

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND GARVER, LLC  
FOR THE COOK LANE DETENTION ANALYSYS PROJECT (21T10110)**

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the **Town of Prosper, Texas**, a municipal corporation, duly authorized to act by the Town Council of said Town, hereinafter called "Town," and **Garver, LLC**, an Arkansas corporation, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional engineering services to Town. Town and Consultant when mentioned collectively shall be referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, Town desires to obtain professional services in connection with the Cook Lane Detention Project **Project (21T10110)**, hereinafter called "Project";

For the mutual promises and benefits herein described, Town and Consultant agree as follows:

1. **Term of Agreement.** This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.

2. **Services to be Performed by Consultant.** The Parties agree that Consultant shall perform such services as are set forth and described in **Exhibit A - Scope of Services** and incorporated herein as if written word for word. All services provided by Consultant hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of their profession. In case of conflict in the language of Exhibit A and this Agreement, this Agreement shall govern and control. Deviations from the Scope of Services or other provisions of this Agreement may only be made by written agreement signed by all Parties to this Agreement.

3. **Prompt Performance by Consultant.** Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay as is necessary to cause Consultant's services hereunder to be timely and properly performed. Notwithstanding the foregoing, Consultant agrees to use diligent efforts to perform the services described herein and further defined in any specific task orders, in a manner consistent with these task orders; however, the Town understands and agrees that Consultant is retained to perform a professional service and such services must be bound, first and foremost, by the principles of sound professional judgment and reasonable diligence.

4. **Compensation of Consultant.** Town agrees to pay to Consultant for satisfactory completion of all services included in this Agreement a total fee of **Forty Eight Thousand, Three Hundred Twenty Three Dollars and No Cents (\$48,323.00)** for the Project as set forth and described in **Exhibit B - Compensation Schedule** and incorporated herein as if written word for word. Lump sum fees shall be billed monthly based on the percentage of completion. Hourly not to exceed fees shall be billed monthly based on hours of work that have been completed. Direct Costs for expenses such as mileage, copies, scans, sub-consultants, and similar costs are included in fees and shall be billed as completed.

Consultant agrees to submit statements to Town for professional services no more than once per month. These statements will be based upon Consultant's actual services performed and reimbursable expenses incurred, if any, and Town shall endeavor to make prompt payments. Each statement submitted by Consultant to Town shall be reasonably itemized to show the amount of work performed during that period. If Town fails to pay Consultant

within sixty (60) calendar days of the receipt of Consultant's invoice, Consultant may, after giving ten (10) days written notice to Town, suspend professional services until paid.

Nothing contained in this Agreement shall require Town to pay for any work that is unsatisfactory as reasonably determined by Town or which is not submitted in compliance with the terms of this Agreement.

The Scope of Services shall be strictly limited. Town shall not be required to pay any amount in excess of the original proposed amount unless Town shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

5. **Town's Obligations.** Town agrees that it will (i) designate a specific person as Town's representative, (ii) provide Consultant with any previous studies, reports, data, budget constraints, special Town requirements, or other pertinent information known to Town, when necessitated by a project, (iii) when needed, assist Consultant in obtaining access to properties necessary for performance of Consultant's work for Town, (iv) make prompt payments in response to Consultant's statements and (v) respond in a timely fashion to requests from Consultant. Consultant is entitled to rely upon and use, without independent verification and without liability, all information and services provided by Town or Town's representatives.

6. **Ownership and Reuse of Documents.** Upon completion of Consultant's services and receipt of payment in full therefore, Consultant agrees to provide Town with copies of all materials and documents prepared or assembled by Consultant as deliverables under this Agreement and that Town may use them without Consultant's permission for any purpose relating to the Project; provided however, any and all underlying intellectual property, if any (unless provided by Town), shall remain the property of Consultant such that Consultant may continue to perform its business in the normal course. Upon payment in full, Consultant hereby grants Town an irrevocable, non-exclusive, royalty free license to use the same for the purposes contemplated under this Agreement. Any reuse of the documents not relating to the Project shall be at Town's risk. Consultant may retain in its files copies of all reports, drawings, specifications and all other pertinent information for the work it performs for Town.

7. **Town Objection to Personnel.** If at any time after entering into this Agreement, Town has any reasonable objection to any of Consultant's personnel, or any personnel, professionals and/or consultants retained by Consultant, Consultant shall promptly propose substitutes to whom Town has no reasonable objection, and Consultant's compensation shall be equitably adjusted to reflect any difference in Consultant's costs occasioned by such substitution.

