

**TOWN OF PROSPER
CONTRACT FOR PERSONAL SERVICES
BETWEEN THE TOWN OF PROSPER, TEXAS, AND MCCARTHY RIGHT OF WAY PARTNERS, LLC
FOR THE FIRST STREET (DNT – COLEMAN) PROJECT (1512-ST)**

This Contract is made by the **Town of Prosper, Texas**, a municipal corporation (“Town”), and **McCarthy Right of Way Partners, LLC** (“Contractor”). The Town and Contractor agree:

1. **RETENTION OF THE CONTRACTOR.** The Town agrees to retain Contractor, and the Contractor agrees to provide services relative to: Right of Way and easement acquisition related to the First Street (DNT – Coleman) project (hereinafter referred to as “Services”), as set forth and described in Exhibit A, attached hereto and incorporated by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are more particularly described 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.** Contractor agrees to begin work 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 one (1) year from date of award of contract. All pricing is to remain firm during the contract period. The contract is renewable for up to one (1) additional one-year terms on an annual basis, if written notice of the intent to renew is provided to either party not less than sixty (60) days prior to the termination date.
5. **COMPENSATION.** Contractor’s total compensation for services to be performed and expenses to be incurred is specified in Exhibit A, attached hereto and incorporated by reference.
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.** The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by 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 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.** Contractor shall provide proof that it has obtained and will continue to maintain throughout the duration of the Contract the insurance requirements set forth in Exhibit B. Failure to maintain the required insurance may result in immediate termination of the Contract.

11. **INDEMNIFICATION.** CONTRACTOR DOES HEREBY COVENANT AND AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS THE TOWN AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES FROM AND AGAINST LIABILITY, CLAIMS, SUITS, DEMANDS AND/OR CAUSES OF ACTION, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION), WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PROPERTY OR PERSONS BUT ONLY TO THE EXTENT OCCASIONED BY THE NEGLIGENT ACT, ERROR OR OMISSION OF CONTRACTOR, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM CONTRACTOR IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT.

IN THE EVENT THAT THE TOWN AND CONTRACTOR ARE CONCURRENTLY NEGLIGENT, THE PARTIES AGREE THAT ALL LIABILITY SHALL BE CALCULATED ON A COMPARATIVE BASIS OF FAULT AND RESPONSIBILITY AND THAT NEITHER PARTY SHALL BE REQUIRED TO DEFEND OR INDEMNIFY THE OTHER PARTY FOR THAT PARTY'S NEGLIGENT OR INTENTIONAL ACTS, ERRORS OR OMISSIONS.

12. **TRANSFER OF INTEREST.** Neither the 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 the 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, 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.** 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. 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.

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.

15. **TERMINATION OF CONTRACT.** The Town may terminate this Contract upon sixty (60) days' written notice to Contractor, except in the event (i) Contractor is in breach of this Contract or (ii) Contractor fails to comply with the terms of Exhibit A. If either of the foregoing conditions exists, the Town shall notify Contractor and Contractor shall be given two (2) days to cure such breach or failure to comply. Should Contractor fail to cure to the satisfaction of the Town, the 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 the 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 the 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. 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 the 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 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. 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 Contractor's employees, a full report of the facts, extent of the damage and estimated impact on Contractor's schedule shall be submitted to the Town by 8 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, Contractor must notify Police Dispatch immediately. Contractor shall be fully liable for all damage to Town property or equipment caused by Contractor's officers, employees or agents.
20. **TOWN OBJECTION TO PERSONNEL.** If at any time after entering into this Contract, the 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 Contractor's compensation shall be equitably adjusted to reflect any difference in 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

Contractor verifies by its signature to this Contract that Contractor does not boycott Israel and will not boycott Israel during the term of this Contract.

23. **IRAN, SUDAN AND FOREIGN TERRORIST ORGANIZATIONS.** If § 2252.153 of the Texas Government Code is applicable to this Contract, by signing below Contractor does hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a “foreign terrorist organization” as defined in § 2252.151 of the Texas Government Code.
24. **PROHIBITION ON CONTRACTS WITH CERTAIN COMPANIES PROVISION.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Contractor is not on a list maintained by the State Comptroller’s Office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
25. **CONFLICT OF INTEREST.** Contractor agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated in Exhibit C - Conflict of Interest Affidavit and incorporated herein as if written word for word, and will abide by the same. Further, a lawful representative of Contractor shall execute the Affidavit included in the exhibit. Contractor understands and agrees that the existence of a prohibited interest during the term of this Contract will render the Contract voidable.

Contractor agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Contractor shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit D - Conflict of Interest Questionnaire and incorporated herein as if written word for word.
26. **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 Contractor, the Town and Contractor agree to submit such disagreement to non-binding mediation.
27. **ENTIRE CONTRACT.** This instrument, together with any exhibits 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.

28. **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 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 Contractor shall be sent to the address listed below until the Town is otherwise notified:

McCarthy Right of Way Partners, LLC
Lauren McCarthy, Managing Member
511 Pleasant Valley Lane
Richardson, TX 75080
lmccarthy@mccarthypartners.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.

29. **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.

30. **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.

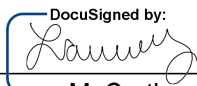
31. **COUNTERPARTS.** The Contract may be signed in counterparts, each of which shall be deemed to be an original.

