

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of date both parties sign will be entered (the "Effective Date") by and between **CITY OF PROSPER, POLICE DEPARTMENT** (the "City"), and **COLLIN COUNTY, ELECTIONS** (the "County"). City and County are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

BACKGROUND:

- A. City provides services of off-duty law enforcement officers for security staffing and activities.
- B. County desires to engage City to provide such services in connection with its Election activities.

AGREEMENT:

- 1) **Services.** City will perform the services (the "**Services**") for County as defined in each statement of work mutually agreed to by the Parties in writing in the format attached as Exhibit A to this MOU ("**Scope of Services**") The Scope of Services will set forth the basis on which the City will charge the County and the manner by which the City will collect such charges from County.
- 2) **County's Obligations.** County will (a) utilize City's established third-party provider, Off Duty Management ("ODM"), to schedule security at County locations as needed; (b) cooperate with City and ODM in all matters relating to the Services; and (c) respond promptly to any City and ODM request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for City to perform the Services in accordance with this MOU.
- 3) **Term and Termination.** This MOU will be effective as of the Effective Date and will continue until terminated under this section. City may terminate this MOU for any material breach of a term of this MOU by delivering thirty (30) days prior written notice to County. In the event that City materially breaches any term of this MOU, City will use reasonable commercial efforts to promptly cure any such breach; provided, that if City cannot cure such breach within a reasonable time (but no more than sixty (60) days) after County's written notice of such breach, County may, at its option, terminate the MOU by serving written notice of termination. This entire MOU, including any Scope of Services which may be in effect at the time, may be terminated for reasons of convenience by either Party by giving ninety (90) days written notice to the other Party.
- 4) **Billing and Payment.** In consideration of the provision of the Services by the City and the rights granted to County under this MOU, County agrees and understands that ODM will bill County directly for all Services performed in accordance with the Scope of Services attached hereto as Exhibit A to this MOU, which shall include all such fees set forth therein, however designated, that are based on the Services provided by City pursuant to this MOU. Payment from the County in accordance with this Section 4 will constitute payment in full for the performance of the Services and County will not be responsible for paying any other fees, costs or expenses.
- 5) **Relationship.** The Services will be provided by employees or agents of City as set forth on the respective Scope of Services executed by the Parties and made part of this MOU. The Parties intend that the relationship created between them is one of an independent contractor. Neither City nor any employee or agent of City will be, or will be deemed to be, the agent or employee of County. The manner and means of providing the Services are within the sole discretion, direction and control of City. County provides none of the benefits provided by County to its employees to City or any employee or agent of City. Nothing contained in this MOU will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

- 6) **Assignment.** Neither Party to this MOU may assign its rights or obligations hereunder without the prior written consent of the other Party hereto. Any attempted assignment without such prior written consent will be void. Notwithstanding the foregoing, City may assign its rights or obligations hereunder in connection with a sale or transfer of all or substantially all of its assets.
- 7) **Entire Agreement.** This MOU, including Scope of Services, constitutes the entire agreement among the Parties hereto with respect to the matters governed hereby. This MOU and any Scope of Services may be amended only by a written instrument signed by each Party to this MOU.
- 8) **Performance of MOU; Applicable Law.** Each Party hereby agrees that this MOU is performable in Collin County, Texas. This MOU, and the rights and obligations of City and County, will be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Texas, without regard to principles of conflicts of laws.
- 9) **Indemnification.** To the fullest extent allowed by Texas law, City shall defend, indemnify and save harmless County and all its officers, agents and employees and all entities, their officers, agents and employees who are participating in this contract from all suits, claims, actions, damages (including personal injury and or property damages), or demands of any character, name and description, (including attorneys' fees, expenses and other defense costs of any nature) brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of City's breach of the contract arising from an award, and/or any negligent act, error, omission or fault of the City, or of any agent, employee, subcontractor or supplier of City in the execution of, or performance under, any contract which may result from an award. City shall pay in full any judgment with costs, including attorneys' fees and expenses which are rendered against County and/or participating entities arising out of such breach, act, error, omission and/or fault.
- 10) **Expenses for Enforcement.** In the event either party hereto is required to employ an attorney to enforce the provisions of this agreement or required to commence legal proceedings to enforce the provisions hereof, the prevailing party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement including collection.
- 11) **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.
- 12) **Notices.** Any notice, approval, consent, waiver or other communications required or permitted to be given or to be served upon any person in connection with this MOU will be in writing given or served at the Party's address set forth below or as such Parties will otherwise direct.

If to Collin County:

Elections Administrator
Kaleb Breaux
2010 Redbud Blvd, #102
McKinney, TX 75069
kbreaux@co.collin.tx.us

County Administrator
Yoon Kim
2300 Bloomdale, #4192
McKinney, TX 75071
ykim@co.collin.tx.us

Purchasing
G Zimmel
2300 Bloomdale, #3160
McKinney, TX 75071
purchasing@co.collin.tx.us

If to City:

Town Manager
Mario Canizares
250 W First St
Prosper, TX 75078
mcanizares@prospertx.gov

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first written above.

City of Prosper

By: 
Signature

Mario Canizares

Title: Town Manager

Collin County

By: 
Signature

Chris Hill

Title: County Judge

Exhibit A - "Scope of Services"

City of Prosper Police Department will:

- Provide web-based law enforcement agency portal utilizing Off Duty Management ("ODM") to allow County to schedule and track security requests of off-duty officers.
- ODM will set up, monitor and administer the security staffing requested by County.
- Invoices to County will be billed by ODM and checks will be made payable to ODM.
- The following hourly rates will apply:
 - Officer Regular - \$69.00/hr
 - Officer Traffic - \$74.75/hr
 - Supervisor Regular - \$86.25/hr
 - Supervisor Traffic - \$92.00/hr
 - Officer Holiday Regular - \$86.24/hr
 - Officer Holiday Traffic - \$92.00/hr
 - Supervisor Holiday Regular - \$92.00/hr
 - Supervisor Holiday Traffic - \$97.75/hr
 - Officer Emergency Regular - \$86.25/hr
 - Officer Emergency Traffic - \$92.00/hr
 - Supervisor Emergency Regular - \$92.00/hr
 - Supervisor Emergency Traffic - \$97.75/hr
 - Vehicle Usage - \$5.75/hr
- A notification for any rate or fee changes will be provided to County minimum sixty (60) days prior to scheduled-security service.
- Hiring Details:
 - 4 hours minimum per request
 - 24 hours prior to the start of a shift is required.
 - A supervisor is required for 5 or more officers.
- Holiday rates apply 12 am to 11:59 pm on New Year's Eve, New Year's Day, Easter, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- Emergency rates apply when a request is received less than 24 hours prior to the start of the shift.
- Cancellation Policy
 - Once an assignment has been approved and scheduled; vendors canceling or reducing assignments are required to pay the full ODM administrative fees for the first 24 hours of the original assignment. Vendors canceling or reducing assignments within 48 hours of the start of the assignment are required to pay the greater of officer hours worked or the agency minimum hours plus ODM administrative fees for the first 24 hours of the original assignment. (Adm in fees depend on the coverage and can range from \$1.75 to \$10.50 per hour.)

The scheduled armed officers will provide the following:

- Patrol and safeguard assigned Election location.
- Maintain police presence by walking the location and parking cruiser in prominent location.
- Provide emergency response as/if needed following all law enforcement protocols.
- Maintain situational awareness of potential threats or incidents.
- Identify and report suspicious activities.
- Work in public and/or secured areas as directed by County contact in Elections office.