

**AGREEMENT FOR
VIDEO STREAMING SERVICES**

**TOWN OF PROSPER
and
SWAGIT PRODUCTIONS, LLC**

This Agreement for Video Streaming Services ("Agreement") is made by and between the Town of Prosper, Texas ("Town"), with offices at 250 W. First Street, Prosper, Texas 75078, and Swagit Productions, LLC, ("Provider") a Texas Limited Liability Company, with offices at 12801 N. Central Expressway, Suite 900, Dallas, Texas 75243 effective as of the date written below.

RECITALS

- A. The Town desires to enter into this Agreement in order to obtain video streaming services for scheduled meetings as outlined in the Scope of Services attached as Exhibit "A"; and
- B. Provider has available and offers to provide the personnel necessary to provide said services in accordance with the Scope of Services included in this Agreement (see Exhibit A attached hereto and incorporated herein); and
- C. Provider is in the business of providing video streaming services for businesses and governmental entities, is an approved provider under and in accordance with The Interlocal Purchasing System Contract No. 190703 (TIPS), and represents and warrants that it has the skills, qualifications, expertise and experience necessary to perform the work and services to provide and implement video streaming services as described herein in an efficient, cost-effective manner with a high degree of quality and responsiveness and has performed and continues to perform the same and similar services for other buyers; and
- D. On the basis of and in reliance upon such representations by Provider and others made herein and in Provider's proposal, the Town desires to engage Provider to provide the work and services described herein under the terms and conditions of this Agreement.

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following work and services for the Town:

- 1.1 Provider agrees to provide the work and services as set forth in the Scope of Services.

2. COMPENSATION OF PROVIDER

- 2.1 Provider agrees to provide all of the services and equipment set forth in the Scope of Services and as described herein for the following amounts:

(a) A one-time charge not to exceed:

(i) **Seventeen Thousand Six Hundred Seventy and No/100 Dollars** (\$17,670.00) for Swagit EASE hardware/software and other related (including, without limitation, Remote Installation) costs (as identified and detailed on the attached Exhibit "A", page 3, "Streaming Video Hardware"); and

(ii) **Four Thousand Nine Hundred Ninety-Five and No/100 Dollars** (\$4,995.00) for closed captions hardware and other related (including, without limitation, Remote Installation) costs (as identified and detailed on the attached Exhibit "A", page 3, "Captions Encoder"); and

(iii) **Five Thousand Six Hundred and No/100 Dollars** (\$5,600.00) for a two (2) year extended Streaming hardware warranty and other related (including, without limitation, installed software) costs (as identified and detailed on the attached Exhibit "A", page 3, "CaptionPrime *Extended Warranty*"); and

(b) Following the Installation and the acceptance thereof by the Town, the Town shall pay to Provider a monthly fee in the amount of **One Thousand Eight Hundred Fifty-Five and No/100 Dollars** (\$1,855.00) for on-demand streaming, live video streaming and automated captions (as identified and described on the attached Exhibit "A", page 3, "*Streaming Video Monthly Managed Services*").

- 2.2 Except as set forth herein, payments will be processed on a monthly basis (the Town may elect annual basis) with payment available within 30 days after receipt of an invoice for the previous month's service. All payments pursuant to this Agreement shall be paid in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

- 2.3 Should the Town fail to pay any invoice that is outstanding more than 60 days, a 5% service fee will be applied to the total amount of that invoice, not including any

shipping or sales tax.

