

**INTERLOCAL AGREEMENT AMONG
THE TOWN OF PROSPER, TEXAS, THE CITY OF FRISCO, TEXAS AND
THE CITY OF MCKINNEY, TEXAS FOR MEDIAN MAINTENANCE AND
IMPROVEMENTS ON US HIGHWAY 380 FROM LOVERS LANE TO CUSTER ROAD**

THIS AGREEMENT ("Agreement") is made and entered into by and among the **TOWN OF PROSPER, TEXAS**, a home-rule municipal corporation, hereinafter referred to as ("Prosper"); the **CITY OF FRISCO, TEXAS**, a home-rule municipal corporation, hereinafter referred to as ("Frisco"); and the **CITY OF MCKINNEY, TEXAS**, a home-rule municipal corporation, hereinafter referred to as ("McKinney"). Prosper, Frisco, and McKinney may from time to time herein be referred to collectively as "Parties" or "Municipalities" and individually as a "Party" or "Municipality".

WHEREAS, the Interlocal Cooperation Act ("Act"), codified at Chapter 791 of the Texas Government Code, authorizes units of local government to contract with one or more units of local government to perform governmental functions and services; and

WHEREAS, Prosper, Frisco and McKinney are political subdivisions of the State of Texas and are engaged in the provision of governmental services for the benefit of their citizens and users; and

WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, the Act for the performance of governmental functions and services; specifically, the Existing Median Maintenance project (as described herein), the Median Improvements project (as described herein) and the Roadway Illumination project (as described herein) (collectively, "Project"); and

WHEREAS, Prosper, Frisco and McKinney have determined that the Project may be completed and maintained most economically by implementing this Agreement; and

WHEREAS, each of Prosper, Frisco and McKinney has current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Prosper, Frisco and McKinney agree as follows:

**I.
TERM; TERMINATION**

This Agreement is effective upon the execution and delivery by all parties, and shall continue in effect for a period of one (1) year; provided, however, that the initial term of this Agreement will automatically be extended for successive one-year periods thereafter, unless any party gives written notice to the other parties to the contrary not less than ninety (90) days prior to the expiration of the then-current term. Notwithstanding

the foregoing, however, this Agreement may be terminated by any party, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Agreement, by giving the other parties at least ninety (90) days' prior written notice of the termination date, in which event this Agreement shall terminate as to all parties as of such termination date.

II. ROLES AND RESPONSIBILITIES OF THE PARTIES

A. Existing Median Maintenance

1. Prosper shall maintain the existing median of US Highway 380 from the Prosper / McKinney city limit line to Lovers Lane and described in Exhibit 1, including all median and island areas but excluding paved areas intended for vehicular travel, in a functional and aesthetically pleasing condition (collectively, "Existing Median Maintenance"). The Existing Median Maintenance for landscape elements shall include mowing, edging, blowing and trash pickup.
2. Prosper and Frisco have agreed to the proposed maintenance services that will be provided by one or more private contractors. Prosper will execute a contract with such contractor(s) in accordance with Prosper purchasing requirements after execution of this Agreement. In the event that additional, "on-demand" work is required in excess of the contract amounts due to seasonal conditions or excess trash, each party will be responsible for its proportionate cost thereof based on linear feet of roadway per Exhibit 1. More particularly, pursuant to calculations based on said Exhibit 1 Prosper will be responsible for 50% and Frisco 50% of the total cost of the proposed maintenance services and any additional, "on-demand" work. Prosper will notify Frisco prior to authorizing such "on-demand" work.
3. Prosper and McKinney have agreed to the proposed maintenance services that will be provided by one or more private contractors. McKinney has executed a contract with such contractor(s) in accordance with McKinney purchasing requirements. In the event that additional, "on-demand" work is required in excess of the contract amounts due to seasonal conditions or excess trash, McKinney will bear the full cost. The ongoing maintenance cost will be borne entirely by McKinney in exchange for Prosper funding the design cost of the Median Improvements contemplated below in Section B, Median Landscape Improvements and Maintenance.
4. The cost of future maintenance services will be adjusted in the future to account for the construction of additional improvements that are anticipated in connection with the Roadway Illumination project and/or the Median Improvement project in the same proportion set forth in Subparagraph 2 and 3, herein above.

5. Prosper shall designate a program liaison who will manage Existing Median Maintenance program details and coordinate with Frisco's designated liaisons for Existing Median Maintenance.
6. McKinney shall designate a program liaison who will manage Existing Median Maintenance program details and coordinate with Prosper's designated liaisons for Existing Median Maintenance.

B. Median Landscape Improvements and Maintenance

1. Prosper, Frisco and McKinney have all agreed to the scope of services and Prosper has engaged a professional engineering and landscape architecture firm, hereafter referred to as the "Median Improvement Consultant," to prepare a design for median landscape improvements for US Highway 380 from Custer Road to Lovers Lane (collectively, the "Median Improvements"). The Design work has progressed in a collaborative process where each party has reviewed progress sets and made comments as to their desires. The Median Improvement Consultant will also prepare construction documents, specifications and cost estimates suitable for submission to the Texas Department of Transportation ("TxDOT") and suitable for bidding and constructing the Median Improvement project. Frisco and McKinney will continue to receive progress sets for comments.
2. Frisco, McKinney and Prosper shall submit the Median Improvement project to TxDOT to be considered for the TxDOT Green Ribbon Funding Program. Frisco, McKinney and Prosper anticipate that TxDOT will bid and manage the construction of the Median Improvement project if the project is selected to receive funding from TxDOT. Frisco and Prosper have agreed to each fund their proportional share of the cost of any items that were mutually agreed to be included in the future design of the Median Improvement project but not funded by TxDOT on the section of US380 from Frisco's eastern city limit line to Lovers Lane. The Median Improvement Consultant will provide quantities and estimates that detail the proportionate costs for Frisco and Prosper. Prosper and McKinney have agreed that Prosper will fund the full cost any items that were mutually agreed to be included in the future design of the Median Improvements project but not funded by TxDOT on the section of US380 from Custer Road to McKinney western city limit line.
3. Frisco, McKinney and Prosper agree that electrical and water service shall be designed and placed in a mutually acceptable location and that, due to site conditions, it may be located in Frisco, McKinney or Prosper but in no case will there be a cross connection between municipal water systems.
4. Prosper has engaged the Median Improvement Consultant and is managing the design contract and TxDOT submittal for the Median Improvement project. In the

event that TxDOT does not manage the construction of the Median Improvement project, Prosper shall manage such construction. In the event TxDOT does not manage the construction, Frisco, McKinney and Prosper may be required to engage the Median Improvement Consultant for additional services to be determined at that time. All construction and improvements in connection with the Median Improvement project shall be designed to meet or exceed the current TxDOT design standards and shall be constructed in accordance with the plans and specifications approved by TxDOT, Frisco, McKinney and Prosper.

5. Frisco and Prosper agree that Prosper shall provide long-term maintenance of all improvements and landscaping within the median of the roadway that is located along US Highway 380 from the Frisco and McKinney city limit line to Lovers Lane and shown in Exhibit 1, including all median and island areas but excluding paved areas intended for vehicular travel, in a reasonably timely manner. Landscape maintenance shall include but not be limited to plant maintenance, plant replacement, mowing and trimming, applications of herbicides and pesticides, hardscape element maintenance and irrigation system operation, maintenance and cost of irrigation water. All landscape elements will be maintained in a functional and aesthetically pleasing condition.
6. McKinney and Prosper agree that McKinney shall provide long-term maintenance of all improvements and landscaping within the median of the roadway that is located along US Highway 380 from the Frisco and McKinney city limit line to Custer Road and shown in Exhibit 1, including all median and island areas but excluding paved areas intended for vehicular travel, in a reasonably timely manner. Landscape maintenance shall include but not be limited to plant maintenance, plant replacement, mowing and trimming, applications of herbicides and pesticides, hardscape element maintenance and irrigation system operation, maintenance and cost of irrigation water. All landscape elements will be maintained in a functional and aesthetically pleasing condition.
7. Prosper, Frisco and McKinney shall designate a program liaison who will manage program details and coordinate with the respective designated liaisons during the design process and all maintenance activities.
8. Frisco, McKinney and Prosper agree to each fund its proportional share of long-term maintenance costs associated with the Median Improvements. Per Exhibit 1, the proportionate cost will be Frisco 50%, and Prosper 50% of the maintenance cost associated for the area between Lovers Lane to Frisco's eastern city limit line. McKinney will bear 100% of the maintenance cost between Frisco's eastern city limit line and Custer Road.
9. All utility costs will be split proportionally based on Exhibit 1. The proportional utility cost will be Frisco 50% and Prosper 50% for the area between Lovers Lane to

Frisco's eastern city limit line. McKinney will bear 100% of the utility cost between Frisco's eastern city limit line and Custer Road.

C. Roadway Illumination and Maintenance

1. Prosper, Frisco and McKinney have all agreed to the scope of services for roadway illumination. Frisco, McKinney and Prosper mutually agree that it will be beneficial to each for roadway illumination to be installed and maintained along a portion of US Highway 380 from Custer Road to Lovers Lane referenced in Exhibit 1, (collectively, "Roadway Illumination") prior to the installation of the Median Improvements as contemplated in Section II(B) above. Frisco, McKinney and Prosper shall provide reasonably adequate staff resources to ensure that the Roadway Illumination project is designed and constructed. It is anticipated that the work will be finished prior to March 2019.
2. Prosper, Frisco and McKinney have all agreed to the scope of services for roadway illumination design, Exhibit 4 and Frisco has engaged a professional engineering firm, hereafter referred to as the "Illumination Consultant," to prepare a design for the Roadway Illumination. The Illumination Consultant will prepare construction documents, specifications and cost estimates suitable for bidding and constructing the Roadway Illumination project. McKinney and Prosper will receive progress sets upon reasonable request, if desired, for the purpose of providing comments at various milestones outlined in the Illumination Consultant's scope of work.
3. Frisco shall manage the design contract, approval process, bidding and construction of the Illumination Improvements. All construction and improvements in connection with the Roadway Illumination project shall be designed to meet or exceed the current TxDOT design standards and shall be constructed in accordance with the plans and specifications approved by the parties.
4. The Roadway Illumination fixtures, poles and other improvements (collectively, the "Illumination Improvements") shall be as mutually approved by Frisco, McKinney and Prosper, such approval not to be unreasonably withheld, conditioned or delayed. The parties agree that electrical service to the Illumination Improvements shall be placed in a mutually acceptable location and that, due to site conditions, electrical service may be located in any or all three of the cities.
5. Prosper and Frisco agree that Frisco shall provide long-term maintenance of the Illumination Improvements in a reasonably timely manner to ensure that that the Roadway Illumination remains operational on that section of US380 from Frisco's eastern city limit line to Lovers Lane. This maintenance shall include but not be limited to trouble shooting outages; replacing bulbs, fixtures or poles; providing on-call services for repairs; and responding to accidents that cause damage to the

Illumination Improvements. Subject to any reductions for recovery of costs pursuant to Subparagraph 7, herein below, Prosper will reimburse Frisco as provided in Article III for Frisco's costs associated with the long-term maintenance of the Illumination Improvements.

