



Agenda
Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, June 11, 2024
6:15 PM

Welcome to the Prosper Town Council Meeting.

Citizens may watch the meeting live by using the following link: www.prospertx.gov/livemeetings

Addressing the Town Council:

Those wishing to address the Town Council must complete the Public Comment Request Form located on the Town's website or in the Council Chambers.

If you are attending in person, please submit this form to the Town Secretary or the person recording the minutes for the Board/Commission prior to the meeting. When called upon, please come to the podium, and state your name and address for the record.

If you are watching online, please submit this form to the Town Secretary prior to 4:00 p.m. on the day of the meeting in order for your comments to be read into the record. The Town assumes no responsibility for technical issues beyond our control.

In compliance with the Texas Open Meetings Act, the Town Council/Board/Commission may not deliberate or vote on any matter that does not appear on the agenda. The Council/Board/Commission, however, may provide statements of fact regarding the topic, request the topic be included as part of a future meeting, and/or refer the topic to Town staff for further assistance.

Citizens and other visitors attending Town Council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, profane or slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the meeting shall be removed from the room, if so directed by the Mayor or presiding officer, and the person shall be barred from further audience before the Town Council during that session. Disruption of a public meeting could constitute a violation of Section 42.05 of the Texas Penal Code.

Call to Order/ Roll Call.

Invocation, Pledge of Allegiance and Pledge to the Texas Flag.

Announcements of recent and upcoming events.

Presentations.

1. Recognize the Town's Communication's staff with awards received from the Texas Association of Municipal Information Officers (TAMIO). (TR)

CITIZEN COMMENTS

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a "Public Comment Request Form" and present it to the Town Secretary prior to the meeting. Please limit your comments to three minutes. If multiple individuals wish to speak on a topic, they may yield their three minutes to

one individual appointed to speak on their behalf. All individuals yielding their time must be present at the meeting, and the appointed individual will be limited to a total of 15 minutes.

CONSENT AGENDA:

Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda by the request of Council Members or staff.

2. Consider and act upon the minutes from the May 28, 2024, Town Council Regular meeting. (MLS)
3. Consider and act upon an ordinance renaming Cook Lane between First Street and Prosper Trail to Mike Howard Lane. (HW)
4. Consider and act upon an ordinance amending Article 4.03, "Solicitors and Itinerant Merchants; Handbill Distribution," of Chapter 4, "Business Regulations," of the Town's Code of Ordinances by updating terms and conditions related to door-to-door commercial solicitation in the Town. (TW/DK)
5. Consider and act upon a resolution authorizing the Town Manager, and/or his/her designee, to apply for the FY 2025 Motor Vehicle Crime Prevention Authority SB 224 Catalytic Converter Grants Grant. (DK)
6. Consider and act upon authorizing the Town Manager to execute a renewal agreement with CivicPlus for website hosting services for an initial term of one year in the amount of \$16,990, with annual renewals for three additional years in an amount not to exceed an increase of 5% per year. (RB)
7. Consider and act upon authorizing the Town Manager to execute an Agreement for Professional Services between the Town of Prosper and Olsson Studio related to design of monumentation in Downtown Prosper for an amount not to exceed \$66,500. (RB)
8. Consider and act upon approval of a supplemental BuyBoard Contract Purchase Order with GameTime c/o Cunningham Recreation to cover cost increases in the amount of \$43,511 for an amount not to exceed \$173,625 related to playground installation at Lakewood Park. (DB)
9. Consider and act upon authorizing the Town Manager to execute a License, Maintenance & Hold Harmless Agreement between Pettis Real Estate, LLC, and the Town of Prosper relative to Bryant's First Addition, Block 1, Lots 12-14. (DH)
10. Consider and act upon an ordinance rezone 47.0± acres from Planned Development-75 to a Planned Development for Multifamily and Mixed-Use, located at the northwest corner of Dallas Parkway and Prosper Trail. (ZONE-24-0001) (DH)
11. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Prosper Tollway Avenues 35, L.P., and the Town of Prosper relative to Prosper Arts District. (DH)
12. Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on Preliminary Site Plans and Site Plans. (DH)

REGULAR AGENDA:

Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Council for items listed as public hearings will be recognized when the public hearing is opened. [If you wish to address the Council, please fill out a “Public Comment Request Form” and present it to the Town Secretary, preferably before the meeting begins.]

Items for Individual Consideration:

- 13. Conduct a public hearing to consider and act upon an ordinance amending Chapter 3, Sections 1 and 2, of the Town of Prosper Zoning Ordinance to add Commercial Drone Delivery Hub use, standards, and definition. (ZONE-24-0010) (DH)
- 14. Discuss and consider Town Council Subcommittee reports. (DFB)

Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

Section 551.087 – To discuss and consider economic development incentives and all matters incident and related thereto.

Section 551.072 – To discuss and consider the purchase, exchange, lease, or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Reconvene in Regular Session and take any action necessary as a result of the Closed Session.

Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, June 7, 2024, and remained so posted at least 72 hours before said meeting was convened.

Michelle Lewis Sirianni, Town Secretary

Date Notice Removed

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

NOTICE

Pursuant to Town of Prosper Ordinance No. 13-63, all speakers other than Town of Prosper staff are limited to three (3) minutes per person, per item, which may be extended for an additional two (2) minutes with approval of a majority vote of the Town Council.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS: The Prosper Town Council meetings are wheelchair accessible. For special services or assistance, please contact the Town Secretary's Office at (972) 569-1073 at least 48 hours prior to the meeting time.



MINUTES
Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, May 28, 2024

Call to Order/ Roll Call.

The meeting was called to order at 6:15 p.m.

Council Members Present:

- Mayor David F. Bristol
- Mayor Pro-Tem Marcus E. Ray
- Deputy Mayor Pro-Tem Amy Bartley
- Councilmember Chris Kern
- Councilmember Jeff Hodges
- Councilmember Cameron Reeves

Council Members Absent:

- Councilmember Craig Andres

Staff Members Present:

- Mario Canizares, Town Manager
- Terry Welch, Town Attorney
- Michelle Lewis Sirianni, Town Secretary
- Bob Scott, Deputy Town Manager
- Chuck Ewings, Assistant Town Manager
- Robyn Battle, Executive Director
- Chris Landrum, Finance Director
- Ryan Peterson, Assistant Finance Director
- Leigh Johnson, IT Director
- Hulon Webb, Director of Engineering Services
- Pete Anaya, Assistant Director of Engineering CIP
- David Hoover, Development Services Director
- Suzanne Porter, Planning Manager
- Dan Baker, Parks and Recreation Director
- Kurt Beilharz, Assistant Parks and Recreation Director
- Todd Rice, Communications and Media Relations Manager
- Scott Brewer, Interim Human Resources Director
- Eric Men, Help Desk Technician II
- Aidan Daily, Police Crime Analyst
- Doug Kowalski, Police Chief
- Stuart Blasingame, Fire Chief

Invocation, Pledge of Allegiance and Pledge to the Texas Flag.

John Fowler with First Presbyterian Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

Announcements of recent and upcoming events.

Councilmember Reeves made the following announcements:

Thank you to all who attended the Memorial Day Ceremony yesterday to honor the brave men and women who sacrificed their lives for our country. A special thanks to Congressman Self, Mr. Catanzaro, Pastor White, and all those who participated in the event.

The Prosper Community Library Summer Program kicked off today and will continue through August 3. This year's theme is "Every Animal Has a Story". For more information, including how to register, visit the Library page on the Town's website for all the exciting upcoming summer programs.

Join us on Saturday, June 1 from 8 am to 10:30 am at Prosper Town Hall for Coffee & Chrome. Enjoy complimentary coffee by 1418 Coffee while viewing a spectacular showcase of vehicles and related exhibits. Those wishing to show their vehicle or be an exhibitor may visit the Town's website for more information or contact the Parks and Recreation Department at events@prospertx.gov.

Presentations.

1. Recognition of the 2024 Inaugural Mayor's Youth Advisory Council. (RB)

Ms. Battle introduced and provided an overview of the purpose, goals and objectives, and accomplishments of the MYAC.

William He, Chair of the MYAC, spoke and extended his appreciation to all those on the Council, to Mayor Bristol and staff for their support and leadership given to the Council.

Rithika Chakrapani, member of MYAC, spoke and expressed her appreciation for establishing the MYAC and providing a leadership council for the youth to learn about local government.

Mayor Bristol presented certificates recognizing the 2024 inaugural MYAC council.

2. Proclamation recognizing the Prosper High School Women's Soccer Team. (MLS)

Mayor Bristol read and presented a Proclamation to the Lady Eagles soccer team.

3. Recognition of members of the Police Department for life-saving efforts. (DK)

Chief Kowalski provided an overview of the life-saving event and introduced the officers involved.

Mayor Bristol thanked the officers for their actions taken during the event.

CONSENT AGENDA:

Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda at the request of Council Members or staff.

- 4. Consider and act upon the minutes from the May 14, 2024, Town Council Regular meeting. (MLS)**
- 5. Consider acceptance of the April 2024 monthly financial report. (CL)**
- 6. Consider and act upon approving Ordinance 2024-37 to authorize the Town Manager to execute certain agreements, contracts, and grant applications by increasing the contract and related authority to \$50,000 and authorizing the delegation to any Assistant Town Manager. (RBS)**

7. Consider and act upon Ordinance 2024-38 amending Chapter 8, “Offenses and Nuisances,” of the Town’s Code of Ordinances by adopting a new Article 8.10 prohibiting the solicitation of occupants of vehicles on public roadways. (TW/DK)
8. Consider and act up Ordinance 2024-39 amending Article 12.08 of Chapter 12, “TRAFFIC”, prohibiting certain commercial vehicles from operating on Prosper Trail. (CE)
9. Consider and act upon authorizing the Town Manager to enter into a contract amendment with Republic Services adjusting the fees for Commercial recycling provided through 95-gallon carts and providing a discount to Homeowners Associations for 95-gallon trash service. (CL)
10. Consider and act upon authorizing the Town Manager to execute a Service Agreement between the Town of Prosper and Coffey Global, LLC, for Freedom Fest 2024 for an amount not to exceed \$106,300. (DB)
11. Consider and act upon authorizing the Town Manager to approve the proposal for the Prosper Christmas Festival Rentals between 5 Star Rental, and the Town of Prosper, Texas, related to the Prosper Christmas Festival for \$32,103. (DB)
12. Consider and act upon authorizing the Town Manager to execute a Professional Services Agreement between the Town of Prosper and Bowmen Sports for recreation program instructor services for an estimated amount of \$27,090. (DB)
13. Consider and act upon approving the emergency repair of North Legacy Drive north of Prosper Trail for \$44,870. (CE)
14. Consider and act upon authorizing the Town Manager to execute a contract with Nouveau Technology Services, LP, for interior improvements to the Police Department Headquarters building for \$37,283. (CE)
15. Consider and act upon authorizing the Town Manager to approve the purchase of traffic signal-related items for the Gee Road and Acacia Parkway Traffic Signal project, from Consolidated Traffic Controls, Inc., utilizing the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program for \$125,448. (PA)
16. Consider and act upon authorizing the Town Manager to approve an agreement for repairs to the traffic signal preemption equipment on Preston Road with Consolidated Traffic Controls, Inc., utilizing the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program for \$82,557. (HW)
17. Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town’s Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on Preliminary Site Plans and Site Plans. (DH)

Mayor Pro-Tem Ray made a motion to approve items 4-17. Councilmember Hodges seconded the motion. Motion carried with a 6-0 vote.

CITIZEN COMMENTS

Aarzo Patel, 541 Travis Lane, invited the Town Council to a walk/run event on June 8.

Items for Individual Consideration:

- 18. Consider and act upon Resolution 2024-40 directing the publication of Notice of Intention to issue Certificates of Obligation for the purpose of funding costs associated with the construction of wastewater improvements. (CL)**

Mr. Landrum stated this item is to initiate the process of issuing Certificates of Obligation for the wastewater projects specified within the resolution. If approved, the resolution directs the publication of the notice, which will be published twice within the local newspaper.

Councilmember Kern noted the Finance Subcommittee reviewed and approved this item.

Mayor Pro-Tem Ray made a motion to approve Resolution 2024-40 directing publication of Notice of Intention to issue Certificates of Obligation for the purpose of funding costs associated with the construction of wastewater improvements. Deputy Mayor Pro-Tem Bartley seconded the motion. Motion carried with a 6-0 vote.

- 19. Consider and act upon authorizing the Town Manager to execute a Construction Agreement awarding CSP No. 2024-20-B to Mountain Cascade of Texas, LLC, related to the Lower Pressure Plane Phase 2 Water Pipeline project, for \$7,101,331. (PA)**

Mr. Anaya stated that this project consists of all the work needed to install a 42" water main located at the southwest corner of Coit Road and Richland Blvd. The Town received eight bids and was listed with a base bid with two options. Staff checked the references provided and received positive feedback. Staff recommends approval.

Councilmember Hodges requested if possible to have the work completed before school was in session or around school hours to alleviate traffic congestion.

Councilmember Hodges made a motion to approve authorizing the Town Manager to execute a Construction Agreement awarding CSP No. 2024-20-B to Mountain Cascade of Texas, LLC, related to the Lower Pressure Plane Phase 2 Water Pipeline project, for \$7,101,331. Councilmember Bartley seconded that motion. Motion carried with a 6-0 vote.

- 20. Consider and act upon authorizing the Town Manager to execute a Guaranteed Maximum Price (GMP) Contract #2 between the Town of Prosper and Dean Construction related to Site Development for Raymond Community Park in the amount of \$9,363,174. (DB)**

Mr. Baker stated GMP #1 contract with Dean Construction for site preparation was awarded in December 2023. This item (GMP #2) if approved, will provide the owner's authorization for the construction of the balance of the work required to provide a complete and functional project. Mr. Baker reviewed the contingency item priority list and noted it was reviewed by the CIP Subcommittee. The Subcommittee requested cost estimates for the trail that parallels the creek, artificial turf, and costs to construct a well to provide water for irrigation. The Parks and Recreation Board met, reviewed the item, and recommended approval at their May 9 meeting. Staff is recommending approval.

The Town Council discussed the costs associated with the artificial turf, the water well installation, the trail parallel to the creek, and the items on the contingency list. The

Council did not recommend artificial turf at Raymond Park; however, they would like to see it incorporated into future parks. They would like to see additional funds identified for the well and the trail, and also for the monument sign and playground pavilion.

Councilmember Bartley made a motion to approve authorizing the Town Manager to execute a Guaranteed Maximum Price (GMP) Contract #2 between the Town of Prosper and Dean Construction related to Site Development for Raymond Community Park in the amount of \$9,363,174 as presented. Councilmember Reeves seconded the motion. Motion carried with a 6-0 vote.

21. Consider and act upon authorizing the Town Manager to execute an amendment to the agreement between the Town of Prosper, Texas, and Brown, Reynolds, Watford, Architects, Inc., related to architectural and engineering design services for Fire Station No. 4 for \$342,300. (SB)

Chief Blasingame introduced the item with a brief background of the project to date. Since that time, the Town has adopted the 2021 International Fire Code and 2021 International Building Codes, which requires updates to all construction documents. An amendment to the original agreement is necessary to incorporate these changes and other adjustments needed for the next GMP. Staff met with BRW Architects, Inc. and they have presented a proposal for services. The CIP Subcommittee reviewed and recommended approval. Staff recommends approval.

Councilmember Kern made a motion to approve authorizing the Town Manager to execute an amendment to the agreement between the Town of Prosper, Texas, and Brown, Reynolds, Watford, Architects, Inc., related to architectural and engineering design services for Fire Station No. 4 for \$342,300. Mayor Pro-Tem Ray seconded the motion. Motion carried with a 6-0 vote.

22. Consider and act upon authorizing the Town Manager to enter into a Professional Services Agreement with Quorum Architects in the amount of \$1,780,000 for the design of the proposed Public Works/Parks Service Center. (CE)

Mr. Ewings stated funding for design was authorized as part of the Capital Improvements Plan. Twelve proposals were received for design services. Staff interviewed three finalists. The services include validation and reconfiguration of the existing Site Plan to consider the completion of Safety Way, as well as modifying the layout. The architect will provide construction documents and assist in managing the construction of the buildings and site. The plan will also address phasing the project to construct improvements as funding is available. Staff is recommending approval.

Councilmember Reeves made a motion to approve authorizing the Town Manager to enter into a Professional Services Agreement with Quorum Architects in the amount of \$1,780,000 for the design of the proposed Public Works/Parks Service Center. Councilmember Hodges seconded the motion. Motion carried with a 6-0 vote.

23. Conduct a public hearing to consider and act upon a request for a rezoning of 47.0± acres from Planned Development-75 to a Planned Development for Multifamily and Mixed-Use, located at the northwest corner of Dallas Parkway and Prosper Trail. (ZONE-24-0001) (DH)

Mr. Hoover provided an introduction and background of the item noting the applicant has made changes based on feedback received. The development team for the project

presented the concept plan detailing the uniqueness of the project including the hotels, retail area, open spaces, and the phasing of the plan.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

The Town Council discussed landscaping, items within the plan as they relate to the DNT Design Guidelines, the quantity of multi-family, and the overall phasing of the plan.

Deputy Mayor Pro-Tem Bartley made a motion to approve a request for a rezoning of 47.0± acres from Planned Development-75 to a Planned Development for Multifamily and Mixed-Use, located at the northwest corner of Dallas Parkway and Prosper Trail with all recommended changes by the Planning and Zoning Commission, and with all coming back within a Development Agreement and Zoning Ordinance. Councilmember Hodges seconded the motion. Motion carried with a 4-2 vote. Mayor Pro-Tem Ray and Councilmember Kern voted in opposition.

24. Consider and act to adopt and reaffirm the revised Strategic Visioning Priorities of the Prosper Town Council. (MC)

Mr. Canizares stated that the Council met and discussed the Strategic Visioning Priorities. All five (5) objectives were maintained with the language regarding the future bond program from the long-term priorities now to be included in the current priorities. A statement for overlay districts was also added.

25. Discuss and consider Town Council Subcommittee reports. (DFB)

CIP Subcommittee: Deputy Mayor Pro-Tem Bartley noted that items discussed were voted on agenda items during this meeting.

Finance Subcommittee: Mayor Pro-Tem Ray echoed the same comments.

Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

Mayor Pro-Tem Ray requested a report regarding grants including those the Town are seeking, what has been granted year-to-date, and grants available.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

Section 551.087 – To discuss and consider economic development incentives and all matters incident and related thereto.

Section 551.072 – To discuss and consider the purchase, exchange, lease, or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with code enforcement activities and substandard structures, and all matters incident and related thereto.

The Town Council recessed into Executive Session at 9:34 p.m.

Reconvene in Regular Session and take any action necessary as a result of the Closed Session.

The Town Council reconvened into Regular Session at 10:27 p.m.

No action was taken.

Adjourn.

The meeting was adjourned at 10:27 p.m.

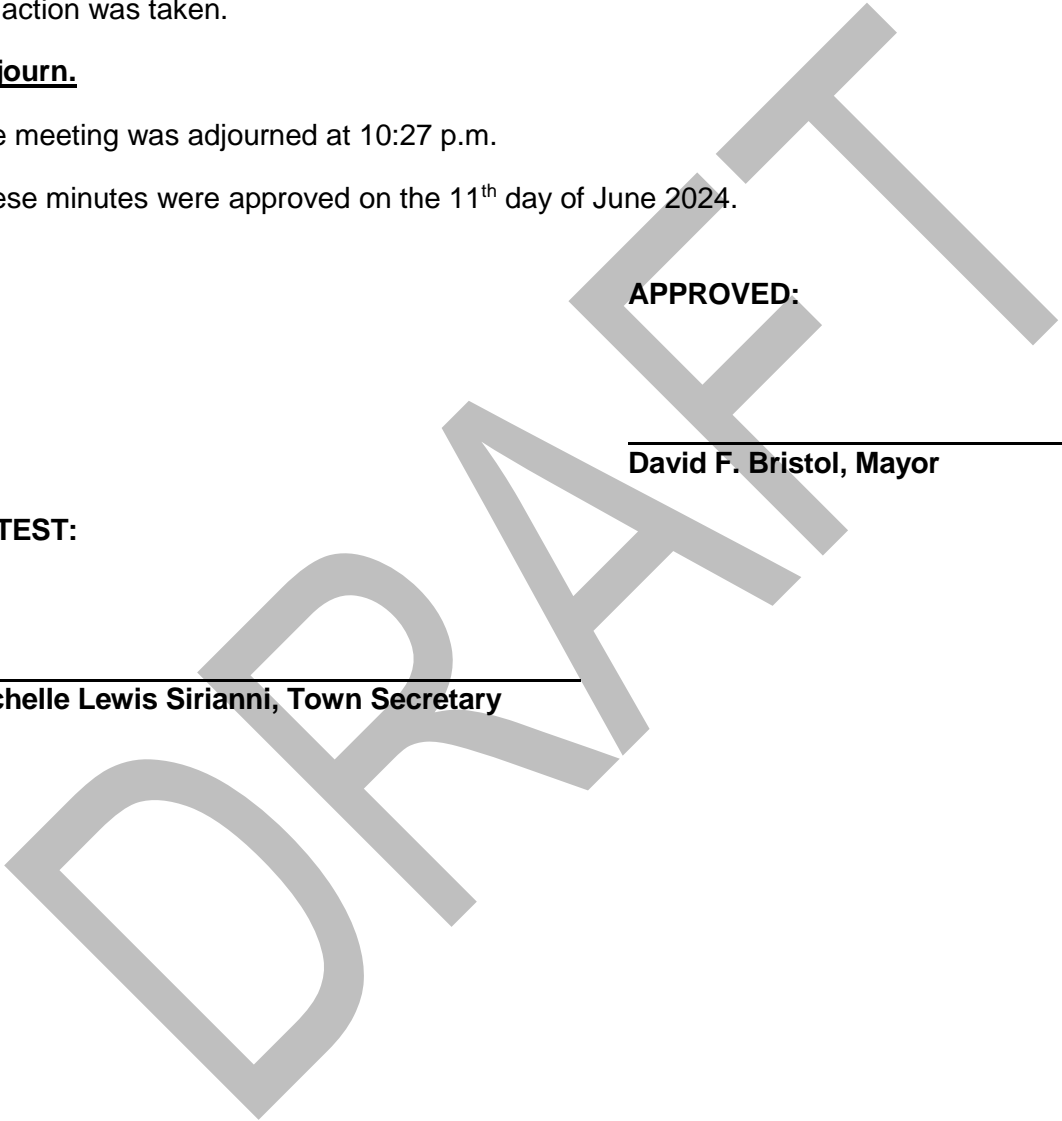
These minutes were approved on the 11th day of June 2024.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary





ENGINEERING SERVICES

To: Mayor and Town Council

From: Hulon T. Webb, Jr., P.E., Director of Engineering Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Cook Lane Renaming to Mike Howard Lane

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance renaming Cook Lane between First Street and Prosper Trail to Mike Howard Lane.

Description of Agenda Item:

On November 28, 2023, the Town Council recognized Mike Howard for his service to the country since 1951, highlighting his years in the Secret Service as a Special Agent working detail for President Kennedy in 1963 during his visit to Dallas. Mike Howard also served as a Bailiff for the Town for many years and is currently serving as a Reserve Peace Officer, greeting visitors at the Police Station. The purpose of this request is to rename Cook Lane between First Street and Prosper Trail to Mike Howard Lane for his many years in public service and dedication to the country and Town of Prosper.

Upon Town Council adoption of the attached ordinance, Town staff will order and install new street name blades. In addition, property owners impacted by the road name change will be notified to submit for reimbursement of advertising, licensing and signage expenses incurred as a result of the road name change. Emergency services will reflect the street name change within their databases once all signage has been replaced.

Budget Impact:

The estimated expense for the renaming is between \$2,500 - \$7,500 and is dependent upon expenses impacted property owners submit for reimbursement, and the expense for replacing street signage. Expenses incurred will be funded by the Streets Department - Signs and Hardware in Account No. 100-5640-50-01.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attachments:

1. Ordinance
2. Thoroughfare Plan

Town Staff Recommendation:

Town Staff recommends that the Town Council approve an ordinance renaming Cook Lane between First Street and Prosper Trail to Mike Howard Lane.

Proposed Motion:

I move to approve an ordinance renaming Cook Lane between First Street and Prosper Trail to Mike Howard Lane.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, CHANGING THE NAME OF COOK LANE BETWEEN FIRST STREET AND PROSPER TRAIL IN THE TOWN OF PROSPER TO “MIKE HOWARD LANE”; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas (the "Town"), wishes to honor Town resident Mike Howard for his distinguished service to the United States of America as a Secret Service agent for former Presidents of the United States; and

WHEREAS, Mr. Howard's exemplary service to our nation deserves tribute and the Town Council and the residents of the Town wish to honor Mr. Howard by renaming Cook Lane between First Street and Prosper Trail as "Mike Howard Lane," as depicted in attached Exhibit 1.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

From and after the effective date of this Ordinance, the Town hereby renames Cook Lane between First Street and Prosper Trail as Mike Howard Lane," and by doing so to honor the legacy of Mr. Howard for his service to his country.

SECTION 3

The Town Manager is hereby charged with notifying any and all public agencies, property owners and others of the foregoing name change and to take any and all necessary steps and acts to effect immediately such name changes. The Town Manager is also further authorized to make all appropriate revisions to street signage and Town maps, and take all other necessary actions incident and related thereto.

SECTION 4

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 5

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 6

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 11TH DAY OF JUNE, 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

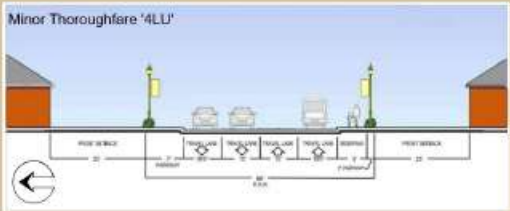
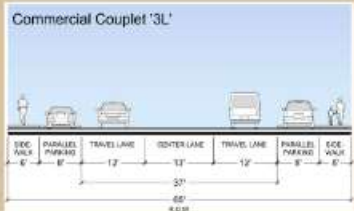
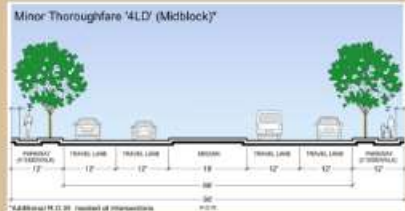
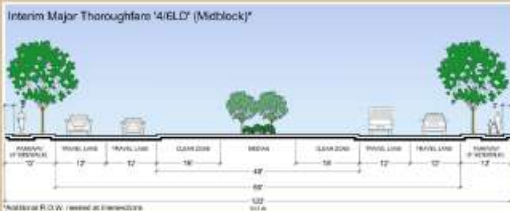
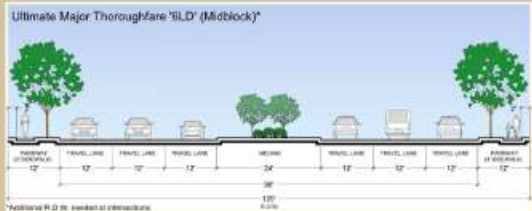
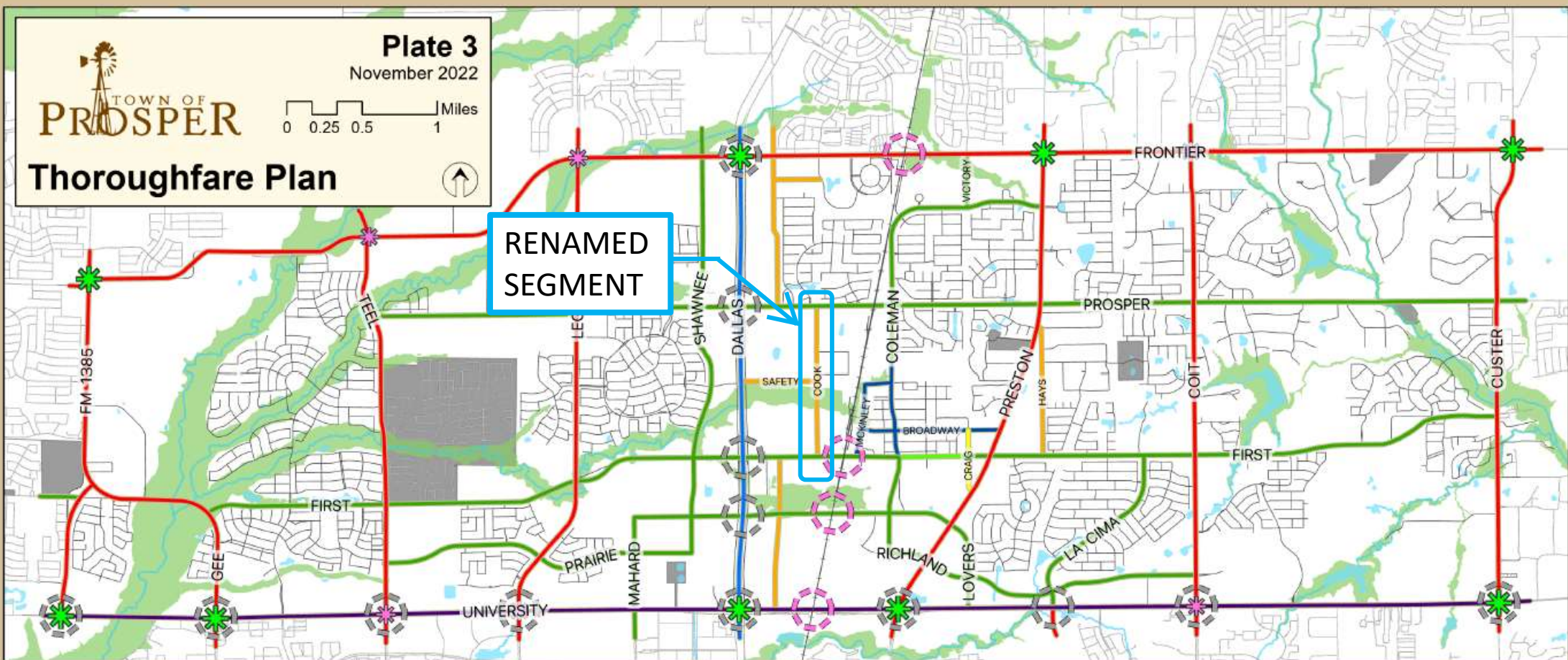
APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

EXHIBIT 1

(Depiction of "Mike Howard Lane")





- Dallas North Tollway
- Limited Access Roadway/Freeway (330' ROW)
- Major Thoroughfare (6 lane; 120' ROW)
- Minor Thoroughfare (4 lane divided; 90' ROW)
- Minor Thoroughfare (4 lane undivided; 56' ROW)
- Commercial Couplet (3 lane; 65' ROW)
- Commercial Collector (2 lane; 60' ROW)
- Old Town District (Section Varies)

- Major Gateway
- Minor Gateway
- Grade Separation
- RR Grade Separation

Town of Prosper

ETJ

100 Year Floodplain

*Refer to Comprehensive Plan for Interim Development of Coit Road between Frontier Parkway and Prosper Trail.

The Thoroughfare Plan is for informational purposes and has not been prepared for and is not intended for legal, real estate, engineering, or surveying purposes. It is provided as a conceptual guide for transportation decisions within the Town related to general roadway alignments and classifications. The Town of Prosper does not assume any responsibility or liability for omissions, inaccuracies, or misinterpretations of the Thoroughfare Plan.



TOWN ATTORNEY/ POLICE DEPARTMENT

To: Mayor and Town Council

From: Terrence S. Welch, Town Attorney
Doug Kowalski, Chief of Police

Through: Mario Canizares, Town Manager

Re: Door-to-Door Solicitation Ordinance Amendments

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Article 4.03, “Solicitors and Itinerant Merchants; Handbill Distribution,” of Chapter 4, “Business Regulations,” of the Town’s Code of Ordinances by updating terms and conditions related to door-to-door commercial solicitation in the Town.

Description of Agenda Item:

Due to federal constitutional case law that has addressed door-to-door solicitation ordinances around the nation, it is necessary that certain provisions in the Town’s existing solicitation ordinance be revised. The proposed ordinance, in accordance with applicable constitutional case law, generally provides as follows: (1) “solicitation” has been defined as excluding fundraising for political, religious or charitable purposes; (2) permits and registration are not required for political, religious or charitable institutions or individuals on behalf of such institutions; (3) individuals or entities that engage in home solicitation transactions (for example, door-to-door sales of products or solicitations for home repair services) or the distribution of commercial handbills will continue to be required to register and receive permits from the Prosper Police Department; (4) no solicitation will be permitted on any property where notice is given that solicitation is either not permitted or desired; (4) the application process for a permit to solicit has been expanded to require more information about the solicitors and their purposes for solicitation; (5) the denial or revocation of permits is further clarified, with expanded grounds for such denial or revocation; and (6) appeals from such denials or revocations shall be to the Town Manager.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached Ordinance as to form and legality.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

The Town Attorney recommends that the Town Council approve an ordinance amending Article 4.03, "Solicitors and Itinerant Merchants; Handbill Distribution," of Chapter 4, "Business Regulations," of the Town's Code of Ordinances by updating terms and conditions related to door-to-door commercial solicitation in the Town.

Proposed Motion:

I move to approve an ordinance amending Article 4.03, "Solicitors and Itinerant Merchants; Handbill Distribution," of Chapter 4, "Business Regulations," of the Town's Code of Ordinances by updating terms and conditions related to door-to-door commercial solicitation in the Town.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING ARTICLE 4.03, "SOLICITORS AND ITINERANT MERCHANTS; HANDBILL DISTRIBUTION," OF CHAPTER 4, "BUSINESS REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, AND REPLACING IT WITH A NEW ARTICLE 4.03, "SOLICITORS AND ITINERANT MERCHANTS; HANDBILL DISTRIBUTION"; MAKING FINDINGS; PROVIDING FOR A PENALTY; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town") has deemed it necessary and in the best interest of the Town and its residents to repeal existing Article 4.03, "Solicitors and Itinerant Merchants; Handbill Distribution," of the Town's Code of Ordinances and replace it with an updated ordinance regarding solicitation, itinerant merchants and handbill distribution, in full compliance with state and federal case law relative thereto; and

WHEREAS, it is the desire and intent of the Town Council to fully comply with existing jurisprudence on these issues while protecting the health and safety of Town residents who interact with solicitors and itinerant merchants; and

WHEREAS, the Town Council has further determined that it will be advantageous and beneficial to Prosper and its inhabitants to amend Article 4.03 as described below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

From and after the effective date of this Ordinance, existing Article 4.03 "Solicitors and Itinerant Merchants, Handbill Distribution," of Chapter 4, "Business Regulations," of the Code of Ordinances of the Town of Prosper, Texas, is hereby repealed in its entirety and replaced with a new Article 4.03 "Solicitors and Itinerant Merchants, Handbill Distribution," of Chapter 4, "Business Regulations," of the Code of Ordinances of the Town of Prosper, Texas, to read as follows:

"ARTICLE 4.03. SOLICITORS AND ITINERANT MERCHANTS, HANDBILL DISTRIBUTION

DIVISION 1. GENERALLY

Sec. 4.03.001 Purpose.