3. RIGHTS, OBLIGATIONS AND REPRESENTATIONS OF PROVIDER

- 3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the Town as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the Town. Further, nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the Town to exercise discretion or control over the manner in which Provider performs the work and services, which are the subject matter of this Agreement. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.
- 3.2 Provider's Control of Work. All services to be provided by Provider shall be performed in accordance with the Scope of Services. Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel. Provider warrants and represents that all equipment and other goods and materials provided by Provider shall be safe, fully operational, and will not cause injury or damage to any person or property, and that all persons provided by Provider to perform the work and services under this Agreement shall be adequately trained and capable of performing the work and services.
- 3.3 Reports to the Town. Although Provider is responsible for control and supervision of work and services performed under this Agreement, the work and services provided shall be acceptable to the Town and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the Town and the right of the Town, as set forth in the Scope of Services.
- 3.4 Compliance with All Laws. Provider shall comply with all applicable laws, statutes, ordinances, rules, regulations, standards, codes, and executive orders of the federal, state and local government, which may affect the performance of this Agreement.
- 3.5 Organization and Authorization. Provider warrants and represents that: (i) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and which shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been

authorized and approved by all action required on the part of Provider; (v) has the right and authority to sell the hardware and software to the Town; (vi) all hardware and software shall be in good working order; and, (vii) all licenses and warranties regarding the software and hardware shall be conveyed to the Town.

- 3.6 No Conflict. Provider warrants and represents that the execution and delivery of this Agreement and ancillary agreements hereto by Provider does and will not: (i) conflict with, or result in any violation or breach of, any provision of Provider's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which Provider is a party; or (iii) conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to Provider.
- 3.7 Warranty. Provider warrants that: (i) any streaming server hardware provided by Swagit not in good working order and used under normal operating conditions, will be fully replaced for a period of three (3) years; (ii) thereafter, all costs of streaming server hardware replacement due to any failure or caused by normal wear and tear, shall be at the Town's expense; (iii) all proprietary software for any streaming server shall be fully replaced or upgraded, at no cost to the Town, for the life of the contract; and (iv) all hardware and software for the caption equipment (as identified and described in Scope of Services, page 3, "*Captions Encoder*"), shall be replaced or fixed with respect to each components manufacturer's warranties.
- 3.8 Provider's Service Network. Provider's content delivery network and service level represents that: (i) it maintains full N+1 redundancy on all service critical-infrastructure in order to protect against outages. Multiple mirror facilities provide diverse geographic redundancy. Within each facility servers have multiple power supplies, network interfaces and RAID protected storage. Provider is connected to upstream bandwidth providers by multiple gigabit uplinks, transitioning to gigabit and ten-gigabit connections to multiple "tier 1" bandwidth providers, offering route diversity and redundancy. These bandwidth providers maintain 24/7 staffs familiar with mitigating Denial of Service attacks, should the need arise, which they have sufficient capacity to absorb-and-filter; (ii) Provider utilizes external, 3rd party monitoring services to track server availability metrics. This service tracks availability from approximately 30 international points which helps isolate regional networking issues, in addition to any centralized failures; (iii) Content is stored and viewable to the public on the Provider's networks for a period of three years or as defined by the managed services agreement. All Content is stored and backed up offline indefinitely for the life of the Agreement. Content can also be stored locally on the Town's network for an indefinite period of time limited only by storage capacity, with the added benefit of cached delivery to local users. Town is consulted before they exceed any storage horizon and may extend the window for additional years; (iv) Content is stored in widely accessible formats and is available for export at any time. Exported data will include multimedia content and associated documents in their native format as well as any structured metadata in XML format. Access to exported content can be via FTP but in such an event the Town is encouraged to provide a portable hard drive to ease the transition of storage and

bandwidth intensive content; and (v) the Town may verify compliance with these policies at any time in consultation with Provider engineers and officers.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, postage prepaid, (ii) delivered personally, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; and addresses for such notice are as follows:

To the Town's Authorized
Representative:

Robyn Battle
Executive Dir. of Community Services
Town of Prosper
PO Box 307
Prosper, TX 75078
972-569-1011

To Provider:

David Owusu
Director of Streaming
Swagit Productions, LLC
12801 N. Central Expressway, Ste 900
Dallas, Texas 75243
800-573-3160

Notice shall be deemed given upon receipt by the party to whom it is sent.