6. Prosper and McKinney agree that McKinney will provide long-term maintenance of the Illumination Improvements in a reasonably timely manner to ensure that the illumination remains operational on that section of US Highway 380 from Custer Road to Prosper's eastern city limit line. This maintenance shall include but not be limited to trouble shooting outages; replacing bulbs, fixtures or poles; providing on-call services for repairs; and responding to accidents that cause damage to the Illumination Improvements. Subject to any reductions for recovery of costs pursuant to Subparagraph 7, herein below, Prosper will reimburse McKinney as provided in Article III for McKinney's costs associated with the long-term maintenance of the Illumination Improvements.
7. Frisco and McKinney shall use reasonable efforts to seek reimbursement from the responsible party, if known, and/or the responsible party's insurance carrier for all damages to the Illumination Improvements resulting from an accident occurring in the cities' respective city limits. In the event that Frisco or McKinney is unable to recover the full cost of replacement or repair from the responsible party and/or the responsible party's insurance, the cost of replacement or repair shall be equally shared by Prosper, on the one hand, and the city in which the accident occurred, on the other.

III. CONSIDERATION

A. Existing Median Maintenance

1. In consideration for Prosper providing the Existing Median Maintenance services as specified in Exhibit 2 and Section II(A) above Frisco shall pay to Prosper 35.8 percent of all reasonable costs incurred by Prosper in connection with Existing Median Maintenance services estimated at Eight Thousand and 00/100 Dollars (\$8,000.00) per year during the initial term and any renewal term of this Agreement. Prosper shall submit to Frisco monthly itemized invoices of all expenses incurred by Prosper during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.
2. In consideration for McKinney providing the Existing Median Maintenance services as specified in Exhibit 2 and Section II(A) above, Prosper will fund the Median Improvements design services.

B. Median Improvements and Maintenance

1. In consideration for Prosper procuring the Median Improvement Consultant services as specified in Exhibit 3 and Section II(B) above Frisco shall pay to Prosper 35.8 percent of all reasonable costs incurred by Prosper in connection with Median Improvement Consultant services up to an amount not to exceed Thirty-One Thousand and 00/100 Dollars (\$31,000.00). Prosper shall submit to Frisco monthly itemized invoices of all expenses incurred by Prosper during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.
2. Frisco hereby agrees to pay Prosper its proportional share of long-term maintenance costs associated with the Median Improvements. Per Exhibit 1, the proportionate cost will be Frisco 50%, and Prosper 50% of the maintenance cost associated for the area between Lovers Lane to Frisco's eastern city limit line.
3. In consideration for Prosper funding the reasonable cost associated with the installation of improvements that are not funded by the TxDOT Green Ribbon Funding Program per Section II (B) above on the section of US380 from Custer Road to McKinney western city limit line, McKinney will fund the full cost of the long-term maintenance associated with the Median Improvements.

C. Roadway Illumination and Maintenance

1. In consideration for Frisco procuring the Illumination Consultant services as specified in Exhibit 4 and Section II(C) above, Prosper shall pay to Frisco 50.0 percent of all reasonable costs incurred by Prosper in connection with Illumination Consultant services up to an amount not to exceed Fifty-Eight Thousand and 00/100 Dollars (\$58,000.00). Frisco shall submit to Prosper monthly itemized invoices of all expenses incurred by Prosper during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.
2. In consideration for Frisco procuring the Illumination Consultant services as specified in Exhibit 4 and Section II(C) above, McKinney shall pay to Frisco 14.2 percent of all reasonable costs incurred by Frisco in connection with Illumination Consultant services up to an amount not to exceed Twenty Thousand and 00/100 Dollars (\$20,000.00). Frisco shall submit to McKinney monthly itemized invoices of all expenses incurred by Frisco during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.
3. In consideration for Frisco providing the Roadway Illumination maintenance services described in Section II(C) above and electrical service to the Illumination Improvements, Prosper shall pay to Frisco 50.0 percent of all reasonable costs incurred by Frisco in connection with Roadway Illumination maintenance services and appurtenant electrical service thereto along US Highway 380 from Lovers Lane to Frisco's eastern city limit line, estimated at Seven Thousand and

00/100 Dollars (\$7,000.00) per year during the initial term and any renewal term of this Agreement. Frisco shall submit to Prosper monthly itemized invoices of all expenses incurred by Prosper during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.

4. In consideration for McKinney providing the Roadway Illumination maintenance services described in Section II(C) above and electrical service to the Illumination Improvements, Prosper shall pay to McKinney 50.0 percent of all reasonable costs incurred by McKinney in connection with Roadway Illumination maintenance services and appurtenant electrical service thereto section of US Highway 380 from Custer Road to Prosper's eastern city limit line, estimated at Seven Thousand and 00/100 Dollars (\$7,000.00) per year during the initial term and any renewal term of this Agreement. McKinney shall submit to Prosper quarterly itemized invoices of all expenses incurred by Prosper during the prior ninety (90) day period. Payments are due within thirty (30) days after receipt.

D. Roadway Illumination Removal

1. Frisco and Prosper agree that, in the event TxDOT requires some or all of the Illumination Improvements to be removed prior to ten years from the execution of this agreement along US Highway 380 shown in Exhibit 1, Frisco and Prosper will determine a mutually acceptable salvage value to be paid by the party taking possession of the poles. If the removal occurs after ten years from the execution of this Agreement, Frisco shall remove and take possession of such Illumination Improvements for which it is responsible to provide maintenance services.
2. Prosper and McKinney agree that, in the event TxDOT requires some or all of the Illumination Improvements to be removed prior to ten years from the execution of this agreement along the section of US Highway 380 from Custer Road to Prosper's eastern city limit line shown in Exhibit 1, McKinney and Prosper will determine a mutually acceptable salvage value to be paid by the party taking possession of the poles. If the removal occurs after ten years from the execution of this Agreement McKinney shall remove and take possession of such Illumination Improvements for that section of US Highway 380 from Custer Road to Prosper's eastern city limit line that borders McKinney.

All costs incurred by any party as a result of its obligations under this Agreement shall be paid only from current revenues legally available to the paying party. The obligation of a party to pay an invoice within thirty (30) days of receipt of each invoice shall apply, unless supporting receipts or other supporting documentation have been requested by a party to whom an invoice is submitted, in which case the party to whom an invoice is submitted shall pay the invoice as soon after receiving the supporting receipts or documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in

which case the party to whom an invoice is submitted shall pay the undisputed amount of the invoice within thirty (30) days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. Notwithstanding anything to the contrary herein, a party to whom an invoice is submitted shall not be required to pay any invoice submitted by the party submitting the invoice if the party submitting the invoice is in breach of this Agreement.

The parties acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of a party shall be subject to approval by each party's governing body. In the event that a party's governing body does not approve the appropriation of funds required to be paid under this Agreement, this Agreement shall terminate at the end of the fiscal year for which funds were appropriated, and the parties shall have no further obligations hereunder, but the party responsible for payment shall be obligated to pay all charges incurred by the party to whom payment must be made through the end of that fiscal year provided that the party to whom payment must be made is not in breach of this Agreement.

IV. RELEASE AND HOLD HARMLESS

TO THE EXTENT ALLOWED BY LAW, AND WITHOUT WAIVING GOVERNMENTAL OR SOVEREIGN IMMUNITY, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

THIS INDEMNIFICATION CLAUSE IS VALID ONLY TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, PARTICULARLY SECTION 7 OF ARTICLE XI OF THE TEXAS CONSTITUTION, AND WITH THE MUTUAL UNDERSTANDING THAT THE PARTIES ARE POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS AND THAT THIS EXECUTORY INDEMNITY OBLIGATION CANNOT BE PAID FROM CURRENT REVENUES AND THAT NO TAX NOR INTEREST AND SINKING FUND HAS BEEN SET, ADOPTED OR ESTABLISHED FOR THE PAYMENT OF THIS EXECUTORY INDEMNITY OBLIGATION.

**V.
INDEPENDENT CONTRACTOR**

Each party covenants and agrees that each party is an independent contractor of the other parties and not an officer, agent, servant or employee of any other party and that nothing herein shall be construed as creating a partnership or joint enterprise between or among any party.

**VI.
NOTICE**

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

Frisco Representative:

City of Frisco
Attn: _____
6101 Frisco Square Blvd.
Frisco, Texas 75034

Prosper Representative:

Town of Prosper
Attn: _____

McKinney Representative:

City of McKinney
Attn: _____

**VII.
AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Prosper has executed this Agreement pursuant to duly authorized action of the Prosper Town Council on _____. Frisco has executed this Agreement pursuant to duly authorized action of the Frisco City Council on _____. McKinney has executed this Agreement pursuant to duly

authorized action of the McKinney City Council on _____. Each of the parties shall provide written documentation evidencing the grant of approval by its respective governing body.

**VIII.
SEVERABILITY**

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, any party may terminate this agreement by giving the other parties thirty (30) days written notice.

**IX.
VENUE**

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

**X.
INTERPRETATION OF AGREEMENT**

Although this Agreement is drafted by Prosper, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for or against any party.