This article and shall be deemed an exercise of the police powers of the state and of the town, in full compliance with the First Amendment to the United States Constitution and applicable jurisprudence, for the public safety, comfort, convenience, and protection of the town and the

citizens thereof, and all of the provisions of this article shall be constructed for the accomplishment of that purpose.

Sec. 4.03.002 Definitions.

(a) The following words and phrases, when used in this article, shall have the meanings ascribed to them by this subsection:

Agent means a person who undertakes to transact some business or manage some affair for another person by the authority and on the account of the latter.

Badge means photographic identification permit issued by the police department of the town.

Business day means any calendar day except Saturday, Sunday or any state or national holiday.

Canvasser means a person who engages in canvassing activities.

Canvassing or canvassing activity means the act of:

(1) Traveling either by foot or vehicle, going door-to-door, house-to-house, building-to-building; or

(2) Occupying space in or traveling on or through any public place in the city;

Charitable purpose means philanthropic or other nonprofit objectives, including the benefit of poor, needy, sick, refugee or handicapped persons; the benefit of any patriotic or veterans' association or organization; the benefit of any fraternal, social or civil organization; or the benefit of any educational institution. "Charitable purpose" shall not be construed to include:

(1) The direct benefit of the individual making the solicitation;

(2) The benefit of any political group or political organization that is subject to financial disclosure under state or federal law; or The benefit of any church or religious society or order;

(3) The benefit of any church or religious society or order.

Consumer means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family or household purposes.

Consumer transaction means a sales transaction in which one or more of the parties is a consumer.

Handbill means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature that is commercial in nature or has a commercial intent.

Handbill distribution means traveling either by foot or vehicle, going door-to-door, house-to-house or building-to-building without personally contacting persons to distribute or leave on or at each premises handbills for any purpose.

Handbill distributor means any person engaging or engaged in the business for hire or gain of distributing handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

Home solicitation transaction means a consumer transaction for the purchase of goods, services, or realty, payable in installments, or in cash, in which the merchant engages in a personal solicitation of the sale to the consumer at a residence, and the consumer's agreement or offer to purchase is given at the residence to the merchant. A home solicitation transaction shall not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker.

Local business means a business located and operated within the corporate limits of the town.

Merchant means a party to a consumer transaction other than a consumer.

Police department means the police department of the Town.

Political purpose means any form of communication related to a political issue, a particular candidate to a position or nonpartisan office, a political committee, as defined by state law, or to a political party.

Religious organization means an organization that is dedicated to the support of a church, religious society, or any other religious sect, group, or order.

Religious purpose means the use of money or property for the support of a church, religious society or other religious sect, group, or order.

Solicitation means conduct whereby a person or its agent, member, or representative:

(1) Either orally or in writing, asks for a ride, employment, property, financial aid, money, or any article representing monetary value, for any purpose;

(2) Whether orally or in writing, sells or offers to sell goods, services, publications, or subscriptions;

(3) Distributes without remuneration goods, services, publications, or subscriptions; or

(4) Solicits signatures on a petition or opinions for a survey.

a. The term "solicitation" shall include persons engaged in the delivery of handbills or circulars door to door for the solicitation of money, products, services or other items of pecuniary value. An offer of membership in any organization is expressly excluded.

b. All terminology used in this article and not specifically defined above shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of Webster's Collegiate Dictionary.

Sec 4.03.003 Unlawful solicitation and handbill distribution.

(a) No person, directly or through an agent, shall canvass or solicit in person from house to house in the town, to sell or attempt to sell goods, merchandise, wares, services or anything of value or to take or attempt to take orders for the future delivery of goods, merchandise, wares, or any personal property of any nature whatsoever, or take or attempt to take orders for services to be furnished or performed in the future, without first having a written permit therefor, unless the solicitation is for charitable purposes.

(b) Subject to Division 2 of this article, it shall be unlawful for any person, directly or through an agent or employee, to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill in or upon any premises within the corporate limits of the town without first having obtained a permit for such distribution.

(c) It shall be unlawful to solicit funds or distribute handbills after sundown and before 9:00 a.m.

(d) Subject to Division 2 of this article, it shall be unlawful for any person, directly or through an agent or employee, to solicit funds or distribute handbills after the expiration of any permit issued as hereinafter provided.

(e) Subject to Division 2 of this article, it shall be unlawful for the person registering or applying, or the agents or employees thereof, to solicit funds or distribute handbills for a purpose other than that set out in the registration statement or application upon which the permit was issued.

(f) It shall be unlawful for any person who shall solicit funds or distribute handbills in the town to represent that the issuance of a permit by the town constitutes an endorsement or approval of the solicitation or distribution by the town or its officers or employees.

(g) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill in or upon any premises which are temporarily or continuously uninhabited or vacant.

(h) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill upon any premises which are inhabited and not otherwise posted as provided for in subsection (i) below, except by:

(1) Handing or transmitting such handbill directly to the owner, occupant, or any other person then present in or upon such premises; or

(2) Placing or depositing the handbill in a secure manner to prevent such handbill from being blown or drifting about the premises, except that mailboxes may not be used when prohibited by federal postal laws or regulations.

(i) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill upon any premises if requested not to do so by the owner, occupant, or any other person then present in or upon such premises, or if there is placed on such premises, in a conspicuous place upon or near the main entrance to the residence, a weatherproof card, not less than three inches by four

inches in size bearing the words "no trespassing," "no peddlers," "no advertisements," "no solicitation," no handbills," or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbill left upon such premises. The letters on such cards shall be not less than two-thirds of an inch in height.

(j) It shall be unlawful for any person to distribute or cause to be distributed, deposited, placed, thrown, cast, scattered, handed out or circulated any handbill in any place, under any circumstances, which does not have printed on the cover, front or back thereof, the name, address and telephone number of the handbill sponsor who caused the same to be distributed; provided, however, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers, or agents for the fictitious person or club sponsoring such handbill shall also appear thereon.

Sec. 4.03.004 Penalty for violation.

Any person violating any of the provisions or terms of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed the sum of \$500.00 for each offense, and each and every day such violation shall continue be deemed to constitute a separate offense. Allegation and evidence of a culpable mental state is not required for proof of any offense defined by this article.

Sec 4.03.005 Supervision of child solicitors.

It shall be unlawful for any person to use any children 13 years of age or less for any type of solicitation or handbill distribution purposes unless the child or children are actively supervised by an adult individual at least 18 years of age, who has obtained the permit required by this article, or is the agent of the individual who obtained the permit. In all cases the supervising adult shall always be within 100 yards of the child solicitor.

Sec. 4.03.006 Permit—Grounds for denial or revocation.

(a) The police department may deny a permit to any applicant for good cause, which shall include but not be limited to, the following:

- (1) being a fugitive from justice, including any outstanding arrest warrant;
- (2) submission of an incomplete application for a permit; or
- (3) providing false and/or misleading statements on a permit application.

(b) Failure to comply with any of the provisions of this article shall constitute grounds for denial or revocation of any permit sought to be issued or issued in accordance with the provisions of this article.

Sec. 4.03.007 Appeals.

Should an applicant or registrant be denied a permit, or have a permit revoked, he/she may appeal that action to the Town Manager by submitting a letter and/or related documentation within ten days of the denial or revocation, specifying the reasons why the permit should have been granted.

The Town Manager shall consider the reasons for the denial or revocation of a permit and shall render a decision on the appeal within 21 days of the date the appeal was received by the Town Manager. The decision of the Town Manager shall be final. No new application for a permit will be considered for six months after denial or revocation, unless said denial or revocation is without prejudice or is conditional and the conditions have been satisfied as determined by the chief of police.

Sec. 4.03.008 Sale of merchandise on public right-of-way.

It shall be unlawful for any person to peddle, solicit, sell, offer for sale, or exhibit for sale any merchandise upon any public sidewalk, street, street right-of-way, parkway, or other public right-of-way.

Sec. 4.03.009 Affirmative defense and exemption.

(a) It shall be an affirmative defense to prosecution under this article if the person is occupying the public right-of-way for the purpose of selling newspapers or publications of other printed material which deal with the dissemination of information or opinion; however, this defense is not available if said act occurred upon the paved surface or shoulder of any public street, highway or road.

(b) The provisions of this article shall not apply to:

- (1) The regular delivery of newspapers or magazines or other items which have been subscribed to by the persons receiving them or by occupants of the premises to which they are delivered;
- (2) The interruption of service notices by utility companies;
- (3) The distribution of mail by the United States government; and
- (4) The service of any lien foreclosure or governmental notices of any character distributed by the town or any other governmental entity.

Sec. 4.03.010 Exhibiting sign or card prohibiting solicitors and handbill distributors.

(a) A person desiring that no merchant or other person engage in handbill distribution or a home solicitation at his/her premises shall exhibit, in a conspicuous place upon or near the main entrance to the premises, a weatherproof sign or card, not less than three inches by four inches in size bearing the words "no trespassing," "no peddlers," "no advertisements," "no solicitation," "no handbills," or any similar notice indicating in any manner that the occupants of such premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbill left upon the premises. The letters on such sign or cards shall be not less than two-thirds of an inch in height.

(b) Every person upon going onto any premises shall first examine the premises to determine if any notice prohibiting solicitation or handbill distribution is exhibited upon or near the main entrance to the premises. If notice prohibiting soliciting or handbill distribution is exhibited, the person shall immediately depart from the premises without distributing, placing, or depositing

any handbill or disturbing the occupant, unless the visit is the result of a request made by the occupant.

(c) No person shall go upon any premises and ring the doorbell, or rap or knock upon the door or create any sound in a manner calculated to attract the attention of the occupant of the premises, for the purpose of securing an audience with the occupant and engaging in or attempting to engage in a solicitation or distribution transaction, if a sign or card, as described in this section, is exhibited in a conspicuous place upon or near the main entrance to the premises, unless the visit is the result of a request made by the occupant.

(d) No person, other than the owner or occupant of the premises, shall remove, deface, or render illegible a sign or card placed by the occupant pursuant to this section.

(e) Any merchant who has gained entrance to a premises, or audience with the occupant, whether invited or not, shall immediately depart from the premises without disturbing the occupant further when requested to leave by the occupant.

Secs 4.03.011—4.03.040 Reserved.

DIVISION 2. NONCHARITABLE SOLICITATION AND HANDBILL DISTRIBUTION

Sec. 4.03.041 Exception.

The provisions of this division shall not apply to a person engaged in a solicitation for a charitable purpose, a political purpose or a religious purpose.

Sec. 4.03.042 Permit application.

(a) Any person desiring to make home solicitation transactions or distribute handbills within the town shall file a written application for a permit to do so with the town's Police Department, which application shall show:

(1) The name, date of birth and address of the person applying and desiring to make home solicitations.

(2) No person younger than 18 years of age shall conduct any solicitation within and upon public rights-of-way within the town.

(3) Whether the person applying is a natural person, partnership, corporation or association, and:

a. If a natural person, the business or residence address and telephone number must be given.

b. If a partnership, the names of all partners and the principal business address and telephone number of the partnership and the address and telephone number of each partner must be given.

c. If a corporation, the person applying must:

i. State whether it is organized under the laws of this state or is a foreign corporation;

- ii. Show the mailing address and telephone number of the principal place of business;
- iii. Show the mailing address, business location, telephone number and name of the individual in charge of the town office of such corporation, if any;
- iv. State the names of all officers and directors or trustees of such corporation; and
- v. If a foreign corporation, state the place of incorporation.
- d. If an association, the application must:
 - i. Show the association's principal business address, and telephone number, if any;
 - ii. Show names and principal business or residence addresses and telephone numbers of all members of the association unless they exceed ten in number, in which case the application shall so state and the person registering may alternatively list the names of principal business or residence addresses and telephone numbers of the officers and directors or trustees of the association; and(iii)If the association is part of a multistate organization or association, the mailing address and business location of its central office shall be given, in addition to the mailing address and business location of its local office.

(4) The names, mailing addresses and telephone numbers of all individuals who will be in direct charge or control of the solicitation of funds or distribution of handbills.

(5) The time period within which the solicitation of funds or distribution of handbills is to be made, giving the date of the beginning of solicitation and its concluding date.

(6) A description of the methods and means by which the solicitation of funds or distribution of handbills is to be accomplished.

(7) The names of other communities in which the applicant has made home solicitations or distribution of handbills in the past six months.

(8) The nature of merchandise to be sold or offered for sale or the nature of the services to be furnished.

(9) Whether such applicant, upon any such order so obtained, will demand, accept or receive payment or deposit of money in advance of final delivery.

(10) Each applicant shall provide proof of identification through submission of a valid driver's license or other valid/official photo ID.

(11) A statement to the effect that if a permit is granted, such permit will not be used or represented to be an endorsement or approval by the town or any of its officers or employees.

(12) Any other information which the town deems necessary for the administration of this division.

a. The application must be signed by the applicant, if the person applying is an individual; if the applicant is a partnership, by the partner charged with disbursing the funds solicited or overseeing the handbill distribution; if the applicant is a corporation or an association, by its officer charged with disbursing the funds solicited or overseeing the handbill distribution. The individual signing the application shall sign the application and swear before an officer authorized to administer oaths that he/she carefully read the application and that all the information contained therein is true and correct.

b. The application must be accompanied by a copy of a valid state sales tax certificate, if applicable.

c. Information provided by the applicant in accordance with the provisions of this division shall be subject to verification by the Police Department. Such application shall also be satisfactory written proof of the individual's authority to represent the partnership, corporation, association or business entity.

Sec. 4.03.043 Permit fee generally.

Every application shall be accompanied by a nonrefundable application fee of \$50.00 subject to change by resolution by town council in order to compensate the town for the cost of administering this division, and such fee will not be refunded if a permit is not issued. No permit provided for by this division shall be issued until such fee has been paid by the applicant.

Sec. 4.03.044 Permit fee exemptions.

The permit fee required for the issuance of a permit under the provisions of this division shall not be required of the following:

(1) Ordinary commercial travelers who sell or exhibit for sale goods, wares or merchandise to persons selling and dealing in the same within the town.

(2) Persons offering for sale agricultural products, meats, poultry or other articles of food grown or produced by such persons.

(3) The provisions of this article shall not apply to public utility companies or others operating under franchises granted by the town, insurance salespeople, real estate sales people, and others licensed by the state, political groups or organizations which are subject to financial disclosure under state or federal law.

(4) The provisions of this article shall not apply to commercial agents dealing with local business establishments in the usual course of business.

(5) Persons engaged in interstate commerce.

Sec. 4.03.045 Permit issuance, duration and form.

(a) After review of the application to determine its compliance with section 4.03.042 above, and within ten business days of the receipt of the application, unless it is determined that the applicant has provided false or incomplete information on its application, the Police Department shall either issue a permit, or notify the person applying that the application does

not comply with the requirements of section 4.03.082 above and specifically point out what information or explanation has not been furnished that is required before a permit can be issued.

(b) A permit requested under this division shall be issued for the length of time requested, not to exceed one year.

(c) The town shall prescribe the form of the permit. Each such permit shall be printed in black and the following shall be printed thereon: "The issuance of this permit is not an endorsement by the Town of Prosper or any of its officers or employees." Each permit shall bear a permit number which is the same as the files containing the application filed by the applicant.

Sec. 4.03.046 Identification.

(a) Each solicitor and handbill distributor shall carry with him/her and produce upon request the following information and identification:

(1) Authorization to represent the permittee by holding a copy of the permit issued by the town;

(2) copy of the valid state sales tax certificate, if applicable; and

(3) A valid driver's license or other valid/official photo ID.

(4) Upon issuance of the badge by the police department, the following requirements shall apply:

a. The badge issued shall be in such form and requirement so as to fully identify the person soliciting and will bear a photographic likeness of the solicitor and shall contain an expiration date.

b. The badge shall be valid only for the person to whom it is issued (nontransferable). Each solicitor is also required to carry a state approved picture identification card or a state driver's license as proof of identification.

c. The badge issued shall be carried/displayed by the solicitor in plain sight while he is engaged in soliciting.

d. The badge is and shall remain the property of the town and may be revoked and required to be surrendered at any time for any false or misleading information on the permit application, for violation of any town ordinance, including the provisions set forth in this article, and for violation of any state or federal law.

Sec. 4.03.047 Revocation of permit.

Any permit issued under this article may be revoked by the police department for any of the following reasons:

1. Fraud or misrepresentation in the application for a permit;
2. Fraud or misrepresentation in the course of conducting solicitation activities;
3. Conducting solicitation activities contrary to the conditions of the permit; or

4. Conducting solicitation activities in such a manner as to create or constitute a danger to the public health, safety or welfare.

Upon revocation, the police department shall deliver written notice to the permit holder stating the action taken and the reasons supporting such action. The written notice shall be delivered to the permit holder's place of business or mailed to the permit holder's last known address. The chief of police or designee shall have the authority to seize any and all permit badges possessed by persons conducting business as a solicitor while the official notification process is underway. At such time, any and all solicitation activities conducted under the authority of that permit shall cease. Any appeal of such revocation shall be subject to the provisions of section 4.03.007.

Sec. 4.03.048 Public disclosure.

All applications, whether or not a permit has been issued, shall be public record and shall be available for inspection by members of the public during regular business hours, and copies may be obtained at cost.”

SECTION 3

Any person, firm, corporation, or business entity violating this Ordinance or any provision thereof, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Five Hundred Dollars (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

SECTION 4

Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 5

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6

This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 11TH DAY OF JUNE, 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



POLICE DEPARTMENT

To: Mayor and Town Council

From: Whitney Rehm, Budget Officer & Grants Administrator

**Through: Mario Canizares, Town Manager
Doug Kowalski, Chief of Police**

**Re: FY 2025 MVCPA SB 224 Catalytic Converter Grants Second Solicitation
Grant Application**

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon a resolution authorizing the Town Manager, and/or his/her designee, to apply for the FY 2025 Motor Vehicle Crime Prevention Authority SB 224 Catalytic Converter Grants Grant.

Description of Agenda Item:

The Motor Vehicle Crime Prevention Authority (MVCPA) has authorized the issuance of the Fiscal Year 2025 (FY 2025) Request for Applications (RFA). Senate Bill 224 provides that, “The money deposited to the credit of the general revenue fund for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state... may be appropriated to the Authority for the activities required by this section.” To implement SB 224, the MVCPA is providing grants to local law enforcement taskforces and agencies to combat Catalytic Converter Theft.

To help combat catalytic converter theft in the Town of Prosper, the Police Department will be requesting 4 Flock Camera Trailers \$20,500, Traffic Analytics \$8,000, 3SI's ESO Trackers \$3,250, Flock 911 \$30,400, Flock Integrations (Railroad) \$3600 and 9 Flock Wireless Video Pairs \$22,500. The 4 Flock Camera Trailers will be mobile and allow Prosper PD to place these trailers in areas that have a high likelihood of catalytic converter theft, vehicle thefts and burglary of motor vehicles. Traffic Analytics complements Flock by providing data analytics, providing vehicle counts, and vehicle demographics. The ESO trackers will allow Prosper PD to purchase small GPS trackers that belong to the Town of Prosper instead of borrowing them from other agencies during criminal investigations especially those dealing with catalytic converter theft and other crimes associated with motor vehicles. Flock 911 will allow our officers to respond effectively to Flock hotlist alerts. The integration of the Flock with the railroad will allow our officers to respond to Flock hits near the railroad as well as other town owned cameras. The 9 Flock wireless video pairs will replace cameras at Frontier Park. These equipment requests will complement our existing Flock Safety Program footprint and allow our officers to solve crimes expeditiously.

This grant is funded at 80% if selected by the Motor Vehicle Crime Prevention Authority. The Town of Prosper will be responsible for initially funding the equipment out of General Fund, and the MVCPA will reimburse the Town of Prosper.

This request related to the FY25 Decision Package for FY25.

Budget Impact:

The total funds requested will be approximately \$88,250 and will be funded from the Police Department's Capital Account, 100-6140-20-01. The cost share is 80/20, with an estimated commitment of \$17,560.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

- 1. Solicitation
- 2. Resolution

Town Staff Recommendation:

Town staff recommends the Town Council approve a resolution authorizing the Town Manager, and/or his/her designee, to apply for the FY 2025 Motor Vehicle Crime Prevention Authority SB 224 Catalytic Converter Grants Second Solicitation Grant and approve the authorization to accept the FY 2025 Motor Vehicle Crime Prevention Authority SB 224 Catalytic Converter Grants Second Solicitation Grant, if awarded. A future budget amendment will be requested to account for the grant income and to allocate funding for this project.

Proposed Motion:

I move to accept a resolution authorizing the Town Manager, and/or his/her designee, to apply for the FY 2025 Motor Vehicle Crime Prevention Authority SB 224 Catalytic Converter Grants Second Solicitation Grant and approve the authorization to accept the FY 2025 Motor Vehicle Crime Prevention Authority SB 224 Catalytic Converter Grants Second Solicitation Grant, if awarded.

Only Texas law enforcement agencies through their city or county are eligible to apply for the FY 2025 SB Catalytic Converter Grant funding.

New Grant – These are annual grants that require a minimum cash match of 20% for the program described in the application. Applicants meeting the eligibility requirements may submit a new grant application to the priority established by the MVCPA in the FY 2025 RFA. New applicants shall email MVCPA at GrantsMVCPA@txdmv.gov from an official governmental agency email account to request an account and access be established.

Grant Type

Reimbursement – This is a total program budget reimbursement grant. Applicants that are awarded grants will expend local (agency) funds and then will be reimbursed quarterly, subject to compliance with standard and special conditions as contained in the Statement of Grant Award (SGA), at the agreed rate for all allowable, reasonable, and necessary program costs incurred.

Grant Term

The FY 2025 grant cycle is a one (1) year funding cycle to begin on September 1, 2024, and end August 31, 2025. Subject to availability of funding and grantees' positive program performance the MVCPA may provide a FY 2026 grant using the same on-line application systems and prorated budget values as originally submitted. No obligations or expenses may be incurred or made outside of the grant period(s).

Method of Application

Grant Applications from eligible applicants shall be completely submitted on-line at <https://MVCPA.tamu.edu> on or before 5:00 PM, June 21, 2024. All forms will be completed on-line. The Resolution and all supporting documents must be submitted as attachments.

Resolution Required

A Resolution (Order or Ordinance) by the applicant governing body is required to make application for these funds. The resolution shall provide that the governing body applies for the funds for the purpose provided in statute (SB 224 and this RFA) and agrees to return the grant funds in the event of loss or misuse and designate the officials that the governing body chooses as its agents to make uniform assurances and administer the grant if awarded.

Only the governing body that submits an application needs to adopt and submit a Resolution. Participating jurisdictions in multi-agency taskforces shall agree and commit to the grant through Interlocal Cooperation Contract or agreements as provided under Texas Local Government Code Chapter 362, Texas Government Code Chapter 791, and TxGMS.

In the event a governing body has delegated the application authority to a city manager, chief of police, sheriff or other official, then applicants must submit on-line a copy of the delegation order (documentation) along with the Resolution signed by the official. A sample Resolution is attached as Appendix A.

Program Category

To be eligible for consideration for funding, a taskforce grant application must be designed to support one or more of the following MVCPA program categories (43 TAC §57.14):

Law Enforcement, Detection, and Apprehension - provide financial support to law enforcement agencies for catalytic converter theft and crime enforcement teams (referred to as taskforces). Taskforces will develop

organized methods to combat catalytic converter theft through the enforcement of applicable law. This include recovery of vehicles, clearance of cases, arrest of law violators, and disruption of organized moto vehicle crime. This category includes development of uniform programs to prevent stolen catalytic converters from entering Mexico or being removed from Texas through outbound seaports. Item 5.

Prosecution/Adjudication/Conviction - provide financial support for taskforces to work with prosecutors and the judiciary to implement programs designed to reduce the incidence of catalytic converter theft.

Prevention, Anti-Theft Devices and Automobile Registration - provide financial support for taskforces to work with organizations and communities to reduce the incidence of catalytic converter theft. The application shall demonstrate how financial support will assist motor vehicle owners to reduce catalytic converter theft.

Reduction of the Sale of Stolen Vehicles or Parts - provide financial support for taskforces to work with businesses, organizations, and communities to reduce the sale of stolen vehicles or parts. Applicants will develop organized methods to combat the sale of stolen vehicles and parts using any of the following: vehicle identification number (VIN) inspection; inspections of motor vehicle part and component distribution enterprises; parts labeling and etching methods; and means to detect the fraudulent selling of stolen parts.

Educational Programs and Marketing - provide financial support for taskforces to work with businesses, organizations, and communities to reduce the sale of catalytic converters. Applicants will develop organized methods to combat the sale of stolen catalytic converters using any of the following: vehicle identification number (VIN) inspections; inspections of motor vehicle part and component distribution enterprises; parts labeling and etching methods; and means to detect the fraudulent sale of stolen catalytic converters.

Priority Funding

The MVCPA enabling statute provides that “The authority shall allocate grant funds primarily based on the number of motor vehicles stolen in, or the motor vehicle burglary or theft rate across, and the number of fraud-related motor vehicle crimes committed in the state rather than based on geographic distribution.” (TTC Section 1006.151(c); SB 224). In addition, the following grant features will be given priority consideration in evaluating new grant applications:

Continuing Funded Programs in Compliance with MVCPA Grant Conditions – Applications that provide for the continuation of existing programs that currently meet the program and fiscal reporting conditions of the MVCPA grant program. Applicants must provide the ongoing need and their progress and impactful performance toward detecting and preventing catalytic converter theft.

The applicant must describe the experience and qualifications of investigators used in the program and how utilization of grant inventory and resources for continued operation of these specialized investigative grant programs are useful for state and local governments.

Programs to Combat Organized Catalytic Converter Crime – Applications for detecting and preventing catalytic converter theft enforcement teams that introduce, increase, or expand efforts to detect and prevent theft of catalytic converters by organized crime.

Border and Port Security – Applications that provide specific initiatives to identify and prevent stolen catalytic converters from crossing the border using automatic license plate readers, training of local state and federal personnel in the identification of catalytic converters, and bridge and port inspections.

Use of Technology – Applications that incorporate automatic license plate reader programs, surveillance equipment and other uses of technology to increase the number of stolen catalytic converters recovered and the number of persons arrested for catalytic converter crimes.

Theft of Parts from a Motor Vehicle – Applications that incorporate a reasonable, objective plan to combat and prevent the theft of catalytic converters.

Dedicated Prosecutors – Applications that incorporate a dedicated prosecutor to increase the priority of catalytic converter theft prosecutions and decrease the number of repeat offenders through successful prosecution efforts.

Supporting Documents

Documents that provide evidence of local support or commitment from other officials or agencies for the application may be submitted following the same instructions as the Resolution. Interagency agreements shall be submitted prior to payments being authorized if an award is made. MVCPA recommends that interagency agreements be completed after award determinations are made to ensure correct amounts are reflected in those agreements. All interagency agreements must meet the conditions and elements required in the TxGMS.

Supplanting Prohibited

Grant funds provided by the Authority under this RFA shall not be used to supplant federal, state or local funds that otherwise would be available for the same purposes (43 Texas Administrative Code §57.9). Supplanting means the replacement of other funds with MVCPA grant funds. This shall include using existing resources already available to a program activity as cash match.

NICB – Applicants may enter into formal agreements with the National Insurance Crime Bureau (NICB) to work on grant funded activities. The amount of salary and other direct costs related to the work on grant activity provided by the NICB may be reported. Time certifications are required to be made by the employee for these positions as required by TXGMS.

In-Kind Match

Only include in-kind match if necessary for the local jurisdiction. In-kind match may be used to: 1) reflect the total level of jurisdictions' effort/costs to combat catalytic converter theft; 2) reflect how the grant program fits into jurisdictions' operation; 3) effectively operate a single program with multiple funding streams; and/or 4) contributions from the applicant or third parties that are for grant funded activity. Costs in detail line items shall not be split between in-kind match and grant funding. For example, the entire salary of an officer shall be placed in one expense type rather than split between grant and in-kind.

Reporting and Webinar Attendance Requirements

Applicants that are awarded grants will be required to provide:

Quarterly Progress Reports - The MVCPA requires the submission of quarterly progress reports to demonstrate progress toward meeting goals and activities provided in the grant application. These include: 1) Monthly progress toward meeting statutorily required performance measures; 2) Monthly progress recorded on the Goals, Strategies and Activities report; and 3) Quarterly Summary and Success section. Grantees designated as Border/Port Security grants are required to complete additional sections required by the Texas Legislature.

Quarterly Financial Reports – Reports of actual expenses incurred are required to request funds. All

expenditures must be in accordance with local policies and procedures and grant requirements. Grant shall review all expenditures, ensure all applicable regulations are followed, and maintain documentation that is accurate and complete. All expenses must be supported by appropriate documentation.

Webinar Attendance: One grant financial representative from the applicant agency is required to attend a monthly session via teleconference or webinar that includes information on MVCPA grant administration. One law enforcement officer is required to attend the information sharing and networking sessions on a monthly session via teleconference or webinar that includes law enforcement issues and other MVCPA issues critical to the successful operation of MVCPA taskforces.

Funding Requirements and Conditions

- a) State Funds Availability – All awards by the MVCPA are subject to availability of state funds.
- b) Right of Refusal –The Authority reserves the right to reject any or all of the applications submitted.
- c) Awards – Publishing the RFA does not legally obligate the Authority to fund any programs.
- d) Partial Funding – The Authority may choose to offer funds for all, or any portion of a program submitted in an application.
- e) Substitution –The Authority may offer alternative funding sources, special conditions, or alternative program elements in response to submitted Applications.
- f) Application Required –Registration for on-line access is required. The MVCPA is not responsible for applicants that cannot complete the registration and application process on-time.
- g) No Alternative Application Submission - Paper applications and requests for funding are not accepted in lieu of the on-line grant application process.
- h) Review Criteria–Authority staff and designated MVCPA Board member(s) will review each grant using subjective and objective tools and comparative analysis. The weight given to each section or combination of sections is at the sole discretion of the Authority.
- i) Questions and Clarification –During the review period, the applicant may be contacted by Authority staff to ask questions or to seek clarification regarding information provided in the application. Failure to promptly respond will not disqualify an applicant, but information that is submitted after the review period may not be considered.
- j) Final Selection –The Authority may select and award programs that best meet the statutory purposes and that reflect its current priorities. No appeal may be made from the Authority’s decisions.
- k) Changes in Application –If an applicant proposes changes to be made in the program type or participation of jurisdictions after an award is determined, then the Authority will review the changes and may make modifications (including the amount) or cancel the award as deemed appropriate to the Authority.
- l) Delayed Start –An applicant that is awarded a grant and that does not begin operations within 30 days of the issuance of the Statement of Grant Award is considered terminated.
- m) Application instructions – the MVCPA provides additional details and instructions in the on-line application system that are incorporated by reference as part of this RFA and must be followed during the application and award process.
- n) Program Income – is defined in the TxGMS. Current grantees carrying forward program income to future years will follow the new rules established by the Texas Comptroller and MVCPA Grant Administrative Manual.
- o) TCOLE Certifications Required –All law enforcement agencies regulated by Chapter 1701, Occupations Code must certify that they are in compliance with the Texas Commission on Law Enforcement standards or provide a certification from the Texas Commission on Law Enforcement that states that the requesting agency is in the process of achieving compliance

with said rules.

Selection Process:

Eligible applications will be reviewed. Grant award decisions by MVCPA are final and not subject to judicial review.

Applications that do not meet the stated requirements of this RFA and that are not eligible for review will be notified ten (10) working days after the due date.

Application Workshop

Potential applicants are requested to attend the on-line “Motor Vehicle Crime Prevention Authority Grant Application Workshop” which has been scheduled for: **May 22, 2024 (10:00 AM to 11:30 AM).**

Join us using the following links:

THIS MEETING WILL BE HELD REMOTELY VIA MICROSOFT TEAMS MEETING
Join on your computer, mobile app or room device.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 250 373 407 534

Passcode: 4ZE5Sq

Dial-in by phone

+1 737-787-8456,,870654560# United States, Austin

Phone Conference ID: 870 654 560#

For organizers: [Meeting options](#) |

The informational session will provide details on the grant Application process including grant eligibility requirements, completing the various Application sections, and the grant cycle timeline. At least one representative of the potential grant applicant should be present at this workshop.

Contact Person

William Diggs, MVCPA Director,
Texas Motor Vehicle Crime Prevention Authority
4000 Jackson Avenue
Austin, Texas 78731
(512) 465-1485

GrantsMVCPA@txdmv.gov

Issued in Austin, Texas on May 13, 2024

William Diggs, MVCPA Director

MVCPA Application Checklist

Each Applicant must:

- 1) Complete the on-line Application on or before **5:00 PM, June 21, 2024;**
- 2) Complete the Resolution with the city or county and attach with other supporting documents on or before **5:00 PM, June 21, 2024**

Appendix A

Updated Sample Motor Vehicle Crime Prevention Authority Resolution

Applicants must use the language below to meet the minimum legal elements to execute an agreement with the MVCPA through the grant application process. Cities and counties not wanting to use the sample below must address all the legal elements contained herein.

2025 Blank City/ County Resolution or Order or Ordinance
Motor Vehicle Crime Prevention Authority

2025 BLANK Resolution

Taskforce Grant Program

WHEREAS, under the provisions of the Texas Transportation Code Chapter 1006 and Texas Administrative Code Title 43; Part 3; Chapter 57, entities are eligible to receive grants from the Motor Vehicle Crime Prevention Authority to provide financial support to law enforcement agencies for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams; and

WHEREAS, this grant program will assist this jurisdiction to combat motor vehicle theft, motor vehicle burglary and fraud-related motor vehicle crime; and

WHEREAS, BLANK has agreed that in the event of loss or misuse of the grant funds, BLANK assures that the grant funds will be returned in full to the Motor Vehicle Crime Prevention Authority.

NOW THEREFORE, BE IT RESOLVED and ordered that TITLE, is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the grant application for the Motor Vehicle Crime Prevention Authority Grant Program and all other necessary documents to accept said grant; and

BE IT FURTHER RESOLVED that TITLE, is designated as the Program Director and TITLE, is designated as the Financial Officer for this grant.

Adopted this _____ day of _____, 2024.

NAME
TITLE: County Judge /Mayor/ City Manager

TOWN OF PROSPER, TEXAS**RESOLUTION NO. 2024-XX**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AUTHORIZING THE TOWN TO SUBMIT A GRANT APPLICATION TO THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY FOR THE 2025 SB 224 CATALYTIC CONVERTER GRANT PROGRAM; MAKING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper finds it in the best interests of the citizens of the Town of Prosper ("Town") that the Town submit a grant application for the SB 224 Catalytic Converter Grant Program to be funded by the Motor Vehicle Crime Prevention Authority Taskforce Grant Program for the 2024 fiscal year; and

WHEREAS, under the provisions of the Texas Transportation Code Chapter 1006 and Texas Administrative Code Title 43; Part 3; chapter 57, entities are eligible to receive grants from the Motor Vehicle Crime Prevention Authority to provide financial support to law enforcement taskforces and agencies for economic motor vehicle theft, including catalytic converter theft; and

WHEREAS, this grant program will assist this jurisdiction to combat catalytic converter theft; and

WHEREAS, the Town agrees to provide applicable matching funds for said project as required by the Motor Vehicle Crime Prevention Authority grant application; and

WHEREAS, the Town agrees that in the event of the loss or misuse of the grant funds, the Town agrees and assures that the funds will be returned to the Motor Vehicle Crime Prevention Authority in full; and

WHEREAS, the Town designates the Budget Officer & Grants Administrator as the Authorized Official to apply for, accept, reject, alter, or terminate the grant application for the Motor Vehicle Crime Prevention Authority Grant Program and all other necessary documents to accept said grant on behalf of the Town; and

WHEREAS, the Town designates that Jon Kundak is designated as the Program Director and Marcus Northcutt is designated as the Financial Officer for this grant.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

The findings set forth above are incorporated into the body of this Resolution as if fully set forth herein.