5. INDEMNIFICATION

PROVIDER'S INDEMNITY OBLIGATION. PROVIDER COVENANTS, AGREES TO, AND SHALL DEFEND (WITH COUNSEL REASONABLY ACCEPTABLE TO THE TOWN), INDEMNIFY, AND HOLD HARMLESS THE TOWN OF PROSPER, TEXAS AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF PROSPER, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF PROSPER, TEXAS, AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF PROSPER, TEXAS EACH BEING A "PROSPER PERSON" AND COLLECTIVELY THE "PROSPER PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE TOWN OF PROSPER, TEXAS AND/OR ANY OTHER PROSPER PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (I) ANY OF THE WORK AND SERVICES OF THE PROVIDER AS DESCRIBED IN SECTION 1 OF THIS AGREEMENT, (II) ANY REPRESENTATIONS AND/OR WARRANTIES BY PROVIDER UNDER THIS AGREEMENT, AND/OR (III) ANY ACT OR OMISSION UNDER, IN PERFORMANCE OF, OR IN CONNECTION WITH THIS AGREEMENT BY PROVIDER, OR BY ANY OF PROVIDER'S

OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, TENANTS, SUBTENANTS, LICENSEE, SUBLICENSEE, CONCESSIONAIRES, OR ANY OTHER PERSON OR ENTITY FOR WHOM PROVIDER IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, DIRECTORS, OFFICERS, SHAREHOLDERS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, ENGINEERS, ARCHITECTS, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, PATRONS, GUESTS, CUSTOMERS, PROVIDERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY PROSPER PERSON, OR CONDUCT BY ANY PROSPER PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

PROVIDER SHALL PROMPTLY ADVISE THE TOWN IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY PROSPER PERSON RELATED TO OR ARISING OUT OF PROVIDER'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT PROVIDER'S SOLE COST AND EXPENSE. THE PROSPER PERSONS SHALL HAVE THE RIGHT, AT THE PROSPER PERSONS' OPTION AND OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING PROVIDER OF ANY OF ITS OBLIGATIONS HEREUNDER. THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATIONS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

6. INSURANCE

Provider and its subcontractors shall procure and maintain in a company or companies lawfully authorized to do business in Texas and until all of their obligations have been discharged and satisfied (and including during any warranty periods under this Agreement), insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the services and work hereunder by Provider, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The Town in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that may arise out of the performance of the services and work under this Agreement by Provider, its agents, representatives, employees or subcontractors and Provider is free to purchase additional insurance as may be determined necessary.

A. Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form
 (Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

 (This coverage must be amended to provide for an each-project aggregate limit of insurance)

2. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

3. Professional Liability \$1,000,000

4. Cyber-Liability

Each Occurrence	\$1,000,000
Aggregate	\$2,000,000

B. OTHER INSURANCE REQUIREMENTS: The foregoing insurance policies shall be endorsed to contain the following provisions:

1. The Town of Prosper, its officers, officials, agents, employees and volunteers shall be named as additional insureds with respect to general liability, including liability arising out of activities performed by, or on behalf of, the Provider; products and completed operations of the Provider, and automobiles owned, leased, hired or borrowed by the Provider.
2. The Provider's insurance shall contain broad form contractual liability coverage.
3. The Town of Prosper, its, officers, officials, agents, employees and volunteers shall be additional named insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.
4. The Provider's insurance coverage shall be primary insurance with respect to the Town, its, officers, officials, agents, and employees (and must be endorsed to read as primary coverage regardless of the application of other insurance). Any insurance or self-insurance maintained by the Town, its officers, officials, agents, employees, or

volunteers shall be in excess to the coverage of the Provider's insurance and shall not contribute to it.

5. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 6. Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
 7. The policies shall contain a waiver of subrogation in favor of the Town, its officers, officials, agents, and employees.
 8. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Prosper.
 9. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Prosper, Texas of any material change in the insurance coverage.
 10. Provider may maintain reasonable and customary deductibles, subject to approval of the Town.
 11. Insurance must be purchased from insurers that are financially acceptable to the Town and licensed to do business in the State of Texas.
- 6.1 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled, or not renewed, except after sixty (60) days prior written notice has been given to the Town, except when cancellation is for non-payment of premium, then at least ten (10) days prior notice shall be given to the Town. Such notice shall be sent directly to:
- Robyn Battle**
Executive Director of Community Services
Town of Prosper
PO Box 307
Prosper, TX 75078
- 6.2 Acceptability of Insurers. Insurance shall be placed with insurers duly licensed or authorized to do business in the State of Texas and with an "A.M. Best" rating of not less than A- VII, or receiving prior approval by the Town. The Town in no way warrants that the above-required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency. All insurance must be written on forms filed with and approved by the Texas Department of Insurance.

6.3 Verification of Coverage. Prior to commencing work or services, Provider shall furnish the Town with certificates of insurance (ACORD form or equivalent approved by the Town) as required by this Agreement (and update the same as needed to comply with this Agreement). The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

Certificates of Insurance shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Prosper.

All certificates and any required endorsements shall be received and approved by the Town before work commences. Each insurance policy required by this Agreement shall be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of this Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal shall constitute a material breach of contract.

All certificates required by this Agreement shall be sent directly to **Robyn Battle, Executive Director of Community Services, Town of Prosper, PO Box 307, Prosper, TX 75078.** The Town reserves the right to request and receive within ten (10) days, complete copies of all insurance policies (certified to be true and correct by the insurance carrier) required by this Agreement at any time. The Town shall not be obligated, however, to review same or to advise Provider of any deficiencies in such policies and endorsements, and such receipt shall not relieve Provider from, or be deemed a waiver of the Town's right to insist on, strict fulfillment of Provider's obligations under this Agreement.

6.4 Subcontractors. Providers' certificate(s) shall include all subcontractors as additional insureds under its policies or Provider shall furnish to the Town separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements and all provisions identified above.

6.5 Approval. Any modification or variation from the insurance requirements in this Agreement shall be made by the Town's risk manager, whose decision shall be final. Such action shall not require a formal amendment to this Agreement, but may be made by administrative action.

7. DEFAULT AND TERMINATION

7.1 Events of Default Defined. The following shall be Events of Default under this

Agreement:

- 7.1.1 Any material misrepresentation made by Provider to the Town;
- 7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:
 - 7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider's reasonable control;
 - 7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider's reasonable control;
 - 7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the Town;
 - 7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the Town as unsatisfactory or erroneous;
 - 7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;
 - 7.1.2.6 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and
 - 7.1.2.7 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies. The following shall be remedies under this agreement.

- 7.2.1 Upon the occurrence of any Event of Default, the Town may declare Provider in default under this Agreement. The Town shall provide written notification of the Event of Default and any intention of the Town to terminate this Agreement. Upon the giving of notice, the Town may invoke any or all of the following remedies:
 - 7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;
 - 7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;
 - 7.2.1.3 The right to monetary damages;
 - 7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the Town; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The Town may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the Town, and that if the Town allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the Town be deemed to waive or relinquish any of its rights under this Agreement.

7.3 Right to Offset. Any excess costs incurred by the Town in the event of termination of this Agreement for default, or in the event the Town exercises any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before termination of this Agreement for default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the Town the balance upon written demand from the Town.

8. GENERAL PROVISIONS

8.1 Headings. The section and subsection headings contained herein are for convenience only and shall not be used in interpretation of this Agreement and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Governing Law and Venue. This Agreement shall be governed by and administered and interpreted under the laws of the State of Texas, without regard to any conflict of laws provisions. Venue for any action, cause or action or proceeding under this Agreement lies exclusively in the State District Court of Collin County, Texas, and the parties agree to submit to the personal and subject matter jurisdiction of said court.

8.3 Severability. The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

8.4 Attorney's Fees. If suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in event of appeal as allowed by the appellate court.

