

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
BETWEEN THE TOWN OF PROSPER, TEXAS, AND D&S ENGINEERING LABS, LLC  
FOR THE PUBLIC SAFETY COMPLEX PHASE 2 (CENTRAL FIRE STATION AND FIRE ADMINISTRATION)  
PROJECT**

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 **D&S Engineering Labs, LLC** 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 construction materials engineering and testing services in connection with the **Public Safety Complex Phase 2 (Central Fire Station and Fire Administration) Project**, 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 Nintey-NineThousand, Seven Hundred and Seventy Two Dollars (\$99,772) 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:

D&S Engineering Labs  
Amy Brothers, President  
PO Box 855  
Collinsville, TX 76233  
abrothers@dsenglabs.com

Town of Prosper  
Harlan Jefferson, Town Manager  
PO Box 307  
Prosper, TX 75078  
[hjefferson@prospertx.gov](mailto: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\_\_\_\_.

**D&S ENGINEERING LABS, LLC**

**TOWN OF PROSPER, TEXAS**

By: Amy Brothers  
Signature  
Amy Brothers  
Printed Name  
President  
Title  
1/26/2022  
Date

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Harlan Jefferson  
Printed Name  
\_\_\_\_\_  
Town Manager  
Title  
\_\_\_\_\_  
Date

**EXHIBIT A  
SCOPE OF SERVICES**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
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PROJECT**

**I. PROJECT DESCRIPTION**

Observation and Testing Services for Prosper Central Fire Station

**II. TASK SUMMARY**

Task 1 – Earthwork Observation and Testing – Building Pad

Moisture Density Relations (ASTM D698 – Method A or B)  
Atterberg Limits  
Minus 200 Sieve Analysis  
In-Place Moisture Density Tests, Min. 3 per trip  
Engineering Soils Technician, Min 3 hrs. per trip  
Trip Charge  
Project Manager  
Project Administration

Task 2 - Earthwork Observation and Testing – Paving & Utilities

Moisture Density Relations (ASTM D698 – Method A or B)  
Atterberg Limits  
Minus 200 Sieve Analysis  
Lime Depth Check and Subgrade Gradations  
Sulfate Contents in Soils, Colorimetric Method  
Lime Series & Report  
In-Place Moisture Density Tests, Min. 3 per trip  
Engineering Soils Technician, Min 3 hrs. per trip  
Trip Charge  
Project Manager  
Project Administration

Task 3 – Concrete Observation & Testing – Paving

Concrete Test Cylinders (4x8 inch)  
Engineering Concrete Technician, Min. 3 hrs. per trip  
Trip Charge  
Project Manager  
Project Administration

#### Task 4 – Drilled Shaft Observations

Concrete Test Cylinders (4x8 inch)

Sr. Engineering Technician, Min. 3 hrs. per trip

Senior Engineer (PE)

Trip Charge

Project Manager

Project Administration

#### Task 5 – Concrete Observation & Testing – Building

Concrete Test Cylinders (4x8 inch)

Engineering Concrete Technician, Min. 3 hrs. per trip

Trip Charge

Project Manager

Project Administration

#### Task 6 – Masonry Observation & Testing

Mortar Cubes

Grout Prisms

Engineering Technician, Min. 3 hrs. per trip

Trip Charge

Project Manager

Project Administration

#### Task 7 – Storm Shelter Observation (Walls included with Masonry)

Storm Louvers and Door Frame Observations, Min. 3 hrs. per trip

Trip Charge

Project Manager

Project Administration

#### Task 8 – Structural Steel Observation

CWI Visual Observation, Min. 4 hrs. per trip

Ultrasonic Inspection, Min. 4 hrs. per trip

Material Fee

Trip Charge

Project Manager

Project Administration

### **III. DELIVERABLES**

Task 1 - Earthwork Obs. and Testing – Building	Observation report and test results
Task 2 – Earthwork Obs. And Testing - Paving	Observation report and test results
Task 3 – Concrete Obs. And Testing - Paving	Observation report and test results
Task 4 – Drilled Shaft Observation	Observation report and test results
Task 5 – Concrete Obs. And Testing - Building	Observation report and test results

Task 6 – Masonry Observation and Testing	Observation report and test results
Task 7 – Storm Shelter Observation	Observation report and test results
Task 8 – Structural Steel Observation	Observation report
Task 9 – Project Setup	
Task 10 – Sr. Engineer, Site Visits, ect.	Project Management as required

**EXHIBIT B  
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT  
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PROJECT**

**I. COMPENSATION SCHEDULE**

<b>Task</b>	<b>Completion Schedule</b>	<b>Compensation Schedule</b>
Notice-to-Proceed	TBD	
Task 1 – Earthwork Obs. And Testing - Building	TBD	\$5,275
Task 2 – Earthwork Obs. And Testing - Paving	TBD	\$15,411
Task 3 – Concrete Obs. And Testing - Paving	TBD	\$12,617
Task 4 – Drilled Shaft Observation	TBD	\$13,200
Task 5 – Concrete Obs. And Testing - Building	TBD	\$14,905
Task 6 – Masonry Observation and Testing	TBD	\$31,867
Task 7 – Storm Shelter Observation	TBD	\$1,463
Task 8 – Structural Steel Observation	TBD	\$4,417
Task 9 – Project Setup	TBD	\$100
Task 10 – Sr. Engineer, Site Visits, ect.	TBD	\$1980
<b>Total Compensation</b>		<b>\$99,772</b>

**II. COMPENSATION SUMMARY**

<b>Basic Services (Lump Sum)</b>	<b>Amount</b>
Task 1 – Earthwork Observation and Testing – Building	\$5,275
Task 2 – Earthwork Observation and Testing – Paving	\$15,411
Task 3 – Concrete Observation and Testing – Paving	\$12,617
Task 4 – Drilled Shaft Observation	\$13,200
Task 5 – Concrete Observation and Testing – Building	\$14,905
Task 6 – Masonry Observation and Testing	\$31,867
Task 7 – Storm Shelter Observation	\$1,463
Task 8 – Structural Steel Observation	\$4,417
Task 9 – Project Setup	\$100
Task 6 – Sr. Engineer, Site Visits, ect.	\$1,980
<b>Total Basic Services:</b>	<b>\$99,772</b>



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

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

## **EXHIBIT C INSURANCE REQUIREMENTS**

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

### **A. MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

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

### **B. MINIMUM LIMITS OF INSURANCE**

Service Provider shall maintain throughout contract limits not less than:

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

### **C. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

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

**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

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My Commission expires: \_\_\_\_\_

**EXHIBIT E**  
**CONFLICT OF INTEREST QUESTIONNAIRE**

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

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).

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.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

D&S Engineering Labs, LLC

2 ☐ 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.)

3 Name of local government officer about whom the information is being disclosed.

NA

Name of Officer

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.

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?

☐ Yes

☒ No

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?

☐ Yes

☒ No

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.

6 ☐ 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).

7 Amy Brothers  
Signature of vendor doing business with the governmental entity

1/26/2022  
Date