SECTION 2

The Town Council of the Town of Prosper does hereby approve the submission of the grant application for the Motor Vehicle Crime Prevention Authority 2024 SB 224 Catalytic Converter Grant Program.

SECTION 3

This Resolution shall be effective from and after its passage by the Town Council.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS THE ___ DAY OF _____, 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



COMMUNICATIONS

To: Mayor and Town Council

From: Robyn Battle, Executive Director
Leigh Johnson, IT Director

Through: Mario Canizares, Town Manager

Re: CivicPlus Website Hosting Renewal Agreement

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a renewal agreement with CivicPlus for website hosting services for an initial term of one year in the amount of \$16,990, with annual renewals for three additional years in an amount not to exceed an increase of 5% per year.

Description of Agenda Item:

The Town of Prosper entered into an agreement with CivicPlus on July 26, 2022, to design and launch the new Town website. The initial term of the agreement was for two years, and it included a provision for a 5% annual increase beginning in year 2 of service. Year 2 of the initial agreement ends in July 2024.

In April 2024, Town staff was notified that CivicPlus would be raising the Town's renewal rate by 24% at the end of our current term, effective in July 2024. The cost increase was attributed to inflation, more robust cybersecurity protections, and product enhancements. After several weeks of discussion, Town staff was able to negotiate the renewal increase down to 12%, and lock in a not-to-exceed increase of 5% for three additional years. The change in contract terms necessitates approval of a new renewal agreement.

Budget Impact:

This service is currently budgeted in the Information Technology Contract Services account 100-5480-10-06. The renewal cost for FY 2023-2024 is \$16,990, which is an increase of \$3,012 over the current annual budget for this contract. Annual renewals for three additional years will not exceed 5% per year for a total not-to-exceed cost of \$73,230.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has previously approved the attached documents as to form and legality.

Attached Documents:

1. CivicPlus Renewal Quote
2. CivicPlus Agreement – July 2022

Town Staff Recommendation:

Town Staff recommends the Town Council authorize the Town Manager to execute a renewal agreement with CivicPlus for website hosting services for an initial term of one year in the amount of \$16,990, with annual renewals for three additional years in an amount not to exceed an increase of 5% per year.

Proposed Motion:

I move to authorize the Town Manager to execute a renewal agreement with CivicPlus for website hosting services for an initial term of one year in the amount of \$16,990, with annual renewals for three additional years in an amount not to exceed an increase of 5% per year.



CivicPlus

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #:
Date:
Customer:

Q-71897-1
4/12/2024 3:33 PM
PROSPER, TEXAS

QTY	Product Name	DESCRIPTION	TOTAL
1.00	CivicSend Annual - CivicEngage Central Renewal	CivicSend Annual	USD 1,645.70
1.00	CivicEngage Custom IdP Integration Annual Fee Renewal	Custom IdP Integration Annual Fee	USD 1,299.24
1.00	Annual - CivicEngage Central Renewal	Annual - CivicEngage Central	USD 2,671.08
1.00	Hosting & Security Annual Fee - CivicEngage Central Renewal	Hosting & Security Annual Fee - CivicEngage Central	USD 823.27
1.00	SSL Management – CP Provided Only Renewal	SSL Management - CP Provided Only 1 per domain (Annually Renews): https://www.prospertx.gov	USD 61.87
1.00	Design Center Pro Annual Fee - CivicEngage Central Renewal	Design Center Pro Annual Fee	USD 5,196.97
1.00	CivicPlus Chatbot Subscription Renewal	Powered by AI technology, the Frase Answer Engine for Local Government uses website content to answer citizen questions. This solution includes dashboard analytics and language translation.	USD 5,292.00
Annual Recurring Services - Initial Term			USD 16,990.13
Annual Recurring Services – Year 2			USD 17,839.64
Annual Recurring Services – Year 3			USD 18,731.62
Annual Recurring Services – Year 4			USD 19,668.20

1. This renewal Statement of Work ("SOW") is between Town of Prosper ("Customer") and CivicPlus, LLC and shall be subject to the terms and conditions of the Master Services Agreement ("MSA") and the applicable Solutions and Products terms found at: www.civicplus.help/hc/p/legal-stuff (collectively, the "Terms and Conditions"). By signing this SOW, Customer expressly agrees to the Terms and Conditions throughout the Term of this SOW. The Terms and Conditions form the entire agreement between Customer and CivicPlus (collectively, referred to as the "Agreement"). The Parties agree the Agreement shall supersede and replace all prior agreements between the Parties with respect to the services provided by CivicPlus herein (the "Services").

2. This SOW shall remain in effect for an initial term starting at the Customer's next renewal and invoice date of 7/26/2024 and running for four years ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for additional 1-year renewal terms ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".

3. Unless terminated, Customer shall be invoiced on 7/26 for the Annual Recurring Services on each Renewal Date of each calendar year subject to an annual increase of 5% each Renewal Term.

Acceptance

Item 6.

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW. For CivicPlus Billing Information, please visit <https://www.civicplus.com/verify/>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By:

By:



Name:

Name:

Amy Vikander

Title:

Title:

Senior Vice President of Customer Success

Date:

Date:

5/20/2024



CivicPlus

Master Services Agreement

This Master Services Agreement (this “Agreement”) governs all Statements of Work (“SOW”) entered into by and between CivicPlus, LLC (“CivicPlus”) and the client entity identified on the SOW (“Client”). This Agreement governs the use and provision of any Services purchased by Client, as described in any signed SOW, and the effective date of this Agreement shall commence on the date of signature of the SOW (“Effective Date”). If a SOW has not been executed, then the Effective Date shall be determined as the start date of implementation of any software solution or codification services by CivicPlus for Client. CivicPlus and Client referred to herein individually as “Party” and jointly as “Parties”.

Recitals

I. WHEREAS, CivicPlus is engaged in the business of developing and providing access to proprietary community engagement and government content management software solutions, platforms and associated services (the “Services”); and

II. WHEREAS, Client wishes to engage CivicPlus for the procurement of the Services and/or receive a license subscription for the ongoing use of the Services, as set forth in the SOW;

NOW, THEREFORE, Client and CivicPlus agree as follows:

Agreement

Term & Termination

1. This Agreement shall commence on the Effective Date and shall remain in full force and effect for as long as any SOW is in effect between CivicPlus and Client, or Services are being provided by CivicPlus to Client, unless terminated in accordance with this §1 or as otherwise provided in this Agreement (the “Term”). Either Party may terminate this Agreement or any SOW as set forth in such SOW, or at its discretion, effective immediately upon written notice to the other Party, if the other Party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving notice of such breach. A delinquent Client account remaining past due for longer than 90 days is a material breach by Client and is grounds for CivicPlus termination.

2. Upon termination of this Agreement or any SOW for any reason, (a) the licenses granted for such relevant SOW by §11 below will terminate and Client shall cease all use of the CivicPlus Property and Services associated with the terminated SOW and (b) any amounts owed under outstanding invoices or future planned billing for the completed development and implementation of the Client’s Services, as defined in the SOW (“Project Development”), shall immediately become due in full and payable. Sections 7, 8, 10, 14, 15, 18, 29 -31, 39, and 40 will survive any expiration or termination of this Agreement.

3. At any time during the Term, CivicPlus may, immediately upon notice to Client, suspend access to any Service due to a threat to the technical security or technical integrity of the Services.

Invoicing & Payment Terms

4. Client will pay the amounts owed to CivicPlus for the Project Development, subscription and licensing, and annual hosting, support and maintenance services (“Annual Recurring Services”) in accordance with the payment schedule set forth on the applicable SOW. Invoices shall be sent electronically to the individual/entity designated in the SOW’s contact sheet that is

required to be filled out and submitted by Client (the "Contact Sheet"). Client shall provide accurate, current and complete information of Client's legal business name, address, email address, and phone number in the Contact Sheet upon submission of a signed SOW. Client will maintain and promptly update the Contact Sheet information if it should change. Upon Client's request, CivicPlus will mail hard-copy invoices for a \$5.00 convenience fee.

5. Each SOW will state the amount of days from date of invoice payment is due. Unless otherwise limited by law, a finance charge of 1.5 percent (%) per month or the maximum rate permitted by applicable law, whichever is less, will be added to past due accounts from due date until paid. Payments received will be applied first to finance charges, then to the oldest outstanding invoice(s). If the Client's account exceeds 60 days past due, support will be discontinued until the Client's account is made current. If the Client's account exceeds 90 days past due, Annual Recurring Services will be discontinued, and the Client will no longer have access to the Services until the Client's account is made current. Client will be given 15 days' notice prior to discontinuation of Services for non-payment.

6. During the performance of services during Project Development, if a change that requires repeated efforts to previously approved work product and such change causes CivicPlus to incur additional expenses (i.e. airline change fees, resource hours, consultant fees, Client does not show up for scheduled meetings or trainings), Client agrees to reimburse CivicPlus for such fees, not to exceed \$1,000 per CivicPlus employee. CivicPlus shall notify Client prior to incurring such expenses and shall only incur those expenses which are approved by Client.

Ownership & Content Responsibility

7. Upon full and complete payment of amounts owed for Project Development under the applicable SOW, Client will own the website graphic designs, webpage or Services content, module content, importable/exportable data, and archived information ("Client Content") created by CivicPlus on behalf of Client pursuant to this Agreement. "Client Content" also includes any elements of text, graphics, images, photos, designs, artworks, logos, trademarks, services marks, and other materials or content which Client provides or inputs into any website, software or module in connection with any Services. Client Content excludes any content in the public domain; and any content owned or licensed by CivicPlus, whether in connection with providing Services or otherwise.

8. Upon completion of the Project Development, Client will assume full responsibility for Client Content maintenance and administration. Client, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Content. Client hereby grants CivicPlus a worldwide, non-exclusive right and license to reproduce, distribute and display the Client Content as necessary to provide the Services. Client represents and warrants that Client owns all Client Content or that Client has permission from the rightful owner to use each of the elements of Client Content; and that Client has all rights necessary for CivicPlus to use the Client Content in connection with providing the Services.

9. At any time during the term of the applicable SOW, Client will have the ability to download the Client Content and export the Client data through the Services. Client may request CivicPlus to perform the export of Client data and provide the Client data to Client in a commonly used format at any time, for a fee to be quoted at time of request and approved by Client. Upon termination of the applicable SOW for any reason, whether or not Client has retrieved or requested the Client data, CivicPlus reserves the right to permanently and definitively delete the Client Content and Client data held in the Services thirty (30) days following termination of the applicable SOW. During the thirty (30) day period following termination of the SOW, regardless of the reason for its termination, Client will not have access to the Services.

10. Intellectual Property in the software or other original works created by or licensed to CivicPlus, including all software source code, documents, and materials used in the Services ("CivicPlus Property") will remain the property of CivicPlus. CivicPlus Property specifically excludes Client Content. Client shall not (i) license, sublicense, sell, resell, reproduce, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any CivicPlus Property in any way, except as specifically provided in the applicable SOW; (ii) adapt, alter, modify or make derivative works based upon any CivicPlus Property; (iii) create internet "links" to the CivicPlus Property software or "frame" or "mirror" any CivicPlus

Property administrative access on any other server or wireless or internet-based device that may allow third party entities, other than Client, to use the Services; (iv) reverse engineer, decompile, disassemble or otherwise attempt to obtain the software source code to all or any portion of the Services; or (v) access any CivicPlus Property in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of any CivicPlus Property, or (c) copy any ideas, features, functions or graphics of any CivicPlus Property. The CivicPlus name, the CivicPlus logo, and the product and module names associated with any CivicPlus Property are trademarks of CivicPlus, and no right or license is granted to use them outside of the licenses set forth in this Agreement.

11. Provided Client complies with the terms and conditions herein, the relevant SOW, and license restrictions set forth in §10, CivicPlus hereby grants Client a limited, nontransferable, nonexclusive, license to access and use the CivicPlus Property associated with any valid and effective SOW, for the term of the respective SOW.

12. All CivicPlus helpful information and user's guides for the Services ("Documentation") are maintained and updated electronically by CivicPlus and can be accessed through the CivicPlus "Help Center". CivicPlus does not provide paper copies of its Documentation. Client and its Users are granted a limited license to access Documentation as needed. Client shall not copy, download, distribute, or make derivatives of the Documentation.

13. Client acknowledges that CivicPlus may continually develop, alter, deliver, and provide to the Client ongoing innovation to the Services, in the form of new features and functionalities. CivicPlus reserves the right to modify the Services from time to time. Any modifications or improvements to the Services listed on the SOW will be provided to the Client at no additional charge. In the event that CivicPlus creates new products or enhancements to the Services ("New Services"), and Client desires these New Services, then Client will have to pay CivicPlus the appropriate fee for the access to and use of the New Services. If Client disputes any change, then CivicPlus shall use its reasonable best efforts to resolve the dispute.

14. CivicPlus in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Client to CivicPlus in connection with its access to and use of the Services (all reports, comments and suggestions provided by Client hereunder constitute, collectively, the "Feedback"). Client hereby grants to CivicPlus a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback in the CivicPlus products and services.

Indemnification

15. Unless prohibited by the law of Client's state, the Parties shall defend, indemnify and hold the other Party, its partners, employees, and agents harmless from and against any and all third party lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses, including attorney's fees, of any kind, without limitation, arising out of the negligent actions and omissions, or intentionally malicious actions or omissions of the indemnifying Party or its affiliates, partners, employees, and agents, directly associated with this Agreement and the installation and ongoing operations of Services contemplated by the SOW. This section shall not apply to the extent that any lawsuits, claims, demands, penalties, losses, fines, liabilities, damages, and expenses is caused by the negligence or willful misconduct on the part of the indemnified Party.

Responsibilities of the Parties

16. CivicPlus will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier, licensor or other third-party service provider whose facilities or services are used in furnishing any portion of the Service received by the Client.

17. CivicPlus will not be liable for any failure of performance that is caused by or the result of any act or omission by Client or any entity employed/contracted on the Client's behalf. During Project Development, Client will be responsive and cooperative with CivicPlus to ensure the Project Development is completed in a timely manner.

18. Client agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-user's personal data on any Service provided by CivicPlus. Client further agrees that CivicPlus has no responsibility for the use or storage of end-users'

personal data in connection with the Services or the consequences of the solicitation, collection, storage, or other use by Client or by any third party of personal data.

19. Client is responsible for all activity that occurs under Client's accounts by or on behalf of Client. Client agrees to (a) be solely responsible for all designated and authorized individuals chosen by Client ("User") activity, which must be in accordance with this Agreement and the CivicPlus [Terms of Use](#); (b) be solely responsible for Client data; (c) obtain and maintain during the term all necessary consents, agreements and approvals from end-users, individuals or any other third parties for all actual or intended uses of information, data or other content Client will use in connection with the Services; (d) use commercially reasonable efforts to prevent unauthorized access to, or use of, any User's log-in information and the Services, and notify CivicPlus promptly of any known unauthorized access or use of the foregoing; and (e) use the Services only in accordance with applicable laws and regulations.

20. The Parties shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use and provision of any of the Services or CivicPlus Property.

21. CivicPlus shall not be responsible for any act or omission of any third-party vendor or service provider that Client has selected to integrate any of its Services with.

22. If implementation services, such as consulting or training, are purchased by Client and are not used solely due to the inaction or unresponsiveness of Client during the implementation period, then these services shall expire within 30 days after implementation closeout. The Client may choose to re-schedule any unused implementation services during this 30 day period as mutually agreed upon by the Parties. Any implementation services that have not been used or rescheduled shall be marked complete and closed upon the expiration of the 30 day period.

Data Security

23. CivicPlus shall, at all times, comply with the terms and conditions of its [Privacy Policy](#). CivicPlus will maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of Client data. Except (a) in order to provide the Services; (b) to prevent or address service or technical problems in connection with support matters; (c) as expressly permitted in writing by Client; or (d) in compliance with our [Privacy Policy](#), CivicPlus will not modify Client data or disclose Client data, unless specifically directed by Client or compelled by law. Notwithstanding the foregoing, CivicPlus reserves the right to delete known malicious accounts without Client authorization.

24. Client acknowledges and agrees that CivicPlus utilizes third-party service providers to host and provide the Services and store Client data and the protection of such data will be in accordance with such third party's safeguards for the protection and the security and confidentiality of Client's data.

25. CivicPlus may offer Client the ability to use third-party applications in combination with the Services. Any such third-party application will be subject to acceptance by Client. In connection with any such third-party application agreed to by Client, Client acknowledges and agrees that CivicPlus may allow the third-party providers access to Client data as required for the interoperation of such third-party application with the Services. The use of a third-party application with the Services may also require Client to agree to a separate agreement or terms and conditions with the provider of the third-party application, which will govern Client's use of such third-party application.

26. In the event of a security breach at the sole fault of the negligence, malicious actions, omissions, or misconduct of CivicPlus, CivicPlus, as the data custodian, will comply will all remediation efforts as required by applicable federal and state law.

CivicPlus Support

27. CivicPlus will use commercially reasonable efforts to perform the Services in a manner consistent with applicable industry standards, including maintaining Services availability 24 hours a day, 7 days a week. Client will have 24/7 access to the online

CivicPlus Help Center (civicplus.help) to review use articles, software best practices, receive maintenance release notes, as well as submit and monitor omni-channel support tickets and access solution specific support contact methods (<https://www.civicplus.help/hc/en-us/requests/new>).

28. CivicPlus provides live support engineers based in the domestic United States to respond to basic questions concerning use and configuration, to diagnose software code-related errors, and proactively identify potential systems issues. CivicPlus support engineers serve a preliminary function in the agile development process and escalate defects to software developers or architects for remediation. For security purposes, CivicPlus support engineers are not permitted to modify user accounts, and permissions nor distribute access outside of accounts established by means of a support interaction for testing. Client delegated Users may receive tutorials and guidance on account modifications but will perform the action themselves.

29. CivicPlus support hours span between the hours of 7 am to 7 pm CST, but may vary by product. Client will have 24/7 access to the online CivicPlus Help Center (civicplus.help) to obtain each product's support hours, review use articles, software best practices, receive maintenance release notes, as well as submit and monitor omni-channel support tickets and access solution specific support contact methods (<https://www.civicplus.help/hc/en-us/requests/new>). After-hours support is available by toll-free phone call only. Non-emergency support requested outside of support hours will be subject to additional fees, such fees will be quoted to Client at the time of the request and will be subject to Client acceptance and invoiced the next business day following the non-emergency support. CivicPlus shall have the sole discretion to determine whether support requests qualify as an emergency, exceed reasonable use or are outside the scope of services outlined in any SOW.

30. If a reported problem cannot be solved during the first support interaction, Client will be provided a ticket number that will be used as communication method throughout ticket escalation until a solution is provided. Support service does not include support for errors caused by third party products or applications for which CivicPlus is not responsible.

Marketing

31. Client hereby authorizes CivicPlus to use Client's name and logo on CivicPlus's website and in sales and marketing presentations. Such authorization may be withdrawn by Client at any time for any reason or no reason at all upon written notice to CivicPlus. Client may publicly refer to itself as a customer of the CivicPlus Services, including on Client's website and in sales presentations. Notwithstanding the foregoing, Each Party hereby grants the other a limited, worldwide, license to use the other's logo in conformance with such Party's trademark usage guidelines and solely for the purpose set forth in this §28. In no event will either party issue a press release publicly announcing this relationship without the approval of the other party, such approval not to be unreasonably withheld.

Limitation of Liability

32. CivicPlus' liability arising out of or related to this Agreement, or any associated SOW, will not exceed the Annual Recurring Services amounts paid by Client in the year prior to such claim of liability.

33. In no event will CivicPlus be liable to Client for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement.

34. The liabilities limited by Section 29 and 30 apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if Client is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if Client's remedies fail of their essential purposes. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.

Warranties and Disclaimer

35. Each person signing the SOW, or otherwise agreeing to the terms of this Agreement, represents and warrants that he or she is duly authorized and has legal capacity to execute and bind the respective Party to the terms and conditions of the SOW and this Agreement. Each Party represents and warrants to the other that the execution and delivery of the SOW and the performance

of such Party's obligations thereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

36. CivicPlus warrants that the Services will perform substantially in accordance with documentation and marketing proposals, and free of any material defect. CivicPlus warrants to the Client that, upon notice given to CivicPlus of any defect in design or fault or improper workmanship, CivicPlus will remedy any such defect. CivicPlus makes no warranty regarding, and will have no responsibility for, any claim arising out of: (i) a modification of the Services made by anyone other than CivicPlus, even in a situation where CivicPlus approves of such modification in writing; or (ii) use of the Services in combination with a third party service, web hosting service, or server not authorized by CivicPlus.

37. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, CIVICPLUS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A PRIOR COURSE OF DEALING.

38. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY CIVICPLUS TO CLIENT AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

Force Majeure

39. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, pandemic, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civic disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

Taxes

40. The amounts owed for the Services exclude, and Client will be responsible for, all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity in connection with the Services (excluding taxes based solely on CivicPlus's income). If the Client is tax-exempt, the Client must provide CivicPlus proof of their tax-exempt status, within fifteen (15) days of contract signing, and the fees owed by Client under this Agreement will not be taxed. If such exemption certificate is challenged or held invalid by a taxing authority then Client agrees to pay for all resulting fines, penalties and expenses.

Other Documents

41. This Agreement, including all exhibits, amendments, and addenda hereto and all SOWs, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement or any SOW will be effective unless in writing and signed by each Party. However, to the extent of any conflict or inconsistency between the provision in the body of this Agreement and any exhibit, amendment, or addenda hereto or any SOW, the terms of such exhibit, amendment, addenda or SOW will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Client purchase order or other order documentation (excluding SOWs) will be incorporated into or form any part of this Agreement, all such terms or conditions will be null and void, unless such term is to refer and agree to this Agreement .

Interlocal Purchasing Consent/ Cooperative Purchasing

42. With the prior approval of CivicPlus, which may be withheld for any or no reason within CivicPlus's sole discretion, this Agreement and any SOW may be extended to any public entity in Client's home-state to purchase at the SOW prices and specifications in accordance with the terms stated herein.

43. To the extent permitted by law, the terms of this Agreement and set forth in one or more SOW(s) may be extended for use by other local government entities upon execution of a separate agreement, SOW, or other duly signed writing by and between CivicPlus and such entity, setting forth all of the terms and conditions for such use, including applicable fees and billing terms.

Miscellaneous Provisions

44. The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

45. The Parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting Party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

46. The Parties will use reasonable efforts to resolve any dispute between them in good faith prior to initiating legal action.

47. This Agreement and any SOW, to the extent signed and delivered by means of a facsimile machine or electronic mail, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. The Parties agree that an electronic signature is the legal equivalent of its manual signature on this Agreement and any SOW. The Parties agree that no certification authority or other third party verification is necessary to validate its electronic signature and that the lack of such certification of third party verification will not in any way affect the enforceability of the Parties' electronic signature or any resulting agreement between CivicPlus and Client.

48. Due to the rapidly changing nature of software as a service and digital communications, CivicPlus may unilaterally update this Agreement from time to time. In the event CivicPlus believes such change is a material alteration of the terms herein, CivicPlus will provide Client with written notice describing such change via email or through its website. Client's continued use of the Services following such updates constitutes Client's acceptance of the same. In the event Client rejects the update to the terms herein, Client must notify CivicPlus of its objection within ten (10) days receipt of notice of such update.


CivicPlus

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #:

Q-21644-2

Date:

12/29/2021 11:28 AM

Expires On:

8/31/2022

Product:

CivicEngage

Client:

Prosper TX - CivicEngage

Bill To:

Prosper TX - CivicEngage

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Jacob Bertram	x	bertram@civicplus.com		Net 30

CivicEngage - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
6.00	System Training (4h, virtual) - CivicEngage	CivicEngage System Training - Virtual, Half Day Block	One-time
1.00	Annual - CivicEngage Central	Annual - CivicEngage Central	Renewable
1.00	Hosting & Security Annual Fee - CivicEngage Central	Hosting & Security Annual Fee - CivicEngage Central	Renewable
1.00	SSL Management – CP Provided Only	SSL Management – CP Provided Only 1 per domain (Annually Renews)	Renewable
1.00	DNS Hosting for .GOV – Annual Fee	DNS Hosting for .GOV – Annual Fee - https://www.prospertx.gov/	Renewable
1.00	Premium Implementation - CivicEngage	Premium Implementation	One-time
250.00	Content Development - 1 Page - CivicEngage	Content Development - 1 Page - CivicEngage	One-time
1.00	Agendas & Minutes Migration - PDF - 100 Meetings - CivicEngage	Content Migration : Agendas & Minutes - Per 100 Meetings (Approx. 1 year)	One-time
1.00	CivicSend Annual - CivicEngage Central	CivicSend Annual	Renewable
1.00	CivicSend Implementation - CivicEngage Central	CivicSend Implementation	One-time
4.00	Virtual Content Consulting - CivicEngage	Virtual Content Consulting 1/2 day block - CivicEngage	One-time
1.00	CivicEngage CP Media Implementation	CP Media Implementation	One-time

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	CivicEngage Media Annual Fee	Unlimited storage, unlimited users, up to 3 concurrent streams	Renewable
1.00	CivicEngage Custom IdP Integration Package	Custom IdP Integration Package Custom IdP Integration Annual Fee Custom IdP Integration Implementation Fee	Renewable
1.00	CivicEngage Custom IdP Integration Annual Fee	Custom IdP Integration Annual Fee	Renewable
1.00	CivicEngage Custom IdP Integration Implementation Fee	Custom IdP Integration Implementation Fee	One-time
1.00	CivicPlus Chatbot Subscription	Powered by AI technology, the Frase Answer Engine for Local Government uses website content to answer citizen questions. This solution includes dashboard analytics and language translation.	Renewable
Total Investment - Year 1			USD 48,860.00
Annual Recurring Services - Year 2			USD 15,225.00

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at <https://www.civicplus.com/master-services-agreement> ("MSA"), to which this SOW is hereby attached as the CivicEngage Statement of Work. By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.
2. This SOW shall remain in effect for an initial term equal to 365 days from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".
3. The Total Investment - Year 1 will be invoiced as follows:
 - a. Upon signing this SOW, thirty percent (30%) of the Total Investment Year 1 Fees;
 - b. The earlier of 6 months from signing or upon completion of CivicEngage Implementation (completion of training), the remaining seventy percent (70%) of the Total Investment Year 1.
4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 2 of service. Client will pay all invoices within 30 days of the date of such invoice.
5. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed as time sensitive, such as calendar or blog content, during the Project Development.
6. If a Recurring Redesign line item is included with the Client's quote in this SOW, starting after 48 months of continuous service under this SOW, Client shall be entitled to receive a redesign at no additional cost. Client may initiate such redesign any time after 48 months of continuous service. Upon the initiation of an eligible redesign project, Client may begin accumulating eligibility towards a subsequent redesign after another 48 months of continuous service. Redesigns that include additional features not available on the original website may be subject to additional charges. Additional features include, but are not limited to, additional modules and integration of third-party software. Recurring Redesigns are eligible for the website, subsite,

and department headers included in this SOW only. Any subsequently purchased website, subsite, and department header shall not be included in a redesign hereunder.

7. Client allows CivicPlus to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages. Client understands that the pricing and any related discount structure provided under this SOW assumes such perpetual permission.
8. Client understands that the services contracted for herein (the "Services") do not collect, and CivicPlus discourages Client from soliciting and collecting, any personally identifiable information ("PII"), personal health information ("PHI"), payment card industry information ("PCI") or any other financial data from its users. CivicPlus cannot monitor and control Client's actions; therefore, in the event Client solicits and stores any PII, PHI, PCI or other financial data, it is at Client's sole discretion and risk. Client as the data owner, and not CivicPlus, is solely responsible for the applicable laws and regulations regarding any data breach involving such data, including breach notification and credit monitoring requirements.
9. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, CIVICPLUS MAKES NO REPRESENTATION OR EXTENDS ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE CLIENT WITH RESPECT TO ANY TECHNOLOGY OR OTHER SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL OF THE FOREGOING.
10. Client agrees to use the Service in ways that conform to all applicable laws and regulations. Client agrees not to make any attempt to gain unauthorized access to the Services and/or any of CivicPlus' systems or networks. Client agrees that CivicPlus shall not be responsible or liable for the content of messages created by Client, or by those who access Service.
11. Client understands that the Services must crawl over Client's entire site and scrape information for successful performance. Client shall be solely responsible for obtaining permission from any third-party whose content may be crawled and/or scraped by the usage of the Services. In no event shall CivicPlus be liable to Client or any third-party, for any claim, action, liability, or damages, arising out of or related to the Services crawling over and/or scraping any third-party system and/or content. The cost of the Services listed in this SOW is for one domain, limited to ten crawled websites, if Client requires more domains or crawled websites, please reach out to your CivicPlus representative.
12. Notwithstanding anything to the contrary, CivicPlus and/or its partners shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client data and data derived therefrom), and CivicPlus and/or its partners will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other CivicPlus offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

Signature Page to Follow.

Acceptance


By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: <https://www.civicplus.com/master-services-agreement>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

By: 
Name: Harlan Jefferson
Title: Town Manager
Date: 7/21/2022

CivicPlus

By: 
Name: Amy Vikander
Title: Senior VP of Customer Success
Date: 7/21/2022

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization Town of Prosper URL www.prospertx.gov
 Street Address 250 W. First Street
 Address 2 Prosper TX 75078
 City Prosper State TX Postal Code 75078

CivicPlus provides telephone support for all trained clients from 7am -7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone Robyn Battle 214-796-6639

Emergency Contact & Mobile Phone Leigh Johnson 214-810-6646

Emergency Contact & Mobile Phone

Billing Contact Robyn Battle E-Mail ap@prospertx.gov

Phone 972-369-1011 Ext. Fax

Billing Address PO Box 307

Address 2

City Prosper State TX Postal Code 75078

Tax ID # 75-6000642 Sales Tax Exempt # 75-6000642

Billing Terms Net 30 Account Rep

Info Required on Invoice (PO or Job #) PO #

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [] or N []

Please list all external sources:

Contract Contact Robyn Battle Email rbattle@prospertx.gov

Phone 214-796-6639 Ext. Fax

Project Contact Robyn Battle Email rbattle@prospertx.gov

Phone 214-796-6639 Ext. Fax



**Master Service Agreement and Statement of Work
Addendum**

THIS Master Services Agreement and Statement of Work Addendum ("Addendum") hereby sets forth the (i) additional terms and conditions applicable to the Master Services Agreement, found at: [www.civicplus.com/master-services-agreement], and/or Statement of Work ("Agreements") and/or (ii) amendments to specific provisions of the terms and conditions which exist in the Agreements (collectively, the "Special Terms"), as described below, as agreed upon by CivicPlus and Fenton, MO. The Special Terms shall be deemed to amend, modify, supplement, replace and/or supersede (as applicable) any inconsistent provisions of the Agreements, to the extent of the inconsistency.

ALL TERMS AND CONDITIONS OF THE AGREEMENTS NOT EXPRESSLEY MODIFIED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

Capitalized terms used and not defined herein shall have the meanings assigned to them in the Agreements (to which this Addendum is attached and incorporated).

1.
AMENDMENTS



The terms and conditions of the Agreement are hereby amended as follows:

MSA #31 Client hereby authorizes CivicPlus to use Client's name and logo on CivicPlus's website and in sales and marketing presentations. Such authorization may be withdrawn by Client at any time for any reason or no reason at all upon written notice to CivicPlus. Client may publicly refer to itself as a customer of the CivicPlus Services, including on Client's website and in sales presentations. Notwithstanding the foregoing, Each Party hereby grants the other a limited, worldwide, license to use the other's logo in conformance with such Party's trademark usage guidelines and solely for the purpose set forth in this §31. In no event will either party issue a press release publicly announcing this relationship without the approval of the other party, such approval not to be unreasonably withheld.

MSA #34 The liabilities limited by Section 32 and 33 apply: (a) to liability for negligence; (b) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (c) even if Client is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (d) even if Client's remedies fail of their essential purposes. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.

Acceptance

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their duly authorized representatives as of the dates below.

Client	CivicPlus
By: 	By: 
Name: <u>Harlan Jefferson</u>	Name: <u>Amy Vikander</u>
Title: <u>Town Manager</u>	Title: <u>Senior VP of Customer Success</u>
Date: <u>7/26/2022</u>	Date: <u>7/21/2022</u>



COMMUNICATIONS

To: Mayor and Town Council

From: Robyn Battle, Executive Director

Through: Mario Canizares, Town Manager

Re: Downtown Monumentation Design

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 2. Development of Downtown as Destination

Agenda Item:

Consider and act upon authorizing the Town Manager to execute an Agreement for Professional Services between the Town of Prosper and Olsson Studio related to design of monumentation in Downtown Prosper for an amount not to exceed \$66,500.

Description of Agenda Item:

The Downtown Advisory Committee (DTAC) was appointed in November 2023 for the purpose of making recommendations on the implementation of the Downtown Master Plan. Since that time, the DTAC has made several recommendations on improvements to Downtown Prosper.

Among the projects the DTAC is considering is a series of decorative archways and/or monuments that will create a unique identity for Downtown Prosper and establish Downtown as a destination for residents and visitors. In March 2024, the DTAC recommended the Town seek Statements of Qualification (SOQ) from qualified firms for the conceptual design and planning of the Downtown Archway Structures project. The Town received five proposals and the top three firms were invited to give presentations to the DTAC. Olsson Studio was chosen as the top firm for the project. Olsson Studio has experience with similar projects, including Grandscape in The Colony.

The Scope of Services in the attached Agreement outlines the services that will be provided by Olsson Studio through the conceptual development stage (Phases 100-300) for a cost of \$62,900, plus additional reimbursable expenses up to \$3,600, for an amount not to exceed \$66,500. The deliverables for Phases 100-300 include a kickoff meeting with staff, a design charrette comprised of three meetings with the DTAC and other Downtown stakeholders, the conceptual design of a monumentation plan for Downtown, and an opinion of probable costs for construction. The estimated timeline for completion is approximately four months.

After the conceptual development process is completed, the DTAC will have the option to recommend moving forward with the preparation of Construction Documents for the project (Phase 4). Those services will be provided by Olsson Studio under a separate agreement which will be brought back to the Town Council for approval. If the Town Council decides to move forward with construction of the project, funding will need to be identified and the Town will solicit bids from qualified vendors.

Budget Impact:

The project fee for the conceptual design portion of the project will not exceed \$66,500. Funds are available in account 100-5480-10-99 for Downtown Improvements.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Olsson Studio Letter Agreement

Town Staff Recommendation:

Town Staff recommends the Town Council authorize the Town Manager to execute an Agreement for Professional Services between the Town of Prosper and Olsson Studio related to design of monumentation in Downtown Prosper for an amount not to exceed \$66,500.