**XI.
REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by any party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XII.
SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other parties to this Agreement. No party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written

consent of the other parties. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

**XIII.
IMMUNITY**

It is expressly understood and agreed that, in the execution and performance of this Agreement, no party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**XIV.
MULTIPLE COUNTERPARTS**

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

**XV.
ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and may only be modified in a writing executed by all parties.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below:

CITY OF FRISCO, TEXAS

By: _____
Printed Name: George Purefoy
Title: City Manager
Date: _____

APPROVED AS TO FORM:

Abernathy Roeder Boyd & Hullett P.C.
City Attorneys

TOWN OF PROSPER, TEXAS

By: _____
Printed Name: Harlan Jefferson
Title: Town Manager
Date: _____

APPROVED AS TO FORM:

Terrence Welch, Town Attorney

CITY OF MCKINNEY, TEXAS

By: _____
PAUL G. GRIMES
City Manager
Date: _____

APPROVED AS TO FORM:

Mark Houser, City Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on this the ____ day of _____, 2018 by _____, of the **TOWN OF PROSPER**.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on this the ____ day of _____, 2018 by _____, of the **CITY OF FRISCO**.

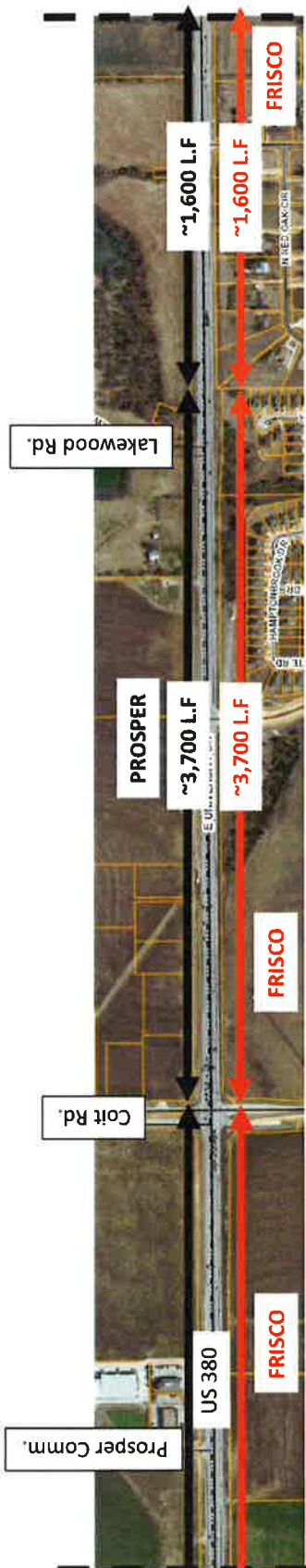
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on this the _____ day of _____, 2018 by PAUL; G. GRIMES, of the **CITY OF MCKINNEY**.

Notary Public, State of Texas

EXHIBIT 1



Design cost responsibility

Prosper: 64.2%
 Frisco: 35.8%

Annual Landscape Maintenance Responsibility

Prosper: 35.8%
 Frisco: 35.8%
 McKinney: 28.4%

Total length: approximately 18,600 linear feet
 (3.52 miles)

Exhibit 2

TOWN OF PROSPER STANDARD TERMS & CONDITIONS FOR PROCUREMENTS

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Prosper ("Town"), unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Prosper advertises formal procurement opportunities through *The Prosper Press*. The Town shall not be responsible for information distributed by sources other than the Town.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of one or more addenda. The sole issuing authority shall be vested in the Town of Prosper Purchasing Division. If addenda containing material changes to the specifications or pricing form are issued, the respondent shall acknowledge receipt of such addenda in the designated section on the Bid/Proposal Certification Form. It is the responsibility of the bidder/proposer to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of any addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or the apparent omission from these specifications of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Prosper reserves the right to waive any minor defect, irregularity, or informality in any bid/proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all bids/proposals with or without cause prior to award.
7. **SUBMISSIONS:** Submissions shall be submitted on the forms provided by the Town of Prosper and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Prosper Purchasing Division, 151 S. Main St., Prosper, Texas 75078, prior to the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Prosper Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Prosper is not responsible for issues encountered with methods of delivery.
10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure of a unit price or extended price made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.
FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting an error in bid price after bid opening.
11. **TAXES:** The Town of Prosper is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. **Tax shall not be included in prices offered.** A Tax Exempt Form will be provided by the Town of Prosper upon request. A request for a Tax Exempt Form can be submitted in writing to january_cook@prospertx.gov or by contacting the Purchasing Division at 972.569.1018.
12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal without written approval of the Purchasing Agent.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Prosper, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Prosper will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town of Prosper's discretion, testing may be required prior to award of the bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town of Prosper's discretion, samples may be required prior to award of the bid/proposal or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.

17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is merely descriptive and **not** restrictive, and is intended to indicate the type and minimum quality level desired for comparison purposes, unless otherwise stated herein to the contrary. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.

18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Prosper's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive. Neither shall such reading be construed as a comment on the responsibility of the bidder/proposer.

The Town of Prosper will make a determination regarding the responsiveness of offers submitted based upon compliance with all applicable laws and the Town of Prosper's purchasing guidelines and project documents including, but not necessarily limited to, the bid/proposal specifications and contract documents. The Town will notify the successful respondent upon award of the contract; and, according to State law all offers received will be available for inspection after award.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.

19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to january_cook@prospertx.gov. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**

20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.

21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the laws, Town Charter, and Town Code of Ethics regarding conflicts of interest. No officer, employee or agent of the Town of Prosper shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 1.10 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined therein.

22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident bidder/proposer unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid the non-resident bidder/proposer on a bid/proposal for goods and services in the non-resident bidder's state.

23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Prosper for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.

24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Prosper may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:

- A. Have adequate financial resources, or the ability to obtain such resources as required;
- B. Ability to comply with the required or proposed delivery schedule;
- C. Have a satisfactory record of performance;
- D. Have a satisfactory record of integrity and ethics; and
- E. Be otherwise qualified and eligible to receive an award.

25. **AWARD OF CONTRACT:** The Town of Prosper reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.

The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
- B. The reputation of the respondent and of the respondent's goods or services;
- C. The quality of the respondent's goods or services;
- D. The extent to which the goods or services meet the Town's needs;
- E. The respondent's past relationship with the Town;
- F. The total long-term cost to the Town to acquire the respondent's goods or services; and/or
- G. Any relevant criteria specifically listed herein.

26. **ACCEPTANCE:** Respondent agrees that acceptance of any or all items by the Town of Prosper, Texas, within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for this bid/proposal will be for one (1) year upon Town approval, with four (4) optional one-year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town of Prosper is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available in a subsequent fiscal year.
29. **ASSIGNMENT:** The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, to any other person or party without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or may hereafter enter into, interlocal cooperative purchasing agreements with the Town of Prosper.
31. **CHANGE ORDER:** The Town of Prosper reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract shall be documented in written form by the Town of Prosper and acknowledged by the contracted vendor. **All change orders and modifications to the contract shall be processed through the Purchasing Division only.**
32. **DELIVERY PROMISE – PENALTIES:** Where indicated, respondents must provide the number of calendar days required to deliver goods or services to the Town of Prosper after receipt of order (ARO). **Do not quote shipping dates.** When a delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Agent, who shall have the right to extend the delivery date if the reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.
33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Prosper location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Prosper's satisfaction.
35. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, P.O. Box 307, Prosper, Texas 75078, or electronically to ap@prosper.tx.gov.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Prosper shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Prosper requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Agent. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Prosper reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Prosper's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.

41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Prosper, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act, omission, or fault of the successful bidder, or of any agent, employee, subcontractor or supplier for which the successful bidder is responsible in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Prosper, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
42. **PATENT RIGHTS:** The bidder/proposer agrees to indemnify and hold harmless the Town of Prosper from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town pursuant to the contract documents.
43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Agent within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.

Post-award protests must be submitted in written form to the Purchasing Agent within five (5) working days after award.

The protest must include, at a minimum, the name of the protester, bid/proposal number or description of goods or services, and a statement of the grounds for the protest. The Purchasing Agent, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Prosper reserves the right to enforce the performance of the contract in any manner prescribed by law and deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost plus any additional administrative costs incurred by the Town to the defaulting contracted vendor.
45. **REMEDIES:** The successful vendor and the Town of Prosper agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
46. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in CollinCounty, Texas.

Town of Prosper
RFP No. 2017-47-A
US Hwy 380 Median Mowing and Maintenance

I. Introduction

The Town of Prosper is soliciting proposals for the maintenance of medians located on US Hwy 380, within the Town of Prosper, City of McKinney, and City of Frisco, as described in the following specifications. The initial term of the contract will be one (1) year, with four optional, one-year renewal periods. The contract will be awarded to the vendor(s) providing the best value, as determined by the evaluation criteria as stated herein.

This is a cooperative procurement process, with the Town of Prosper serving as the lead agency on behalf of the Town of Prosper, the City of McKinney, and the City of Frisco. The Town of Prosper will administer the contract on behalf of all entities, and process payments. It is understood that any reference to the "Town" throughout this document is representative all entities.

The cycle frequencies stated herein are an accurate reflection of the Town's anticipated needs. However, these are estimates, and not a commitment. Furthermore, based on need and budget contingencies, cycle frequencies may be adjusted at any time during the contract period. At no time will adjustments to the prices offered be imposed on the Town. Prices will be held firm during the contract period.

The successful vendor will be required to execute a service contract. A sample contract is available for viewing upon request, in the Purchasing Office.

II. Scope of Services

The successful vendor shall perform all services in accordance with the following conditions, at the locations outlined in Exhibit A:

A. Turf Maintenance

1. All turf areas will be mowed, edged, trimmed and blown for each scheduled cycle during the growing season, and as needed during the non-growing season.
2. All major turf areas will be mowed with commercial walk-behind and riding mowers.
3. In areas where heavier equipment could potentially damage the turf, line trimmers will be operated.

