

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND PEAK PROGRAM VALUE, LLC
FOR THE CENTRAL FIRE STATION and FIRE ADMINISTRATION FACILITY PROJECT (2109-FC)**

This Agreement for Professional Consulting 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 Peak Program Value, LLC, a company authorized to do business in Texas, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional consulting services to Town. Town and Consultant when mentioned collectively shall be referred to as the "Parties."

WITNESSETH:

WHEREAS, Town desires to obtain professional consulting services in connection with the **Central Fire Station and Fire Administration Facility Project (2109-FC)**, 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 Thirty-two Thousand Five Hundred and Fifteen Dollars (\$ 32,515) 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 under this Agreement and that Town may use them without Consultant's permission for any purpose relating to the Project. 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 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 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:

Peak Program Value, LLC
4450 Arapahoe Avenue Suite 100
Boulder, CO 80303
csquadra@peakprogramvalue.com

Town of Prosper
Harlan Jefferson, Town Manager
PO Box 307
Prosper, TX 75078
hjefferson@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____.

PEAK PROGRAM VALUE, LLC

TOWN OF PROSPER, TEXAS



By: _____
Signature

By: _____
Signature

Chris Squadra
Printed Name

Harlan Jefferson
Printed Name

Partner
Title

Town Manager
Title

June 14, 2021
Date

Date

**EXHIBIT A
SCOPE OF SERVICES**

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND PEAK PROGRAM VALUE, LLC
FOR THE CENTRAL FIRE STATION and FIRE ADMINISTRATION FACILITY PROJECT (2109-FC)**

(Consultant's Scope of Services is Attached Hereto)

I.



PROFESSIONAL SERVICES AGREEMENT with THE TOWN OF PROSPER

EXHIBIT A – SCOPE of SERVICES

I. The Project

The project scope for the Central Fire Station and Fire Administration facility is what is reasonably inferable from the information provided to date.

II. Basic Services

PPV will provide the following services as the base of this proposal:

A. Validation of Selected CMAR's 100% Schematic Design Estimate

Work closely with the selected CMAR's estimating team to understand their estimate format, delivery date and estimating process, and integrate seamlessly into this process.

Collaborate with the CMAR's team in an interactive work session to confirm the proposed estimate is acceptable for the team to use as the project's Control Estimate. Validate the CMAR's scope of work, unit costs, sample quantities selected by PPV, and soft costs for reasonableness and compliance with standards of the industry.

Jointly present the resulting Control Estimate to the project team as the new budget estimate.

B. Validation of CMAR's 100% Design Development Construction Cost Estimate

Work closely with the selected CMAR's estimating team to understand their estimate format, delivery date and estimating process for the 100% Design Development estimate.

Collaborate with the CMAR's team in an interactive work session to track the changes in cost, scope and quality from the last, approved Control Estimate, and reconcile discrepancies into a new, approvable Control Estimate. Validate the CMAR's scope of work, unit costs, quantities, and soft costs for reasonableness and compliance with standards of the industry.

Jointly present the resulting CMAR's deliverable to the project team as the new Control Estimate. Integrate the new estimate into the owner's budget, and update the cash flow prediction with this new cost model.

C. Validation of Subcontractor Prequals, Solicitation, Bid Analysis & Award Process

Review the CM/GC's proposed subcontractor pre-qualification and solicitation process for compliance with the owner's procurement requirements, and with best value practices. Review the CMAR's proposed Instructions to Bidders, Supplemental Instructions to Bidders and Bid Form. Suggest improvements and methods to broaden market penetration, if needed.

D. Validation of the CMAR's Proposed Final Guaranteed Maximum Price (GMP)

Review the proposed Final GMP, analyzing, among other things, compliance with the agreement and with industry standards; reasonableness of soft costs, markups and reimbursable expenses; the appropriateness

and quality of detail supporting all proposed allowances; the method of incorporation of subcontractor proposals; and reasonableness, completeness of scope, and other similar validation services.

III. Services Specifically Excluded

The following additional project control services are available when requested in advance by the Client, at fees as mutually agreed, but are specifically excluded from the base Scope of Work:

A. Additional Meetings

Meetings necessary, in the opinion of PPV, to accomplish Basic Services are included in the fees in Exhibit B. Additional meetings are available as mutually agreed.

B. Construction Cost Estimates

Prepare independent, detailed construction cost estimates concurrently with the CMAR, at milestones now in place throughout the Design Development and/or Construction Documents phases of design.

C. Provide an Owner's Budget, and Update at Each Estimating Phase

Provide a separate Owner's Budget, incorporating construction cost for the project, and update at each of the estimating phases above. This Owner's Budget will include the following categories of costs outside the CMAR's contract amount:

1. Professional Fees (Design, Engineering, PM, IT/AV, and Materials Testing)
2. Permits and Water Tap Fees;
3. Furnishings, Fixtures and Equipment;
4. Owner's Contingency at Preconstruction and Construction; and
5. Construction Cost Escalation.

D. Cash Flow Prediction

Load the budget into the schedule, showing the costs to be incurred each month throughout the project life cycle.

E. Formal Value Engineering & Value Analysis

Collaborate with the project team to identify value engineering ideas, ascertain their first cost impact on the budget, as well as their impact to the operational costs of the facility over a 30 year life cycle.

Attend, and if requested, lead interactive work session(s) with the project team to evaluate the acceptability of the first cost and life cycle cost impacts of the preferred value engineering options. Encourage the project team to use stakeholder goals and a value analysis process to finalize these value engineering decisions.

F. Other Project Control Services During Preconstruction & Construction

PPV has a wide range of services we provide during preconstruction and construction outside the basic services of this agreement, and they can be provided upon request by the City, as mutually agreed.

**EXHIBIT B
COMPENSATION SCHEDULE**

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(Consultant's Compensation Schedule is Attached Hereto)



EXHIBIT B – COMPENSATION SCHEDULE

Fees for these **Basic Services** will be **\$ 32,515**, excluding the Direct Costs identified below. Billing for these fees will be as follows:

A. Validation of Selected CMAR's 100% Schematic Design Estimate	\$ 8,445
B. Validation of CMAR's 100% Design Development Construction Cost Estimate	9,710
C. Validation of Subcontractor Prequals, Solicitation, Bid Analysis & Award Process	4,130
D. Validation of the CMAR's Proposed Final Guaranteed Maximum Price (GMP)	<u>8,905</u>
Fee Subtotal	\$ 31,190

Fees above do not include Direct Costs (e.g. mileage, parking, shipping, and out of town travel expenses), which will be billed at cost in addition to the above fees.

Direct Costs (Not to Exceed)	<u>1,325</u>
Total Contract Value	\$ 32,515

A similar not to exceed amount will be determined for Additional Services if and when any are authorized.

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. The Town and the Consultant acknowledge that such Worker's Compensation and Employer's Liability insurance is not required to be provided, as the Consultant is a partnership without any employees.
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. The Town and the Consultant acknowledge that such Professional Liability insurance is not required, given the nature of the Consultant's services.

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. 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.

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. Not required; see above.~~

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. Not Used.

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**



14 JUN 2021

Chris Squadra, a partner in Peak Program Value, LLC affirms it has no business relationship(s) with any local government entities.

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		
<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>	OFFICE USE ONLY Date Received	
<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 align="center">_____</p> <p 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>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>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 align="center">_____ Signature of vendor doing business with the governmental entity</p> <p align="right">_____ Date</p>		