Proposed Motion:

I move to authorize the Town Manager to execute an Agreement for Professional Services between the Town of Prosper and Olsson Studio related to design of monumentation in Downtown Prosper for an amount not to exceed \$66,500.

LETTER AGREEMENT FOR PROFESSIONAL SERVICES

May 16, 2024

Town of Prosper, Texas
Attn: Robyn Battle
250 W First St
Prosper, TX 75078

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**
Downtown Monumentation (the "Project")
Prosper, Texas

Dear Ms. Battle:

It is our understanding that Town of Prosper, Texas ("Client") requests Olsson, Inc. dba Olsson Studio ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project as more specifically described in "Scope of Services" attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: June 1, 2024
Anticipated Completion Date: October 1, 2024

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services a lump sum of Sixty-Two Thousand Nine Hundred Dollars (\$62,900.00) plus reimbursable expenses in accordance with the Reimbursable Expense Schedule attached to this agreement. Olsson shall submit invoices on a monthly basis, and payment is due within 30 calendar days of invoice date.

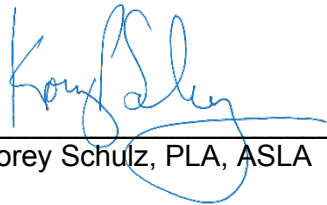
TERMS AND CONDITIONS OF SERVICE

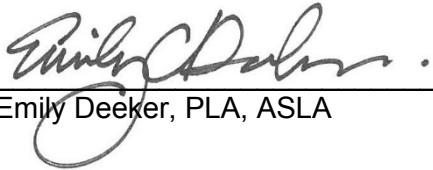
We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be _____.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON, INC. DBA OLSSON STUDIO

By 
Korey Schulz, PLA, ASLA

By 
Emily Deeker, PLA, ASLA

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

TOWN OF PROSPER, TEXAS

By _____
Signature

Print Name _____

Title _____

Dated _____

Attachments

- General Provisions
- Scope of Services
- Reimbursable Expense Schedule
- Exhibit A

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated May 16, 2024 between [Town of Prosper, Texas] ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate

schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed

Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client

understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for

any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 “Inspect” or “Inspection”: If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor’s completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor’s safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 “Record Documents”: Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson’s services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a “for cause” termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson’s final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by

Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a “for cause” termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client’s convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson’s Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson’s actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson the Project(s), or this Agreement (hereinafter collectively referred to as “Disputes”) which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 Except to the extent prohibited by law, the prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute. In the event of a Dispute involving a Claim (as hereinafter defined) against Olsson, Olsson shall be considered the "prevailing party" if Client is awarded materially less than the full amount of damages claimed by the Client in connection with the Dispute. In all other Disputes, "prevailing party" shall mean the party (if any) who obtains all, or substantially all, of the relief requested by that party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice. In any such instance, Olsson shall be entitled to an award of attorney's fees, costs, and expenses.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and to the fullest extent authorized by law, Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it

accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services. To the fullest extent authorize by law, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing

Party”) unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson’s internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party’s option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause

irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. To the fullest extent authorized by law, Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 To the fullest extent authorized by law, Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any

property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other,

except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's

fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement/Severability

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson. If any part of this Agreement is found to conflict with applicable law, such part alone shall be null and void and considered stricken, but the remainder of this Agreement shall be given full force and effect.

General Provisions Updated: 06/06/2024

SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated May 16, 2024 between Town of Prosper, Texas (“Client”) and Olsson, Inc. dba Olsson Studio (“Olsson”) providing for professional services. Olsson’s Scope of Services for the Agreement is indicated below.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: Prosper, Texas

Project Description: Downtown Monumentation

SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

Phase 100 – Discovery

Olsson will provide Project management coordination, quality/cost control, information coordination, and maintain Project schedules. Project site is outlined in the attached Exhibit A.

Olsson will attend one (1) kick-off meeting with Client’s Project management team to define expectations and clarify Project goals. Olsson will review Project scope, schedule, and Stakeholder Committee makeup and responsibilities.

Following Project kick-off, Client will provide Olsson with existing conditions data, including:

- GIS data (parcels, Town boundary, aerial imagery, utility infrastructure, street centerlines, transit routes/stops, bicycle lanes, sidewalks, trails, roadways, street classifications/typology, edge of pavement, public right-of-way, parking lots, building footprints, et cetera)
- Survey data and past streetscape construction documents.

Olsson will review available information provided by Client and will assemble a base map for required plan documents. Client shall provide current and accurate base information to Olsson.

Meetings

Olsson shall attend the following meetings:

- One (1) virtual kick-off meeting

Work Products: Meeting notes and memorandums, as needed

Phase 100 Fee: \$5,400.00

Phase 200 – Design Generation and Engagement

Olsson will coordinate and facilitate a three (3)-day in-person monumentation design charrette with Client's stakeholder committee. The goal of this event is to develop a monumentation master plan and a family of signs.

Collaborative Design Programming Workshop

During the first day, Olsson will lead stakeholders through a half-day exploration and verification of the type of monumentation. Project design team will go through a programming session to discuss the process of 'Why', 'What', and 'Where' to help determine types of elements needed.

Based on feedback received, Olsson will prepare concept designs that explore design solutions, addressing wayfinding, iconography, size, and character aesthetics. Depending upon feedback, potential family of monument element concepts will include primary, secondary, gateway monument, wayfinding, and iconic art piece. Designs will consider materials, overall site, pedestrians, appropriateness of materials / massing, contextual fit, themes, and reinforcement of pedestrian scale. Olsson will prepare hand-drawn concepts and elevations.

On the second day, design charrette will include a half-day stakeholder workshop to review concept sketches generated from the programming session. Client will provide feedback for sketches to be finalized. Pros and cons of each concept will be discussed with regard to cost, maintenance, and implementation.

On the third day, updated monument concepts will be presented to the stakeholder committee. Concept designs will incorporate feedback from previous workshop sessions and will consider appropriate materials to fit within the Project site.

Meetings

Olsson will attend the following meetings:

- Three (3)-day in-person charette meeting

Work Products: Monumentation master plan, concept designs; and meeting notes and memorandums, as needed

Phase 200 Fee: \$32,800.00

Phase 300 – Final Concept Design

Olsson will incorporate feedback from the charrette to produce final conceptual designs for proposed monuments. Olsson will generate three (3)-dimensional color-rendered graphic views of monumentation masterplan elements using SketchUp, Lumion, and Adobe Photoshop software.

Monumentation Plan Presentation

Olsson shall meet with Client to review final monumentation masterplan and proposed elements. Depending upon feedback, potential elements will include primary, secondary, gateway monument, wayfinding, and iconic art piece.

Opinion of Probably Costs

Olsson shall provide a magnitude of cost based upon the selected master plan elements.

Meetings

Olsson will attend the following meetings:

- Attendance at one (1) virtual Client review meeting

Work Products: Final concept design master plan and three (3)-dimensional renderings, opinion of probable cost; and meeting notes and memorandums, as needed

Phase 300 Fee: \$24,700.00

Phase 900 – Expenses

Includes all Project related reimbursable expenses, as defined in the Reimbursable Expense Schedule attached to this Agreement.

Phase 900 Fee: Estimated \$3,600.00

**TOTAL PROJECT FEE: \$62,900.00
+Reimbursable Expenses**

ADDITIONAL SERVICES

Upon Client's request, Olsson shall provide the following services under a separate Agreement:

Phase 400 – Construction Documents

Based upon final concept designs and opinion of probable cost, Client will provide written feedback and direction for which monumentation elements to proceed with. Olsson shall prepare three (3) submittals of construction documents for Client-selected monument elements at the 60 percent, 90 percent, and 100 percent completion construction documents.

Demolition Plan will be prepared for removal of existing hardscape material.

Hardscape Plan will layout proposed monument elements in relation to existing buildings, street parking, and intersection right of way. Horizontal dimensions will be included for construction staking purposes. Hardscape construction specifications will be included.

Monument Details will include construction elevation and detailing for the selected family of monument elements. Structural engineering and lighting design of the monuments is included. Potential elements to include:

- Gateway monument
- Primary monument
- Secondary monument
- Wayfinding monument
- Iconic monument

Work Products: Demolition plan, hardscape plan, monument details, amenities, and lighting construction documents, specifications; and meeting notes and memorandums, as needed

Estimated Total Phase 400 Fee: \$47,000 to \$68,000.00

Phase 500 – Construction Administration Services

Olsson will provide contract negotiation / procurement services, including but not limited to, bidding assistance including responding to Client's Contractors' questions submitted through Client, and providing clarifications to construction documents. Olsson will review shop drawings and submittals from Client's Contractors for conformance to the contract documents. Olsson will review and submit necessary RFI's, ASI's, and PCO's for conformance to contract documents and Project work completed. All information shall be submitted to Olsson through Client.

Installation Observation and Construction Meetings

Olsson shall observe construction pertaining to hardscape and monument signage construction documents listed within this Scope of Services. Olsson will visit the Project site for review of construction and for construction progress meetings. Olsson shall provide a final site observation to produce punch lists for hardscape and monument signage construction documents listed within this Scope of Services. Olsson will coordinate punch list requirements with Client's Contractor, prior to Project substantial completion.

Phase 500 Fee: \$Hourly

ASSUMPTIONS

- GIS and Base map material will be provided by Client to Olsson

EXCLUSIONS

- Boundary and topographic survey
- Geotechnical services
- Environmental studies
- Dry utility coordination
- Stormwater drainage memo
- Public improvement stormwater drainage plans
- Traffic impact study / traffic signal design
- Flood study
- Mechanical / electrical / plumbing engineering plans
- Additional as-built drawings / certifications
- Construction staking
- Survey services
- Photometric study
- TX DOT and State of Texas Coordination
- Architectural and structural building design
- Wi-Fi and communication design
- MEP and structural engineering, including electrical circuiting of low voltage lighting and photometric plan.
- Water utility plan

- Music/sound systems and security/emergency system
- Additional coordination and revisions outside of the Scope of Services described above
- Additional coordination, Project delays, extensions, and revisions
- Value engineering revisions
- Six (6)- and twelve (12)-month review of Project site after construction
- Permitting and submittal fees
- Title policy
- Post-construction survey
- Pot-holing existing utilities
- Design of additional significant architectural features (towers, stage canopy, enclosed pavilions, open air buildings, et cetera)

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.



REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<u>Classification</u>	<u>Cost</u>
Automobiles (Personal Vehicle)	\$0.67/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$95.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

EXHIBIT A



Agenda Item 9.

Consider and act upon authorizing the Town Manager to execute an Agreement for Professional Services between the Town of Prosper and Olsson Studio related to design of monumentation in Downtown Prosper for an amount not to exceed \$66,500. (RB)

Proposal Details from Olsson Studios

Phase 1 - Discovery

- Kickoff Meeting with Town staff
- Data collection (GIS data, Utility Infrastructure, Survey Data)

Phase 2 - Design Generation and Engagement

- Three in-person design charrette meetings with DTAC
- Deliverables: Monumentation Master Plan, Initial Concept Designs

Proposal Details from Olsson Studios

Phase 3 – Final Concept Design

- Monumentation Plan Presentation
- Deliverables:
 - Final Concept Design Master Plan
 - Opinion of Probable Costs
 - 3-D color renderings

Phase 1-3 Project Fee	\$62,900
Reimbursable Expenses	\$3,600
Total	\$66,500

Next Steps:

- DTAC Recommendation on Olsson Studios Proposal
- Town Council approval of Agreement
- Schedule Kickoff Meeting with Staff
- Schedule Design Charette with DTAC, Preferably 3 consecutive days:
 - Meeting 1: 4 hours
 - Meeting 2: 2 hours
 - Meeting 3: 2 hours



PARKS AND RECREATION

To: Mayor and Town Council

From: Dan Baker, Director of Parks and Recreation

**Through: Mario Canizares, Town Manager
Robyn Battle, Executive Director**

Re: Subject – Lakewood Park Phase II Playground Cost Increase

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approval of a supplemental BuyBoard Contract Purchase Order with GameTime c/o Cunningham Recreation to cover cost increases in the amount of \$43,511 for an amount not to exceed \$173,625 related to playground installation at Lakewood Park.

Description of Agenda Item:

The actual playground equipment for Phase II of Lakewood Park was purchased in October of 2022 and has been stored by the vendor until the park site is ready for installation. The total amount for the project in 2022 was estimated at 131,000. Since that time, infrastructure items such as safety surfacing, subbase, and drainage costs have increased considerably and the BuyBoard amounts for the items yet to be purchased have increased by \$43,511.

The total being spent for the playground and infrastructure will be \$57,225 for the equipment (from the first PO) plus an additional \$116,399.52 to finish the project for a grand total of \$173,625.

Budget Impact:

The increased costs for surfacing and installation, plus the addition of a drainage system total \$43,511. Funding for this Buy Board Contract Purchase Order is available in project account 750-6610-10-00-2107-PK.

Attached Documents:

1. Updated Buy Board quote for surfacing, increased equipment installation costs, and adding a drainage system.

Town Staff Recommendation:

Town staff recommends the Town Council approve a supplemental BuyBoard Contract Purchase Order with GameTime c/o Cunningham Recreation to cover cost increases in the amount of \$43,511 for an amount not to exceed \$173,625 related to playground installation at Lakewood Park.

Proposed Motion:

Item 8.

I move to approve a supplemental BuyBoard Contract Purchase Order with GameTime c/o Cunningham Recreation to cover cost increases in the amount of \$43,511 for an amount not to exceed \$173,625 related to playground installation at Lakewood Park.



GameTime c/o Cunningham Recreation
 PO Box 240981
 Charlotte, NC 28224
 800.438.2780
 704.525.7356 FAX

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 101595
 Item 8.

Lakewood Park - Surfacing and Installation (Revised)

Town of Prosper
 Attn: Paul Naughton
 250 W. First Street
 Prosper, TX 75078
 Phone: 972-569-1160
 paul_naughton@prospertx.gov

Ship to Zip 75078

Quantity	Part #	Description	Unit Price	Amount
3186	POURED	GT-Impax - Poured in Place Rubber Safety Surfacing (SF)- <ul style="list-style-type: none"> • Area: 3,186 Sq.Ft. • Materials: (50% Standard Color / 50% Black) • Depth: 2.5" for 5' CFH • Freight to Site • Installation of Rubber Surfacing Only 	\$19.82	\$63,146.52
1	INSTALL	MISC - Installation of Equipment on GameTime Order #2278034	\$21,514.00	\$21,514.00
1	INSTALL	MISC - Provision of the Sub-Base and Berm- <i>Includes:</i> - Provision and installation of 1' to Grade Concrete ramp/Berm - 3,186 SF of compacted stone sub-base <i>All grading, site work, sidewalks and concrete curbs by others.</i>	\$27,436.00	\$27,436.00
1	INSTALL	MISC - Provision and Installation of Drainage to Daylight	\$4,303.00	\$4,303.00
Contract: Buy Board Contract #679-22			Sub Total	\$116,399.52
			Total	\$116,399.52

Comments

* Site must be clear, level, free of obstructions, and accessible. Site should permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional costs.

TERMS & CONDITIONS:

- **PRICING:** Due to volatile economic demand, pricing is valid for 30 days. Pricing is subject to change. Request updated pricing when purchasing from quotes more than 30 days old.
- **PAYMENT TERMS:** Net 30 days subject to approval by Credit Manager. A signed P.O. made out to Cunningham Recreation or this signed quotation is required for all orders unless otherwise noted. Equipment shall be invoiced separately from other services and shall be payable in advance of those services and project completion. Checks should be made payable to Cunningham Recreation unless otherwise directed. **Any order exceeding \$300,000 will require progress payments during the course of completion.**
- **FINANCE CHARGE:** A 1.5% monthly finance charge (or as permitted by law) will be added to invoices over 30 days past due.
- **TAXES:** Taxes will be shown as a separate line item when included. Any applicable taxes not shown will be added to final invoice. A copy of your tax exemption certificate must be submitted at time of order or taxes will be added to your invoice.
- **SHIPMENT:** Multiple shipments may be required based on point of origin. Above costs assume one shipment for each vendor quoted.
- **LEAD TIME:** Standard orders ship **10-12 weeks** after receipt of order and acceptance of your purchase order, color selections, approved submittals (if required) unless otherwise noted. Custom equipment and shades may require a longer lead times. Surfacing lead time is approximately 2 weeks after scheduling request.
- **DELIVERY:** It is the responsibility of the owner to offload and inventory equipment, unless other arrangements have been made. Missing or damaged equipment must be reported within 60 days of acceptance of delivery.



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

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101595
Item 8.

Lakewood Park - Surfacing and Installation (Revised)

INSTALLATION CONDITIONS:

- **ACCESS:** Site should be clear, level and allow for unrestricted access of trucks and machinery.
- **STORAGE:** Customer is responsible for providing a secure location to off-load and store the equipment during the installation process. Once equipment has delivered to the site, the owner is responsible should theft or vandalism occur unless other arrangements are made and noted on the quotation.
- **FOOTER EXCAVATION:** Installation pricing is based on footer excavation through earth/soil only. Customer shall be responsible for unknown conditions such as buried utilities (public & private), tree stumps, rock, or any concealed materials or conditions that may result in additional labor or materials cost.
- **UTILITIES:** Installer will contact 811 to locate all public utilities prior to layout and excavation of any footer holes. Owner is responsible for locating any private utilities.
- **ADDITIONAL COSTS:** Pricing is based on a single mobilization for installation unless otherwise noted. Price includes ONLY what is stated in this quotation. If additional site work or specialized equipment is required, pricing is subject to change.

ACCEPTANCE OF QUOTATION:

Acceptance of this proposal indicates your agreement to the terms and conditions stated herein.

Accepted By (printed): _____ Title: _____

Telephone: _____ Fax: _____

P.O. Number: _____ Date: _____

Purchase Amount: **\$116,399.52**

SALES TAX EXEMPTION CERTIFICATE #: _____

(PLEASE PROVIDE A COPY OF CERTIFICATE)

Salesperson's Signature

Customer Signature



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

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101595
Item 8.

Lakewood Park - Surfacing and Installation (Revised)

BILLING INFORMATION:

Bill to: _____

Contact: _____

Address: _____

Address: _____

City, State: _____ Zip: _____

Tel: _____ Fax: _____

E-mail: _____

SHIPPING INFORMATION:

Ship to: _____

Contact: _____

Address: _____

Address: _____

City, State: _____ Zip: _____

Tel: _____ Fax: _____

E-mail: _____



PLANNING

To: Mayor and Town Council

From: David Hoover, AICP, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Development Agreement for Bryant’s First Addition, Block 1, Lots 12-14

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 2. Development of Downtown as Destination

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a License, Maintenance & Hold Harmless Agreement between Pettis Real Estate, LLC, and the Town of Prosper relative to Bryant’s First Addition, Block 1, Lots 12-14.

Description of Agenda Item:

The utilization of a patio area for the Cotton Gin Café requires an encroachment into the existing alleyway behind the restaurant. A License, Maintenance & Hold Harmless Agreement has been prepared accordingly to address the placement of a grease trap and gas meter in a portion of the alleyway.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. License, Maintenance & Hold Harmless Agreement

Town Staff Recommendation:

Town Staff recommends that the Town Council authorize the Town Manager to execute a License, Maintenance & Hold Harmless Agreement between Pettis Real Estate, LLC, and the Town of Prosper relative to Bryant’s First Addition, Block 1, Lots 12-14.

Proposed Motion:

I move to authorize/not authorize the Town Manager to execute a License, Maintenance & Hold Harmless Agreement between Pettis Real Estate, LLC, and the Town of Prosper relative to Bryant's First Addition, Block 1, Lots 12-14.

LICENSE, MAINTENANCE & HOLD HARMLESS AGREEMENT

THIS LICENSE, MAINTENANCE & HOLD HARMLESS AGREEMENT (“Agreement”), dated _____, 2024 (the “Effective Date”) is made by and between Pettis Real Estate LLC, a Texas limited liability company (“Pettis”), and the Town of Prosper, Texas, a Texas home-rule municipality (“Town”), and is made with reference to the recitals set forth below concerning certain Town right-of-way consisting of a portion of the sidewalk area in front of 206 West Broadway Street and a portion of the alley behind 206 West Broadway Street, including the placement of a grease trap and a gas meter in a portion of the alley behind 206 West Broadway Street (the relevant portions of the front sidewalk area and the rear alley, including the grease trap and gas meter, are hereinafter collectively referred to as the “Property”), as described and depicted in Exhibit A, attached hereto and incorporated by reference.

WHEREAS, Pettis is the owner of the Cotton Gin Café located at 206 West Broadway Street in the Town; and

WHEREAS, Pettis wishes to utilize the Property for patio purposes, including the placement of a grease trap and a gas meter in a portion of the alley behind 206 West Broadway Street, for the Cotton Gin Café; and

WHEREAS, Pettis and the Town have agreed to the use of the Property as patio areas, including the placement of a grease trap and a gas meter in a portion of the alley behind 206 West Broadway Street, subject to the terms and conditions contained herein; and

WHEREAS, Pettis acknowledges and agrees that, at its sole cost and expense, it shall construct and maintain the patio areas, the grease trap and gas meter to be located on the Property.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **License**. Subject to the terms and conditions of this Agreement, and to the extent of the right, title, and interest of the Town, and without any express or implied warranties, the Town grants to Pettis permission to encroach into its Property and to construct and maintain patio areas only on the Property, including the placement of a grease trap and a gas meter in a portion of the alley behind 206 West Broadway Street, as referenced and depicted in attached Exhibit A. Further, Pettis agrees that the patio areas it constructs shall fully comply with all Town ordinances, requirements, and regulations, including all building and construction codes. No other encroachments into or onto Town property are authorized other than those referenced herein.

2. **Agreements Regarding the Property**. Pettis and the Town agree and acknowledge the following understandings and agreements regarding the Property:

A. The Town does not and shall not abandon any of its right-of-way or any easements on or adjacent to 206 West Broadway Street;

B. Other than the patio areas, the remainder of the sidewalk right-of-way and alley right-of-way shall remain open and accessible at all times for use by the public, any emergency vehicles or franchise utilities, and access shall not be impeded in any manner;

C. Pettis or its successors and assigns, including any future owners of 206 West Broadway Street, shall fully maintain the patio areas, including the maintenance and mowing of the alley, and shall be responsible for all costs associated therewith, including keeping the patio areas free of trash, litter and debris.

3. Indemnity and Hold Harmless. Pettis shall fully indemnify and hold harmless the Town and the Town's Council Members, officers, agents, employees, representatives, successors and assigns from, against, for and in respect of all damages, losses, obligations, liabilities, claims, deficiencies, costs and expenses in any way related to the patio areas to be constructed and maintained by Pettis, including any costs in any way associated with the construction, on-going maintenance, and/or on-going repair costs incurred by Pettis.

4. Release. Pettis hereby releases the Town, its Council Members, officers, agents, representatives and employees, from and against, and waives any and all rights to, any and all claims and/or demands for damages (personal or property), injury (including death), or otherwise, it may have with regard to the construction, maintenance, or repair of the Property, in whole or in part, directly or indirectly, as provided in this Agreement.

5. No Lease or Conveyance of Property Interest. This Agreement shall not be construed as a lease or as a conveyance of any right, title, or interest in any of the Town's public right-of-way referenced herein, but instead, this Agreement constitutes a grant of the privilege, permit, and license for Pettis.

6. Termination of License. The Parties agree and acknowledge that at such time in the future if the Town opts to terminate this Agreement, then this Agreement shall cease upon thirty (30) days' written notice to Pettis, and Pettis shall remove, or cause to be removed, all patio areas in the Town's right-of-way, at its expense. In the event Pettis wishes to terminate this Agreement, it shall give the Town at least thirty (30) days' written notice.

7. 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.

8. Sovereign Immunity. The Parties agree that the Town has not waived its sovereign or governmental immunity from suit by entering into and performing its obligations under this Agreement.

9. Filing in County Deed Records. Pettis and the Town further agree that the provisions of this Agreement shall constitute a covenant running with the land described in Exhibit A, attached hereto. The parties agree that this Agreement shall be filed in the Deed Records of Collin County, Texas.

10. Binding Effect. This Agreement shall inure to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

11. Severability. If any provision in this Agreement be held to be void or unenforceable under the laws of any place governing its construction or enforcement, this Agreement shall not

be void, but shall be construed to be in force with the same effect as though such provision were omitted.

12. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and is specifically performable in Collin County, Texas.

13. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

14. Notice. Any notices required or permitted to be given hereunder (each, a “Notice”) shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: Town of Prosper
 250 W. First Street
 P.O. Box 307
 Prosper, Texas 75078
 Attention: Town Manager

If to Pettis: Pettis Real Estate LLC
 1700 Aspen Street
 Prosper, Texas 75078
 Attention: Michael Pettis

15. Incorporation of Recitals. The recitals set forth above are incorporated herein as if repeated verbatim.

16. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed as of the date first above written.

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____
Name: Mario Canizares
Title: Town Manager, Town of Prosper

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2024, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas
My Commission Expires: _____

PETTIS:

liability

PETTIS REAL ESTATE, LLC, a Texas limited company

By: _____

Name: Michael Pettis

Title: President

STATE OF TEXAS)

)

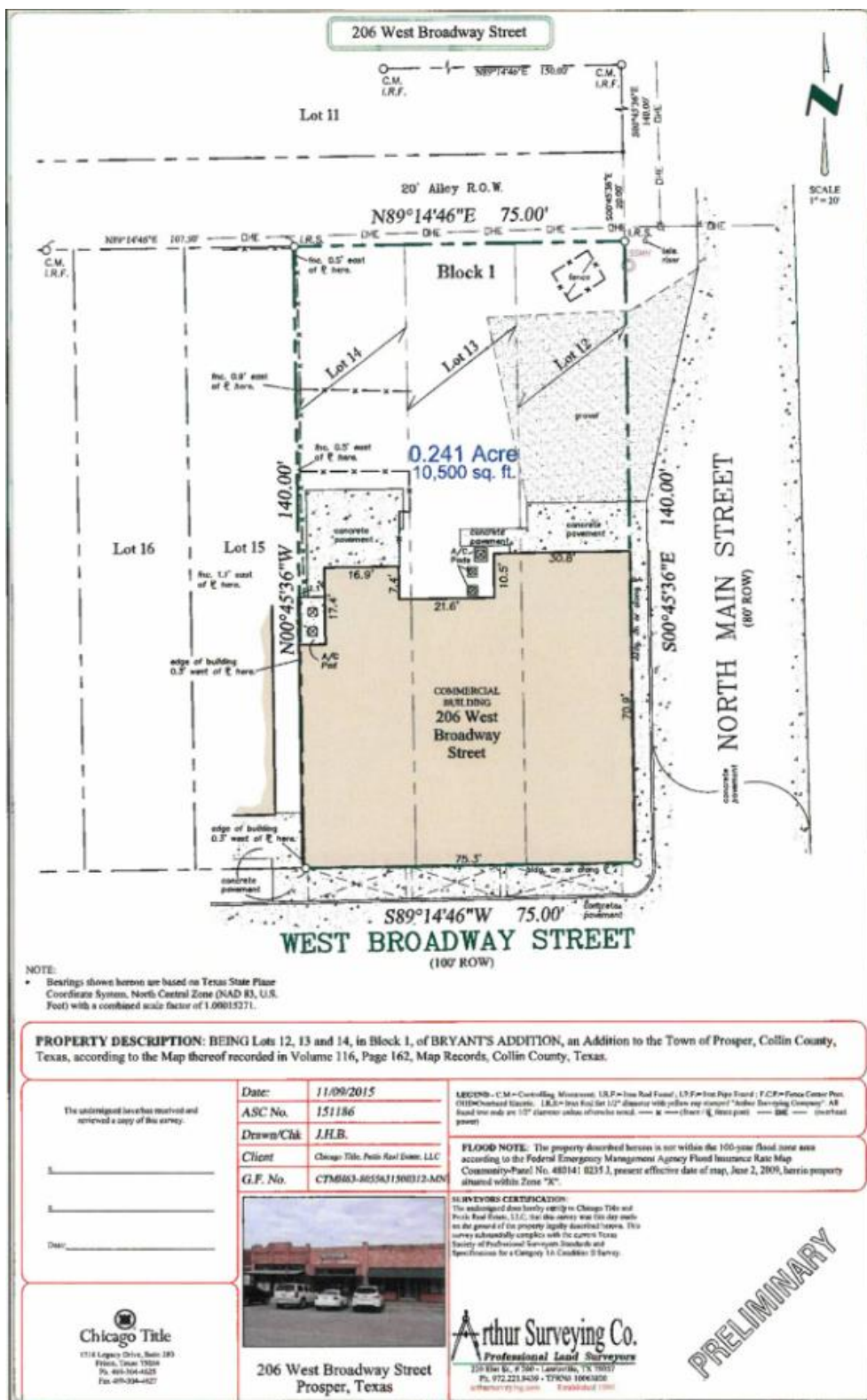
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2024, by Michael Pettis, in his capacity as President of Pettis Real Estate LLC, a Texas limited liability company, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Pettis Real Estate LLC.

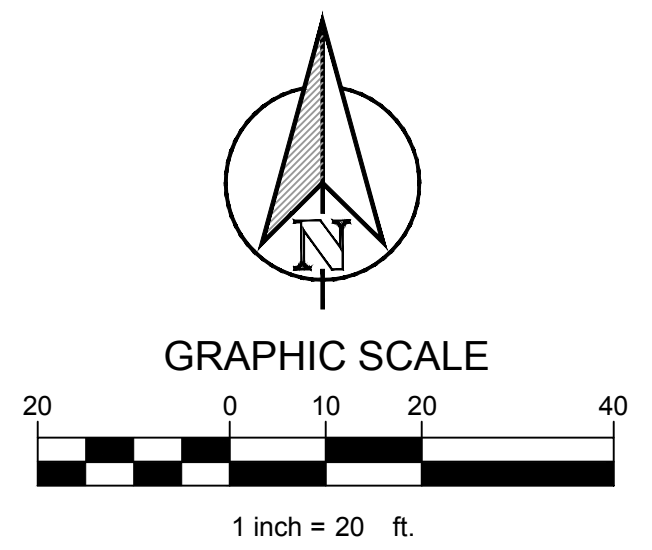
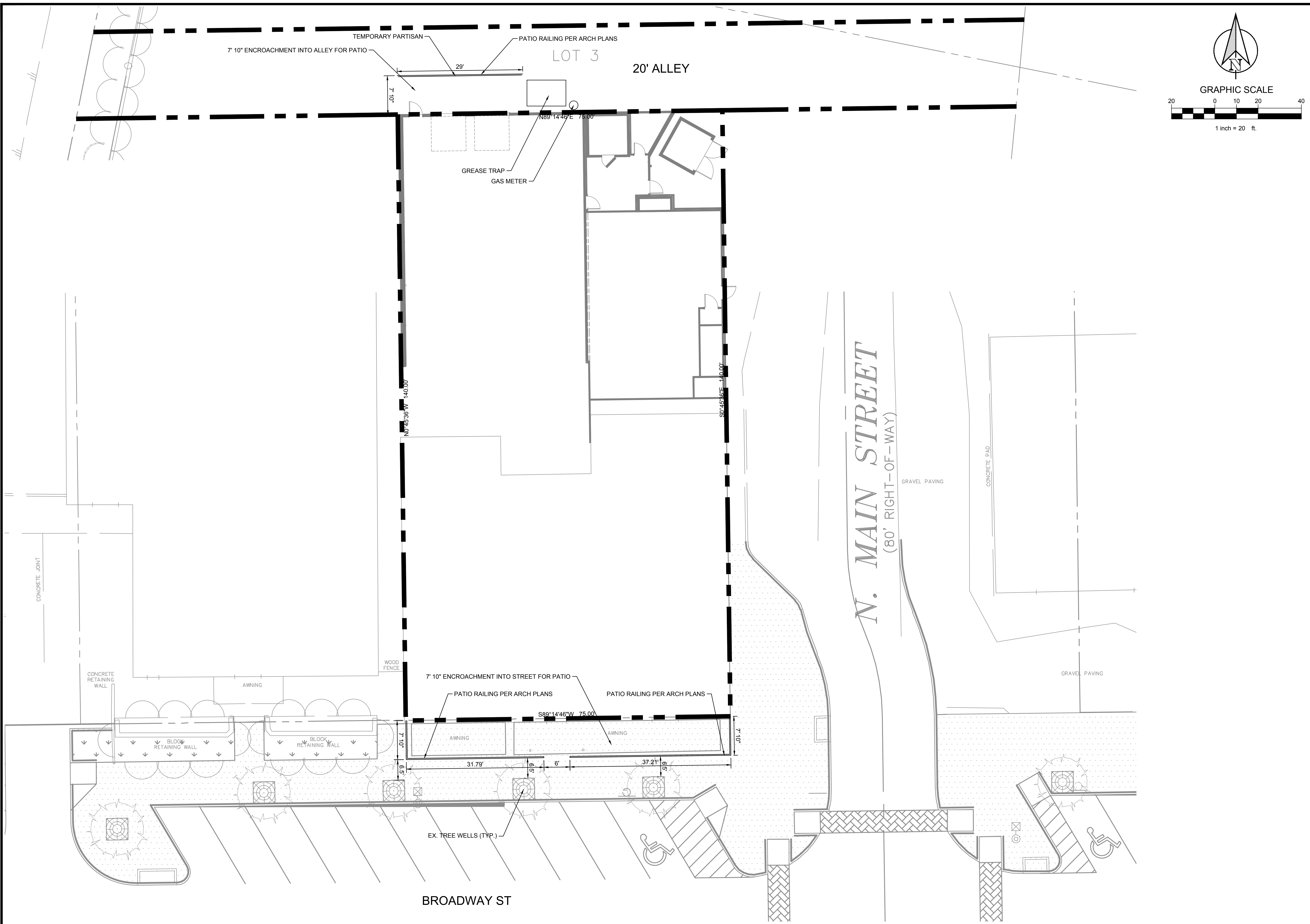
Notary Public, State of Texas

My Commission Expires: _____

Exhibit A (Property Description and Depiction)



PLOTTED BY: DREW DONOSKY
 PLOT DATE: 5/7/2024 4:51 PM
 LOCATION: Z:\PROJECTS\MARKETING\0 ASD CONCEPTS\GIN PROSPER PATIO\CADD\BASE\XSITE.DWG
 LAST SAVED: 4/24/2024 4:19 PM



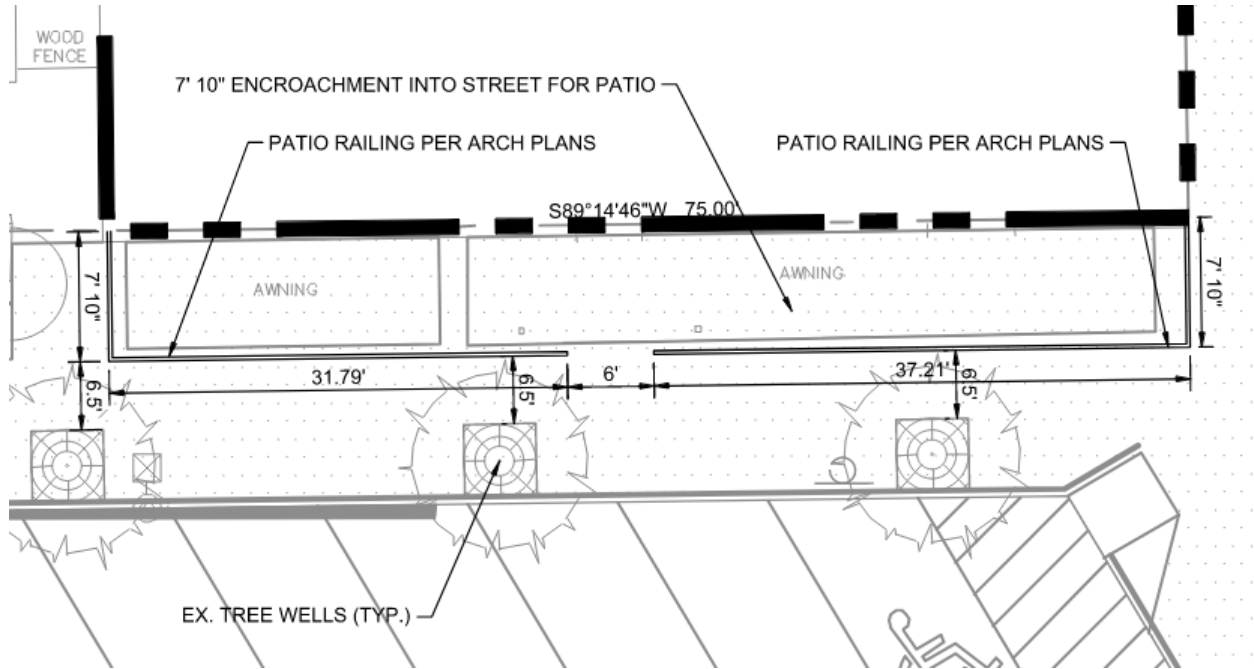
THE GIN
204 BROADWAY ST.
PROSPER, TX

No.	DATE	REVISION	BY

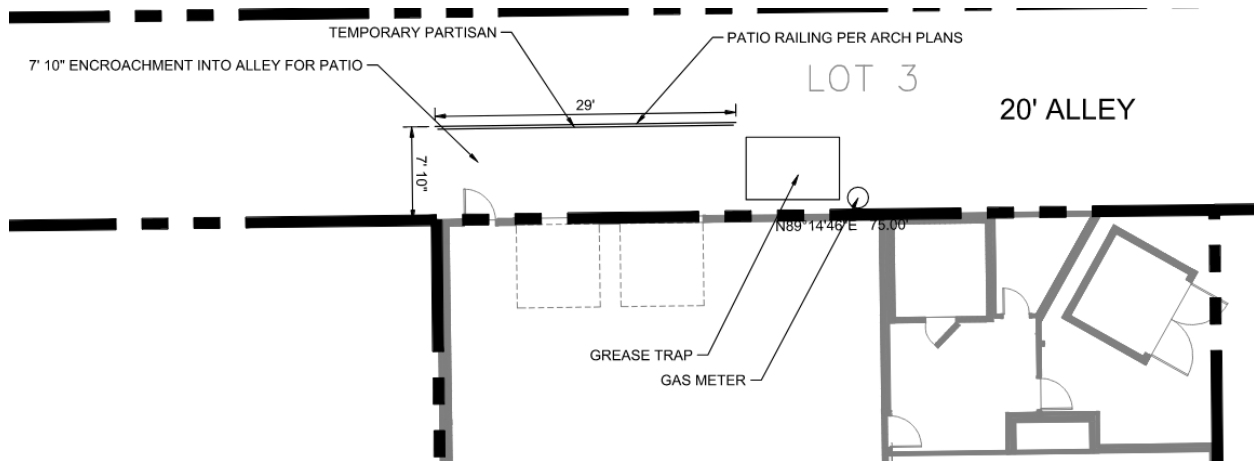
CONCEPTUAL SITE PLAN

DESIGN:	ASD
DRAWN:	ASD
CHECKED:	MAM
DATE:	9/3/2019
SHEET	
SP-1	
File No.	Page 98

FRONT ENCROACHMENT



REAR ENCROACHMENT





PLANNING

To: Mayor and Town Council

From: David Hoover, AICP, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Planned Development Ordinance for Prosper Arts District

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 3. Commercial Corridors are ready for Development

Agenda Item:

Consider and act upon an ordinance rezone 47.0± acres from Planned Development-75 to a Planned Development for Multifamily and Mixed-Use, located at the northwest corner of Dallas Parkway and Prosper Trail. (ZONE-24-0001)

Description of Agenda Item:

On May 28, 2024, the Town Council approved the proposed rezoning request by a vote of 4-2 with Mayor Pro-Tem Ray and Councilmember Kern voting in opposition.