B. Edging

1. All edging of curbs will be performed with a gas powered steel blade, for each scheduled cycle during the growing season, and as needed during the non-growing season.

C. Trash and Debris Removal

1. All trash and debris shall be removed from all turf and bed areas, in conjunction with each scheduled turf maintenance cycle during the growing season, and as needed during the non-growing season.

D. Other Conditions

1. Unless otherwise instructed, the successful vendor(s) shall accomplish all tasks listed on a regular schedule, as agreed upon by the proposer and the department representative. Any variance from the prescribed schedule will require a minimum of twenty-four hour advance notification to the designated department representative. All mowing is to be accomplished Monday through Saturday, between the hours of 7am-7pm, weather permitting. It will be considered a breach of the contract if the schedule is repeatedly missed.
2. The successful vendor(s) will be required to send a facsimile or e-mail to a designated Town department representative to report proposed schedules and work accomplished every week that maintenance is accomplished under this agreement.
3. The successful vendor(s) shall set mowing equipment to a height no less than 2 ½" unless otherwise instructed by the designated Town department representative. All changes in the mowing height are to be approved by the Town department representative. In an effort not to bag lawn clippings, mulching mowers are preferred over mowers that throw clippings into rows.
4. The successful vendor(s) shall be responsible for any damage done to plant material or other property during the maintenance operation. The successful vendor(s) shall be responsible for replacement of all trees, shrubs, ground covers, plant bed areas, and irrigation equipment destroyed by the successful vendor(s), employees or agents of the successful vendor(s) during maintenance operations, including labor costs associated with the repair(s). Trees and shrubs must not be bumped or marked by mowing or edging equipment. Mulch rings shall be reshaped within twenty-four hours when dislodged by mowing equipment. The successful vendor(s) must report damage immediately to the designated Town department representative. Damage to trees or tree collars will be assessed at \$20.00 for each instance. The successful vendor(s) will not be permitted to mow within 18" of each tree in order to avoid damage to trees.
5. The successful vendor(s) shall furnish all supplies, tools, and equipment to be used on the job.
6. The successful vendor(s) shall comply with all applicable governmental laws and regulations.
7. The Town shall not be liable for any loss or damage sustained by the successful vendor(s). The successful vendor(s) shall save the Town whole and harmless from any and all claims for liability or damage of whatsoever nature and kind, including cost of court and attorney's fees, suffered or asserted to have been suffered by any person or to any property of any person whomsoever, growing out of or resulting from or in any way

connected with the performance of work under this agreement. The successful vendor(s) shall exercise every necessary precaution for the safety of work site and the protection of any and all persons and/or property located adjacent to or making passage through the work site.

8. The successful vendor(s) shall fill out invoice forms for monthly payments.
9. The successful vendor(s) shall operate as an independent contractor and not as an agent, representative, partner, or employee of the Town, and shall control the operations at the work site, and be solely responsible for the acts of omissions of the successful vendor(s) employees or agents.
10. Unit prices are to reflect the charges for mowing and associated tasks at each location.
11. A proposal constitutes understanding and acceptance of all terms, conditions, instruction, glossary, specifications, forms and statements contained in this proposal document.
12. The successful vendor(s) shall exercise extreme caution while working on medians, road sides and high traffic areas. TX DOT approved safety vests, traffic cones, and "men working" signage are required when crews are working in any traffic situations.
13. The Town representatives reserves the right to cancel scheduled mowing cycles on a week-to week basis, based upon need, prevailing weather conditions, and available funding.
14. The service will be monitored by the Town of Prosper Park and Recreation staff. Contact information will be provided to the successful vendor(s).
15. Responses shall include a complete "list of machinery and equipment available" in order to determine whether or not the vendor can adequately perform the necessary work. All equipment the vendor anticipates committing to this contract, if awarded, should be included on the Machinery and Equipment Worksheet (Attachment B). Past experience has shown that it is absolutely essential to have adequate back-up equipment in reserve to allow for breakdowns.
 - a. Insufficient and/or inadequate equipment as determined by the Town is cause for rejection of a proposal.
 - b. All mowers will be finish mowers.
 - c. No tractor drawn mowers will be allowed, unless approved by Parks and Recreation staff.
 - d. Contractor equipment must be maintained in good operating condition and in sufficient quantities to adequately perform all services.
 - e. The contractor is responsible for performing scheduled maintenance on all equipment used on the contract. As part of his proposal the contractor must submit proof of an active Preventative Maintenance Equipment Program. Proof

of an active and successful Preventative Maintenance Program will be used in evaluation of the proposal.

16. It is mandatory that a review of the contracted area be conducted prior to award of contract. The review shall be attended by the recommended vendor(s) and the Town department representative.
17. Ozone Alert Days: On ozone alert days, vendor(s) is required to refrain from mowing until after 10 A.M., unless diesel powered equipment is used. The North Texas Clean Air Coalition offers an ozone alert hotline at 1-800-960-4247. This number can be called daily for current ozone conditions. It is the responsibility of the successful bidder to be aware of ozone alert conditions. Failure to comply with these standards will be grounds for the following:
 - a. First offense will result in a verbal warning.
 - b. Second offense will result in a written warning.
 - c. Third offense will result in contract termination.
18. After abundant rainfall, it may be necessary to mow selected areas twice per week in lieu of the specified once per week. Town personnel will determine if needed.
19. Hazardous Conditions
 - a. The successful vendor(s) will be required to notify the Town department representative immediately of any hazardous conditions and/or damaged Town property prior to leaving the work site. Contact information will be provided to the successful vendor(s).
20. Concurrent Contracts
 - a. In the event that any one vendor shall receive contracts for mowing in more than one project area, work shall proceed simultaneously in all such areas assigned.
21. Supervision of Work Crew
 - a. The successful vendor(s) shall provide supervision of all work crews at all times while performing work under this contract.
 - b. Personal supervision is not required, provided that communication equipment or other means are provided that enable the work crew to communicate with the successful vendor(s) at all times.
 - c. Each work crew shall have a designated person on the work site that has the authority to respond to inquiries about work details or priorities in English.
 - d. The successful vendor(s) shall provide the Town department representative with the name and phone number of a designated contact person available during normal business hours.

22. Safety Program

- a. The vendor(s) should have an established on-going safety training program that addresses issues such as proper safety equipment, equipment operating procedures, general safety awareness, etc.

III. Glossary of Terms

- A. Mowing project area shall refer to specific geographic area(s) of the Town designated to receive specified mowing and related services.
- B. Maintenance schedule shall mean the time periods established by the Town for the project year within which all prescribed maintenance activities for each area shall be completed. The successful bidder and area Inspector will agree on a regular day and time for maintenance at each location. If the successful bidder expects to vary from the schedule, he/she shall notify area Inspector 24 hours in advance, so work completion can be inspected in a timely manner.
- C. Concurrent shall refer to all mowing, trimming, edging, and litter removal on any given item being completed on the same day. Should a given area be too large to complete in a single day, any areas that have been mowed must be trimmed, edged, and litter removed on the same day the mowing occurs.
- D. Monthly billing cycle shall refer to each time period in the mowing schedule for the project year. Each time period is defined by a beginning and ending date, in which all prescribed maintenance activities for each area shall be completed.
- E. Inclement weather shall mean rainy weather or when the condition of the soil is such that the rutting of property will not allow cutting of grass to be accomplished satisfactorily.
- F. Trash and litter shall mean any debris within the mowing project area such as paper, cans, bottles, limbs, rocks, etc., which is not intended to be present as part of the landscape. Inclusive of entire project area including streets, sidewalks, curbs, hillsides, ditches, etc. (Where tree/brush/shrub lines or mowing edge determines the area, the successful bidder will extract litter an additional three (3) feet. Where tree/brush/shrub lines are in front of fence the fence will be the determining boundary). Removal of debris will require sweeping of hard surface areas such as sidewalks.
- G. Trimming shall refer to the cutting or removal of all plant materials immediately adjacent to or under Town structures, trees, poles, tables, signs, fences, shrub beds, or other structures.
- H. Edging shall refer to the vertical removal of any and all plant material which encroaches over or onto sidewalks, curbs, steps, driveways and pavements. Edges shall be vertical, minimum depth of 1", and minimum width of 1/4". This task must be done neatly to present a clean, crisp appearance, having a smooth line. Line trimmer accepted along fences and poles.
- I. Monofilament Trimming shall refer to trimming grass around fences, building, tree wells and posts. Do not directly use around the trunks of trees.

IV. Insurance

ALL RESPONDENTS must submit, with the bid, proof of insurance coverage as stipulated in Exhibit B. Proof shall be by submission of copies of current policies or current Certificates of Insurance, including the effective dates of coverage. Any provisions outlined in Exhibit B will be required of the successful firm only. Prior to the execution of this contract, the successful firm will supply the Purchasing Office with an original certificate of insurance evidencing the stated requirements. This insurance shall be effective for the contract duration and renewal certificates shall also be supplied upon expiration.

V. Questions Deadline

The Town of Prosper requires that all questions relating to this bid be submitted in writing to January Cook, Purchasing Agent, at january_cook@prospertx.gov by **12:00pm on Tuesday, January 16, 2018**. **No questions will be answered over the phone.** Questions in regards to the specifications will only be accepted until the stated deadline.

VI. Submittals

In order for your proposals to be considered responsive, the following information should be submitted with your proposal, in the following order:

- A. Pricing Worksheet (Attachment A)
- B. Machinery and Equipment Worksheet (Attachment B)
 - 1. List the type of equipment to be utilized to service the contract, including the age of equipment.
 - 2. Provide details of established Preventative Equipment Maintenance Program
- C. Vendor Information Worksheet (Attachment C)
- D. Work History and References

Provide a minimum of three (3) current references for same or similar service as described in this proposal document, preferably for a municipality. Please provide the following information for each reference provided on the References Worksheet (Attachment D):

- 1. Company Name
 - 2. Contact Person
 - 3. Company Address
 - 4. Contact Phone Number
 - 5. Contact Fax Number
 - 6. Effective Dates
 - 7. Description of Services
- E. Additional Information

Include any additional information that you feel will assist the Town in the selection process.