8. **Insurance.** Consultant shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement applicable insurance policies as described in **Exhibit C - Insurance Requirements** and incorporated herein as if written word for word. Consultant shall submit to Town proof of such insurance prior to commencing any work for Town.

9. **Indemnification.** **CONSULTANT DOES HEREBY COVENANT AND AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES FROM AND AGAINST THIRD PARTY 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 TANGIBLE PROPERTY OR BODILY INJURY OF PERSONS BUT ONLY TO THE EXTENT OCCASIONED BY THE NEGLIGENT ACT, ERROR OR OMISSION OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT.**

**IN THE EVENT THAT TOWN AND CONSULTANT 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.**

10. **Notices.** Any notices to be given hereunder by either Party to the other may be affected either by personal delivery, in writing, or by registered or certified mail to the following addresses:

Garver, LLC  
Burt Weathersbee, PE, Project Manager  
3010 Gaylord Parkway, Suite 190  
Frisco, Texas 75034  
[BEWeathersbee@GarverUSA.com](mailto:BEWeathersbee@GarverUSA.com)

Town of Prosper  
Harlan Jefferson, Town Manager  
PO Box 307  
Prosper, TX 75078  
[harlan\\_jefferson@prospertx.gov](mailto:harlan_jefferson@prospertx.gov)

11. **Termination.** The obligation to provide further services under this Agreement may be terminated by either Party in writing upon thirty (30) calendar days notice. In the event of termination by Town, Consultant shall be entitled to payment for services rendered through receipt of the termination notice.

12. **Sole Parties and Entire Agreement.** This Agreement shall not create any rights or benefits to anyone except Town and Consultant, and contains the entire agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.

13. **Assignment and Delegation.** Neither Town nor Consultant may assign its rights or delegate its duties without the written consent of the other Party. This Agreement is binding on Town and Consultant to the extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Town officer, employee or agent.

14. **Texas Law to Apply; Successors; Construction.** This Agreement shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the Parties hereto and their representatives, successors and assigns. Should any provisions in this Agreement later be held invalid, illegal or unenforceable, they shall be deemed void, and this Agreement shall be construed as if such provision had never been contained herein.

15. **Conflict of Interest.** Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated in **Exhibit D - Conflict of Interest Affidavit** and incorporated herein as if written word for word, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit included in the exhibit. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant 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 Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E - Conflict of Interest Questionnaire** and incorporated herein as if written word for word.

16. **Venue.** The Parties herein agree that this Agreement shall be enforceable in Prosper, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Collin County, Texas.

17. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this

Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

18. **Prevailing Party.** In the event a Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney’s fees (including its reasonable costs and attorney’s fees on any appeal).


19. **“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 Agreement on behalf of the company verifies by its signature to this Agreement that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

20. **Signatories.** Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Consultant to same.

**IN WITNESS WHEREOF**, the Parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**GARVER, LLC**

**TOWN OF PROSPER, TEXAS**

By:   
Signature

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

Frank McIlwain  
Printed Name

Harlan Jefferson  
Printed Name

Vice President  
Title

Town Manager  
Title

March 10th, 2021  
Date

\_\_\_\_\_  
Date

**EXHIBIT A  
SCOPE OF SERVICES  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER AND GARVER, LLC  
FOR THE COOK LANE DETENTION ANALYSIS PROJECT (PRJ # 21T10110)**

**I. PROJECT DESCRIPTION**

The project involves sizing detention pond alternatives downstream of the BNSF Railroad on Doe Branch Tributary A in the Town of Prosper, Texas. In addition, a report will be prepared describing the results of the evaluation with recommendations for a proposed detention pond downstream of the BNSF Railroad to detain flows that pass through a set of proposed culverts under the railroad.

**II. TASK SUMMARY**

**Task 1 – Hydrologic & Hydraulic Modelling.**

- A. Prepare a fully developed conditions hydrologic model for storm water runoff to the existing BNSF railroad crossing. Fully-urbanized hydrology shall be based on the hydrologic model developed by Garver for the floodplain of Doe Branch Tributary A downstream of proposed Cook Lane. This model used one drainage area upstream of the railroad culverts. HEC-HMS software will be used. The hydrologic models will be used to generate flows for 2-year, 10-year, 50-year and 100-year frequency events. The hydrologic model will be prepared for use in determining a detention pond size to detain the flows coming thru the railroad culverts after the culverts are enlarged. A drainage area map and an exhibit illustrating the results of the existing and fully urbanized conditions hydrologic model will be prepared. Three detention pond alternatives will be included. These include 1) a detention pond in the channel of the tributary, 2) a location on town property north of the creek, downstream of the railroad, and 3) a combination pond in the channel and on the Town property.
- B. Prepare a floodplain delineation between the railroad and Cook Lane to demonstrate the floodplain resulting from the three detention pond alternatives described in Task 1.A, above. The hydraulic model will be based on LIDAR geometry and field survey information that were used in the tributary study by Garver in September 2018.