The motion included several modifications to the standards which have been incorporated into the ordinance exhibits. Below are the items of change per the Town Council and Planning & Zoning Commission motions, which have been addressed in the attached exhibits.

5/28/2024 Town Council Motion

Section E - Multifamily Zone Development Standards:

- Clarify on the accessory building as a use and that it will be an accessory related to the multifamily.
- Recommended to remove House of Worship as a use.
- For 2i, add minimum density of 40 units to the acre.
- For 2iii add minimum height of 4 stories for multifamily.
- Add that units in multifamily will have climate controlled interior corridors which are also mentioned in the mixed-use section.
- Section 5.i. – approval will be by the Director of Development Services.
- In section 5.ii based on the Planning & Zoning Commission’s feedback, remove the fiber cement panel from the primary materials to the secondary materials with a percentage

area of 20%. As well as limit the stucco from no stucco on the first floor to 10% total on the entire building.

Section F – Mixed-Use Zone Development Standards

- Request for Commercial Amusement Indoor, used Furniture Store, Antiques Shop, and Convenience Store Without Gas Pumps to be an SUP.
- Clarification that Hotel, Residence/Extended Stay is not an extended stay hotel, it is a full-service hotel with limited extended stay capabilities.
- Changing the name of House of Worship to an event center and having it be in conjunction with the Meeting/Banquet/Reception Facility.
- Section 2 – Residential Density, add minimum density which is 40 units to the acre.
- Section 2.V – Add minimum of 4 stories along Shawnee Trail. While along the DNT, have the minimum be 6 stories with a maximum of 14 stories. Retail along Prosper Trail be a maximum height of 4 stories.
- 3.2 – 100% of the first floor is nonresidential uses, clarified that a minimum of 50% is retail that is open to the public.
- 5.2 – Remove fiber cement panel from primary to secondary. Stucco at 10% total of the entire building.

Section G – Useable Open Space and Trails

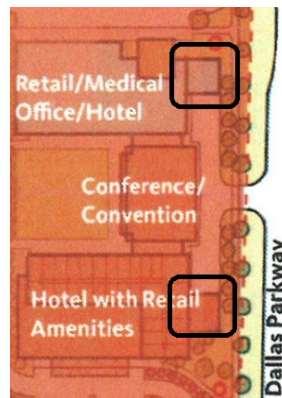
- 1.viii – Remove #2 – Areas of decorative pavement.

Phasing:

- Phase 1A as is.
- Phase 1B – Add that the foundation is poured for 1 of the 2 hotel buildings on site before a permit can be received for the multifamily. Also include that the waterway infrastructure should be approved by the town.
- Phase 2 – A CO on the first hotel building and foundation pour on the second hotel building to obtain a permit for the multifamily in Phase 2. Also add that all Phase 2 should be done together with the retail.
- Phase 3 as is.
- Phase 4 as is.

Zone:

- Along DNT, the setback should be 50ft with a 30ft landscape buffer. A request was made from the applicant for the 2 smaller squares In Phase 1A along Dallas Parkway to have some leeway with the setback requirement. The Council agreed on a 30 ft landscape buffer and setback.



- The council requests that along Prosper Trail and the southern portion of Phase 3 before the waterway, parking should be bermed. The applicant asks the council to reconsider the berming request as it could interfere with retail visibility. Council is satisfied as long as landscaping will still be there enough to act as headlight screens.

As part of the development agreement, if conditions are not met within 5 years, it will be subject to reconsideration.

5/21/2024 Planning & Zoning Commission Meeting Motion

- Phasing is going to be adjusted. Phase 1A will include the infrastructure plus the medical office/hotel, conference/convention center/hotel with retail amenities on the east side of the project closest to Dallas Parkway, including the parking garage.
- Phase 1B will be the multifamily in the northwest quadrant.
- Phase 2 will be mixed-use retail, multifamily, and theatre, plus the reception facility and retail on the southeast quadrant.
- Phase 3 will be the hotel plus retail on the far west side of the project. The hotel in Phase 3 will have 4-diamond status and will include luxury pods called Hakas that will be complementary to the 4-diamond hotel named Hotel Voz.
- Additional updates to Section 5.2.3 in the mixed-use, removing fiber cement from No. 2 and adding it to No. 3.
- Under G.1.8 on Page 93, striking 2 and 3 out and moving 3 items to an SUP as opposed to approved by right, which will be the commercial amusement indoor facility, furnishing/home appliance store, and the vet clinic with indoor pet kennel.
- The trigger for 1B is that 1A will need to have construction started, building permits.
- Phase 4 remains the same with office.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Exhibit C – Redlined from the May 28, 2024, Town Council Meeting
2. Ordinance
3. Ordinance Exhibits

Town Staff Recommendation:

Town Staff recommends approval of an ordinance to rezone 47.0± acres from Planned Development-75 to a Planned Development for Multifamily and Mixed-Use, located at the northwest corner of Dallas Parkway and Prosper Trail.

Proposed Motion:

I move to approve/deny an ordinance to rezone 47.0± acres from Planned Development-75 to a Planned Development for Multifamily and Mixed-Use, located at the northwest corner of Dallas Parkway and Prosper Trail.

**Exhibit C – Redlined from the May 28, 2024,
Town Council Meeting**

Case No. ZONE-24-0001

**EXHIBIT C
Planned Development Standards**

A. Conformance with the Town's Zoning Ordinance and Subdivision Ordinance.

1. Unless expressly identified and referenced within this ordinance, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20), as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.
2. The zoning exhibits attached and incorporated into the Planned Development shall serve as a guide for development of the Property. The ultimate layout (including streets, site layout, building uses, and open space areas) shall be determined at the time of Preliminary Site Plan application review by the Planning & Zoning Commission.
3. The developer shall provide an updated Conceptual Plan (Exhibit "D") with each development application if any changes are being made to the most recent Exhibit on file with the Town.
4. Proposed amendments to this Ordinance, or any of the exhibits attached hereto shall be submitted to the Director of Development Services and evaluated in conformance with Zoning Ordinance, Chapter 2, Section 24 (Planned Development District).

B. Exhibits.

Use and development of the Property shall be in conformance with the following exhibits:

1. Exhibit B, Statement of Intent and Purpose
2. Exhibit D, Conceptual Plan
3. Exhibit E, Development Schedule
4. Exhibit F, Elevations

C. Regulations.

The regulations in Exhibit C shall be the exclusive regulations governing building setbacks and other types of regulations such as, lot area, lot width, lot depth, residential density, dwelling area, height, number of stories, coverage, and floor area ratio.

D. Project Tracking Plan.

A Project Tracking Plan shall be submitted with each preliminary site plan, site plan, preliminary plat and final plat to provide context for planning purposes and to serve as a "tracking tool" for compliance with this PD Ordinance. Updates to a Project Tracking Plan may be submitted at any time. It is an informational document that is used for tracking purposes only and no approval of a Project Tracking Plan is required. No rights derived from Chapter 245 of the Texas Local Government Code, as amended, or other vested rights shall accrue from the Project Tracking Plan, and the Project Tracking Plan shall not be deemed to provide "fair notice" as provided therein. Each tracking plan shall track the following:

Case No. ZONE-24-0001

1. The number of building permits issued for multifamily units in the Mixed-Use Zone and in the Multifamily Zone;
2. the density in the Mixed-Use Zone and in the Multifamily Zone based on approved preliminary site plans and site plans;
3. the acreage and percentage of open space within each Zone;
4. the acreage and percentage of parkland within each Zone and/or fees paid in lieu of parkland per Ordinance requirements;
5. the approximate number of dwelling units (or range), as well as dwelling types, if any, authorized by an approved plat within each Zone and the Property (i.e. overall density summary). For tracking purposes, each Project Tracking Plan submitted with a preliminary site plan or plat application will include a tabular summary of each recorded plat for all or any portion of the Property subject to this PD Ordinance.

E. Multifamily Zone Development Standards.

1. Uses. Except as noted below, the Multifamily Zone shall develop in accordance with the Multifamily District, as it exists or may be amended, and in accordance with the regulations described below.

i. Permitted Uses. Uses shall be permitted in accordance with the Multifamily District as follows:

1. Multifamily Dwelling
- ~~2.~~ Accessory Building (only for Multifamily use)
- ~~3-2.~~ House of Worship
- ~~4-3.~~ Municipal Uses Operated by Town of Prosper
- ~~5-4.~~ Park or Playground
- ~~6-5.~~ Private Recreation Center
- ~~7-6.~~ Home Occupation

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2. Regulations.

i. Residential Density.

- ~~1.~~ Minimum Density: Forty (40) units per acre.
- ~~2.~~ Maximum Density: Fifty (50) units per acre up to 450 total units.
The combined total multifamily units for the Multifamily Zone and Mixed-Use Zone shall not exceed 515 units.

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ii. Size of Yards.

1. Minimum Front Yard: Ten (10) feet; Twenty-five (25) feet along Shawnee Trail to accommodate the landscape buffer
2. Minimum Side Yard: Thirty (30) feet for structures adjacent to property that is either zoned for multifamily or non-residential uses

Case No. ZONE-24-0001

- 3. Minimum Rear Yard: Thirty (30) feet for structures adjacent to property that is either zoned for multifamily or non-residential uses
- 4. Multiple structures constructed on the same lot shall maintain a minimum separation of thirty (30) feet

iii. ~~Maximum~~-Height:

- 1. ~~Minimum Height – Four (4) stories~~
- 2. ~~Maximum Height – Five (5) stories, no greater than sixty (60) feet from finished grade~~

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iii-iv. ~~Lot Coverage: Forty-five percent (45%)~~

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iv-v. ~~Minimum Dwelling Area:~~

- 1. One or two bedroom —850 square feet.
- 2. ~~Additional bedroom~~~~Three bedroom~~ — ~~450-1,000~~ square feet.
- 3. No more than 10% of the units may contain three bedrooms.

3. Building Configuration.

i. ~~Multifamily structures shall have climate controlled interior corridors.~~

ii. ~~The arrangement of multifamily buildings shall be organized so that the resident parking shall be provided in a structured garage. Visitor and other ancillary parking may be located on the drive aisle/fire lane that wraps the multifamily development.~~

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iii. ~~The Multifamily shall wrap the structured parking so that no more than 25% of the structured parking garage is exposed to the drive aisle/fire lane. The height of the garage shall not exceed the height of the adjoining multifamily building. All associated appurtenances to the garage, such as an elevator shaft or mechanical equipment, shall be completely screened.~~

iv. ~~Any elevation or portion of an elevation of a structured garage that is not wrapped by a building or is visible from Dallas Parkway/Tollway shall have architectural styles and materials compatible with the adjacent or attached structure to ensure the exposed structured garage elevation gives the appearance of a building rather than a blank parking garage. Cladding, murals, or other artistic expressions shall be used to enhance the overall architectural character of the structured garage.~~

v. ~~Parking in a structured garage shall be a minimum nine (9) feet in width and a minimum twenty (20) feet in depth.~~

vi. ~~Internal roadways/fire lanes on the front sides of the multi-family buildings shall include on-street parking, either in parallel or angled parking format to further build an urban character. A maximum of one row of parking on each side of the drive aisle is permitted on the front side of residential buildings.~~

Case No. ZONE-24-0001

~~vi-vii.~~ Any non-structured, off-street, surface parking that contains ten (10) or more spaces shall provide interior landscaping as follows:

1. All landscaped areas shall be protected by a raised six (6) inch concrete curb. Pavement shall not be placed closer than four (4) feet from the trunk of a tree unless a Town approved root barrier is utilized.
2. Landscaped islands shall be located at the terminus of all parking rows, except for-street parking, and shall contain at least one (1) large tree, three (3) inch caliper minimum, with no more than seven (7) parking spaces permitted in a continuous row without being interrupted by a landscape island.
3. Landscape islands shall be a minimum of one hundred sixty (160) square feet, not less than nine (9) feet wide, measured from the inside face of curb, and length equal to the abutting space.

~~vii-viii.~~ The Multifamily Zone may be gated. If the Multifamily Zone is gated, details and logistics related to being gated will be refined in later planning stages.

~~viii-ix.~~ The residential buildings shall have a strong urban edge with buildings forming a block. Residential buildings shall have entrances oriented to the sidewalk for ease of pedestrian access and shall be located in such a manner as to minimize conflicts between pedestrians and automobiles. Outward facing residential units on the ground floor shall include patio/outdoor space associated with the unit and an exterior door that leads to the sidewalk.

~~ix-x.~~ Upscale amenities shall include a minimum of five (5) items and be approved by the Director of Development Services.

4. Off-Street Parking. Multifamily shall be parked at one and one-half (1.5) spaces per dwelling unit for one-bedroom and two-bedroom units. For every additional room, an additional parking space is required. For example, a three-bedroom unit will require two and one-half (2.5) parking spaces.

5. Architectural and Material Standards.

i. Review and Approval Process.

1. Conceptual Architectural and Material Standards.
The applicant shall submit a detailed materials and style plan along with sample elevations and renderings to define the architectural character of the property. This shall be submitted at the time of Preliminary Site Plan submission and is subject to the approval of the Director of Development Services. ~~This shall be submitted at the time of Preliminary Site Plan submission.~~
2. Final Architectural and Material Standards.
The applicant shall submit a Façade Plan and Material Sample Board for each structure at the time of Site Plan submission and is subject to the approval of the Director of Development Services.

Case No. ZONE-24-0001

3. The conceptual elevations in Exhibit F are intended to evoke a general look and feel of the architecture of the various land use types. Changes to materials and architectural elements are permitted so long as the building elevations adhere to the design guidelines outlined in the Design Guidelines of this Exhibit C.

ii. Design Guidelines.

1. All buildings ~~must~~ shall be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each façade. The remaining twenty percent (20%) of each building elevation may be comprised of secondary materials.
 2. Primary materials shall include metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, and marble. ~~Primary materials include fiber cement panel, metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, and marble.~~
 - 2-3. Fiber cement panel is a secondary material.
 - 3-4. Stucco is a secondary material. Stucco is not permitted on the first floor of any building. The total area of stucco shall not exceed ten percent (10%) of the total building elevation area. ~~On each façade, stucco is limited to a maximum ten percent (10%) on the first floor, a maximum thirty percent (30%) on the second and third stories, and a maximum fifty percent (50%) on the fourth story and above.~~
 - 4-5. The style of all buildings must be consistent and in keeping with the style of the entire Multifamily Zone.
 - 5-6. All materials and exterior colors shall be compatible with those used throughout the development.
 - 6-7. Horizontal and vertical building articulation is required on all elevations. This may be achieved through recessed or projected architectural elements, variations in roof line, etc.
 - 7-8. No single finish shall cover more than eighty (80) percent of the front of any building.
6. Sidewalks. Sidewalks adjacent to the fronts of buildings shall be a minimum seven (7) feet in width and may include tree wells, landscape beds/plantings, and enhanced pavement.
 7. Screening and Retaining Walls.
 - i. Service, Mechanical and Utility Equipment.
 1. All service, mechanical and/or utility equipment, including transformers, shall be completely screened from public view by architectural screens, masonry screening walls, and/or landscaping.

Case No. ZONE-24-0001

- 2. When possible, all service areas and mechanical equipment shall be located at the rear of the building and out of view of the roadways.
- ii. Screening and retaining walls shall be finished with a masonry veneer compatible with the materials of the surrounding development.
- ~~8.~~ 8. Landscape Buffers. A minimum of a twenty-five (25) foot landscape buffer is required along Prosper Trail, minimum of a twenty-five (25) foot landscape buffer is required along Shawnee Trail, and a minimum thirty (30) foot buffer is required along Dallas Parkway.

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F. Mixed-Use Zone Development Standards.

1. Uses. Except as noted below, the Mixed-Use Zone of Tract C shall develop in accordance with the Retail District, as it exists or may be amended, and in accordance with the regulations described below.

i. Permitted Uses:

- 1. Administrative, Medical or Professional Office
- 2. Wine Bar
- 3. Cocktail Lounge
- 4. Cigar Bar
- ~~5.~~ 5. ~~Antique Shop and Used Furniture~~
- ~~6-5.~~ 6-5. Artisan's Workshop
- ~~7-6.~~ 7-6. Automobile Parking Lot/Garage
- ~~8-7.~~ 8-7. Automobile Paid Parking Lot/Garage
- ~~9-8.~~ 9-8. Bank, Savings and Loan, or Credit Union
- ~~10-9.~~ 10-9. Beauty Salon/Barber Shop
- ~~11-10.~~ 11-10. Business Service
- ~~12-11.~~ 12-11. Caretaker's/Guard's Residence
- ~~13-12.~~ 13-12. Catering
- ~~14-13.~~ 14-13. Civic/Convention Center
- ~~15.~~ 15. ~~Convenience Store without Gas Pumps~~
- ~~16-14.~~ 16-14. Dry Cleaning, Minor
- ~~17-15.~~ 17-15. Governmental Office
- ~~18-16.~~ 18-16. Gymnastics/Dance Studio
- ~~19-17.~~ 19-17. Health/Fitness Center
- ~~20-18.~~ 20-18. Hospital
- ~~21-19.~~ 21-19. Hotel, Full Service
- ~~22.~~ 22. Hotel, Residence/Extended Stay, being a full-service hotel with limited extended stay capabilities (XO2)
- ~~23-20.~~ 23-20. ~~House of Worship~~
- ~~24-21.~~ 24-21. Insurance Office
- ~~25-22.~~ 25-22. Meeting/Banquet/Reception Facility/~~Wedding Event Center~~
- ~~26-23.~~ 26-23. Mobile Food Vendor
- ~~27-24.~~ 27-24. Multifamily, if over a minimum 1-floor of ~~non-residential~~non-residential -uses.
- ~~28-25.~~ 28-25. Municipal Uses Operated by the Town of Prosper

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- ~~29-26.~~ Museum/Art Gallery
- ~~30-27.~~ Outdoor Merchandise Display, Temporary
- ~~31-28.~~ Park or Playground
- ~~32-29.~~ Print Shop, Minor
- ~~33-30.~~ Private Club
- ~~34-31.~~ Private Recreation Center
- ~~35-32.~~ Restaurant (without a drive-through)
- ~~36-33.~~ Retail Stores and Shops
- ~~37-34.~~ Retail/Service Incidental Use
- ~~38-35.~~ Theater, Neighborhood

ii. Permitted with Specific Use Permit:

- ~~1.~~ Antique Shop and Used Furniture
- ~~4-2.~~ Commercial Amusement, Indoor
- ~~3.~~ Commercial Amusement, Outdoor
- ~~2-4.~~ Convenience Store without Gas Pumps
- ~~3-5.~~ Farmer's Market
- ~~4-6.~~ Furniture, Home Furnishings and Appliance Store
- ~~5-7.~~ Helistop
- ~~6-8.~~ Outdoor Merchandise Display, Incidental
- ~~7-9.~~ Pet Day Care
- ~~8-10.~~ Rehabilitation Care Institution
- ~~9-11.~~ Veterinarian Clinic and/or Kennel, Indoor

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2. Regulations.

i. Residential Density.

- ~~1.~~ Minimum Density: Forty (40) dwelling units per acre.
- ~~2.~~ Maximum Density: ~~sixty (60)~~ Sixty-five (65) dwelling units per acre,
up to 350 total units. The combined total multifamily units for the
Multifamily Zone and Mixed-Use Zone shall not exceed 515 units.

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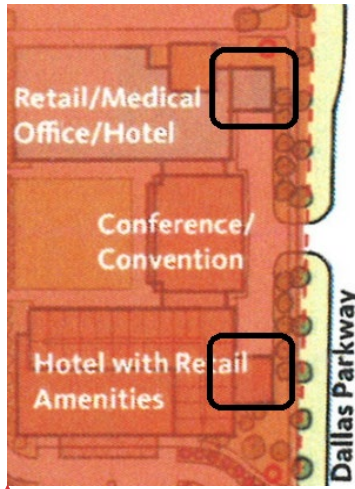
ii. Size of Yards.

1. Minimum Front Yard:

- ~~a.~~ Along the Dallas North Tollway (Dallas Parkway): Fifty (50) foot front yard with a thirty (30) foot landscape buffer. In Phase 1A, the front yard setback and landscape buffer may both be thirty (30) feet in the service areas outlined in the graphic below, provided that these areas are heavily landscaped, including berms:

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Case No. ZONE-24-0001



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b. ~~Along Shawnee Trail and Prosper Trail:~~ No minimum front yard setbacks

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2. ~~Minimum Side Yard:~~

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a. Ten feet, subject to provision of fire-retardant wall as required by adopted edition of the Unified Building Code.

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b. Ten feet without fire retardant wall.

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3. ~~Minimum Rear Yard:~~

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~~3.~~

a. None, if abutting an alley or fire lane and constructed with fire retardant wall.

b. Ten feet or none if attached to an adjacent building and constructed with fire retardant wall.

c. Ten feet without alley separation or fire-retardant wall.

iii. Size of Lots.

1. Minimum Lot Area: 30,000 square feet

2. Minimum Lot Width: 120 feet

3. Minimum Lot Depth: 250 feet

iv. Minimum Dwelling Area:

1. One or two bedroom —850 square feet.

2. ~~Additional-Three~~ bedroom — ~~450-1,000~~ square feet.

3. No more than 10% of the units may contain three bedrooms.

v. ~~Maximum~~ Height:

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1. Minimum Height:

- a. Four (4) stories along Shawnee Trail
- b. Six (6) stories along Dallas North Tollway.

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2. Maximum Height:

- a. Nine (9) stories, no greater than 110 feet, along Shawnee Trail
- b. Fourteen (14) stories, no greater than 190 feet, along Dallas North Tollway
- ~~v.c. Four (4) stories along Prosper Trail 9 stories, no greater than 110 feet along Shawnee Trail and 14 stories, no greater than 170 feet along Dallas Parkway.~~

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vi. Lot Coverage: Fifty-five percent (55%)

vii. Floor Area Ratio: Maximum 2.25:1

3. Multifamily Building Configuration.

- i. Multifamily structures shall be attached to structured parking by a covered walkway or connector element.
- ~~ii. Multifamily structures shall have climate controlled interior corridors.~~
- iii. First Floor: The ceiling height of the first floor shall be a minimum fourteen (14) feet in height.
- ~~iv. All (100%) of the first floor shall be for nonresidential uses, including multifamily amenities, retail and restaurant uses. One-half (50%) of the first floor uses shall be open to the public.~~

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~~iii. Garage Height:~~

- ~~1. Attached Garages: Attached garages are those that are directly connected to another building. The height of the garage shall not exceed the height of an adjoining or exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.~~
- ~~2. Detached Garages: The height of detached garages shall not exceed seven (7) stories or seventy five (75) feet in height.~~

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4. Garage Height:

- i. Attached Garages: Attached garages are those that are directly connected to another building. The height of the garage shall not exceed the height of an adjoining or exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.

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Case No. ZONE-24-0001

ii. Detached Garages: The height of detached garages shall not exceed seven (7) stories or seventy-five (75) feet in height.

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4.5. Off-Street Parking.

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- i. Multifamily shall be parked at one and one-half (1.5) spaces per dwelling unit for one-bedroom and two-bedroom units. For every additional room, an additional parking space is required. For example, a three-bedroom unit will require two and one-half (2.5) parking spaces.
- ii. A shared parking strategy is encouraged to reduce the required parking needed in the Mixed-Use Zone based on peak time demands. Shared parking agreements for adjacent properties should include a written agreement between property owners that clearly stipulates the terms of the joint use of the parking spaces. The shared parking agreement should include parking ratios per use that will be agreed upon between the developer and Town Staff during the Preliminary Site Plan review phase.
- iii. When a building includes Multifamily uses, the resident parking shall be provided in a structured garage. A section of the garage may be gated specifically for Multifamily use. If the Multifamily parking is gated from the parking utilized for other uses in the structured garage, details and logistics related to being gated will be refined in the Preliminary Site Plan review phase. Visitor parking and other ancillary uses associated with the Multifamily uses may be located between the building and a public street when located at or beyond the required landscape setback and screened with a headlight screen of earthen berms and/or a row of shrubs.
- iv. Parking in a structured garage shall be a minimum nine (9) feet in width and a minimum twenty (20) feet in depth.

iv-v. Along Prosper Trail and along Shawnee Trail, south of the man-made water feature, shrubs are not required to be on top of the required berm. The shrubs, berm and trees shall be installed in conjunction with a meandering trail/sidewalk in a manner that will provide a headline screen.

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5.6. Architectural and Material Standards.

- i. Review and Approval Process.
 - 1. Conceptual Architectural and Material Standards.
The applicant shall submit a detailed materials and style plan along with sample elevations and renderings to define the architectural character of the property. This shall be submitted at the time of Preliminary Site Plan submission and is subject to the approval of the Director of Development Services. This shall be submitted at the time of Preliminary Site Plan submission.
 - 2. Final Architectural and Material Standards.

Case No. ZONE-24-0001

The applicant shall submit a Façade Plan and Material Sample Board for each structure at the time of Site Plan submission and is subject to the approval of the Director of Development Services.

3. The conceptual elevations in Exhibit F are intended to evoke a general look and feel of the architecture of the various land use types. Changes to materials and architectural elements are permitted so long as the building elevations adhere to the design guidelines outlined in the Design Guidelines of this Exhibit C. The Mixed-Use Zone should offer architectural diversity between buildings, with each structure contributing its own unique flair that blends styles, materials, and artistic expressions in this dynamic arts district.
4. Structured Garages. Any elevation or portion of an elevation of a structured garage that is not wrapped by a building or is visible from Dallas Parkway/Tollway shall have architectural styles and materials compatible with the adjacent or attached structure to ensure the exposed structured garage elevation gives the appearance of a building rather than a blank parking garage. Cladding, murals, or other artistic expressions shall be used to enhance the overall architectural character of the structured garage.

ii. Design Guidelines.

1. All buildings shall be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each building elevation. The remaining twenty percent (20%) of each building elevation may be comprised of secondary materials.~~All buildings must be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each façade.~~
2. Primary materials shall include metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, marble, and carbon.~~For purposes of this section, primary materials shall include: metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, and marble.~~
- 2.3. Fiber cement panel is a secondary material.
- 3.4. Stucco is a secondary material. Stucco is not permitted on the first floor of any building. The total area of stucco shall not exceed ten percent (10%) of the total building elevation area.~~On each façade, fiber cement panel and stucco are each limited to a maximum ten percent (10%) on the first floor, a maximum thirty percent (30%) on the second and third stories, and a maximum fifty percent (50%) on the fourth story and above.~~
- 4.5. All materials and exterior colors shall be compatible throughout the development.
- 5.6. Horizontal and vertical building articulation is required on all elevations. This may be achieved through recessed or projected architectural elements, variations in roof line, etc.

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~~6-7.~~ No single finish shall cover more than eighty (80) percent of the front of any building.

~~7-8.~~ Storefronts on façade treatments that span multiple tenants shall use architecturally compatible materials, colors, details, awning signage, and lighting fixtures. Retail ground floor shall have windows covering a minimum of 60% of the major street and/or public-realm fronting façade(s).

~~8-9.~~ Architectural elements should tie into and play off of the historical features throughout the Town of Prosper, including but not limited to the silos and windmills to ensure this development feels connected to the Town as a whole. Modern elements and artistic expression may be used to play off of the historic theme of Prosper.

~~6-7.~~ Sidewalks. Sidewalks adjacent to the fronts of primary buildings, along drive aisles and parking rows, shall be a minimum fifteen (15) feet in width and may include tree wells, landscape beds/plantings, and enhanced pavement.

~~7-8.~~ Screening and Retaining Walls.

i. Service, Mechanical and Utility Equipment.

1. All service, mechanical and/or utility equipment, including transformers, shall be completely screened from public view by architectural screens, masonry screening walls, and/or landscaping.

2. When possible, all service areas and mechanical equipment shall be located at the rear of the building and out of view of the roadways.

ii. Screening and retaining walls shall be finished with a masonry veneer compatible with the materials of the surrounding development.

~~8-9.~~ Landscape Buffers. A minimum of a twenty-five (25) foot landscape buffer is required along Prosper Trail, minimum of a twenty-five (25) foot landscape buffer is required along Shawnee Trail, and a minimum thirty (30) foot buffer is required along Dallas Parkway.

G. Useable Open Space and Trails.

Usable open space is to be laid out in a way that provides equal access to both the Multifamily Zone and Mixed-Use Zone.

1. Useable Open Space.

i. A minimum of 15% of the property (35.68 acres) is required to be open space which will be provided through the entire development.

ii. A minimum 30% of the Multifamily Zone area is required to be open space. At least one-third of this open space is to be within the boundary of the Multifamily Zone. The remaining two-thirds of the required minimum open space for the Multifamily Zone is included as part of the entire project, can

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be located in the Mixed-Use Zone, and will require an easement, shared property right, or other form of agreement through the property owners association to be determined in later planning or development stages.

- iii. Any use of the floodplain as open space shall be approved by the Director of Engineering Services.
- iv. This space may include detention and floodplain areas. No more than (60%) of the useable open space can be detention or within the floodplain.
- v. Useable open space shall be a minimum of 35 feet in width, unless otherwise approved by the Director of Development Services, or his/her designee.
- vi. Useable open space in the floodplain shall include walking trails, sculptures/artwork, benches, and other amenities as outlined in item viii.
- vii. Buildings shall face and/or side to the open space to the greatest extent possible to provide pedestrian access and areas of congregation along the open space.
- viii. A minimum of six (6) amenities shall be provided within the open space and shall be approved by the Director of Development Services. Examples include:
 - 1. Outdoor fitness stations
 - 2. Durable shade structure such as a pavilion or pergola
 - 3. Sport court
 - 4. Fire pits and lounging areas
 - 5. Water features, including fountains and ponds outside the detention area
 - 6. Any other similar improvement approved by the Director of Development Services or his/her designee.

2. Trails.

- i. All trails shall comply with the Hike & Bike Master Plan.
- ii. A ten-foot (10') trail is required along Dallas Parkway and Prosper Trail, and a six-foot (6') sidewalk is required along all other public roadways.

iii. Trails within the development shall connect to the trails along the roadways.

~~iii.~~

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3. Planting Standards.

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- i. One (1) – Four (4) in caliper evergreen tree shall be planted per thirty (30) feet of linear open space area. These trees shall be planted in groups with appropriate spacing for species.
- ii. One (1) – Three (3) inch caliper ornamental tree shall be planted per thirty (30) linear feet of open space area. These trees may be planted in groups with appropriate spacing for species.
- iii. A minimum of fifteen (15) shrubs with a minimum size of five (5) gallons each shall be planted per thirty (30) linear feet of open space area. These shrubs may be planted in groups with appropriate spacing for species.
- iv. It is intended that all plant types promote a natural landscape. Where possible, the planting shall be in accordance with the general planting style. Drought tolerant and/or native plants from the Town’s approved plant list are required for compliance. Other species may be utilized with approval from the Town as part of the Site Plan process.
- v. All landscape areas to be kept free of weeds, invasive plant species, and trash

H. Detention/Retention.

Detention located within the Floodplain must meet all Town of Prosper, FEMA and all other applicable regulations. The proposed man-made water feature, located in the approximate location of the existing creek bed, will be sized to accommodate the proposed development on both sides as shown on the Conceptual Plan.