F. Additional Forms

1. Proof of Insurance
2. Certification Form

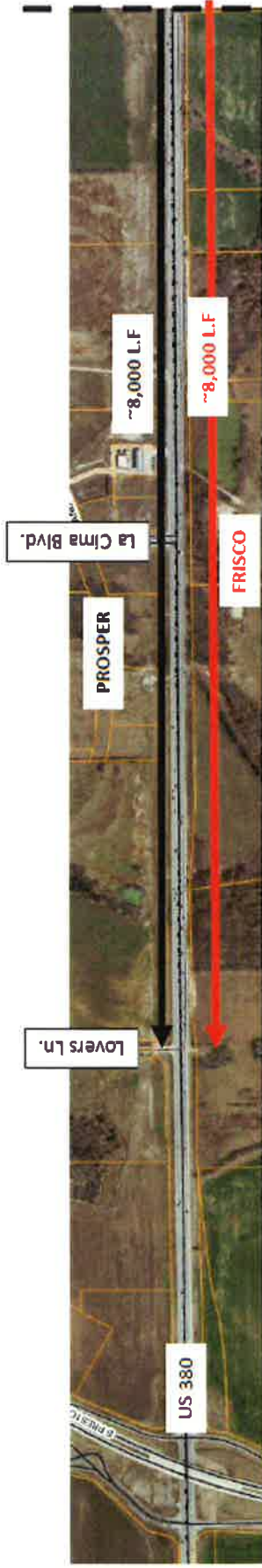
VII. Evaluation Criteria

A review committee will judge the merit of proposals received in accordance with the requirements defined herein. Failure of vendor to provide in their proposal any information requested in this CSP may result in disqualification of the proposals. The sole objective of the review committee will be to select the proposal that provides the best value to the Town of Prosper.

The contract will be awarded based on the following evaluation criteria:

- A. Cost as evidenced in VI. Submittals, Section A. (30%)
- B. Equipment as evidenced in VI. Submittals, Section B. (15%)
- C. Staffing as evidence in VI. Submittals, Section C. (20%)
- D. Work History and References as evidenced in VI. Submittals, Section D. (20%)
- E. Ability to meet the Town's needs, as evidenced in VI. Submittals, all sections (15%)

EXHIBIT A



Total length:
 approximately 18,600
 linear feet (3.52 miles)

EXHIBIT B

INSURANCE REQUIREMENTS GENERAL SERVICES

Services performed on Town property, including but not limited to: Installation, Landscape, Maintenance, Custodial, Electrical, Painting, Welding, Plumbing, Transportation, Street Sweeping, Fireworks, Moving, Uniforms, Concessions, etc.

Vendor 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 vendor. 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.
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.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 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.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retention 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 vendor, products and completed operations of the vendor, premises owned, occupied or used by the vendor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
 - b. The vendor'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 vendor'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 vendor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limit 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 vendor 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.

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

Vendor shall provide the Town 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.

**Best and Final Offer
Attachment A
Pricing Worksheet**

US Hwy 380 Median Maintenance

Base Proposal	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total:
1. Turf Maintenance (Including Trash & Debris Removal)			2	4	4	4	2	2	2	2	2		26
2. Additional Trash & Debris Removal	2	2										2	6

The cycle frequencies stated herein are an accurate reflection of the Town's anticipated needs. However, these are estimates, and not a commitment. Furthermore, based on need and budget contingencies, cycle frequencies may be adjusted at any time during the contract period. At no time will adjustments to the prices offered be imposed on the Town. Prices will be held firm during the contract period.

*The Town reserves the right to award in whole or in part, any of the items listed below. Please include the price per entity where indicated below, based on Exhibit A. The Town of Prosper is opposite of all City of Frisco sections on Revised Exhibit A.

Base Proposal

1. Turf Maintenance

**All turf areas will be mowed, edged, trimmed and blown one (1) time per cycle during the growing season, per the schedule above. Price per cycle to include litter and debris removal service on same day. If additional cycles are necessary during growing or non-growing seasons, the same services will be performed by the end of the next day following the request, at the per cycle rate proposed.*

Breakdown per Entity:

Town of Prosper Sections Only	\$ <u>260</u>	X 26 = Annual Cost: \$ <u>6,760</u>
City of Frisco Sections Only	\$ <u>260</u>	X 26 = Annual Cost: \$ <u>6,760</u>
Total Cost for Turf Maintenance:	\$ <u>520</u>	x 26 = Annual Cost: \$ <u>13,520</u>

2. Additional Trash and Debris Removal

**Trash and debris removal service for all non-mowing months, per the schedule above. If additional services are necessary during growing or non-growing seasons, the same services will be performed by the end of the next day following the request, at the per service rate proposed.*

Breakdown per Entity:

Town of Prosper Sections Only	\$ <u>100</u>	X 6 = Annual Cost: \$ <u>600</u>
City of Frisco Sections Only	\$ <u>100</u>	X 6 = Annual Cost: \$ <u>600</u>
Total Cost for Trash and Debris removal:	\$ <u>200</u>	x 6 = Annual Cost: \$ <u>1,200</u>

3. Total Annual Cost (No. 1 + No. 2)

Breakdown per Entity:

Town of Prosper Sections Only	\$ <u>7,360</u>
City of Frisco Sections Only	\$ <u>7,360</u>
Grand Total Annual Cost:	\$ <u>14,720</u>

4. Optional Pricing

This is for future planning purposes, should these items be added to the medians at a later date.

Shrubs and Ground Cover

**Shrubs will be shaped and pruned as needed to maintain a manicured appearance while incorporating the best horticulture practices. Flowering shrubs will be trimmed after their blooming cycle. Ground cover shall be trimmed and edged to maintain uniform and manicured appearance.*

Unit Price per Service: \$ 200.00

Attachment B Machinery and Equipment List Worksheet

It is represented as part of this bid that the below listed items of machinery and equipment are available for use on the work covered by this bid. "Being Available" shall mean that the equipment is owned or under the control of the vendor submitting this proposal.

NO. OF UNITS	TYPE OF EQUIPMENT
8	Scag 61" ZT12
3	Scag 52" ZT12
1	John Deere 61" ZT12
1	Grasshopper 61" ZT12
1	Snapper Pro 61" ZT12
1	Ex Mark 61" ZT12
1	Toro 61" ZT12
1	Ferris 52" ZT12
18	Stihl FS 90 Weedeaters
8	Stihl FC 95 to edge
10	Stihl Blowers
18	Stihl Backyard Sprayers
8	Maintenance Trucks
8	14'-18' Maintenance Trailers
10	Stihl Hedge trimmers
4	Stihl Chainsaws
1	200 gallon Northstar Spray Rig

If additional space is needed, continue on additional pages and attach to this form

**Attachment C
Vendor Information Form**

VENDOR INFORMATION

Number of employees: Full time 16

Number of employees: Part time: 0

Length of time in business: 33

Physical location of business (full address, including city, state & zip code):

2460 Shorecrest Dr
Rodaway, Tx 75087

VENDOR CONTACTS

The successful vendor must provide, to a designated Park Operations Representative, a valid telephone number and name of a designated company representative. The telephone number must be answered on workdays, Monday-Friday, 7:00 AM to 5:00 PM. An alternate or emergency telephone number must also be provided to the Park Operations Representative. Failure to provide this information may be considered reason to terminate the contract.

Company Representative: Brandon Weldon

Company Telephone Number (including are code): 972-979-8902

Emergency Telephone Number (including are code): 972-979-2342

SUBCONTRACTOR INFORMATION

Proposer must provide the following information for any portion of work under this contract being subcontracted. **All subcontractors will be approved by the Town of Prosper prior to commencement of work.**

Name: N/A

Type of Work: N/A

Amount: N/A

Portion of work by proposer: 100 %

Portion of work by sub-contractor: N/A %

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.

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.

_____ 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

 Signature of vendor doing business with the governmental entity

 Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

**Town of Prosper
RFP No. 2018-40-A
US Hwy 380 Median Mowing and Maintenance
Certification Form**

Company Information

The following information must be provided in its entirety for your proposal to be considered:

Company Name: Weldon's Lawn and Tree LLC

Principal Place of Business Address: 2440 Shorecrest Dr

Principal Place of Business City, State, Zip: Rockwall, TX 75087

Principal Place of Business Phone Number: 972-979-8902

Principal Place of Business Fax Number: brandon@wiltlandscape.com

Remittance Address (if different from above): /

Remittance City, State, Zip: /

Tax Identification No: 82-1974371

Addendums

If an addendum to this proposal is issued, acknowledge addendum by initialing beside the addendum number:

Add. No. 1 BW Add. No. 2 BW Add. No. 3 BW Add. No. 4 BW Add. No. 5 BW

Certification

The undersigned hereby certifies that he/she understands the specifications, has read the document in its entirety and that the prices contained in this proposal have been carefully reviewed and are submitted as correct and final. Vendor further certifies and agrees to furnish any or all products/services upon which prices are extended at the price offered, in accordance with the terms and conditions contained herein. Vendor agrees that acceptance of any or all items by the Town of Prosper, Texas, within the time frame indicated in this proposal, constitutes a contract.

The individual signing this proposal certifies that he/she is a legal agent of the company, authorized to submit on behalf of the company, and is legally responsible for the decisions as to the prices and supporting documentation provided.

Authorized Representative: Brandon Weldon 1-18-18
Signature Date

Brandon Weldon
Printed Name

General Manager
Title

BW brandon@wiltlandscape.com
Email Address

Applicators are required to keep certificates of completion for 12 months following renewal of a license. 4 TAC§7.24(s)


Regulations and statutory provisions governing pesticide applicator licensees and their use of pesticides may be found in Chapter 7, Title 4, of the Texas Administrative Code and Chapter 76 of the Texas Agriculture Code, respectively. TDA's web site provides convenient links to these laws. Failure to comply with these laws, including misuse of any pesticide, may result in revocation, suspension, modification, or probation of your license and/or assessment of monetary administrative penalties.

If you have any questions regarding your license, please contact our Austin headquarters toll free at (877) LIC-AGRI (877-542-2474), or visit our web site at www.TexasAgriculture.gov. For the hearing impaired, you may call Relay Texas (800) 735-2988 (voice) or (800) 735-2989 (TDD) or visit our web site.

