

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.  
FOR THE CREATION OF A UNIFIED DEVELOPMENT CODE**

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 **Freese and Nichols, Inc.**, a company authorized to do business in Texas, 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 engineering services in connection with the **Creation of a Unified Development Code**, 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 Three Hundred Twenty Four Thousand Eight Hundred Forty Two Dollars (\$324,842) 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 Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom Town has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer'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:

Freese and Nichols, Inc.  
Chance Sparks, FAICP, CNU-A, Principal  
1251 Sadler Dr., Building 1, Suite 1150  
San Marcos, TX 78666  
chance.sparks@freese.com

Town of Prosper  
Mario Canizares, Town Manager  
PO Box 307  
Prosper, TX 75078  
mcanizares@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).

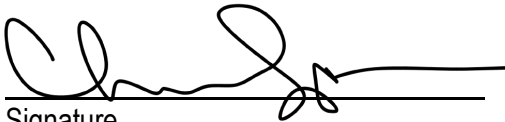
19. **"Anti-Israel Boycott" Provision.** In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott 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\_\_\_\_.

**FREESE AND NICHOLS, INC.**

**TOWN OF PROSPER, TEXAS**

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

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

Chance Sparks, FAICP, CNU-A  
Printed Name

Mario Canizares  
Printed Name

Principal/Vice President  
Title

Town Manager  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT "A"  
SCOPE OF SERVICES

TOWN OF PROSPER  
CREATION OF A UNIFIED DEVELOPMENT CODE

**I. PROJECT DESCRIPTION**

Freese and Nichols, Inc. (Engineer) has met with the Town and determined the scope of work and the services to be rendered. The general description of the work shall be as follows.

- A.** As further described below, the Town of Prosper, TX (Client, Town) is engaging Freese and Nichols, Inc (Engineer, Consultant) to develop an updated Unified Development Ordinance, consistent with standards, procedures and best management practices in Texas. Execution of the contract by all parties shall constitute a notice to proceed. Tasks prepared as part of this planning effort may occur concurrently or sequentially where appropriate, or in some cases may deviate from the sequence shown in this Scope of Services document.

**II. BASIC SERVICES**

Consultant will deliver the features associated with this project. The deliverables shall include the following.

**Task 1: Project Management and Quality Control**

Perform general project management and control project quality, progress and budget for the scoped period of completion, including the Consultant's monthly reporting and invoicing requirements, monthly status meetings with the Town, and similar efforts.

Deliverables:

- a. Project schedule, updated as needed
- b. Monthly one-page reports and invoices

**Task 2: Engagement and Meetings**

Consultant will prepare an engagement plan for approval by the Town, consistent with the following:

1. Staff Check-In Meetings

The Consultant will meet with Town staff periodically throughout the project to discuss project progress, key action items and responsibilities, and the project schedule. These meetings will take place through standing conference calls (typically every two weeks) to be determined by the Client and the Consultant. The project's progress and status will also come through submitted monthly status updates that summarize progress and

document upcoming tasks. The monthly status updates will outline any upcoming key decisions which will require input from or discussion with the Town.

## 2. Project Initiation

A conference call or virtual meeting with key project team staff from the Town will take place at the beginning of the project to familiarize all parties with the scope, project schedule, project kick-off, data request needs and timing, invoicing, communication and key staff, and other significant considerations advantageous to understand prior to the kick-off.

## 3. Kick-off Meeting and Tour

On an initial trip (Trip 1), hold the following meetings:

- Kick-off Meeting and Tour: Attend one (1) kick-off meeting in-person with the Town. The purpose of the meeting will be to build upon discussions of the staff initiation conference call. Consultant would seek to engage in conversations with Town staff who can provide specific insights into the development process and standards. Immediately following the Kick-off Meeting, participate in one (1) tour of the Town to discuss specific development-related issues in spatial context to conversations about the Town's regulations and design criteria.

Summary of Task 2 Trips:

- The consultant will make one (1) trip as part of the total project effort, included in the base fee. The consultant may elect to take additional trips as deemed necessary, with those costs included in the base fee.