I. Public Art.

An amount of not less than twenty-four (24) public art installations shall be included throughout the entire project. Approximate locations for public art are denoted on Exhibit D, which includes locations at significant entry points into the development along the Tollway. The Director of Development Services shall determine the location and types of public art.

J. Phasing.

Phase 1A:

- Site-wide infrastructure for all 34 Acres
- Hotel Carbon
 - 144 Rooms (Only for Hotel Guests)
 - 12 Social Spaces (Primarily for Hotel Guests but available to the public as Event/Meeting Rental Space)
 - Performance Center (Open to the Public – Leased to a 3rd Party Operator)
 - Conference Center (Open to the Public)
 - Streaming & eSports Center (Open to the Public – Leased to a 3rd Party Operator)
 - Retail Operations (Open to the Public – Leased to a 3rd Party Operator)
 - Restaurants

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- Protein Bar (Open to the Public)
- Sports Bar (Open to the Public)
- Food Hall (Open to the Public)
- XO2 Tower
 - Luxury Condo residences (specialized for medical recovery)
 - 1 floor of Retail Flex Space
 - 3 floors of leased medical and out-patient office
 - Rooftop workout and relaxation facility
- Outdoor Recreation Area
 - Soccer field
 - Running track
 - Covered sports pavilion
 - Enclosed multi-sport court
- Mixed-Use Zone Parking Garage

Phase 1B:

- Multifamily Zone

Triggers:

Phase 1B Multifamily cannot shall not begin until Phase 1A has a building permit and begins construction until a foundation is poured in Phase 1A for one of the two hotel buildings (i.e. Hotel Carbon or the XO2 Tower).

The man-made water feature shall be approved by the Town before a permit can be received for the Multifamily development.

Phase 2:

- Mixed-Use retail and multi-family
- Theater
- Reception Facility
- Retail on the southeast quadrant

Triggers:

The multifamily component within Phase 2 shall not obtain a building permit until a Certificate of Occupancy is issued for the first hotel building and foundation poured for the second hotel building.

The retail portion of Phase 2 shall be built with the other components of this phase.

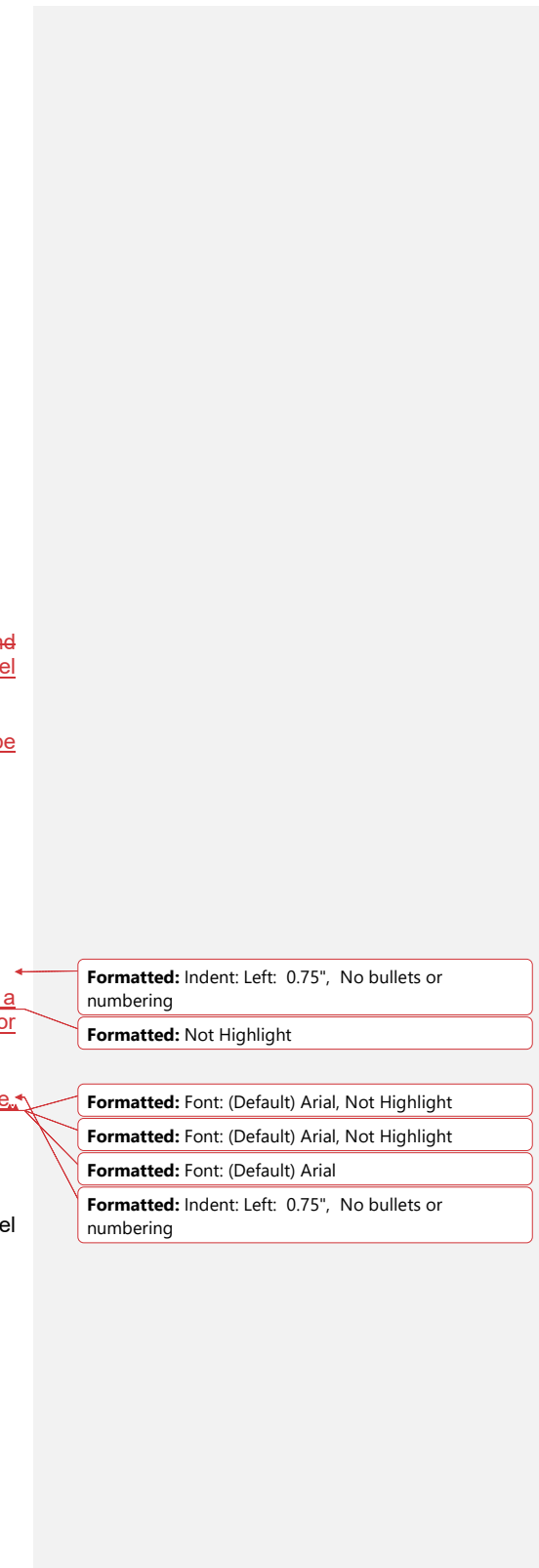
Phase 3:

- Hotel Voz on the far west
 - 4-diamond hotel status
 - Luxury pods called Hako that will be complementary to the 4-diamond Hotel Voz
- Retail in the southwest quadrant

Phase 4:

- Office on Dallas Parkway

A phasing diagram for the entire development is depicted below.



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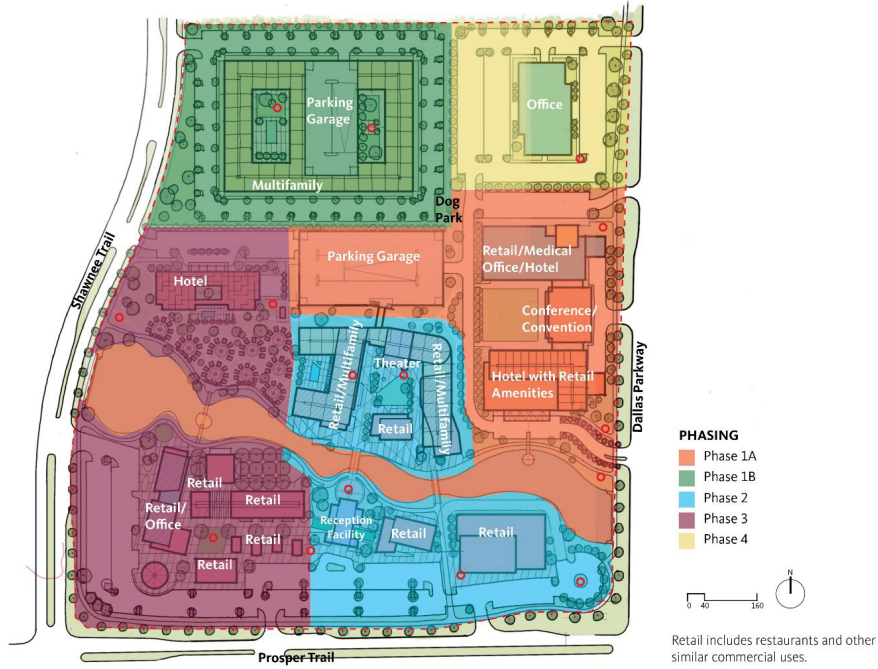
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PHASING DIAGRAM



TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 47.0 ACRES, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND #12 SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, FROM PLANNED DEVELOPMENT-75 (PD-75) TO PLANNED DEVELOPMENT-127 (PD-127), DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated and determined that the Zoning Ordinance should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request (Case ZONE-24-0001) from Prosper Tollway Avenues 35, L.P. ("Applicant"), to rezone 47.0 acres of land, more or less, situated in the Collin County School Land #12 Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A-1" and represented in Exhibit "A-2," attached hereto and incorporated herein for all purposes; and

WHEREAS, the Town Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and form set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the Town Council has further investigated into and determined that it will be advantageous and beneficial to Prosper and its inhabitants to rezone this property as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

Amendment to the Town's Zoning Ordinance. The Town's Zoning Ordinance is amended as follows: The zoning designation of the below described property containing 47.0 acres of land, more or less, at the northwest corner of Dallas Parkway and Prosper Trail, Town of Prosper, Collin County, Texas, and all streets, roads, and alleyways contiguous and/or adjacent thereto are hereby zoned as Planned Development-128 and being more particularly described in Exhibit "A-1" and represented in Exhibit "A-2," attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with (1) the Statement of Intent and Purpose, attached hereto as Exhibit “B,” (2) Development Standards, attached hereto as Exhibit “C,” (3) the Conceptual Plan, attached hereto as Exhibit “D,” (4) the Development Schedule, attached hereto as Exhibit “E,” and (5) Conceptual Elevations, attached hereto as Exhibit “F,” all of which are incorporated herein for all purposes as if set forth verbatim, subject to the following condition of approval by the Town Council:

1. Approval of a Development Agreement, including, but not limited to, architectural building materials.

Two (2) original, official, and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. One (1) copy shall be filed with the Town Secretary and retained as an original record and shall not be changed in any manner.
- b. One (1) copy shall be filed with the Building Official and shall be maintained up to date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy, and enforcing the zoning ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

SECTION 3

No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the Town Council in the manner provided for by law.

SECTION 4

Unlawful Use of Premises. It shall be unlawful for any person, firm, or corporation to make use of said premises in some manner other than as authorized by this Ordinance, and shall be unlawful for any person, firm, or corporation to construct on said premises any building that is not in conformity with the permissible uses under this Zoning Ordinance.

SECTION 5

Penalty. Any person, firm, corporation, or business entity violating this Ordinance or any provision of Prosper’s Zoning Ordinance, as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day’s violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 6

Severability. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is

expressly provided that all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 7

Savings/Repealing Clause. Prosper’s Zoning Ordinance, as amended, shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8

Effective Date. This Ordinance shall become effective from and after its adoption and publications as required by law.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THE 11TH DAY OF JUNE 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis-Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the Collin County School Land #12 Survey, Abstract Number 147, Town of Prosper, Collin County, Texas, being all of a tract conveyed to Prosper Tollway Avenues 35 LP, by deed recorded in Document No. 2022000116052, Official Public Records, Collin County, Texas (OPRCCT), also being all of a tract of land described as Parcel 40-18, by deed recorded in Instrument No. 20060912001319330 OPRCCT, also being a portion of Prosper Trail and Shawnee Trail (variable width right-of-way), according to the plat recorded in Document No. 2018-408 OPRCCT, with the subject tract being more particularly described as follows:

BEGINNING at a point at the northeast corner of said Parcel 40-18, also being in Dallas Parkway (variable width right-of-way);

THENCE along the east line of said Parcel 40-18, the following:

S 00°10'54" E, 326.59 feet;

S 01°07'15" W, 1094.89 feet to a point in the centerline of Prosper Trail;

THENCE S 89°26'13" W, 1521.87 feet along the centerline thereof to a point at the intersection of the centerline of Prosper Trail and the centerline of Shawnee Trail;

THENCE Along the centerline of Shawnee Trail, the following:

N 00°33'47" W, 360.01 feet;

Around a non-tangent curve to the right having a central angle of 26°13'18", a radius of 1099.99 feet, a chord of N 12°33'02" E, 499.04 feet, and an arc length of 503.42 feet;

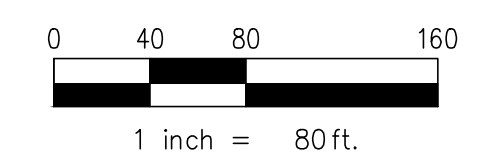
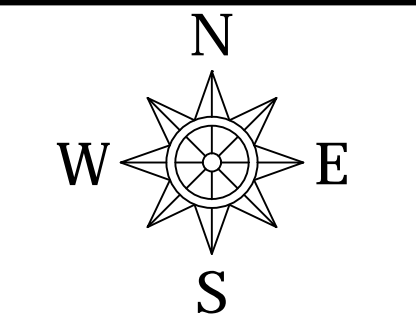
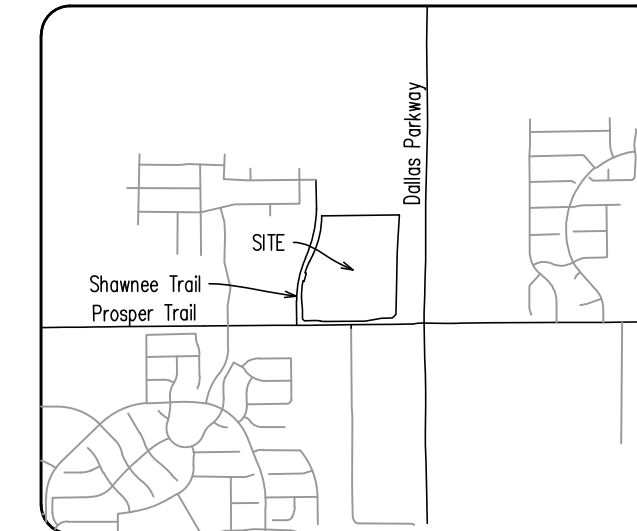
N 25°39'41" E, 100.00 feet;

Around a tangent curve to the left having a central angle of 26°12'21", a radius of 1100.00 feet, a chord of N 12°33'31" E, 498.74 feet, and an arc length of 503.12 feet to a point at the southwest corner of a tract of land conveyed to Cothran Malibu LP, by deed recorded in Instrument No. 20150105000009000 OPRCCT;

THENCE N 89°27'26" E, 1285.59 feet along the south line thereof to the POINT OF BEGINNING with the subject tract containing 2,047,881 square feet or 47.013 acres of land.



This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



Basis of bearing: State Plane Coordinate System, Texas North Central Zone 4202, North American Datum of 1983, Adjustment Realization 2011.

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the Collin County School Land #12 Survey, Abstract Number 147, Town of Prosper, Collin County, Texas, being all of a tract conveyed to Prosper Tollway Avenues 35 LP, by deed recorded in Document No. 2022000116052, Official Public Records, Collin County, Texas (OPRCCT), also being all of a tract of land described as Parcel 40-18, by deed recorded in Instrument No. 20060912001319330 OPRCCT, also being a portion of Prosper Trail and Shawnee Trail (variable width right-of-way), according to the plat recorded in Document No. 2018-408 OPRCCT, with the subject tract being more particularly described as follows:

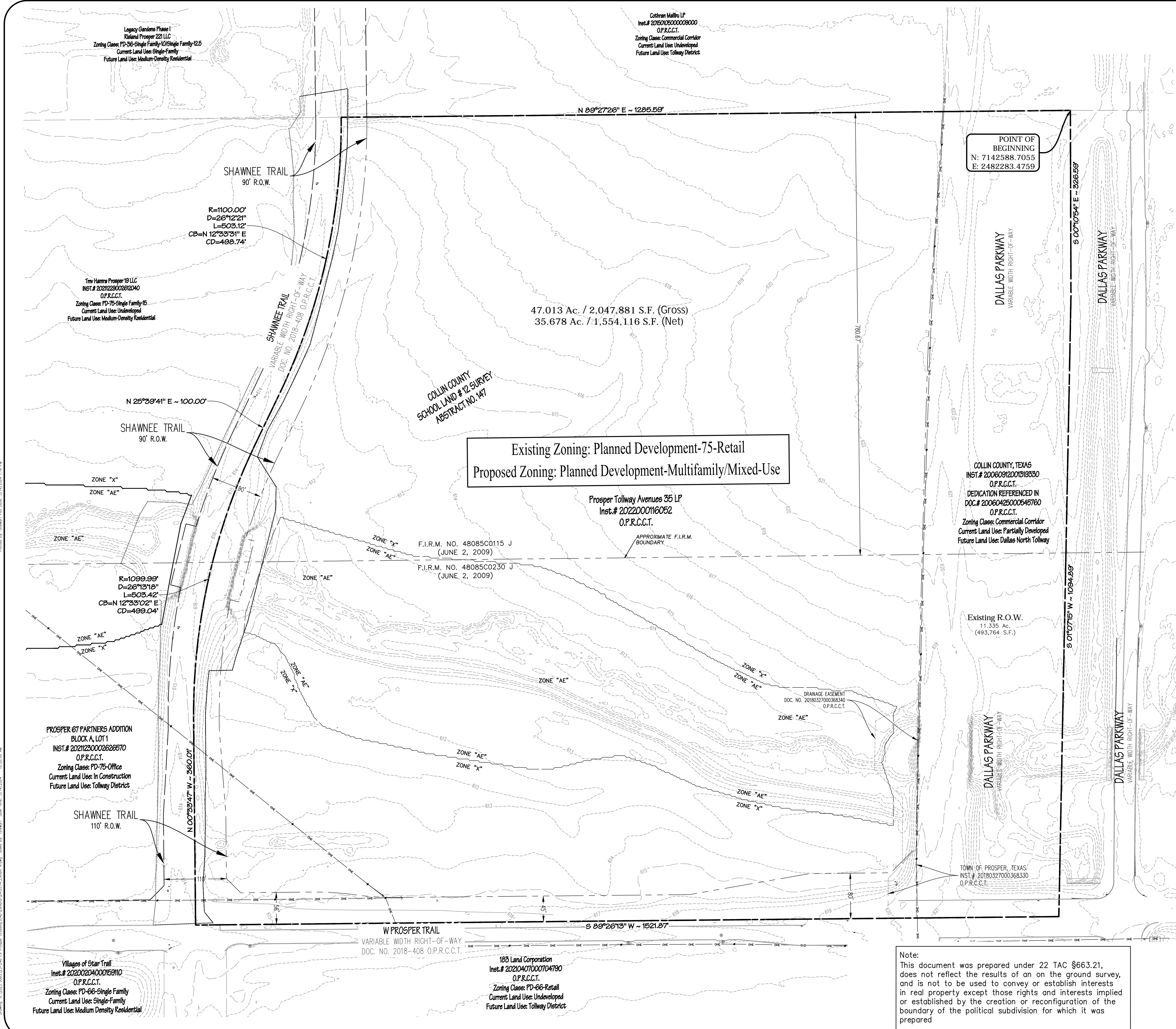
BEGINNING at a point at the northeast corner of said Parcel 40-18, also being in Dallas Parkway (variable width right-of-way); THENCE along the east line of said Parcel 40-18, the following: S 00°10'54" E, 326.59 feet; S 01°07'15" W, 1094.89 feet to a point in the centerline of Prosper Trail; THENCE S 89°26'13" W, 1521.87 feet along the centerline thereof to a point at the intersection of the centerline of Prosper Trail and the centerline of Shawnee Trail; THENCE Along the centerline of Shawnee Trail, the following: N 00°33'47" W, 360.01 feet; Around a non-tangent curve to the right having a central angle of 26°13'18", a radius of 1099.99 feet, a chord of N 12°33'02" E, 499.04 feet, and an arc length of 503.42 feet; N 25°39'41" E, 100.00 feet; Around a tangent curve to the left having a central angle of 26°12'21", a radius of 1100.00 feet, a chord of N 12°33'31" E, 498.74 feet, and an arc length of 503.12 feet to a point at the southwest corner of a tract of land conveyed to Cotthran Malibu LP, by deed recorded in Instrument No. 2015010500009000 OPRCCT; THENCE N 89°27'26" E, 1285.59 feet along the south line thereof to the POINT OF BEGINNING with the subject tract containing 2,047,881 square feet or 47.013 acres of land.

Note: The thoroughfare alignment(s) shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of Final Plat.

Note: FEMA Floodplain depicted on this exhibit reflects Flood Insurance Rate Map (FIRM) panel number 48085C0115J, dated 6/2/2009, and Letter of Map Revision (LOMR) Case No. 21-06-1205P, dated 1/27/2022

Existing Zoning: Planned Development-75-Retail
Proposed Zoning: Planned Development-Multifamily/Mixed-Use

47.013 Ac. / 2,047,881 S.F. (Gross)
35.678 Ac. / 1,554,116 S.F. (Net)



Note: This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared

EXHIBIT A-2
BOUNDARY EXHIBIT
PROSPER ARTS DISTRICT
2,047,881 SQ. FEET OR 47.013 ACRES (GROSS)
1,554,116 SQ. FEET OR 35.678 ACRES (NET)
OF LAND OUT OF THE
COLLIN COUNTY SCHOOL LAND #12 SURVEY
ABSTRACT NO. 147, TRACT 74
TOWN OF PROSPER
COLLIN COUNTY, TEXAS

OWNER / APPLICANT: Prosper Tollway Avenues 35, LP
5 Cowboys Way, #300
Frisco, TX 75034
Telephone: (630) 987-9275
Contact: Satya Donepudi

ENGINEER: Spiars Engineering, Inc.
501 W. President George Bush Hwy, Suite 200
Richardson, TX 75080
Telephone: (972) 422-0077
TBPELS No. F-2121 And No. F-10043100
Contact: Mike Martinie

**EXHIBIT B
STATEMENT OF INTENT AND PURPOSE**

I. Statement of Intent

A. Overall Intent

This 35.68 acre Tract C zone of PD-75 is intended to be developed in a manner that will allow flexibility of uses including retail, commercial, office, medical office, hotel, multifamily and entertainment. This development will include outdoor amenity space with a detention pond, trails, benches, and public art and will grow into an active community of mixed uses.

B. Description of Property

Located at the northwest intersection of the Dallas Parkway and Prosper Trail this 35.68-acre Tract C zone of PD-75 is owned by Satya Donepudi, Prosper Tollway Avenues 35, LP. Shawnee Trail, a four (4) lane divided minor thoroughfare runs north and south along the west side of this zone and will provide access to the proposed uses within the entire development. Driveway access for the development will also be taken off Prosper Trail on the southern boundary of the site and the Dallas Parkway along the eastern boundary. A floodplain, open space and detention basin runs east and west through the site along the creek. With the exception of the existing 20-foot-wide paving for Prosper Trail along the southern boundary, the subject Tract C zone of PD-75 is currently vacant. To the north and west of PD-75 is a proposed single-family development, Legacy Crossing (PD-36 and PD-60). To the south is the proposed 880-acre Villages of Star Trail, a Planned Development (PD-66) which incorporates single family, office, retail and commercial zoning. Exhibit A-2 and Exhibit D depict the location and boundary of the project.

C. Description of Proposed Development

The location of this project, at the intersection of a major highway and two thoroughfares, lends itself well for mixed-use development including commercial, retail, hotel, office, and multifamily residential.

Tract C is divided into two sub-zones- A Multifamily Zone (approximately 6.8 acres) and a Mixed-Use Zone (approximately 28.9 acres). Uses in the Multifamily Zone include Multifamily residential. Uses in the mixed-use zone include hotel, office, retail, structured parking, indoor event/reception space and Multifamily over retail. The mixed-use zone contains a detention/open space area. A hike and bike trail is proposed within the detention/open space area and will connect to the trail in the neighboring development.

II. Current Zoning and Future Land Use

A. Current Zoning Classification

The land is currently zoned as PD-75, with Tract C slated exclusively for retail uses including a grocery, gas station, restaurants, fast food, general retail and office/retail.

B. Future Land Use Plan and Compatibility with the Comprehensive Plan

The 2023 Future Land Use Plan designates this parcel as Dallas North Tollway District, which is defined in the 2023 Comprehensive Plan as consisting of the most intense land uses with a diverse mixture of office, retail and residential uses. The proposed mix of multi-family residential, hotel, office, retail, and structured parking meet the intention of the Comprehensive Plan.

EXHIBIT C Planned Development Standards

A. Conformance with the Town's Zoning Ordinance and Subdivision Ordinance.

1. Unless expressly identified and referenced within this ordinance, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20), as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.
2. The zoning exhibits attached and incorporated into the Planned Development shall serve as a guide for development of the Property. The ultimate layout (including streets, site layout, building uses, and open space areas) shall be determined at the time of Preliminary Site Plan application review by the Planning & Zoning Commission.
3. The developer shall provide an updated Conceptual Plan (Exhibit "D") with each development application if any changes are being made to the most recent Exhibit on file with the Town.
4. Proposed amendments to this Ordinance, or any of the exhibits attached hereto shall be submitted to the Director of Development Services and evaluated in conformance with Zoning Ordinance, Chapter 2, Section 24 (Planned Development District).

B. Exhibits.

Use and development of the Property shall be in conformance with the following exhibits:

1. Exhibit B, Statement of Intent and Purpose
2. Exhibit D, Conceptual Plan
3. Exhibit E, Development Schedule
4. Exhibit F, Elevations

C. Regulations.

The regulations in Exhibit C shall be the exclusive regulations governing building setbacks and other types of regulations such as, lot area, lot width, lot depth, residential density, dwelling area, height, number of stories, coverage, and floor area ratio.

D. Project Tracking Plan.

A Project Tracking Plan shall be submitted with each preliminary site plan, site plan, preliminary plat and final plat to provide context for planning purposes and to serve as a "tracking tool" for compliance with this PD Ordinance. Updates to a Project Tracking Plan may be submitted at any time. It is an informational document that is used for tracking purposes only and no approval of a Project Tracking Plan is required. No rights derived from Chapter 245 of the Texas Local Government Code, as amended, or other vested rights shall accrue from the Project Tracking Plan, and the Project Tracking Plan shall not be deemed to provide "fair notice" as provided therein. Each tracking plan shall track the following:

1. The number of building permits issued for multifamily units in the Mixed-Use Zone and in the Multifamily Zone;
2. the density in the Mixed-Use Zone and in the Multifamily Zone based on approved preliminary site plans and site plans;
3. the acreage and percentage of open space within each Zone;
4. the acreage and percentage of parkland within each Zone and/or fees paid in lieu of parkland per Ordinance requirements;
5. the approximate number of dwelling units (or range), as well as dwelling types, if any, authorized by an approved plat within each Zone and the Property (i.e. overall density summary). For tracking purposes, each Project Tracking Plan submitted with a preliminary site plan or plat application will include a tabular summary of each recorded plat for all or any portion of the Property subject to this PD Ordinance.

E. Multifamily Zone Development Standards.

1. Uses. Except as noted below, the Multifamily Zone shall develop in accordance with the Multifamily District, as it exists or may be amended, and in accordance with the regulations described below.
 - i. Permitted Uses. Uses shall be permitted in accordance with the Multifamily District as follows:
 1. Multifamily Dwelling
 2. Accessory Building (only for Multifamily use)
 3. Municipal Uses Operated by Town of Prosper
 4. Park or Playground
 5. Private Recreation Center
 6. Home Occupation
2. Regulations.
 - i. Residential Density.
 1. Minimum Density: Forty (40) units per acre.
 2. Maximum Density: Fifty (50) units per acre up to 450 total units. The combined total multifamily units for the Multifamily Zone and Mixed-Use Zone shall not exceed 515 units.
 - ii. Size of Yards.
 1. Minimum Front Yard: Ten (10) feet; Twenty-five (25) feet along Shawnee Trail to accommodate the landscape buffer
 2. Minimum Side Yard: Thirty (30) feet for structures adjacent to property that is either zoned for multifamily or non-residential uses
 3. Minimum Rear Yard: Thirty (30) feet for structures adjacent to property that is either zoned for multifamily or non-residential uses

4. Multiple structures constructed on the same lot shall maintain a minimum separation of thirty (30) feet
- iii. Height:
 1. Minimum Height – Four (4) stories
 2. Maximum Height – Five (5) stories, no greater than sixty (60) feet from finished grade
 - iv. Lot Coverage: Forty-five percent (45%)
 - v. Minimum Dwelling Area:
 1. One or two bedroom —850 square feet.
 2. Three bedroom — 1,000 square feet.
 3. No more than 10% of the units may contain three bedrooms.
3. Building Configuration.
 - i. Multifamily structures shall have climate controlled interior corridors.
 - ii. The arrangement of multifamily buildings shall be organized so that the resident parking shall be provided in a structured garage. Visitor and other ancillary parking may be located on the drive aisle/fire lane that wraps the multifamily development.
 - iii. The Multifamily shall wrap the structured parking so that no more than 25% of the structured parking garage is exposed to the drive aisle/fire lane. The height of the garage shall not exceed the height of the adjoining multifamily building. All associated appurtenances to the garage, such as an elevator shaft or mechanical equipment, shall be completely screened.
 - iv. Any elevation or portion of an elevation of a structured garage that is not wrapped by a building or is visible from Dallas Parkway/Tollway shall have architectural styles and materials compatible with the adjacent or attached structure to ensure the exposed structured garage elevation gives the appearance of a building rather than a blank parking garage. Cladding, murals, or other artistic expressions shall be used to enhance the overall architectural character of the structured garage.
 - v. Parking in a structured garage shall be a minimum nine (9) feet in width and a minimum twenty (20) feet in depth.
 - vi. Internal roadways/fire lanes on the front sides of the multi-family buildings shall include on-street parking, either in parallel or angled parking format to further build an urban character. A maximum of one row of parking on each side of the drive aisle is permitted on the front side of residential buildings.
 - vii. Any non-structured, off-street, surface parking that contains ten (10) or more spaces shall provide interior landscaping as follows:

1. All landscaped areas shall be protected by a raised six (6) inch concrete curb. Pavement shall not be placed closer than four (4) feet from the trunk of a tree unless a Town approved root barrier is utilized.
 2. Landscaped islands shall be located at the terminus of all parking rows, except for-street parking, and shall contain at least one (1) large tree, three (3) inch caliper minimum, with no more than seven (7) parking spaces permitted in a continuous row without being interrupted by a landscape island.
 3. Landscape islands shall be a minimum of one hundred sixty (160) square feet, not less than nine (9) feet wide, measured from the inside face of curb, and length equal to the abutting space.
- viii. The Multifamily Zone may be gated. If the Multifamily Zone is gated, details and logistics related to being gated will be refined in later planning stages.
- ix. The residential buildings shall have a strong urban edge with buildings forming a block. Residential buildings shall have entrances oriented to the sidewalk for ease of pedestrian access and shall be located in such a manner as to minimize conflicts between pedestrians and automobiles. Outward facing residential units on the ground floor shall include patio/outdoor space associated with the unit and an exterior door that leads to the sidewalk.
- x. Upscale amenities shall include a minimum of five (5) items and be approved by the Director of Development Services.
4. Off-Street Parking. Multifamily shall be parked at one and one-half (1.5) spaces per dwelling unit for one-bedroom and two-bedroom units. For every additional room, an additional parking space is required. For example, a three-bedroom unit will require two and one-half (2.5) parking spaces.
5. Architectural and Material Standards.
- i. Review and Approval Process.
 1. Conceptual Architectural and Material Standards.

The applicant shall submit a detailed materials and style plan along with sample elevations and renderings to define the architectural character of the property. This shall be submitted at the time of Preliminary Site Plan submission and is subject to the approval of the Director of Development Services.
 2. Final Architectural and Material Standards.

The applicant shall submit a Façade Plan and Material Sample Board for each structure at the time of Site Plan submission and is subject to the approval of the Director of Development Services.
 3. The conceptual elevations in Exhibit F are intended to evoke a general look and feel of the architecture of the various land use types. Changes to materials and architectural elements are

permitted so long as the building elevations adhere to the design guidelines outlined in the Design Guidelines of this Exhibit C.

ii. Design Guidelines.

1. All buildings shall be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each façade. The remaining twenty percent (20%) of each building elevation may be comprised of secondary materials.
 2. Primary materials shall include metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, and marble.
 3. Fiber cement panel is a secondary material.
 4. Stucco is a secondary material. Stucco is not permitted on the first floor of any building. The total area of stucco shall not exceed ten percent (10%) of the total building elevation area.
 5. The style of all buildings must be consistent and in keeping with the style of the entire Multifamily Zone.
 6. All materials and exterior colors shall be compatible with those used throughout the development.
 7. Horizontal and vertical building articulation is required on all elevations. This may be achieved through recessed or projected architectural elements, variations in roof line, etc.
 8. No single finish shall cover more than eighty (80) percent of the front of any building.
6. Sidewalks. Sidewalks adjacent to the fronts of buildings shall be a minimum seven (7) feet in width and may include tree wells, landscape beds/plantings, and enhanced pavement.
7. Screening and Retaining Walls.
- i. Service, Mechanical and Utility Equipment.
 1. All service, mechanical and/or utility equipment, including transformers, shall be completely screened from public view by architectural screens, masonry screening walls, and/or landscaping.
 2. When possible, all service areas and mechanical equipment shall be located at the rear of the building and out of view of the roadways.
 - ii. Screening and retaining walls shall be finished with a masonry veneer compatible with the materials of the surrounding development.
8. Landscape Buffers. A minimum of a twenty-five (25) foot landscape buffer is required along Prosper Trail, minimum of a twenty-five (25) foot landscape buffer is required along Shawnee Trail, and a minimum thirty (30) foot buffer is required along Dallas Parkway.

F. Mixed-Use Zone Development Standards.

1. Uses. Except as noted below, the Mixed-Use Zone of Tract C shall develop in accordance with the Retail District, as it exists or may be amended, and in accordance with the regulations described below.

- i. Permitted Uses:

1. Administrative, Medical or Professional Office
2. Wine Bar
3. Cocktail Lounge
4. Cigar Bar
5. Artisan's Workshop
6. Automobile Parking Lot/Garage
7. Automobile Paid Parking Lot/Garage
8. Bank, Savings and Loan, or Credit Union
9. Beauty Salon/Barber Shop
10. Business Service
11. Caretaker's/Guard's Residence
12. Catering
13. Civic/Convention Center
14. Dry Cleaning, Minor
15. Governmental Office
16. Gymnastics/Dance Studio
17. Health/Fitness Center
18. Hospital
19. Hotel, Full Service
20. Hotel, Residence/Extended Stay, being a full-service hotel with limited extended stay capabilities (XO2)
21. Insurance Office
22. Meeting/Banquet/Reception Facility/Wedding Event Center
23. Mobile Food Vendor
24. Multifamily, if over a minimum 1-floor of non-residential uses.
25. Municipal Uses Operated by the Town of Prosper
26. Museum/Art Gallery
27. Outdoor Merchandise Display, Temporary
28. Park or Playground
29. Print Shop, Minor
30. Private Club
31. Private Recreation Center
32. Restaurant (without a drive-through)
33. Retail Stores and Shops
34. Retail/Service Incidental Use
35. Theater, Neighborhood

- ii. Permitted with Specific Use Permit:

1. Antique Shop and Used Furniture
2. Commercial Amusement, Indoor
3. Commercial Amusement, Outdoor
4. Convenience Store without Gas Pumps

- 5. Farmer's Market
- 6. Furniture, Home Furnishings and Appliance Store
- 7. Helistop
- 8. Outdoor Merchandise Display, Incidental
- 9. Pet Day Care
- 10. Rehabilitation Care Institution
- 11. Veterinarian Clinic and/or Kennel, Indoor

2. Regulations.

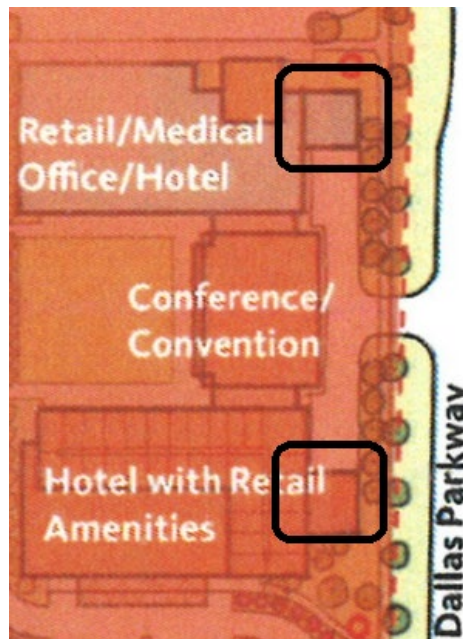
i. Residential Density.