TEXAS DEPARTMENT OF AGRICULTURE
P. O. BOX 12847 AUSTIN, TEXAS 78711-2847


COMMERCIAL PESTICIDE APPLICATOR LICENSE

BRANDON WELDON



TDA Client No: 00465289
License No: 0609747
Effective Date: 10/31/2017
Expires: 10/31/2018

2460 SHORECREST DR
ROCKWALL TX 75087



Front side

Categories: 3A


Descriptions:

1A Field Crop	3A Landscape Maint
1B Fruit, Nut, & Veg	3B Nursery Plant Prod
1C Pasture & Rangeland	4 Seed Treatment
1D Vertebrate Pest	5 Vegetation Mgmt
1E Farm Commodity Pest Control	6 Aquatic
1F Animal Health	7 Demonstr & Research
1G Citrus	8 Reg Pest Control
1H Livestock Prot Collar	9 Aerial Application
1I M-44 Device	11 Soil Fumigation
2 Forest Pest Control	12 Public Health Pest Control (Vector)

Back side

LAMINATION ADVISED: Please cut out along heavy black lines, placing front and back sides together, and laminate.

TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER
P. O. BOX 12847 AUSTIN, TEXAS 78711-2847
(877) LIC-AGRI (877-542-2474)
For the hearing impaired: (800) 735-2989 TDD (800) 735-2988 VOICE
www.TexasAgriculture.gov




COMMERCIAL PESTICIDE APPLICATOR LICENSE

This is to certify that the person whose name appears below has met the requirements of Texas Agriculture Code Chapter 76, relating to application of restricted-use or state-limited-use pesticides or regulated herbicides. This license is issued for purchase and application of restricted-use or state-limited-use pesticides or regulated herbicides to be used according to label directions consistent with the use categories listed below.

BRANDON WELDON
2460 SHORECREST DR
ROCKWALL TX 75087

TDA Client No: 00465289
License No: 0609747
Effective Date: October 31, 2017
Expires: October 31, 2018
Categories:



3A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PO BOX 13087 MC-178 ♦ AUSTIN TEXAS 78711-3087

Pursuant to authorization from the Executive Director of the Texas Commission on Environmental Quality, the Manager of the Operator Licensing Section of the Permitting and Registration Support Division has issued the enclosed LICENSED IRRIGATOR certificate and pocket card.

RECEIPT OF PAYMENT

Fee Type: RENEWAL APPLICATION
Date Fee Paid: 03/18/2016
Amount Paid: \$ 111.00

TEST SCORE: N/A

CONTACT INFORMATION
LANDSCAPE IRRIGATION LICENSING
(512)239-6719

For general information about licensing visit:
www.tceq.texas.gov/licensing
Pursuant to 30 TAC 30.24(k), you are required to notify the TCEQ of any contact information changes within 10 days of the date the change occurs.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

BRANDON S WELDON

Is hereby licensed as a

LICENSED IRRIGATOR

License Number

LI0020590

Expires

03/31/2019

SIGNATURE

R. Q. A. Hyde
EXECUTIVE DIRECTOR

TCEQ VIPP Form oee3 (09-07-06)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Be it known that

BRANDON S WELDON

has fulfilled the requirements in accordance with the laws of the State of Texas for

LICENSED IRRIGATOR

License Number: **LI0020590**
Issue Date: **04/25/2016**
Expiration Date: **03/31/2019**

R. Q. A. Hyde

Executive Director
Texas Commission on Environmental Quality

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND HALFF ASSOCIATES, INC.,
FOR THE US 380 GREEN RIBBON LANDSCAPE DESIGN PROJECT**

This Agreement for Professional 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 **Consultant "Halff Associates, Inc."**, a Texas corporation, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional engineering services to Town. Town and Consultant when mentioned collectively shall be referred to as the "Parties."

WITNESSETH:

WHEREAS, Town desires to obtain professional engineering services in connection with the **US 380 Green Ribbon Landscape Design 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 the same or similar circumstances by competent members of their profession in the locality. 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 **Fifty-nine Thousand and Two-Hundred and Fifty Dollars; (\$59,250)** 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 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:

Half Associates, Inc.
Lenny Hughes, PLA
Vice President
1201 N. Bowser Rd.
Richardson, TX 75081

Town of Prosper
Harlan Jefferson
Town Manager
121 W. Broadway
PO Box 307
Prosper, TX 75078

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 their rights or delegate their 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 requirements of the Town Charter and the Town's Code of Ordinances and will abide by the same. 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 D - 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. **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 13th day of February, 20 18.

HALFF ASSOCIATES, INC.

TOWN OF PROSPER, TEXAS

By: 
Signature

By: 
Signature

Lenny Hughes, PLA
Printed Name

Harlan Jefferson
Printed Name

Vice President
Title

Town Manager
Title

12/19/17
Date

2/13/2018
Date

**EXHIBIT A
SCOPE OF SERVICES**

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND HALFF ASSOCIATES, INC.
FOR THE 380 GREEN RIBBON LANDSCAPE DESIGN PROJECT**

I. PROJECT DESCRIPTION

The purpose of this project is to prepare landscape and irrigation plans for the medians along US 380 between Lovers Lane and Custer Drive in Prosper, TX (approximately 3.5 miles). The landscape design shall replicate the planting patterns found along Preston Road, Richland Blvd., Lovers Lane and Coit Road currently. The project is funded through the TxDOT Green Ribbon Program and will include coordination with adjacent municipalities of Frisco and McKinney as well as TxDOT.

II. PROJECT MANAGER

Halff Associates, Inc.
Lenny Hughes, PLA
Vice President
1201 N. Bowser Rd.
Richardson, TX 75081
214 346-6266
lhughes@halff.com

III. TASK SUMMARY

Task 1 - Project Management Scope of Services

a. Internal Team Meetings

Halff will conduct internal team meetings as required by the project. The internal team meetings will include internal coordination of project processes, program items and schedules.

b. Communications and Reporting

i. Design Submittal Review Meetings

Halff will conduct a kickoff meeting with the Town of Prosper and City of Frisco representatives in attendance. Halff will conduct a design submittal review conference call with Town staff members to discuss all comments related to the project at the 60% and 90% submittal milestones. The meeting and submittal milestones shall be as follows:

- Kickoff meeting with Town of Prosper and City of Frisco
- Public Presentation to Town Council – Meeting excluded; to be conducted by Town staff
- 60% Design Drawings – Conference Call
- 90% Design Drawings – Conference Call

- 100% Final Design Submittal – Meeting excluded

Total Three Meetings

ii. Agency Coordination and Meetings

Halff will coordinate with the City of Frisco regarding the planting design and design constraints for their specific municipality including planned future turn lanes, intersections, lighting and utilities within the project limits.

Halff will attend one meeting with representatives from the Town of Prosper and the City of Frisco to review the project scope and discuss any issues related to the proposed landscape design.

Total One Meeting

Task 2 - Construction Document Preparation

Based on the existing design found along Preston Road and Coit Road in Prosper, Halff shall prepare, for approval by the Town of Prosper, a complete set of landscape construction documents and specifications as defined below. Halff shall prepare one 11x17 pdf file copy of drawings for review and comment by the Town. For TxDOT review, Halff will print three 11x17 sets of drawings and bound specification books. Drawings and specifications shall be submitted at 90% and 100% Final submittal stages. Halff will provide the following drawings for submittal:

a. Landscape Plan

Prepare a 60% and 90% review set and a 100% Final set of plans and specifications for Landscape and Irrigation Design. Landscape plans shall include planting plans for trees, shrubs, decorative hardscape materials such as decomposed granite and gravel, berming and grassing in the roadway median. Incorporate standard Town planting details and notes on the plans.

The trees proposed in the plans will be selected from the Town list of recommended trees and all selections will be submitted for approval as needed and will be designed in accordance with the Town of Prosper standards.

b. Irrigation Plan

Prepare irrigation plans for the watering of trees, planter beds and grass proposed in the Landscape Planting plans. The plan will indicate a complete layout and design for an underground, automated irrigation system. The plan will show complete head to head coverage and proper zoning of the irrigation system to maximize efficient water use. Standard Town details for the proper installation of major system components will be included on the plan. If the main water supply falls with Frisco city limits, Frisco irrigation standards shall be followed. Halff Associates will coordinate pressure data requirements with the Town Water Department, and use such data in the design of the irrigation systems. Pressure readings at the site, if required, will be made by the Town.

The plans will be sealed by a Licensed Irrigator.

c. Cost Estimating, Specifications and Project Manual

Prepare the project manual with TxDOT technical specifications for the tree plantings,

landscaping and irrigation. A draft project manual will be included at all submittal stages in the project for review and comment by Prosper and Frisco staff and TxDOT. The Town will provide Halff with standard “boilerplate” contract documents for incorporation into the project manual. Halff will also prepare an estimate of probable construction cost for the Town and TxDOT with the submittal of interim review plans and specifications. Cost estimates will include costs for landscape planting and the irrigation system components. Cost estimates will be submitted at 60%, 90% and 100% final stages in the course of the project for review by Town staff and TxDOT.

Task 3 - Bidding

We will prepare and print complete sets of final plans, specifications and contract documents and deliver a set of reproducible drawings to the Town. Final plans are to include standard TxDOT pay item codes. Documents will be distributed to contractors by the Town.

- a. Attend one pre-bid meeting; meeting time and location to be selected by the Town.
- b. Answer and respond to RFI’s and Issue Addendums.
- c. Review bid received, tabulate and provide written response to Town.

Task 4 - Construction Administration

The Consultant shall provide construction administration services to include the following:

- a. Answer Contractor’s Request for Information (RFI’s).
- b. Review and respond to construction submittals;
- c. Conduct one (01) site visit walk-through at the completion of project and prepare a punch list of deficient items;
- d. Contractor shall provide CADD as-builts and Halff will review and field-verify.

Note: Day-to-day construction inspection is excluded from this scope of work and will be the responsibility of the Town of Prosper.