## **Task 3: Project Initiation, Form, Outline and Code Analysis**

### 1. UDO Work Plan

Prepare and finalize a project work plan/outline based on incorporating, updating, or rewriting the current UDO:

- a. Chapter 3, Article 3.02 – Construction Board of Appeals
- b. Chapter 3, Article 3.03 – Certificate of Occupancy
- c. Chapter 3, Article 3.13 – Floods and Drainage
- d. Chapter 3, Article 3.14 – Signs
- e. Chapter 3, Article 3.19 – Fence Regulations
- f. Chapter 3, Article 4.02 – Alcoholic Beverages (related to proximity to certain uses)
- g. Chapter 4, Article 4.09 – Special Events and Temporary Outdoor Seasonal Sales
- h. Chapter 4, Article 4.11 – Single-Family Dwelling Transient Rentals
- i. Chapter 10, Article 10.01 – Subdivision Regulation General Provisions
- j. Chapter 10, Article 10.03 – Subdivision Ordinance
- k. Chapter 14 – Zoning

Additionally, the following will be consulted for potential inclusion, cross-reference, or

conflict-avoidance, as deemed appropriate with Town staff:

- a. Chapter 3 – Building Regulations
- b. Chapter 5, Article 5.03 – Fire Code
- c. Chapter 6, Article 6.06 – Irrigation Systems
- d. Chapter 13, Article 13.08 – Right-of-Way Management
- e. Chapter 13, Article 13.12 – Stormwater Management

This scope of services does not include preparation of engineering design/technical criteria or standard specifications, or preparation of a new zoning map. FNI can provide such services as an additional service.

Within one (1) month of the notice to proceed, the Town will provide a redline of existing regulations identifying issues or desired changes, or diagnostic analysis and evaluation in support of this scope of work. The Consultant will review all articles for internal document consistency, state regulatory consistency, and best practices, as well as proposed edits to document format, naming conventions, and overall layout.

## 2. Diagnostic of Current Regulations

Produce a high-level code diagnostic and analysis report to lay the foundation for revising the existing regulations. The diagnostic report will be used to guide the creation/update of the UDO. It is important that consensus is reached on the recommended changes and approach to streamline the ordinance writing process. The diagnostic report will be in memorandum/report format, which will summarize the issues and recommended changes to the existing regulations, informed by the direction of the Comprehensive Plan. This will include development of a recommended UDO organizational structure and annotated outline.

### **Task 4: Preparation of the UDO**

Consultant shall undertake preparation of the Unified Development Ordinance based upon the findings of the Town staff diagnostic evaluation, and other inputs to achieve a UDO that is implementable, internally consistent, and aligned to the Town's vision.

#### 1. Module Drafting Process

The process for creating the development regulations will be divided into several distinct parts (modules) to allow for focused and topical discussion between Town Staff and Consultant. Town Staff is responsible for providing one set of consolidated comments for each part, with conflicting comments either resolved or identified for a facilitated comment resolution conversation.

#### 2. Module Draft Review Process

- a. FNI will prepare a drafting schedule, establishing regulatory content by module.
- b. FNI will prepare one working draft for each of module. FNI will provide a brief (approximately one hour) virtual orientation session to introduce each module to Town Staff.
- c. One set of consolidated comments from Town Staff within 14 calendar days of

receipt of the working draft. After written comments have been provided, FNI and Town Staff will hold a virtual call (approximately one to two hours, as needed) to review City Staff's comments and direction.

- d. Consultant will complete one revision following receipt of review comments, which will be included in the Full Discussion Draft.

### 3. Full Discussion Draft

- a. Based on Town Staff comments and revisions to the module draft reviews, Consultant will prepare a Discussion Draft.
- b. Consultant will deliver the discussion draft to the Town, with Town staff providing one review within 14 calendar days of receipt. Consultant will edit as necessary.

### 4. Public Draft

- a. Consultant will provide a pdf copy to the Town and post for public review.
- b. Consultant will review all comments with Town Staff and address as necessary to prepare a Final Draft for adoption consideration.

### 5. Final Draft and Adoption

- a. Consultant will provide a Final Draft to the Town.
- b. The Town will be responsible for coordinating, paying for, and ensuring public advertisements are done appropriately for UDO adoption.
- c. Consultant will provide an as-adopted UDO following adoption, incorporating changes that occurred at adoption.

#### Deliverables:

- Project deliverables include all electronic files in Microsoft Word and Adobe PDF formats to edit and reproduce the development regulations.

## III. SPECIAL SERVICES

The following services are not included in the above fee, but are available as additional special services. It is understood the use of these services would require an amendment or separate authorization.

## IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES:

**Additional Services not included in the existing Scope of Services** – Town and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the Town's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:



- A. Printing and binding of documents in addition to those identified in Article II will be billed in accordance with the rates outlined in Exhibit B. Consultant, following a request for assistance from the Town, will prepare an estimate for approval by the Town prior to initiating work.
- B. Making revisions to drawings or other report documents when such revisions are 1) not consistent with approvals or instructions previously given by Town or 2) due to other causes not solely within the control of Consultant.
- C. Meeting or trips in excess of the number of meetings included in Article II for coordination meetings, public meetings or other activities. Additional meetings requested by the Town in excess of those included in Article II will be billed hourly in accordance with the rates outlined in Exhibit B. Examples of common additional meetings and trips include, but are not limited to:
  - a. Stakeholder Meetings: One (1) day of stakeholder meetings in-person (trip). If held virtually, up to 8 hours of virtual meetings. Consultant would seek to engage in conversations with external ordinance user experts, as identified by the Town.
  - b. Planning Board Workshop: In-person workshop (trip) with the Planning and Zoning Commission to gain perspectives from their perspective regarding development regulations and challenges with the current ordinance during the diagnostic phase.
  - c. Open House: An Open House Event (trip) would take place with the completion of the full draft to seek feedback and response. The draft would be published to a platform supportive of public comments.
  - d. Hearing/Adoption Meetings: A meeting (trip), planned as a joint public hearing of the Planning and Zoning Commission and Town Council would take place. The Town is responsible for necessary notice publication and distribution. Consultant will advise on content.
- D. Preparation or revisions to application forms and checklists.
- E. Preparation or revisions to the adopted development fee schedule.
- F. Preparation or revisions to engineering criteria manuals, development manuals, or engineering design/construction details. Engineering standards currently codified in the list described in Task 3.1 are included, provided that the Town provides specific revision requests.
- G. Preparation or revisions to the zoning map, such as zoning map amendments.
- H. Preparation of water, wastewater or drainage master plans, or updates to other adopted plans.
- I. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications, including MPO

applications.

- J. Preparing data and reports for assistance to Town in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- K. Revisions, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- L. Providing basic or additional services on an accelerated time schedule. This includes cost for overtime wages of employees and Consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Town.
- M. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- N. Providing document revisions in excess of those outlined in Article II.

**V. DELIVERABLES:**

As described in Article II, above.

**EXHIBIT B  
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND FREESE AND NICHOLS, INC.  
FOR THE CREATION OF A UNIFIED DEVELOPMENT CODE**

**Lump sum fee of \$324,842 shall be billed monthly based on the percentage of completion.**

**TIME OF COMPLETION:** Consultant is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the basic services

Discussion Draft: six (6) months from notice to proceed

Public Draft: fourteen (14) calendar days after receipt of comments/edits from Town Staff

Final Draft for Adoption Consideration: (14) calendar days after receipt of comments/edits from Town Staff

**The duration of the contract is twelve (12) months from the notice to proceed in order to provide any necessary support during the adoption phase.**

If Consultant's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Town or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and will be based upon rates outlined in Exhibit B, Attachment CO.

**COMPENSATION**

ATTACHMENT CO

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Three Hundred Twenty Four Thousand Eight Hundred Forty Two Dollars (\$324,842).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>
Professional 1	131
Professional 2	160
Professional 3	178
Professional 4	206
Professional 5	241
Professional 6	275
Construction Manager 1	113
Construction Manager 2	140
Construction Manager 3	152
Construction Manager 4	191
Construction Manager 5	230
Construction Manager 6	262
Construction Representative 1	101
Construction Representative 2	113
Construction Representative 3	140
Construction Representative 4	152
CAD Technician/Designer 1	111
CAD Technician/Designer 2	143
CAD Technician/Designer 3	177
Corporate Project Support 1	106
Corporate Project Support 2	128
Corporate Project Support 3	170
Intern / Coop	65

**Rates for In-House Services and Equipment**

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&amp;W</u>	<u>Color</u>	Valve Crew Vehicle (hour) \$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each) \$500
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day) \$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each) \$150
	Glossy / Mylar	\$0.75	\$1.25	Ultrasonic Thickness Gauge (per day) \$275
	Vinyl / Adhesive	\$1.50	\$2.00	Coating Inspection Kit (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (each) \$500
	Binding (per binding)	\$0.25		Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

**OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.05. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.05. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2024.

1022024

## 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.

**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**

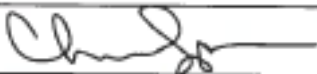
Service Provider shall provide the Town with certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums 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 E  
CONFLICT OF INTEREST QUESTIONNAIRE**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity	<b>FORM CIQ</b>
<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>	<b>OFFICE USE ONLY</b>
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p> <p align="center">Freese and Nichols, Inc.</p>	Date Received
<p><b>2</b> <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><b>3</b> Name of local government officer about whom the information is being disclosed.</p> <p align="center">N/A</p> <p align="center">_____ Name of Officer</p>	
<p><b>4</b> 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><b>5</b> 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><b>6</b> <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><b>7</b></p> <p align="center"></p> <p align="center">Signature of vendor doing business with the governmental entity</p>	<p align="center">6/5/2024</p> <p align="center">_____ Date</p>