- 1. Minimum Density: Forty (40) dwelling units per acre.
- 2. Maximum Density: Sixty-five (65) dwelling units per acre, up to 350 total units. The combined total multifamily units for the Multifamily Zone and Mixed-Use Zone shall not exceed 515 units.

ii. Size of Yards.

1. Minimum Front Yard:

- a. Along the Dallas North Tollway (Dallas Parkway): Fifty (50) foot front yard with a thirty (30) foot landscape buffer. In Phase 1A, the front yard setback and landscape buffer may both be thirty (30) feet in the service areas outlined in the graphic below, provided that these areas are heavily landscaped, including berms:



- b. Along Shawnee Trail and Prosper Trail: No minimum front yard setbacks

2. Minimum Side Yard:
 - a. Ten feet, subject to provision of fire-retardant wall as required by adopted edition of the Unified Building Code.
 - b. Ten feet without fire retardant wall.
3. Minimum Rear Yard:
 - a. None, if abutting an alley or fire lane and constructed with fire retardant wall.
 - b. Ten feet or none if attached to an adjacent building and constructed with fire retardant wall.
 - c. Ten feet without alley separation or fire-retardant wall.
- iii. Size of Lots.
 1. Minimum Lot Area: 30,000 square feet
 2. Minimum Lot Width: 120 feet
 3. Minimum Lot Depth: 250 feet
- iv. Minimum Dwelling Area:
 1. One or two bedroom —850 square feet.
 2. Three bedroom — 1,000 square feet.
 3. No more than 10% of the units may contain three bedrooms.
- v. Height:
 1. Minimum Height:
 - a. Four (4) stories along Shawnee Trail
 - b. Six (6) stories along Dallas North Tollway.
 2. Maximum Height:
 - a. Nine (9) stories, no greater than 110 feet, along Shawnee Trail
 - b. Fourteen (14) stories, no greater than 190 feet, along Dallas North Tollway
 - c. Four (4) stories along Prosper Trail
- vi. Lot Coverage: Fifty-five percent (55%)
- vii. Floor Area Ratio: Maximum 2.25:1
3. Multifamily Building Configuration.
 - i. Multifamily structures shall be attached to structured parking by a covered walkway or connector element.
 - ii. Multifamily structures shall have climate controlled interior corridors.

- iii. First Floor: The ceiling height of the first floor shall be a minimum fourteen (14) feet in height.
- iv. All (100%) of the first floor shall be for nonresidential uses, including multifamily amenities, retail and restaurant uses. One-half (50%) of the first floor uses shall be open to the public.

4. Garage Height:

- i. Attached Garages: Attached garages are those that are directly connected to another building. The height of the garage shall not exceed the height of an adjoining or exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.
- ii. Detached Garages: The height of detached garages shall not exceed seven (7) stories or seventy-five (75) feet in height.

5. Off-Street Parking.

- i. Multifamily shall be parked at one and one-half (1.5) spaces per dwelling unit for one-bedroom and two-bedroom units. For every additional room, an additional parking space is required. For example, a three-bedroom unit will require two and one-half (2.5) parking spaces.
- ii. A shared parking strategy is encouraged to reduce the required parking needed in the Mixed-Use Zone based on peak time demands. Shared parking agreements for adjacent properties should include a written agreement between property owners that clearly stipulates the terms of the joint use of the parking spaces. The shared parking agreement should include parking ratios per use that will be agreed upon between the developer and Town Staff during the Preliminary Site Plan review phase.
- iii. When a building includes Multifamily uses, the resident parking shall be provided in a structured garage. A section of the garage may be gated specifically for Multifamily use. If the Multifamily parking is gated from the parking utilized for other uses in the structured garage, details and logistics related to being gated will be refined in the Preliminary Site Plan review phase. Visitor parking and other ancillary uses associated with the Multifamily uses may be located between the building and a public street when located at or beyond the required landscape setback and screened with a headlight screen of earthen berms and/or a row of shrubs.
- iv. Parking in a structured garage shall be a minimum nine (9) feet in width and a minimum twenty (20) feet in depth.
- v. Along Prosper Trail and along Shawnee Trail, south of the man-made water feature, shrubs are not required to be on top of the required berm. The shrubs, berm and trees shall be installed in conjunction with a meandering trail/sidewalk in a manner that will provide a headline screen.

6. Architectural and Material Standards.

i. Review and Approval Process.

1. Conceptual Architectural and Material Standards.

The applicant shall submit a detailed materials and style plan along with sample elevations and renderings to define the architectural character of the property. This shall be submitted at the time of Preliminary Site Plan submission and is subject to the approval of the Director of Development Services.

2. Final Architectural and Material Standards.

The applicant shall submit a Façade Plan and Material Sample Board for each structure at the time of Site Plan submission and is subject to the approval of the Director of Development Services.

3. The conceptual elevations in Exhibit F are intended to evoke a general look and feel of the architecture of the various land use types. Changes to materials and architectural elements are permitted so long as the building elevations adhere to the design guidelines outlined in the Design Guidelines of this Exhibit C. The Mixed-Use Zone should offer architectural diversity between buildings, with each structure contributing its own unique flair that blends styles, materials, and artistic expressions in this dynamic arts district.

4. Structured Garages. Any elevation or portion of an elevation of a structured garage that is not wrapped by a building or is visible from Dallas Parkway/Tollway shall have architectural styles and materials compatible with the adjacent or attached structure to ensure the exposed structured garage elevation gives the appearance of a building rather than a blank parking garage. Cladding, murals, or other artistic expressions shall be used to enhance the overall architectural character of the structured garage.

ii. Design Guidelines.

1. All buildings shall be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each building elevation. The remaining twenty percent (20%) of each building elevation may be comprised of secondary materials.

2. Primary materials shall include metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, marble, and carbon.

3. Fiber cement panel is a secondary material.

4. Stucco is a secondary material. Stucco is not permitted on the first floor of any building. The total area of stucco shall not exceed ten percent (10%) of the total building elevation area.

5. All materials and exterior colors shall be compatible throughout the development.

6. Horizontal and vertical building articulation is required on all elevations. This may be achieved through recessed or projected architectural elements, variations in roof line, etc.
 7. No single finish shall cover more than eighty (80) percent of the front of any building.
 8. Storefronts on façade treatments that span multiple tenants shall use architecturally compatible materials, colors, details, awning signage, and lighting fixtures. Retail ground floor shall have windows covering a minimum of 60% of the major street and/or public-realm fronting façade(s).
 9. Architectural elements should tie into and play off of the historical features throughout the Town of Prosper, including but not limited to the silos and windmills to ensure this development feels connected to the Town as a whole. Modern elements and artistic expression may be used to play off of the historic theme of Prosper.
7. Sidewalks. Sidewalks adjacent to the fronts of primary buildings, along drive aisles and parking rows, shall be a minimum fifteen (15) feet in width and may include tree wells, landscape beds/plantings, and enhanced pavement.
8. Screening and Retaining Walls.
- i. Service, Mechanical and Utility Equipment.
 1. All service, mechanical and/or utility equipment, including transformers, shall be completely screened from public view by architectural screens, masonry screening walls, and/or landscaping.
 2. When possible, all service areas and mechanical equipment shall be located at the rear of the building and out of view of the roadways.
 - ii. Screening and retaining walls shall be finished with a masonry veneer compatible with the materials of the surrounding development.
9. Landscape Buffers. A minimum of a twenty-five (25) foot landscape buffer is required along Prosper Trail, minimum of a twenty-five (25) foot landscape buffer is required along Shawnee Trail, and a minimum thirty (30) foot buffer is required along Dallas Parkway.

G. Useable Open Space and Trails.

Useable open space is to be laid out in a way that provides equal access to both the Multifamily Zone and Mixed-Use Zone.

1. Useable Open Space.
 - i. A minimum of 15% of the property (35.68 acres) is required to be open space which will be provided through the entire development.

- ii. A minimum 30% of the Multifamily Zone area is required to be open space. At least one-third of this open space is to be within the boundary of the Multifamily Zone. The remaining two-thirds of the required minimum open space for the Multifamily Zone is included as part of the entire project, can be located in the Mixed-Use Zone, and will require an easement, shared property right, or other form of agreement through the property owners association to be determined in later planning or development stages.
- iii. Any use of the floodplain as open space shall be approved by the Director of Engineering Services.
- iv. This space may include detention and floodplain areas. No more than (60%) of the useable open space can be detention or within the floodplain.
- v. Useable open space shall be a minimum of 35 feet in width, unless otherwise approved by the Director of Development Services, or his/her designee.
- vi. Useable open space in the floodplain shall include walking trails, sculptures/artwork, benches, and other amenities as outlined in item viii.
- vii. Buildings shall face and/or side to the open space to the greatest extent possible to provide pedestrian access and areas of congregation along the open space.
- viii. A minimum of six (6) amenities shall be provided within the open space and shall be approved by the Director of Development Services. Examples include:
 - 1. Outdoor fitness stations
 - 2. Durable shade structure such as a pavilion or pergola
 - 3. Sport court
 - 4. Fire pits and lounging areas
 - 5. Water features, including fountains and ponds outside the detention area
 - 6. Any other similar improvement approved by the Director of Development Services or his/her designee.

2. Trails.

- i. All trails shall comply with the Hike & Bike Master Plan.
- ii. A ten-foot (10') trail is required along Dallas Parkway and Prosper Trail, and a six-foot (6') sidewalk is required along all other public roadways.
- iii. Trails within the development shall connect to the trails along the roadways.

3. Planting Standards.

- i. One (1) – Four (4) in caliper evergreen tree shall be planted per thirty (30) feet of linear open space area. These trees shall be planted in groups with appropriate spacing for species.
- ii. One (1) – Three (3) inch caliper ornamental tree shall be planted per thirty (30) linear feet of open space area. These trees may be planted in groups with appropriate spacing for species.
- iii. A minimum of fifteen (15) shrubs with a minimum size of five (5) gallons each shall be planted per thirty (30) linear feet of open space area. These shrubs may be planted in groups with appropriate spacing for species.
- iv. It is intended that all plant types promote a natural landscape. Where possible, the planting shall be in accordance with the general planting style. Drought tolerant and/or native plants from the Town's approved plant list are required for compliance. Other species may be utilized with approval from the Town as part of the Site Plan process.
- v. All landscape areas to be kept free of weeds, invasive plant species, and trash

H. Detention/Retention.

Detention located within the Floodplain must meet all Town of Prosper, FEMA and all other applicable regulations. The proposed man-made water feature, located in the approximate location of the existing creek bed, will be sized to accommodate the proposed development on both sides as shown on the Conceptual Plan.

I. Public Art.

An amount of not less than twenty-four (24) public art installations shall be included throughout the entire project. Approximate locations for public art are denoted on Exhibit D, which includes locations at significant entry points into the development along the Tollway. The Director of Development Services shall determine the location and types of public art.

J. Phasing.

Phase 1A:

- Site-wide infrastructure for all 34 Acres
- Hotel Carbon
 - 144 Rooms (Only for Hotel Guests)
 - 12 Social Spaces (Primarily for Hotel Guests but available to the public as Event/Meeting Rental Space)
 - Performance Center (Open to the Public – Leased to a 3rd Party Operator)
 - Conference Center (Open to the Public)
 - Streaming & eSports Center (Open to the Public – Leased to a 3rd Party Operator)

- Retail Operations (Open to the Public – Leased to a 3rd Party Operator)
- Restaurants
 - Protein Bar (Open to the Public)
 - Sports Bar (Open to the Public)
 - Food Hall (Open to the Public)
- XO2 Tower
 - Luxury Condo residences (specialized for medical recovery)
 - 1 floor of Retail Flex Space
 - 3 floors of leased medical and out-patient office
 - Rooftop workout and relaxation facility
- Outdoor Recreation Area
 - Soccer field
 - Running track
 - Covered sports pavilion
 - Enclosed multi-sport court
- Mixed-Use Zone Parking Garage

Phase 1B:

- Multifamily Zone

Triggers:

Phase 1B Multifamily shall not begin construction until a foundation is poured in Phase 1A for one of the two hotel buildings (i.e. Hotel Carbon or the XO2 Tower).

The man-made water feature shall be approved by the Town before a permit can be received for the Multifamily development.

Phase 2:

- Mixed-Use retail and multi-family
- Theater
- Reception Facility
- Retail on the southeast quadrant

Triggers:

The multifamily component within Phase 2 shall not obtain a building permit until a Certificate of Occupancy is issued for the first hotel building and foundation poured for the second hotel building.

The retail portion of Phase 2 shall be built with the other components of this phase.

Phase 3:

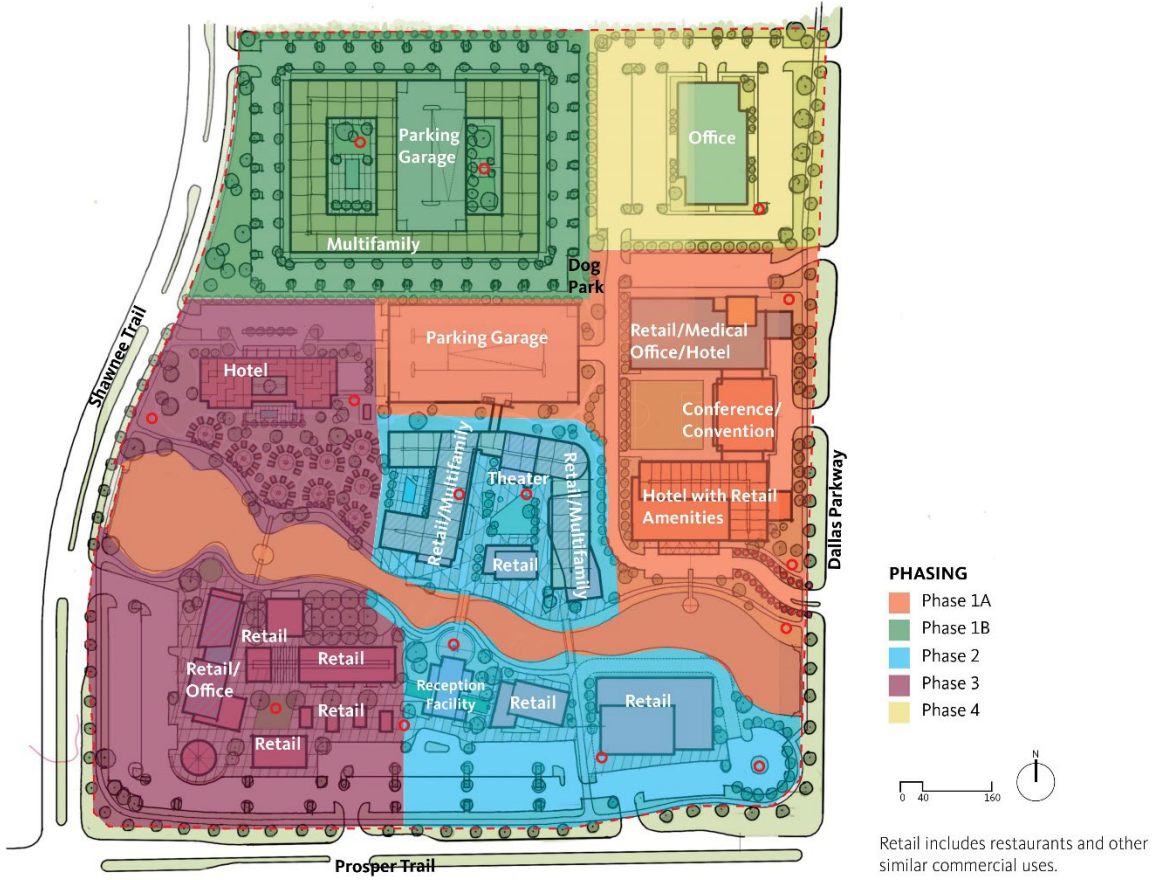
- Hotel Voz on the far west
 - 4-diamond hotel status
 - Luxury pods called Hako that will be complementary to the 4-diamond Hotel Voz
- Retail in the southwest quadrant

Phase 4:

- Office on Dallas Parkway

A phasing diagram for the entire development is depicted below.

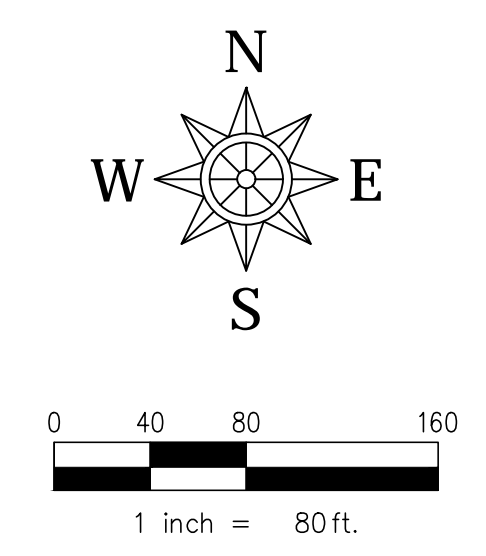
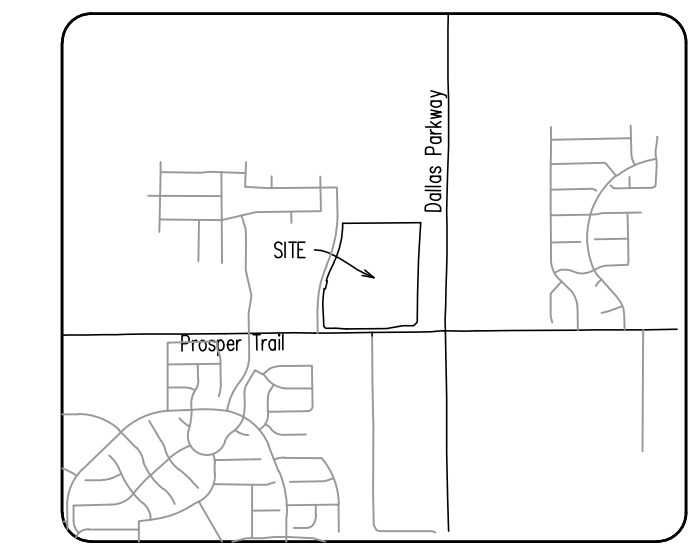
PHASING DIAGRAM



Legacy Gardens Phase I
 Reland Prosper 221 LLC
 Zoning Class: PD-36-Single Family-10/Single Family-12.5
 Current Land Use: Single-Family
 Future Land Use: Medium-Density Residential

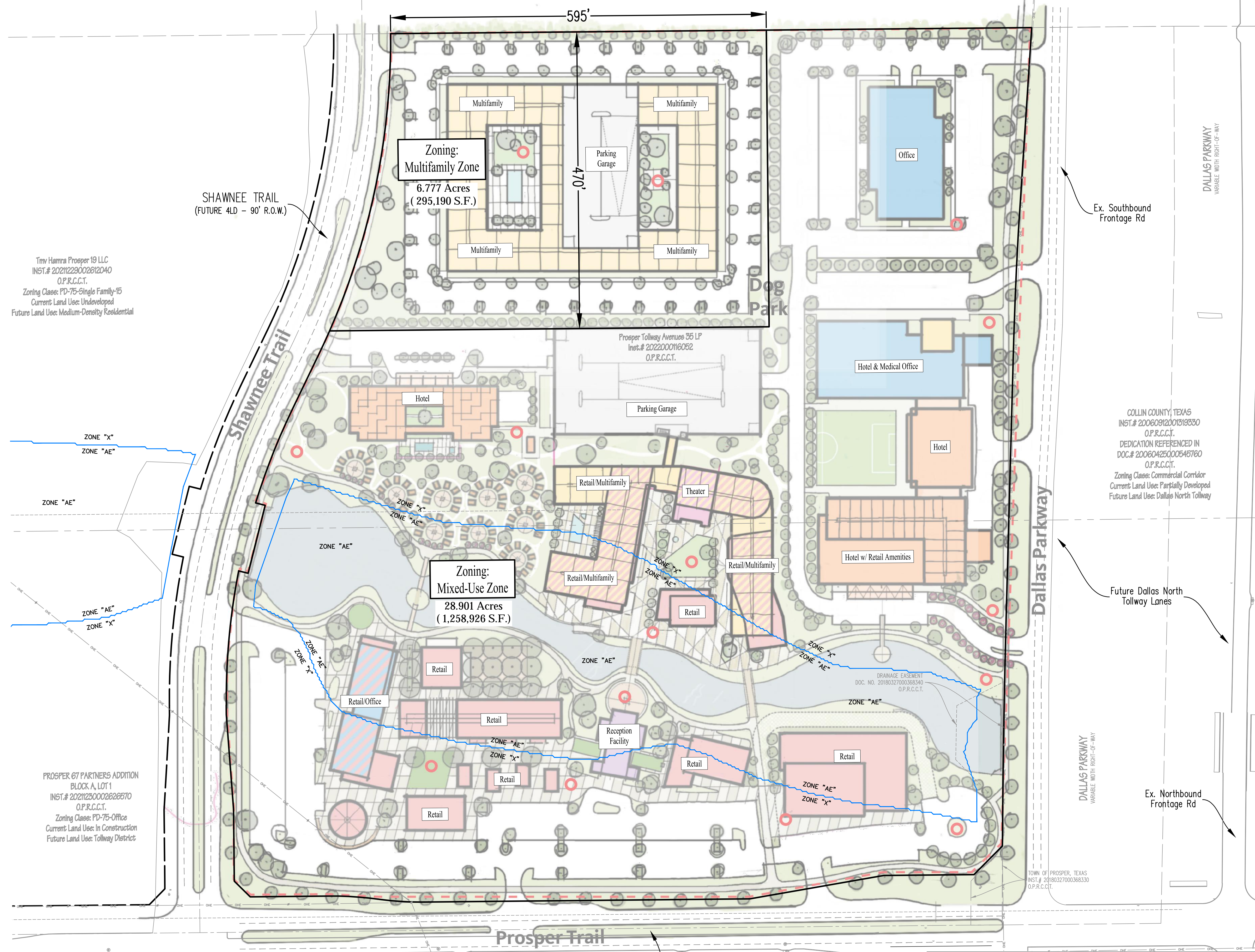
Cottrhan Mallbu LP
 Inst.# 2015010500009000
 O.P.R.C.C.T.
 Zoning Class: Commercial Corridor
 Current Land Use: Undeveloped
 Future Land Use: Tollway District

Note:
 Approximate location of public art.



Basis of bearing: State Plane
 Coordinate System, Texas North
 Central Zone 4202, North American
 Datum of 1983. Adjustment
 Realization 2011.

Site Data Summary Table	
Multifamily Zone	
Max. Permitted Density	50 du/ac
Min. Front Yard Setback	10'
Min. Side Yard Setback	30' for structures adjacent to property line that is either zoned for Multi-Family or non-residential uses; Multiple structures constructed on the same lot shall maintain a minimum separation of 30'
Min. Rear Yard Setback	30' for structures adjacent to property line that is either zoned for Multi-Family or non-residential uses
Max. Height	5 stories, no greater than 60 feet from finished grade
Shawnee Trail Landscape Buffer	25'
Dallas Parkway Landscape Buffer	30'
Prosper Trail Landscape Buffer	25'
Mixed-Use Zone	
Min. Front Yard Setback	None
Min. Side Yard Setback	10' subject to provision of fire retardant wall as required by adopted edition of the Unified Building Code; 10 feet without fire retardant wall.
Min. Rear Yard Setback	None, if abutting an alley or fire lane and constructed with fire retardant wall; 10' subject to provision of fire retardant wall as required by adopted edition of the Unified Building Code; 10' without alley separation or fire-retardant wall.
Min. Lot Area	30,000 sq. ft
Min. Lot Width	120'
Min. Lot Depth	250'
Max. Height	9 stories, no greater than 110 feet along Shawnee Trail and 14 stories, no greater than 170 feet along Dallas Parkway
Lot Coverage	55%
Floor Area Ratio	2.25:1
Shawnee Trail Landscape Buffer	25'
Dallas Parkway Landscape Buffer	30'
Prosper Trail Landscape Buffer	25'



Zoning:
 Multifamily Zone
 6.777 Acres
 (295,190 S.F.)

Zoning:
 Mixed-Use Zone
 28.901 Acres
 (1,258,926 S.F.)

COLLIN COUNTY, TEXAS
 INST.# 20060912001319330
 O.P.R.C.C.T.
 DEDICATION REFERENCED IN
 DOC.# 20060425000545760
 O.P.R.C.C.T.
 Zoning Class: Commercial Corridor
 Current Land Use: Partially Developed
 Future Land Use: Dallas North Tollway

DRAINAGE EASEMENT
 DOC. NO. 20160307000363340
 O.P.R.C.C.T.

TOWN OF PROSPER, TEXAS
 INST.# 20160307000363330
 O.P.R.C.C.T.

Note:
 The thoroughfare alignment(s) shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of Final Plat.

Note:
 All proposed driveways shall meet all Town of Prosper standards in regards to spacing, throat depth, and such.

Note:
 The Traffic Impact Analysis (TIA) shall be provided at time of Preliminary Site Plan. Additional improvements or modifications may be required to accommodate results.

Note:
 FEMA Floodplain depicted on this exhibit reflects Flood Insurance Rate Map (FIRM) panel number 48085C0115J, dated 6/2/2009, and Letter of Map Revision (LOMR) Case No. 21-06-1205P, dated 1/27/2022

EXHIBIT D CONCEPTUAL PLAN
PROSPER ARTS DISTRICT
 2,047,881 SQ. FEET OR 47.013 ACRES (GROSS)
 1,554,116 SQ. FEET OR 35.678 ACRES (NET)
 OF LAND OUT OF THE
 COLLIN COUNTY SCHOOL LAND #12 SURVEY
 ABSTRACT NO. 147, TRACT 74
 TOWN OF PROSPER
 COLLIN COUNTY, TEXAS

PROJECT NO. ZONE-24-0001
 OWNER / APPLICANT: Prosper Tollway Avenues 35, LP
 5 Cowboys Way, #300
 Frisco, TX 75034
 Telephone: (630) 987-9275
 Contact: Satya Donepudi
 ENGINEER: Spiers Engineering, Inc.
 501 W. President George Bush Hwy, Suite 200
 Richardson, TX 75080
 Telephone: (972) 422-0077
 TBPELS No. F-2121 And No. F-10043100
 Contact: Mike Martinie

Note:
 The conceptual layout generally depicts intent, but final layout shall be determined at time of Preliminary Site Plan, and shall meet all Town requirements including, but not limited to, ALL Fire Code requirements. Engineering Design Standards as it relates to driveway spacing, throat depth and turn lane requirements, standard Town landscape requirements if not otherwise defined in Exhibit C (Development Standards), and all development standards listed throughout the Town Zoning Ordinance also if not otherwise defined in Exhibit C. In addition, all other local, state, and federal regulations as it relates to the floodplain and waters of the US, or other shall be adhered. There are no vested rights with the approval of the layout of this zoning case depicted in Exhibit D.

Tmv Hamra Prosper 19 LLC
 INST.# 20211229002612040
 O.P.R.C.C.T.
 Zoning Class: PD-75-Single Family-15
 Current Land Use: Undeveloped
 Future Land Use: Medium-Density Residential

PROSPER 67 PARTNERS ADDITION
 BLOCK A, LOT 1
 INST.# 20211250002626870
 O.P.R.C.C.T.
 Zoning Class: PD-66-Single Family
 Current Land Use: In Construction
 Future Land Use: Tollway District

Villages of Star Trail
 INST.# 20200204000159110
 O.P.R.C.C.T.
 Zoning Class: PD-66-Single Family
 Current Land Use: Single-Family
 Future Land Use: Medium Density Residential

185 Land Corporation
 INST.# 20210407000704790
 O.P.R.C.C.T.
 Zoning Class: PD-66-Retail
 Current Land Use: Undeveloped
 Future Land Use: Tollway District

W PROSPER TRAIL
 (FUTURE 4LD - 90' R.O.W.)

EXHIBIT E DEVELOPMENT SCHEDULE

The phasing and development of this project is dependent upon market conditions and the construction of the Dallas North Tollway and Prosper Trail. Upon initiation of development, the project is expected to be completed in four (4) phases. The following is the anticipated construction schedule:

Phase 1A:

- Site-wide infrastructure for all 34 Acres
- Hotel Carbon
 - 144 Rooms (Only for Hotel Guests)
 - 12 Social Spaces (Primarily for Hotel Guests but available to the public as Event/Meeting Rental Space)
 - Performance Center (Open to the Public – Leased to a 3rd Party Operator)
 - Conference Center (Open to the Public)
 - Streaming & eSports Center (Open to the Public – Leased to a 3rd Party Operator)
 - Retail Operations (Open to the Public – Leased to a 3rd Party Operator)
 - Restaurants
 - Protein Bar (Open to the Public)
 - Sports Bar (Open to the Public)
 - Food Hall (Open to the Public)
- XO2 Tower
 - Luxury Condo residences (specialized for medical recovery)
 - 1 floor of Retail Flex Space
 - 3 floors of leased medical and out-patient office
 - Rooftop workout and relaxation facility
- Outdoor Recreation Area
 - Soccer field
 - Running track
 - Covered sports pavilion
 - Enclosed multi-sport court
- Mixed-Use Zone Parking Garage

Phase 1B:

- Multi-Family Zone

Triggers:

Phase 1B Multifamily shall not begin construction until a foundation is poured in Phase 1A for one of the two hotel buildings (i.e. Hotel Carbon or the XO2 Tower).

The man-made water feature shall be approved by the Town before a permit can be received for the Multifamily development.

Phase 2:

- Mixed-Use retail and multi-family
- Theater
- Reception Facility
- Retail on the southeast quadrant

Triggers:

The multifamily component within Phase 2 shall not obtain a building permit until a Certificate of Occupancy is issued for the first hotel building and foundation poured for the second hotel building.

The retail portion of Phase 2 shall be built with the other components of this phase.

Phase 3:

- Hotel Voz on the far west
 - 4-diamond hotel status
 - Luxury pods called Hako that will be complementary to the 4-diamond Hotel Voz
- Retail on the southwest quadrant

Phase 4:

- Office on Dallas Parkway

PHASING DIAGRAM

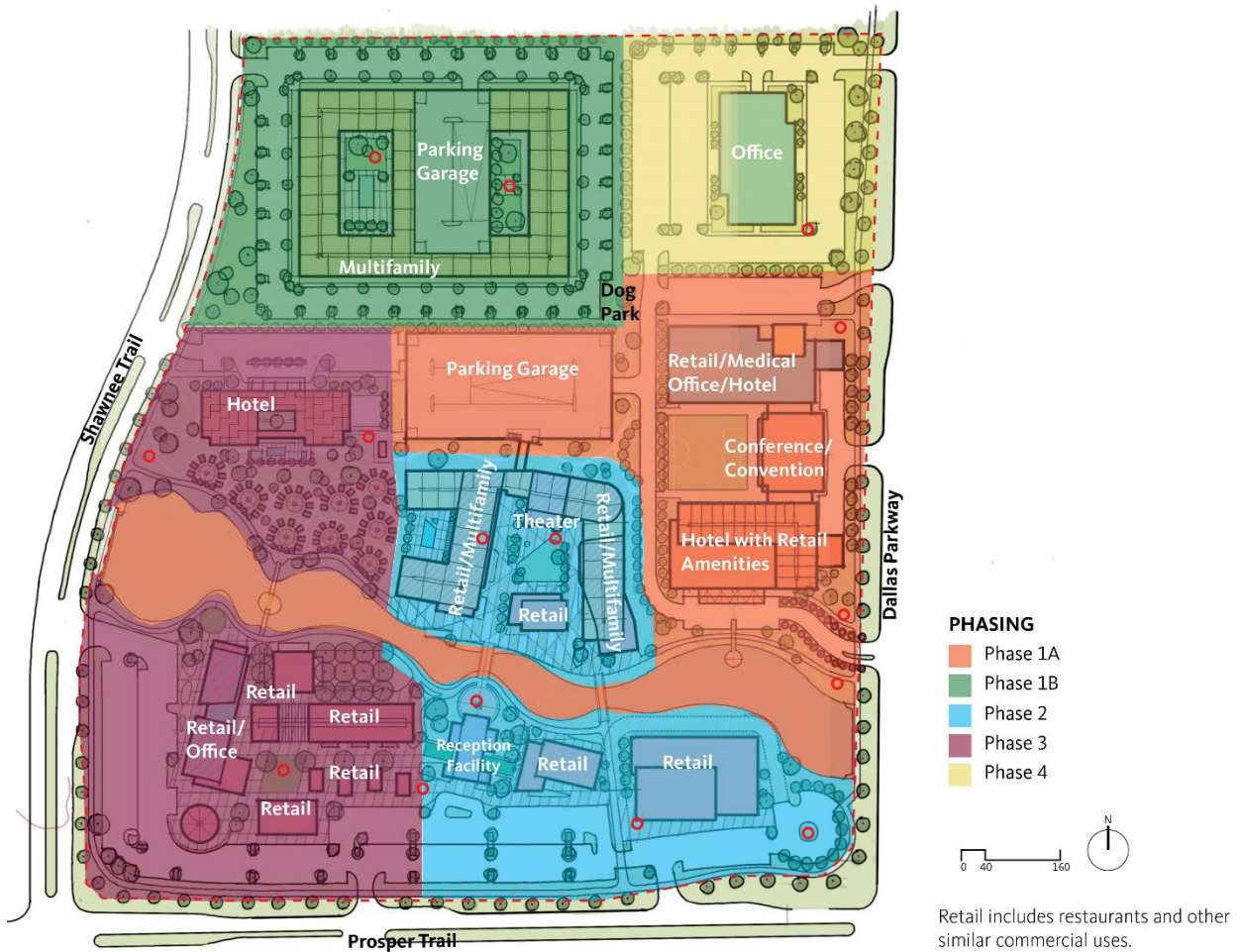


EXHIBIT F - CONCEPTUAL ELEVATIONS : RETAIL



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.