Task 5 – Record Drawings

Final As-Recorded Drawings of Construction Plans as submitted by contractor mark-ups to be incorporated in CADD standard format. Halff will produce a PDF of the as-recorded drawings and provide a CD copy to the Town.

Reimbursable Expenses

Reimbursable Expenses shall include, but are not necessarily limited to expenses for supplies, transportation, equipment, travel, communication, printing of plans and specifications, presentation boards, graphic boards and similar incidentals.

Additional Services

Additional Services not included in the Proposed Scope of Work will be negotiated with the Client as needed. Compensation will be based upon a mutually agreed lump sum fee or an hourly rate as shown below. Items that are considered additional services include:

1. Topographical Survey (it is assumed that record drawings will be provided by the Town to be assembled into a working basemap).

2. Client generated changes to the design once Construction Document Preparation is in progress. Time will be billed at an hourly rate, per a proposal approved by the Client, until the work is at the same level of completion as it was prior to the change.
3. Construction Observation or Site Visits.
4. Geotechnical services.
5. TDLR Plan submittal and review.
6. Design of areas outside the limits of the project site.
7. Additions to the project scope or budget that causes additional work.
8. Additional meetings or workshops not identified in the project scope.
9. Revisions to the plans requested by the Client after the plans are approved in writing, unless necessitated by discrepancy in the plans.
10. Permit fees, filing fees, pro-rated fees, impact fees, taxes, and federal and/or state regulatory agency review fees.
11. Design of gas, telephone or other utility improvements.
12. Submittal coordination meetings, except as noted herein.
13. Printing of drawings, specification and contract documents except as noted herein.
14. Full-time construction inspection.
15. Graphic products except as noted herein.
16. Quality control and material testing services during construction except for submittal reviews.
17. Traffic Engineering reports or studies.
18. Traffic control plan (by the contractor).
19. Construction staking.
20. Design of major existing utility relocations or modifications.
21. Plat or final plat preparation.
22. Analysis or coordination not specifically included in the Scope of Services.
23. Any additional work not specifically included in the Proposed Scope of Work will be accomplished as Additional Services.
24. Preparation of any special interim sets of Construction documents for phased construction other than previously stated.
25. Preparation or submittal of any design calculations.
26. Printing of Drawings and Specifications for Bidding.
27. Evaluation or re-design of value engineering proposed by the contractor.
28. Site visits or meetings except as noted.
29. Additional labor or overtime to complete the project, due to lack of information provided in a timely manner.
30. Modifications to documents after documents are issued for construction.
31. Modification to documents to meet budgeting constraints of other disciplines.
32. Significant design revisions following substantial completion of the Construction Documents, which are not due to design errors or omissions.
33. Environmental review and approval.

IV. DELIVERABLES

Task 1 - Project Management	Four meetings
Task 2 - Construction Document Preparation	Prepare 60%, 90% and 100% Final Construction Documents, Specifications and Cost Estimates Six 11x17 bond copies Construction Drawing Sets; One PDF copy of Construction Drawing Set
Task 3 – Bidding	One Pre-bid meeting, and RFI's
Task 4 – Construction Administration	Respond to RFI's
Task 5 – Record Drawings	One PDF copy of each sheet of the record drawings One DWG of the record drawings base map One CD of the record drawings

**EXHIBIT B
COMPENSATION SCHEDULE**

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND HALFF ASSOCIATES, INC.,
FOR THE 380 GREEN RIBBON LANDSCAPE DESIGN PROJECT**

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	Dec. 2017	
Task 1 - Project Management	On Going	\$5,500
Task 2 – Construction Document Preparation	Mar. 2018	\$44,250
Task 3 - Bidding	April 2018	\$2,500
Task 4 - Construction Administration	Sept. 2018	\$3,500
Task 5 – Record Drawings	Oct. 2018	\$2,500
Total Compensation		\$58,250

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Amount
Task 1 - Project Management	\$5,500
Task 2 – Construction Document Preparation	\$44,250
Task 3 - Bidding	\$2,500
Task 4 - Construction Administration	\$3,500
Task 5 – Record Drawings	\$2,500
Total Basic Services:	\$58,250

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

Direct Expenses	Amount
	\$1000
Total Direct Expenses:	\$1000

**EXHIBIT C
INSURANCE REQUIREMENTS**

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND HALFF ASSOCIATES, INC.,
FOR THE 380 GREEN RIBBON LANDSCAPE DESIGN PROJECT**

I. COMMON REQUIREMENTS

Consultant 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 Consultant, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by Consultant. Consultant shall declare any deductible or self-insured retentions in excess of Ten Thousand Dollars (\$10,000) for approval by the Town.

Consultant shall maintain insurance policies with a company that maintains a financial strength rating of "A-VI" or greater by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

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 thirty (30) days written notice to Town for all occurrences, except ten (10) days written notice to Town for non-payment.

II. GENERAL LIABILITY INSURANCE

Consultant shall maintain a general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) for each occurrence, and Two Million Dollars (\$2,000,000) in the aggregate for third-party bodily injury, personal injury, and property damage. Policy will include coverage for premises/operations, broad form contractual liability, products and completed operations, personal injury, and broad form property damage.

Town, its officers, officials, employees and volunteers are to be added as "Additional Insureds" relative to liability arising out of activities performed by or on behalf of Consultant, products and completed operations of Consultant, premises owned, occupied or used by consultant. The coverage shall contain no special limitations on the scope of protection afforded to Town, its officers, officials, employees or volunteers.

Consultant's insurance coverage shall be primary insurance in respect to Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Town, its officers, officials, employees or volunteers shall be in excess of the provider's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policy shall not affect coverage provided to Town, its officers, officials, employees or volunteers.

Consultant'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.

III. AUTOMOBILE LIABILITY

Consultant shall maintain an automobile liability policy in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit. Automobile liability shall apply to all owned, hired, and non-owned autos that will be used under this Agreement.

III. PROFESSIONAL LIABILITY

Consultant shall maintain a professional liability (errors and omissions) insurance policy in an amount not less than One Million Dollars (\$1,000,000) for each claim, and Two Million Dollars (\$2,000,000) in the aggregate. A "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 Town.

IV. WORKERS COMPENSATION

Consultant shall maintain all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. The insurer shall agree to waive all rights of subrogation against Town, its officers, officials, employees and volunteers for losses arising from work performed by Consultant for the Project.

V. OTHER INSURANCE REQUIREMENTS

Umbrella coverage or excess liability coverage ___ is / X is not required. If Project size and scope warrant, and if required by this section, Consultant shall maintain an umbrella coverage or excess liability coverage insurance policy in an amount of Two Million Dollars (\$2,000,000).

XCU coverage ___ is / X is not required. If Project scope warrants, and if required by this section, Consultant shall maintain XCU coverage not less than One Million Dollars (\$1,000,000) for each occurrence, and Two Million Dollars (\$2,000,000) in the aggregate.

EXHIBIT D

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p><small>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. The questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.003(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</small></p> <p><small>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.</small></p> <p><small>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</small></p>	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
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.)		
3 Name of local government officer about whom the information is being disclosed.		
_____ 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.		
<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 style="text-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 style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </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.		
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).		
7		
_____ Signature of vendor doing business with the governmental entity	_____ Date	

**Task Order to an Agreement
by and between the City of Frisco, Texas (City)
and Maldonado- Burkett ITS, LLP (Consultant)
to perform On-Call Professional Traffic Engineering Services,
Contract Number 2015-006-08**

**TASK ORDER NUMBER 2015-006-08
Roadway Lighting Design for the following roadway sections**

1. US 380 (E University Ave): From Lovers Lane to Custer Blvd. (3.52 miles)

THIS TASK ORDER is made pursuant to the terms and conditions of the Professional Services Agreement Number 2015-006 (the "Agreement") entered into by and between the City of Frisco, Texas (City) and MBITS (Consultant).

- I. **ARTICLE 1.** Consultant will perform the on-call professional engineering services in accordance with the Agreement and the Scope of Services / Compensation Schedule / Budget Summary attached hereto as Exhibit "A" and incorporated herein by reference for all purposes.
- II. **ARTICLE 2.** Compensation for this task shall be on a lump-sum basis for an amount not-to-exceed One Hundred- Seven Thousand Four Hundred Fifty Dollars (\$107,450.00), shall be paid in accordance with Article 3 of the Agreement and the Scope of Services / Compensation Schedule / Project Budget as set forth in Exhibit "A" of this Task Order. Consultant shall not exceed the amount specified in this Task Order without the issuance of a supplemental Task Order issued by the City in writing to the Consultant.
- III. **ARTICLE 3.** City and Consultant agree that in accordance with Article 3, Paragraph 3.1.1 of the Agreement, City will withhold payment of the final five percent (5%) of the Consultant's Fee for work authorized by this Task Order, or Five Thousand Three Hundred Ninety Dollars (\$5,390.00), pending the Consultant's completion of the Record Documents and/or "As-Built" Documents for the authorized work.
- IV. **ARTICLE 4.** This Task Order shall become effective on the latest date as reflected by the signatures below and shall terminate on May 1, 2019 unless extended by a supplemental Task Order issued by City in writing to the Consultant.
- V. **ARTICLE 5.** The City Project Number and the Project Account Code are the following:

US 380 Illumination

City Project Number:

City Account Code Number:

Amount: \$107,450.00

Task Order Number 2015-006-01

VI. ARTICLE 6. Upon execution of this Task Order, the funds available under the Agreement are revised to the following:

Current Project Budget (As revised by Approved Task Order):	\$	47,920.00
Approved Work by this Task Order:	\$	107,450.00
Revised Project Budget:	\$	<u>(59,530.00)</u>

VII. ARTICLE 7. The following exhibits are attached below and made a part of this Task Order:

A. Exhibit "A," Scope of Services / Compensation Schedule / Budget Summary.

VIII. ARTICLE 8. This Task Order does not waive the parties' responsibilities and obligations provided under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Task Order and caused this Task Order to be effective on the latest day as reflected by the signatures below.