**Task 2 – Preliminary Detention Pond Layouts**

- A. Upon completion of the detention pond sizing from the tasks above, a preliminary detention pond layout will be prepared. The layout will consist of only a general aerial size and depth. No detailed layouts or grading of the proposed ponds will be included. Exhibits will be prepared to show the preliminary layout for the following three (3) options: (1) a proposed in-channel pond; (2) a pond located on the Town property downstream of the railroad and (3) a combination pond on Town property and in the tributary.

**Task 3 – Proposed Detention Pond Report.**

- A. A report will be prepared summarizing the existing and fully urbanized conditions hydrologic modeling and detention pond sizing. Also included will be the delineation of the floodplain downstream of the proposed pond for the three pond alternatives only. The report will also include an approximate engineer's opinion of construction cost for the three proposed detention pond locations. The opinion of construction cost will be based on estimated construction volumes and lump sum numbers for other items. The construction cost will not include property acquisition.

- B. This scope includes the following virtual meetings:
1. One kick off meeting with Town staff.
  2. Up to one meeting with adjacent landowners (or their engineers) to discuss development phasing and plans.
  3. Up to one phone call with FEMA to discuss LOMR phasing.
  4. Up to two meetings with Town staff to discuss report findings and obtain direction from the staff.

### **III. DELIVERABLES**

The following deliverables will be included with this scope of work:

Task 1 – Existing Conditions Hydrologic and Hydraulic Models	Interim Work Product
Task 2 – Preliminary Pond Layouts	Preliminary Pond Layouts
Task 3 – Proposed Detention Pond Report	Final Detention Pond Report and Models

### **IV. EXCLUSIONS TO THIS SCOPE OF WORK**

Items not specifically mentioned in the scope of services above are not included. Also not included are the items listed below:

- A. Permitting services or mitigation plans.
- B. Waters of the US delineation or costs.
- C. LOMR application preparation or submittal.
- D. Topographic survey.
- E. Construction plans.
- F. Boundary surveys.
- G. Review of utilities for conflicts.

**EXHIBIT B  
COMPENSATION SCHEDULE**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND GARVER, LLC  
FOR THE COOK LANE DETENTION ANALYSIS PROJECT (PRJ# 21T10110)**

**I. COMPENSATION SCHEDULE**

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	April 1, 2021	
Task 1 – Hydrologic & Hydraulic Modeling	May 17, 2021	\$32,954.00
Task 2 – Preliminary Detention Pond Layouts	May 31, 2021	\$6,052.00
Task 3 – Proposed Detention Pond Report	June 21, 2021	\$9,317.00
<b>Total Compensation</b>		<b>\$48,323.00</b>

**II. COMPENSATION SUMMARY**

Basic Services (Lump Sum)	Amount
Task 1 – Hydrologic & Hydraulic Modeling	\$32,954.00
Task 2 – Preliminary Detention Pond Layouts	\$6,052.00
Task 3 – Proposed Detention Pond Report	\$9,317.00
<b>Total Basic Services:</b>	<b>\$48,323.00</b>

Special Services (Hourly Not-to-Exceed)	Amount
None	\$0
<b>Total Special Services:</b>	<b>\$0</b>

Direct Expenses	Amount
None	\$0
<b>Total Direct Expenses:</b>	<b>\$0</b>

## EXHIBIT C 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. The Town hereby approves Service Provider self-retention in excess of \$10,000.



**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 canceled except after 30 days written notice to the Town Service Provider will provide thirty (30) days written notice of suspension or non-renewal, and ten (10) days prior written notice of nonpayment.

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 E  
CONFLICT OF INTEREST QUESTIONNAIRE**

<p align="center"><b>CONFLICT OF INTEREST QUESTIONNAIRE</b></p> <p align="center"><b>For vendor doing business with local governmental entity</b></p>	<p align="center"><b>FORM CIQ</b></p>
<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></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><b>OFFICE USE ONLY</b></p>
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p> <p align="center">Garver, LLC</p>	<p>Date Received</p>
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (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><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p align="center">N/A Name of Officer</p>	
<p><b>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.</b></p> <p>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 align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>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 align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	
<p><b>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.</b></p>	
<p><b>6</b> <input type="checkbox"/> <b>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).</b></p>	
<p><b>7</b></p> <p align="center">               Signature of vendor doing business with the governmental entity         </p>	<p align="center">March 10th, 2021 Date</p>