- 8.5 Assignment. This Agreement is binding on the heirs, successors and assigns of the parties hereto. This Agreement may not be sold, assigned, pledged, subcontracted, transferred or otherwise conveyed by any means whatsoever by either the Town or Provider without prior written consent of the other, and any sale, assignment, pledge, subcontract, transfer or other conveyance by either party without the other party's prior written consent shall be null and void.
- 8.6 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest.
- 8.7 Authority to Contract. The undersigned officers and/or representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that it has taken all actions necessary to authorize entering into this Agreement.
- 8.8 Integration; Modification. This Agreement represents the entire understanding of Town and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.
- 8.9 Non-appropriation. If the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Agreement at the end of the then current fiscal year, or at the time that funds are no longer available to meet the Town's payment obligations hereunder. The Town agrees to give written notice of termination to the Provider at least sixty (60) days prior to any termination for non-appropriation of funds and will pay the Provider in accordance with this Agreement through the date of termination of this Agreement.
- 8.10 Subcontractors. This Agreement or any portion hereof shall not be subcontracted without the prior approval of the Town. No subcontractor shall, under any circumstances, relieve Provider of its liability and obligation under this Agreement. The Town shall deal through Provider and any subcontractor shall be dealt with as a worker and representative of Provider. Provider assumes responsibility to the Town for the proper performance of the work and service of all subcontractors and any acts and omissions in connection with such performance. Nothing in this Agreement shall, or is intended or deemed to, create any legal, contractual or other relationship between the Town and any subcontractor or sub-subcontractor.

- 8.11 No Waiver. The failure by the Town to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by the Town of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies the Town may have arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.
- 8.12 No Third Party Beneficiaries. This Agreement and all of its provisions are solely for the benefit of Provider and the Town and are not intended to and shall not create or grant any rights, contractual or otherwise, to any third person or entity.
- 8.13 "Includes". For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
- 8.14 Incorporation of Recitals and Exhibits. The Exhibits and Recitals to this Agreement are incorporated herein and made a part hereof for all purposes.

9. DISCLOSURE OF AGREEMENT; INTERLOCAL ARRANGEMENTS.

- 9.1 Disclosure of Agreement Terms. The terms and conditions of this Agreement may be disclosed by either party to other public agencies for the purpose of such other agencies purchasing services under this Agreement pursuant to an interlocal or cooperative arrangement with the Town. In addition, Provider may disclose the terms and conditions of this Agreement in an effort to show that the terms offered to another public agency are fair and reasonable or to determine the best value. It is understood that the Provider shall not be precluded from disclosing the terms and conditions of its form of Service Agreement to any other third party at Swagit's sole discretion and for any reason.
- 9.2 Included Parties; Interlocal Agreement. Pursuant to any interlocal, intergovernmental, or other such cooperative agreement with the Town, Provider will accept orders from, and will furnish the Provider's Software, Hardware, Professional Services, and Managed Services as outlined in the Proposal to any governmental agency or other public entity authorized by the Town to use the Proposal, based upon substantially the same terms and conditions of this Agreement, with the exception of price schedules.
- 9.3 Political Subdivision Participation. The Provider agrees to supply, sell, and contract separately with other similar or related political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the Town, based upon substantially the same terms and conditions of this Agreement, with the

exception of price schedules, in an effort to establish the terms and conditions as fair and reasonable.

10. DURATION

This Agreement shall become effective on the last day of execution by the parties, and shall continue in force for an initial term of twelve (12) months, unless sooner terminated as provided above. All pricing is to remain firm during the contract period. This Agreement will automatically renew for additional one-year terms unless this Agreement is terminated by either party providing written notice of its intent to terminate the Agreement to the other party not less than sixty (60) days prior to the end of the then current term.

11. SURVIVAL OF COVENANTS

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12. COUNTERPARTS

This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

Town of Prosper

Swagit Productions, LLC

Harlan Jefferson, Town Manager

Bryan R. Halley, President

Date of Execution:

Date of Execution:

EXHIBIT A
SCOPE OF SERVICES