CITY
The City of Frisco, Texas

CONSULTANT
Maldonado Burkett Intelligent
Transportation Systems, LLP

By: _____
Name: Brian A. Moen, P.E.
Title: Assistant Director-Transportation
Date: _____

By: _____
Name: _____
Title: Principal
Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

**Task Order by and between the City of Frisco, Texas (City)
and Maldonado-Burkett ITS, LLP (Consultant)
to perform On-Call Professional Traffic Engineering Services,
Contract Number 2015-006-08**

PROJECT DESCRIPTION

Preparation of Design Plans for Illumination along the following roadway segment in Frisco, Texas.

1. US 380: From Lovers Lane to Custer Blvd. (3.52 miles)

I. TASK SUMMARY

GENERAL REQUIREMENTS

- Specific design requirements shall be obtained from the City of Frisco Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- Engineer shall coordinate with the utility companies, including, but not limited to franchised utilities, City of Frisco, pipeline companies, or any other entity which has facilities within or adjacent to the Project, any and all exposure, removal, and/or relocation work necessary for implementation of Project. This shall also include the preparation of additional plans and paperwork necessary to obtain any permits required by any of these entities.
- Each time the Engineer submits plans and/or specifications to City, seven (7) copies of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Engineer for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

A. Task One, Data Collection –

- 1.1. Engineer will gather data from the City of Frisco on the proposed/existing roadway section (electronic CAD format). This data will include existing survey files, proposed roadway files including paving, cross sections, plans and profiles and bridge layouts, and existing and proposed right-of-way and utility files. Based on the information provided by the City, we will prepare illumination base maps. If base files are not available in CAD, the City will provide the latest aerials and planimetric data for the subject roadway sections.

EXHIBIT "A"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJCT BUDGET

- 1.2. Engineer will conduct a field visit to photograph key features and to identify any possible utility and other conflicts associated with illumination pole locations.
- 1.3. Engineer will conduct a design concept meeting with the City of Frisco to determine their requirements and guidelines regarding illumination design.
- 1.4. Approximately locate underground utilities or structures that may be within the limits of the Project. Such utilities include, but are not limited to wastewater, water, gas, electric, storm sewer, telephone, and television cable. Consultant will contact 1-800-DIG-TESS or individual utility companies to mark existing underground utilities in the field and shall show such utilities on the base map based either upon field locations or available construction as-builts.

B. Task Two, Preliminary Design Plans

2.1 Design – At such time as the Consultant is directed by the City, the Consultant shall prepare and submit four (4) sets of Preliminary Design Plans for review on 11" x 17" sheets. At the time of submittal of the Preliminary Design Plans, any supporting studies and/or calculations shall be submitted for review by the City. Preliminary Design Plans must be approved by the City prior to the Consultant commencing with the preparation of Final Design Plans. Upon approval of the Preliminary Design Plans, the Consultant will provide the City with the approved plans in pdf format and revised schedule for completion of the project. Preliminary Design Plans will be prepared by following the steps described below:

- 2.1.1 Review AASHTO requirements to assign a roadway classification and to determine light level requirements. Perform light level calculations using AGI design software to determine pole spacing. In addition, generate a photometric plan.
- 2.1.2 Review clearance requirements to assess the need for guard rails as needed.
- 2.1.3 Review applicable National Electric Code provisions and requirements.
- 2.1.4 Coordinate with the appropriate utility companies to identify service locations, types, and standards for underpass lighting.
- 2.1.5 Perform voltage drop calculations to determine electrical conductor size and grounding conductors.
- 2.1.6 Review conduit fill and design conduit size.
- 2.1.7 Design electrical services including electrical service data, breaker size, and service entrance conductors.
- 2.1.8 Engineer will prepare preliminary illumination plans (65%) for review by the City. The roadway illumination, plans will show pole foundation locations, conduits, ground boxes, electrical service data sheet, power source locations, and conductor charts. In addition, we will submit photometric plan layout for review by the city.

2.2 Construction Estimate - At the time of submittal of the Preliminary Design Plans, the Consultant shall prepare an estimate of construction quantities and develop preliminary statement of probable construction cost.

EXHIBIT "A"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJCT BUDGET

- C. Task Three, Final Design / Construction Plans** – At such time as the Consultant is directed by the City, the Consultant shall prepare Final Design / Construction Plans. Final Design Plans shall be consistent with the content and format of the Preliminary Design Plans and, in addition, shall include the following:
- 3.1. General Notes** – Construction General Notes shall be compiled and inserted in the plans after the Typical Sections.
 - 3.2. Quantity Summary Sheets** – Quantities shall be compiled and summarized in a tabular format with the description of the items matching that of the bid documents. Quantity Summary Sheets shall be located in the plans following the General Notes.
 - 3.3. Details and Standards** – Appropriate details and standards shall be compiled and inserted into the plans following the section in which the detail or standard is applied.
 - 3.4. Bid Proposal and Contract Documents**
 - 3.5. Special Specifications**, if applicable.
 - 3.6. Construction Estimate** - The Consultant shall develop and submit a final estimate of construction cost.
- D. Task Four, Bid Phase Services** – The Consultant shall provide services to assist the City in selection of a Contractor for the construction of the Project. These services shall consist of the following:
- 4.1. Bid Period Requests for Information (RFI)** – The Consultant shall provide technical interpretation of the Bid Documents and shall prepare proposed responses to all contractors' questions and requests to be approved by the City. The responses may be in the form of addenda.
 - 4.2. Addenda** – The Consultant shall assist the City in issuing Addenda to the Bid Documents and shall distribute Addenda to the bidders. All Addenda shall be approved by the City.
 - 4.3. Conformed Document Preparation** – The Consultant shall incorporate all addenda into contract documents and issue conformed sets. The Consultant shall also tabulate the bids received and evaluate for compliance to bidding requirements.
- E. Task Five, Construction Administration** – These services are intended to assist the City in administering the contract for construction and assisting the City in responding to the events that occur during construction. The Consultant shall provide Construction Administration Services as defined below.
- 5.1. Pre-Construction Conference** – The Consultant shall attend the preconstruction conference with the Contractor to review the Project communication, coordination and other procedures and discuss the Contractor's general work plan and requirements for the Project.
 - 5.2. Review of Shop Drawings, Samples and Submittals** - The Consultant shall coordinate with the City for the reviews of the Contractor's shop drawings,

EXHIBIT "A"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJCT BUDGET

samples and other submittals for conformance with the design concept and general compliance with the requirements of the contract for construction.

5.3. Requests for Information – The Consultant will review the Contractor's requests for information or clarification of the contract for construction. The Consultant will coordinate and issue responses to requests to the City. The Consultant will log and track the Contractor's requests.

F. Task Six, Completion Of Record Documents – The Consultant shall prepare construction Record Documents based on information received from the Construction Contractor within thirty (30) days of substantial completion of construction and provide to the City.

II. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

A. Additional Services not included in the existing Scope of Services – City 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 City's written request. Any additional amounts paid to the Consultant as a result of 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:

- 1. Scope of Services for the Project in Relation to Article 3, Section 3.1.2 of the Standard Form Agreement** – Under the Scope of Services to be performed by Consultant under the Agreement, Consultant shall not be responsible for performing Construction Administration Services.
- 2. Scope of Services for the Project in Relation to article 3, Section 3.1.4 of the Standard For Agreement** – Under the Scope of Services to be performed by Consultant under this Agreement, the parties agree that at the time of execution of the Agreement, the requirements of the Barriers Act are not applicable to the Scope of Services to be performed by Consultant under this Agreement.

III. DELIVERABLES

At the completion of Tasks 1 through 5, the Consultant shall deliver the following products to the City and/or another consultant:

- A. Project layouts of photometrics
- B. Preliminary (65%) plans, specifications, and estimates.
- C. Final (95%) plans for Frisco, Prosper, McKinney and TxDOT review
- D. Final signed and sealed plans, specifications, and cost estimates.
- E. Bid and contract documents
- F. Final Record Documents and/or As-Built Documents.

EXHIBIT "A"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJCT BUDGET

IV. PROJECT LABOR ALLOCATION

Task	Subtask	Labor Hours
TASK 1	Data Collection	84 Hours
TASK 2	Prepare Preliminary Design Plans	316 Hours
TASK 3	Prepare Final Design & Construction Plans	204 Hours
TASK 4	Bid Phase Services	64 Hours
TASK 5	Construction Phase Services	20 Hours
TASK 6	Completion of Record Drawings	40 Hours
GRAND TOTAL		728 hours

ATTACHMENTS (IF APPLICABLE)

EXHIBIT "A"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

V. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY

MONTH, YEAR	DOLLAR AMOUNT	TASK COMPLETED
January 2018	--	City executes Agreement and issues Notice to Proceed to Consultant.
January 2018	---	Consultant's receipt of fully executed Agreement.
January 2018	\$10,980	Task One, Data Collection (Task completed and all task-related deliverables submitted to, and accepted by, City).
March 2018	\$45,020	Task Two, Prepare Preliminary Design Plans (Task completed and all task-related deliverables submitted to, and accepted by, City).
May 2018	\$32,280	Task Three, Prepare Final Design / Construction Plans (Task completed and all task-related deliverables submitted to, and accepted by, City).
July 2018	\$10,160	Task Four, Bid Phase Services (Task completed and all task-related deliverables submitted to, and accepted by, City).
August 2018	\$3,620	Task Five, Construction Phase Services (Task completed and all task-related deliverables submitted to, and accepted by, City).
May 2019	\$5,390 (5% of Consultant's Fee)	Task Six, Completion of Record Drawing
TOTAL CONSULTANT'S FEE (Not-to-Exceed)	\$107,450	

EXHIBIT "A"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

VI. PROJECT BUDGET SUMMARY

A. Basic Services.

1. Description of Basic Services.

a. Task One, Data Collection	\$10,980
b. Task Two, Prepare Preliminary Design Plans	\$45,020
c. Task Three, Prepare Final Design / Construction Plans	\$32,280
d. Task Four, Bid Phase Services	\$10,160
e. Task Five, Construction Phase Services	\$3,620
f. Task Six, Completion of Record Drawing (5% of Total Fee)	\$5,390

GRAND TOTAL AMOUNT (Not-to-Exceed) **\$107,450**