32. **EFFECTIVE DATE.** This Contract shall be effective once it is signed by the Town and Contractor.

AGREED TO BY:

MCCARTHY RIGHT OF WAY PARTNERS, LLC

TOWN OF PROSPER, TEXAS

By: 

Lauren McCarthy
Managing Member

By: _____
Harlan Jefferson
Town Manager

Date: 7/15/2022

Date: _____

**EXHIBIT A
SCOPE OF SERVICES AND COMPENSATION SCHEDULE**

**TOWN OF PROSPER
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This proposal makes some assumptions that are identified with asterisks below this table. Some unknowns are still out there and might affect the scope. Those items are:

- If, after the appraisal reports are done and the determination is made that other residences or businesses would need to be displaced due to setback rules (parcels 15, 17, 21, 24, 27), we would need to amend this proposal to account for those additional relocations.
- If the owners of the mobile homes are also residing in the mobile homes, it would be one less business relocation per parcel. We won't know with certainty until we are able to interview the people living there and/or the owners to find out what the living/ownership situation is.
- After looking again at the carport on Parcel 23, we believe this will be paid for in the acquisition because the carport is cemented into the ground and cannot be picked up and moved. Therefore, we do not think it would be considered a relocation. Again, if the appraisal report comes back differently, this scope would need to be amended to reflect an additional personal property relocation.

Category/Employee	#Hours Per Parcel	Hourly Rate	Total Per Parcel	Number of Parcels	Total for Category
Acquisition					
Project Manager	2	\$185	\$370		
Senior Agent	14	\$155	\$2,170		
Junior Agent	14	\$135	\$1,890		
		HOURLY NTE	\$4,430	14	\$62,020
Relocation – Personal Property					
Project Manager	2	\$185	\$370		
Senior Agent	12	\$155	\$1,860		
Junior Agent	12	\$135	\$1,620		
		HOURLY NTE	\$3,850	1*	\$3,850
Relocation – Residential					
Project Manager	4	\$185	\$740		
Senior Agent	20	\$155	\$3,100		
Junior Agent	20	\$135	\$2,700		
		HOURLY NTE	\$6,540	2**	\$13,080

Category/Employee	#Hours Per Parcel	Hourly Rate	Total Per Parcel	Number of Parcels	Total for Category
Relocation – Non-Residential					
Project Manager	4	\$185	\$740		
Senior Agent	25	\$155	\$3,875		
Junior Agent	25	\$135	\$3,375		
		HOURLY NTE	\$7,990	2***	\$15,980
Condemnation					
Project Manager	2	\$185	\$370		
Senior Agent	12	\$155	\$1,860		
Junior Agent	12	\$135	\$1,620		
		HOURLY NTE	\$3,850	6****	\$23,100
Admin Fee	4 months	\$2,000/month	\$8,000	-	\$8,000
			TOTAL NTE		\$126,030

*Assumes 1 storage building relocation

**Assumes 2 mobile home residential relocations

***Assumes 2 landlord business relocations

****Assumes 30% condemnation rate

EXHIBIT B INSURANCE REQUIREMENTS

Service provider shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the service provider. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable, except for professional liability.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.
4. Professional Liability, also known as Errors and Omissions coverage.

B. MINIMUM LIMITS OF INSURANCE

Service Provider shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence /\$1,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease- Policy Limit, and \$100,000 Disease- Each Employee.
3. Automobile Liability: \$500,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired, and non-owned autos.
4. Professional Liability aka Errors and Omissions: \$500,000 per occurrence and in the aggregate.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions in excess of \$10,000 must be declared to and approved by the Town.

D. OTHER INSURANCE PROVISIONS

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

1. General Liability and Automobile Liability Coverages

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the provider, products and completed operations of the provider, premises owned, occupied or used by the provider. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The provider's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the provider's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The provider's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the insured's limits of liability.

2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the provider for the Town.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

4. Professional Liability and / or Errors and Omissions:

"Claims made" policy is acceptable coverage, which must be maintained during the course of the project, and up to two (2) years after completion and acceptance of the project by the Town.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A- VI**, or better.

F. VERIFICATION OF COVERAGE

Service Provider shall provide the Town with certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

Certificate holder to be listed as follows:

Town of Prosper
P.O. Box 307
Prosper, TX 75078

**EXHIBIT C
CONFLICT OF INTEREST AFFIDAVIT**

**TOWN OF PROSPER
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THE STATE OF TEXAS §
 §
COUNTY OF _____ §

I, _____, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

- _____ Ownership of 10% or more of the voting shares of the business entity.
- _____ Ownership of \$25,000.00 or more of the fair market value of the business entity.
- _____ Funds received from the business entity exceed 10% of my income for the previous year.
- _____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least \$25,000.00.
- _____ A relative of mine has substantial interest in the business entity or property that would be affected by my decision of the public body of which I am a member.
- _____ Other: _____.
- _____ None of the Above.

Upon filing this affidavit with the Town of Prosper, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of the public body which took action on the agreement.

Signed this _____ day of _____, 20_____.

Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 20_____.

Notary Public in and for the State of Texas

My Commission expires: _____

EXHIBIT D CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		OFFICE USE ONLY
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<p>Date Received</p>	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of vendor doing business with the governmental entity Date</p>		