consultant shall hold and not disclose any Confidential Information to any person not having a legitimate, need-to-know purpose authorized by the Town. Consultant shall protect all Confidential Information with the same degree of care

as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Consultant shall immediately notify the Town in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict Consultant with respect to information or data identical or similar to that contained in the Confidential Information of the Town but which: (i) that party rightfully possessed before it received such information from the Town as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of Consultant; (iii) is subsequently furnished lawfully to Consultant by a third party without restrictions on use or disclosure; or (iv) is required to be disclosed by law, provided that Consultant shall exercise reasonable efforts to notify the Town prior to disclosure.

8. Termination.

- a. Termination for Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days' prior written notice of termination to the defaulting Party.
- b. Return of Property. Upon termination of this Agreement, Consultant shall promptly deliver to the Town all Town data, which includes any data or information of the Town that is provided to or obtained by Consultant in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the Town, as well as any plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of its Services under this Agreement, up to and including the date of termination.

9. Indemnification.

- a. Consultant's Indemnification. Consultant shall indemnify and hold harmless the Town, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable attorneys' fees and costs of defense), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature suffered or incurred by the Town directly or indirectly arising from or related to: (i) any negligent or intentional act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (ii) any material breach in a representation, warranty, covenant or obligation of Consultant contained in this Agreement. Consultant is not obligated to indemnify the Town in any manner whatsoever for the Town's own negligence. Consultant's

obligation to indemnify the Town as set forth in this Agreement shall survive the termination or expiration of this Agreement.

10. Insurance. See Waiver Letter from the Consultant.

11. Notices. Any notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth below and shall be deemed given (i) if by hand delivery, upon receipt thereof; (ii) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested; or (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying overnight priority delivery. Either Party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other Party.

Any notice provided pursuant to this Agreement shall be in writing to the Parties at the following addresses:

If to Consultant:
Dr. Roberto Santos and Dr. Rachel Santos
Co-Presidents
Santos & Santos, Ph.D., Inc.
409 Sterling Heights Ln
Blacksburg, VA 24060

If to the Town:

Town of Prosper
Prosper Police Department
ATTN: Doug Kowalski, Chief of Police
801 Safety Way
Prosper, Texas 75078

12. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, epidemics, pandemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing Party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed Party must promptly provide the other Party notice of the Force Majeure. Consultant shall not be excused from liability for delays or non-performance caused by events or conditions within its control nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance caused in whole or in part by Consultant itself.

13. Laws to Be Observed. Consultant shall be subject to all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed to perform the Services or otherwise conduct the Services, and shall be subject to all orders and decrees of bodies or tribunals having any jurisdiction over the Services and shall, at all times, observe and comply with all such existing laws, ordinances, regulations, and decrees, and shall indemnify and hold harmless the Town against any claim or liability to the extent caused by the intentional or

negligent violation of any such law ordinance, regulation, order, or decree, whether by itself or by its Subcontractors, agents, or employees.

14. Independent Contractor. The relationship between Consultant and the Town is that of an independent contractor. Consultant shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. Consultant shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venture of the Town. No employee or officer of the Town shall supervise Consultant. **Consultant is not entitled to Workers' Compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Agreement.**

15. No Assignment. Consultant shall not assign this Agreement without the express written consent of the Town, which the Town may withhold at its sole discretion.

16. Complete Agreement. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing.

17. Amendment in Writing. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties. Neither the course of conduct between the Parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

18. Headings; Recitals; Exhibits. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth at the beginning of this Agreement, as well as the exhibits referred to throughout this Agreement and any Scope of Services, are incorporated into this Agreement.

19. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

20. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not affect in any way the full right to require such performance at any subsequent time nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

21. No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Town and Consultant that any such party or entity, other than the Town or Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

22. No Requirements Contract. Nothing in this Agreement shall be construed as a requirement contract and, notwithstanding anything to the contrary contained herein, this Agreement shall not be interpreted to prevent the Town from obtaining from third parties, or

providing to itself, any or all of the Services described herein; the Town shall be free to obtain said Services from other sources without incurring liability or damages to Consultant.

23. Applicable Law; Jurisdiction; Venue. This Agreement shall be construed in accordance with the laws of the State of Texas. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state court situated in Collin County or appropriate federal court for Collin County and each Party consents to jurisdiction and venue before such courts.

24. No Arbitration. No dispute between the Parties shall be resolved by binding arbitration before any extra-judicial body or person. Any provision to the contrary shall be null and void. In the event of any dispute between the Parties, the Parties agree to non-binding mediation.

25. Survival. Any and all provisions of this Agreement that, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

26. Authority. Consultant warrants that the individual executing this Agreement is properly authorized to bind Consultant to this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute a fully binding and executed Agreement.

CONSULTANT

By: _____

Dr. Roberto Santos
Co-President

By: _____

Dr. Rachel Santos
Co-President

TOWN OF PROSPER, TEXAS

By: _____

Name: Ron K. Patterson
Interim Town Manager

ATTEST:

Michelle Lewis Sirianni, Town Secretary

STRATIFIED POLICING

Organizational Implementation Partnership

Submitted to: Chief Doug Kowalski
Prosper, TX Police Department

Submitted by: Dr. Roberto Santos and Dr. Rachel Santos
Co-Presidents, Santos & Santos, Ph.D., Inc.

Date: October 27, 2022

RE: Schedule of Charges (Exhibit B)

The following is the cost breakdown for the work described in Exhibit A in the contract.

\$13,500:	Organizational assessment of crime reduction practices/procedures/recommendations report with a road map for implementation
\$7,500:	One 1-day session of crime analysis training
\$7,500:	One 1-day session of command-level training
\$15,000:	Four ½-day sessions (delivered in two days to accommodate shiftwork) of line-level/supervisor training
\$9,500:	Six Months of ongoing assistance after training delivery
\$53,000:	Total

These costs include all travel, preparation, and communication needed to carry out this work. The assessment and the crime analysis training would be delivered virtually. Training of sworn personnel would be conducted onsite in person in one trip.

The assessment and crime analysis training would be conducted in the first several months. This would be followed by three days of in person training of all sworn personnel which will be done at least one month after the crime analysis training to allow them to work with Dr. Rachel Santos and prepare crime analysis products using agency data.

The specific timeline of the carrying out the work will depend on the agency's needs the consultants availability. However, we anticipate the assessment work and scheduling the training to begin as soon as the contract is signed.