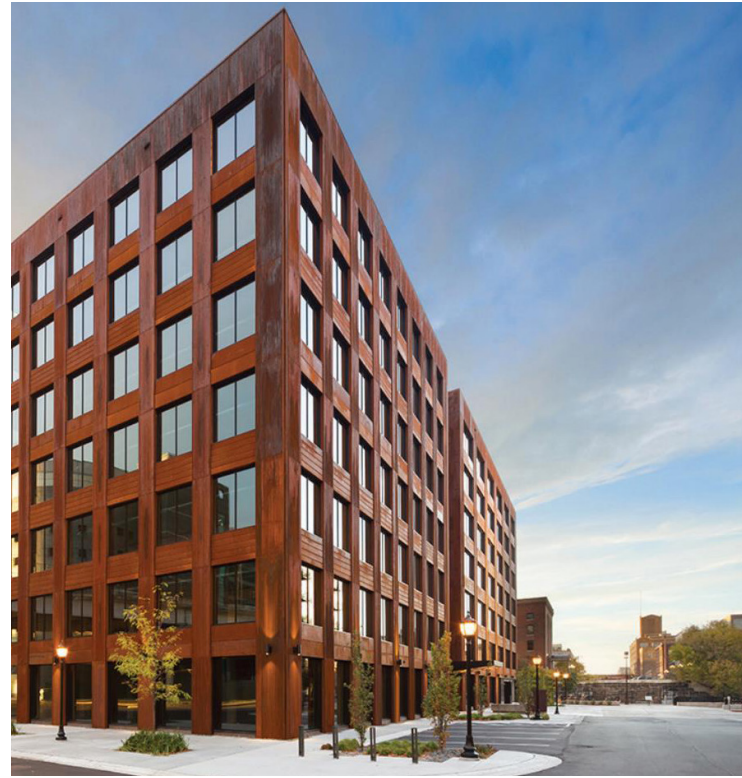
The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.

EXHIBIT F - CONCEPTUAL ELEVATIONS : MULTIFAMILY



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.

EXHIBIT F - CONCEPTUAL ELEVATIONS : OFFICE



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.



PLANNING

To: Mayor and Town Council

From: David Hoover, AICP, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Development Agreement for Prosper Arts District

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 3. Commercial Corridors are ready for Development

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between Prosper Tollway Avenues 35, L.P., and the Town of Prosper relative to Prosper Arts District.

Description of Agenda Item:

On May 28, 2024, the Town Council approved the proposed Planned Development for Prosper Arts District. A Development Agreement has been prepared accordingly and signed by the applicant.

The ordinance for this Planned Development (ZONE-24-0001) is also on the June 11, 2024, Town Council agenda for consideration.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Development Agreement

Town Staff Recommendation:

Town Staff recommends that the Town Council authorize the Town Manager to execute a Development Agreement between Prosper Tollway Avenues 35, L.P., and the Town of Prosper relative to Prosper Arts District.

Proposed Motion:

I move to authorize/not authorize the Town Manager to execute a Development Agreement between Prosper Tollway Avenues 35, L.P., and the Town of Prosper relative to Prosper Arts District.

PROSPER ARTS DISTRICT DEVELOPMENT AGREEMENT

THIS PROSPER ARTS DISTRICT DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Prosper Tollway Avenues 35, L.P. (“Developer”), individually, a “Party” and collectively, the “Parties,” to be effective (the “Effective Date”) on the latest date executed by a Party.

WHEREAS, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Developer is developing a project in the Town known as the Prosper Arts District (“Property”), a legal description of which Property is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the Property was rezoned by the Town Council on or about June 11, 2024, and this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in the underlying zoning ordinance, as may be amended, and/or this Development Agreement, to recognize Developer’s reasonable investment-backed expectations in said development, as may be amended, and as more fully described herein.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. Development Standards. For any structure built on the Property following the Effective Date, it shall comply with the requirements contained in Exhibit B, “Building Materials,” attached hereto and incorporated herein. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

2. Maintenance of Landscape Areas.

A. Developer agrees to maintain all Landscape Areas (including all vegetation) on the Property, as referenced and/or depicted in the applicable zoning ordinance, as amended, free of weeds, tall grass, rubbish, brush and other objectionable, unsightly or unsanitary matter, as defined in Article 6.03 of Chapter 6 of the Town’s Code of Ordinances, as amended. Further, Developer agrees that landscape maintenance obligations referenced herein include mulching of Landscape Areas, prompt replacement of dead or dying vegetation with new vegetation, mowing of

Landscape Areas, where required, and other routine and regular maintenance of plants and other vegetation.

B. In the event that any Landscape Area or plants or vegetation is/are not properly maintained in accordance with this Agreement, the Town may give written notice to Developer of such failure to maintain and Developer shall promptly address such failure, taking into account the type(s) and species of such plants and vegetation and applicable planting cycles of same. After such notice, and Developer's failure to address same, Developer agrees and acknowledges that the Town shall have the right to go onto Developer's property and replace, replant or otherwise address such failure to maintain any Landscape Area or plants or vegetation, with an invoice of costs incurred by the Town being promptly provided by the Town to Developer. In the event Developer does not pay such invoice within thirty (30) days of receipt by Developer, the Town may file a lien on the Property for the costs it incurred for the work done, including a reasonable administrative fee. Any failure to maintain any Landscape Area, plants or vegetation shall not be considered a default in accordance with Paragraph 7 of this Agreement, and any obligations referenced in said Paragraph shall not be applicable to this Paragraph 2.

C. Notwithstanding any provision in this Paragraph to the contrary, the Town specifically reserves the right to take enforcement action and/or file a complaint against Developer in the Town's municipal court (or other appropriate forum) relative to weeds, tall grass, rubbish, brush and other objectionable, unsightly or unsanitary matter on the Property, in accordance with Article 6.03 of Chapter 6 of the Town's Code of Ordinances, as amended.

3. Periodic Review of the Property's Zoning by the Town Council. The Town Council reserves the right to periodically review the progress and/or scope of development of the Property pursuant to the terms of any zoning regulations applicable to the Property, and in the event any amendment(s) or revision(s) to said zoning regulations are deemed reasonably appropriate and have the written approval of the Developer, the Town may provide appropriate notices for Town consideration of same, pursuant to the provisions of Chapter 211 of the Texas Local Government Code, as amended, and the Town's Zoning Ordinance, as amended.

4. Certain Business Establishments Prohibited. Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any of the following business establishments: (1) credit access businesses, as defined in Texas Finance Code § 393.601, as amended, including but not limited to payday lending businesses, "cash for title" lenders, and credit services businesses, as defined in Texas Finance Code § 393.001, as amended); (2) body art facilities; (3) smoke or vape shops; (4) any business entity that sells drug paraphernalia; (5) any business establishment offering gaming or slot machines; (6) sex shops, including but not limited to business entities whose primary purpose is the sale of lewd merchandise; (7) pawn

shops; and (8) business entities which primarily utilize outdoor storage or displays. Additionally, Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property a package liquor store, which for purposes of this Agreement is defined as any business entity that is required to obtain a Package Store Permit (P) from the Texas Alcoholic Beverage Commission for the off-premises consumption of alcohol.

5. Issuance of Building Permit by June 11, 2029. Pursuant to this Agreement, Developer agrees and acknowledges that it must receive a building permit from the Town for the construction of Hotel Carbon, the XO2 Tower or the Mixed Use Parking Garage on or before June 11, 2029, and in the event Developer has not received such building permit from the Town on or before June 11, 2029, this Agreement shall be null and void, and of no further force or effect, and the Parties further agree and acknowledge that the Town may institute rezoning of the Property.

6. Covenant Running with the Land. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Developer and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other Developers of the Property, regardless of whether this Agreement is expressly referenced therein.

7. Applicability of Town Ordinances. Developer shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

8. Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

9. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.

10. Notice. Any notices required or permitted to be given hereunder (each, a “Notice”) shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Prosper
250 W. First Street
Prosper, Texas 75078
Attention: Town Manager

If to Developer: Prosper Tollway Avenues 35, L.P.
5 Cowboys Way St.
300 Frisco, Texas 75034
Attention: Krishna Nimmagadda

11. Prevailing Party. In the event any person 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).

12. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

13. Savings/Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

14. Binding Agreement. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either Party.

15. Authority to Execute. This Agreement shall become a binding obligation on the Parties upon execution by all Parties hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. The Town Council

hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

16. Filing in Deed Records. This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of 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 nonbinding mediation.

18. Notification of Sale or Transfer; Assignment of Agreement. Developer shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Developer has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Developer under this Agreement, to any person or entity (an "Assignee") that is or will become a Developer of any portion of the Property or that is an entity that is controlled by or under common control with Developer. Each assignment shall be in writing executed by Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor Developer assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment. Developer shall maintain true and correct copies of all assignments made by Developer to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

19. Sovereign Immunity. The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

20. Effect of Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as

part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

21. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

22. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

23. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Developer of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.

24. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

25. Waiver of Texas Government Code § 3000.001 et seq. With respect to any and all Structures to be constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

28. Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any Third-Party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

29. Rough Proportionality. Developer hereby agrees that any land or property donated and/or dedicated pursuant to this Agreement, whether in fee simple or otherwise, to the Town relative to any development on the Property is roughly proportional to the need for such land and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the development referenced herein. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the provision of roadway services to the Property.

30. Exactions/Infrastructure Costs. Developer has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____

Name: Mario Canizares

Title: Town Manager, Town of Prosper

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2024, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

My Commission Expires:

DEVELOPER:

PROSPER TOLLWAY AVENUES 35, L.P.

By: [Signature]
Name: Krishna Nimmagadda
Title: General Partner

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the 05 day of JUNE, 2024, by Krishna Nimmagadda on behalf of Prosper Tollway Avenues 35, L.P., known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Developer.

[Signature]

Notary Public, State of Texas
My Commission Expires:
01-13-2027

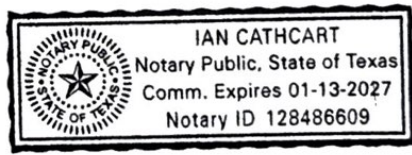


EXHIBIT A
(Property Description & Depiction)

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the Collin County School Land #12 Survey, Abstract Number 147, Town of Prosper, Collin County, Texas, being all of a tract conveyed to Prosper Tollway Avenues 35 LP, by deed recorded in Document No. 2022000116052, Official Public Records, Collin County, Texas (OPRCCT), also being all of a tract of land described as Parcel 40-18, by deed recorded in Instrument No. 20060912001319330 OPRCCT, also being a portion of Prosper Trail and Shawnee Trail (variable width right-of-way), according to the plat recorded in Document No. 2018-408 OPRCCT, with the subject tract being more particularly described as follows:

BEGINNING at a point at the northeast corner of said Parcel 40-18, also being in Dallas Parkway (variable width right-of-way);

THENCE along the east line of said Parcel 40-18, the following:

S 00°10'54" E, 326.59 feet;

S 01°07'15" W, 1094.89 feet to a point in the centerline of Prosper Trail;

THENCE S 89°26'13" W, 1521.87 feet along the centerline thereof to a point at the intersection of the centerline of Prosper Trail and the centerline of Shawnee Trail;

THENCE Along the centerline of Shawnee Trail, the following:

N 00°33'47" W, 360.01 feet;

Around a non-tangent curve to the right having a central angle of 26°13'18", a radius of 1099.99 feet, a chord of N 12°33'02" E, 499.04 feet, and an arc length of 503.42 feet;

N 25°39'41" E, 100.00 feet;

Around a tangent curve to the left having a central angle of 26°12'21", a radius of 1100.00 feet, a chord of N 12°33'31" E, 498.74 feet, and an arc length of 503.12 feet to a point at the southwest corner of a tract of land conveyed to Cothran Malibu LP, by deed recorded in Instrument No. 20150105000009000 OPRCCT;

THENCE N 89°27'26" E, 1285.59 feet along the south line thereof to the POINT OF BEGINNING with the subject tract containing 2,047,881 square feet or 47.013 acres of land.



This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

EXHIBIT B
(Building Materials)

Multifamily Zone:

1. Architectural and Material Standards.

i. Review and Approval Process.

1. Conceptual Architectural and Material Standards.

The applicant shall submit a detailed materials and style plan along with sample elevations and renderings to define the architectural character of the property. This shall be submitted at the time of Preliminary Site Plan submission and is subject to the approval of the Director of Development Services.

2. Final Architectural and Material Standards.

The applicant shall submit a Façade Plan and Material Sample Board for each structure at the time of Site Plan submission and is subject to the approval of the Director of Development Services.

3. The conceptual elevations in Exhibit F are intended to evoke a general look and feel of the architecture of the various land use types. Changes to materials and architectural elements are permitted so long as the building elevations adhere to the design guidelines outlined in the Design Guidelines of this Exhibit.

ii. Design Guidelines.

1. All buildings shall be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each building elevation. The remaining twenty percent (20%) of each building elevation may be comprised of secondary materials.

2. Primary materials shall include metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, and marble.

3. Fiber cement panel is a secondary material.

4. Stucco is a secondary material. Stucco is not permitted on the first floor of any building. The total area of stucco shall not exceed ten percent (10%) of the total building elevation area.

5. The style of all buildings must be consistent and in keeping with the style of the entire Multifamily Zone.
6. All materials and exterior colors shall be compatible with those used throughout the development.
7. Horizontal and vertical building articulation is required on all elevations. This may be achieved through recessed or projected architectural elements, variations in roof line, etc.
8. No single finish shall cover more than eighty (80) percent of the front of any building.

Mixed-Use Zone:

1. Architectural and Material Standards.

i. Review and Approval Process.

1. Conceptual Architectural and Material Standards.

The applicant shall submit a detailed materials and style plan along with sample elevations and renderings to define the architectural character of the property. This shall be submitted at the time of Preliminary Site Plan submission and is subject to the approval of the Director of Development Services.

2. Final Architectural and Material Standards.

The applicant shall submit a Façade Plan and Material Sample Board for each structure at the time of Site Plan submission and is subject to the approval of the Director of Development Services.

3. The conceptual elevations in Exhibit F are intended to evoke a general look and feel of the architecture of the various land use types. Changes to materials and architectural elements are permitted so long as the building elevations adhere to the design guidelines outlined in the Design Guidelines of this Exhibit. The Mixed-Use Zone should offer architectural diversity between buildings, with each structure contributing its own unique flair that blends styles, materials, and artistic expressions in this dynamic arts district.

4. Structured Garages. Any elevation or portion of an elevation of a structured garage that is not wrapped by a building or is visible from Dallas Parkway/Tollway shall have architectural styles and materials compatible with the adjacent or attached structure to ensure the exposed structured garage elevation gives the appearance of a building rather than a blank parking garage. Cladding,

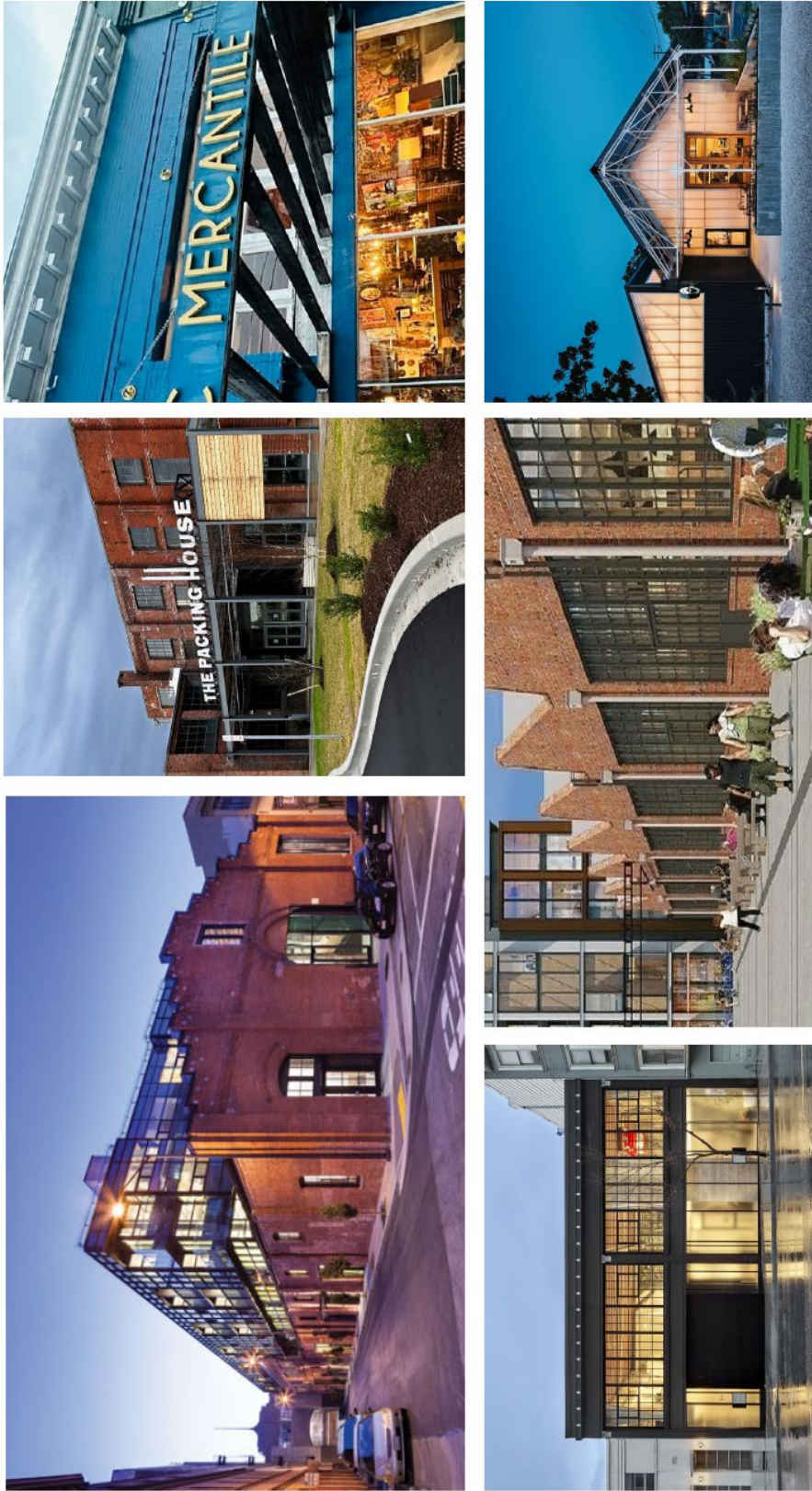
murals, or other artistic expressions shall be used to enhance the overall architectural character of the structured garage.

ii. Design Guidelines.

1. All buildings shall be a minimum of eighty percent (80%) primary materials, excluding windows and doors on each building elevation. The remaining twenty percent (20%) of each building elevation may be comprised of secondary materials.
2. Primary materials shall include metal composite material (examples include, but not limited to Centria and Alucobond), steel plate, clay fired brick, natural and manufactured stone, granite, marble, and carbon.
3. Fiber cement panel is a secondary material.
4. Stucco is a secondary material. Stucco is not permitted on the first floor of any building. The total area of stucco shall not exceed ten percent (10%) of the total building elevation area.
5. All materials and exterior colors shall be compatible throughout the development.
6. Horizontal and vertical building articulation is required on all elevations. This may be achieved through recessed or projected architectural elements, variations in roof line, etc.
7. No single finish shall cover more than eighty (80) percent of the front of any building.
8. Storefronts on façade treatments that span multiple tenants shall use architecturally compatible materials, colors, details, awning signage, and lighting fixtures. Retail ground floor shall have windows covering a minimum of 60% of the major street and/or public-realm fronting façade(s).
9. Architectural elements should tie into and play off of the historical features throughout the Town of Prosper, including but not limited to the silos and windmills to ensure this development feels connected to the Town as a whole. Modern elements and artistic expression may be used to play off of the historic theme of Prosper.

Exhibit F (Conceptual Elevations)

EXHIBIT F - CONCEPTUAL ELEVATIONS : RETAIL



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.

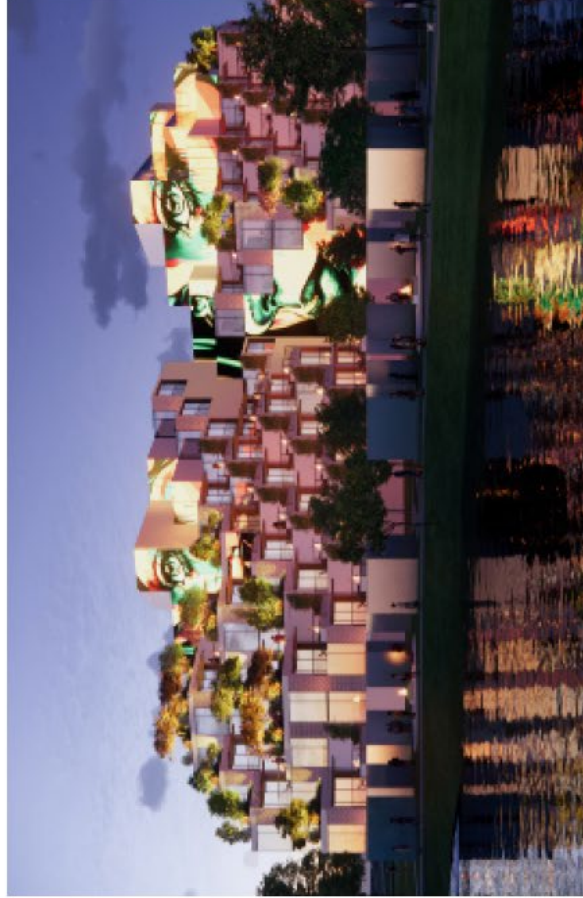
Gensler

PROSPER ARTS DISTRICT

3/8/2024

Exhibit F (Page 1 of 4)
Elevations
ZONE-24-0001

EXHIBIT F - CONCEPTUAL ELEVATIONS : HOTEL



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.

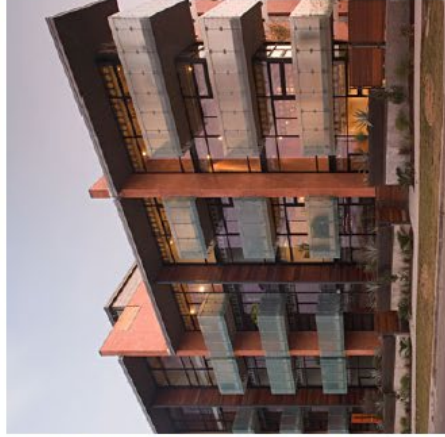
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Exhibit F (Page 2 of 4)
Elevations
ZONE-24-0001

3/8/2024

PROSPER ARTS DISTRICT

EXHIBIT F - CONCEPTUAL ELEVATIONS: MULTIFAMILY



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.

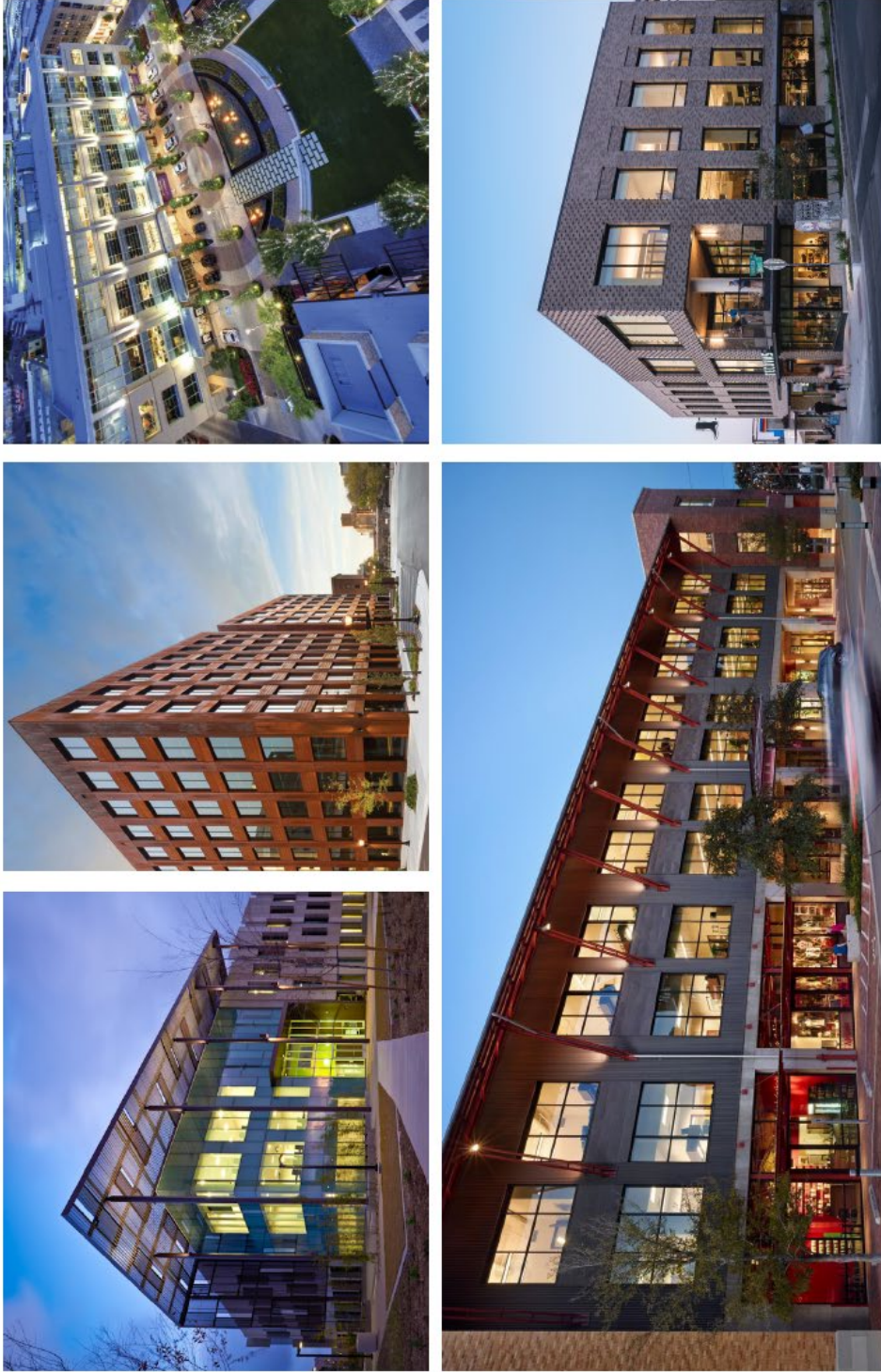
Gensler

3/8/2024

Exhibit F (Page 3 of 4)
Elevations
ZONE-24-0001

PROSPER ARTS DISTRICT

EXHIBIT F - CONCEPTUAL ELEVATIONS : OFFICE



The imagery shown in this Exhibit F are intended to evoke a general look and feel for the architecture. Detailed material/style plans along with facade plans/elevations must be submitted at the time of Preliminary Site Plan and/or Site Plan approval.

Gensler

PROSPER ARTS DISTRICT

3/8/2024

Exhibit F (Page 4 of 4)
Elevations
ZONE-24-0001



PLANNING

To: Mayor and Town Council

From: David Hoover, AICP, Director of Development Services

Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager

Re: Notice of Appeals

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 3. Commercial Corridors are ready for Development

Agenda Item:

Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on Preliminary Site Plans and Site Plans.

Description of Agenda Item:

Attached are the Preliminary Site Plans and Site Plans that were acted on by the Planning & Zoning Commission on June 4, 2024. Per the Zoning Ordinance, the Town Council can direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department for any Preliminary Site Plans and Site Plans acted on by the Planning & Zoning Commission.

Budget Impact:

There is no budgetary impact affiliated with this item.

Attached Documents:

1. DEVAPP-23-0225 – Hunter Gateway Centre, Block A, Lot 3 (Approved 5-0)
2. DEVAPP-24-0037 – Prosper School Church Addition, Block A, Lot 1R (Approved 5-0)

Town Staff Recommendation:

Town Staff recommends the Town Council take no action on this item.

Proposed Motion:

N/A

SITE DATA SUMMARY TABLE:

Zoning	PD-2
Proposed Use:	Retail Building
Lot Area (S.F. & Acres)	36,554 Sq. Ft. (0.84 acres)
Building Area	6,579 Sq. Ft.
Building Height & # of Stories	20'-10"
Lot Coverage	19.7%
Floor Area Ratio:	0.47:1
Total Parking Required (with Ratio)	26 Spaces (@ 1:250 sq. ft.)
Total Parking Provided	32
Handicap Parking Required, including van-accessible	2 Spaces
Handicap Parking Provided, including van-accessible	2 Spaces
Interior Landscaping Required	2,561
Interior Landscaping Provided	9,781
Square footage of Impervious Surface	27,410 Sq. Ft.
Open Space Required	2,561 Sq. Ft. (7% of Lot)
Open Space Provided	8,566 Sq. Ft. (23% of Lot)

- SITE PLAN CHECKLIST GENERAL NOTES**
- (APPLICABLE WHEREVER THE SUBJECT MATTER OCCURS, THROUGHOUT THE PROJECT)
 - ALL DEVELOPMENT STANDARDS SHALL FOLLOW TOWN STANDARDS.
 - LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN OF PROSPER.
 - ALL DEVELOPMENT STANDARDS SHALL FOLLOW FIRE REQUIREMENTS PER THE TOWN OF PROSPER.
 - HANDICAPPED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM TO THE AMERICANS WITH DISABILITIES ACT (ADA) AND WITH THE REQUIREMENTS OF THE CURRENT, ADOPTED BUILDING CODE.
 - ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - IMPACT FEES WILL BE ASSESSED IN ACCORDANCE WITH THE LAND USE CLASSIFICATION(S) IDENTIFIED ON THE SITE DATA SUMMARY TABLE; HOWEVER, CHANGES TO THE PROPOSED LAND USE AT THE TIME OF CO AND/OR FINISH-OUT PERMIT MAY RESULT IN ADDITIONAL IMPACT FEES AND/OR PARKING REQUIREMENTS.
 - THE APPROVAL OF A PRELIMINARY SITE PLAN SHALL BE EFFECTIVE FOR A PERIOD OF TWO (2) YEARS FROM THE DATE THAT THE PRELIMINARY SITE PLAN IS APPROVED BY THE PLANNING & ZONING COMMISSION. AT THE END OF WHICH TIME THE APPLICANT MUST HAVE SUBMITTED AND RECEIVED THE APPROVAL OF A SITE PLAN BY THE PLANNING & ZONING COMMISSION. IF A SITE PLAN IS NOT APPROVED WITHIN SUCH TWO (2) YEAR PERIOD, THE PRELIMINARY SITE PLAN APPROVAL IS NULL AND VOID. IF A SITE PLAN APPROVAL IS ONLY FOR A PORTION OF THE PROPERTY, THE APPROVAL OF THE PRELIMINARY SITE PLAN FOR THE REMAINING PROPERTY SHALL BE NULL AND VOID.
 - OPEN SPACE REQUIREMENTS SHALL FOLLOW THE ZONING ORDINANCE. PER TRACT OPEN SPACE SHALL NOT INCLUDE VEHICULAR PAVING, REQUIRED PARKING LOT LANDSCAPE ISLANDS, BUILDING FOOTPRINT, UTILITY YARDS, REQUIRED LANDSCAPE SETBACKS, SIDEWALKS, AND DETENTION POND.

METER SCHEDULE:

WATER	(1)-1 1/2" DEADHEAD DOMESTIC WATER METER W/ TYPE B METER BOX
IRRIGATION	(1)-1" DEADHEAD IRRIGATION METER W/ BACKFLOW PREVENTER

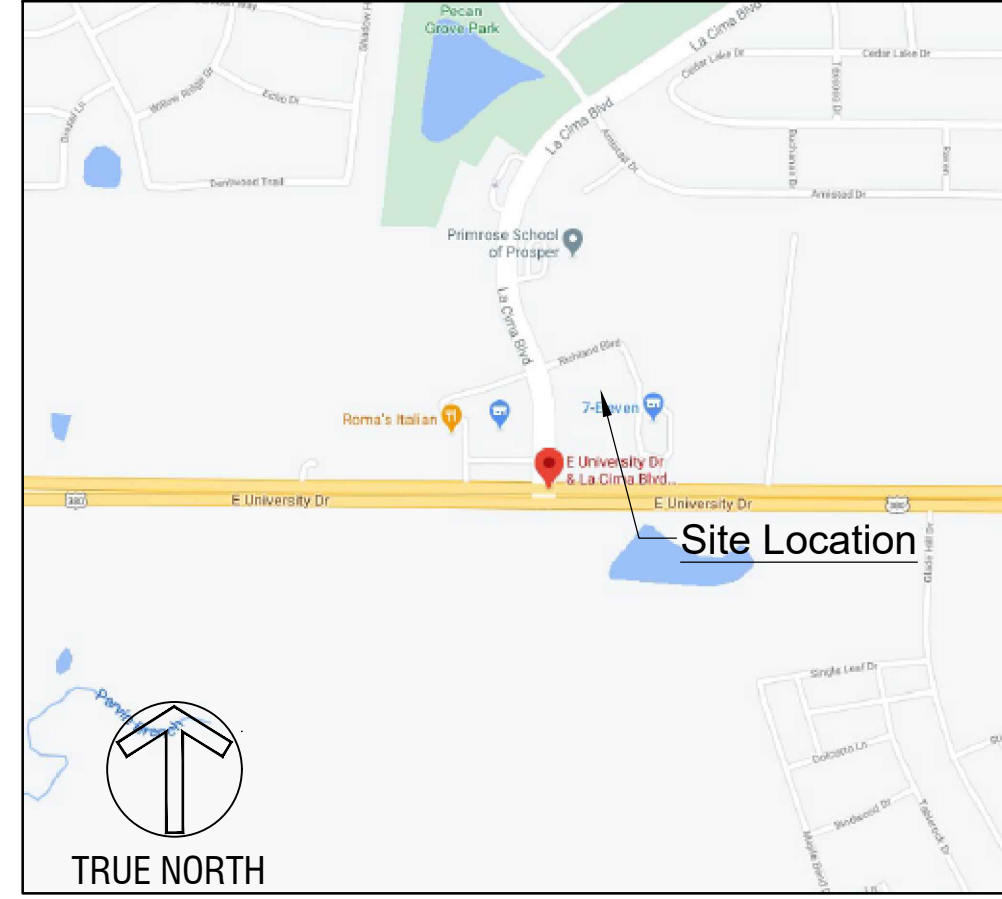
PROJECT MANAGER & PLANNING, LLC
PROJECT ARCHITECT
 Benjamin Cortez, AIA

OWNER:
 La Cima Investments, Inc.
 422 Desert Willow Lane,
 Murphy, Texas 75094

OWNER:
 La Cima Investments, LLC.
 422 Desert Willow Lane,
 Murphy, TX 75094
 Phone: (972) 890-8738
 Contact: Vishnu Patel

APPLICANT:
 RK Patel Design & Planning, LLC
 4908 Carmel Place,
 Colleyville, TX 76034
 Phone: (682) 365-0300
 Email: rkpatel@design@gmail.com
 Contact: Chet Patel

SHELL RETAIL BUILDING
 1501 E. University Drive,
 Prosper, Texas 75078

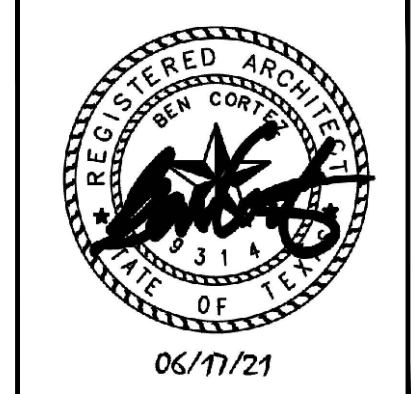


LOCATION MAP

SITE LOCATION:
 Intersection of U.S. Highway 380 & La Cima Blvd, Prosper, TX
 Block A, LOT 3
 Hunter Gateway Centre
 Vol. 2019, PG. 12
 P.R.C.C.T.
 0.84 Acres, 36,554 Sq. Ft.

TOWN PROJECT #: DEVAPP-23-0225

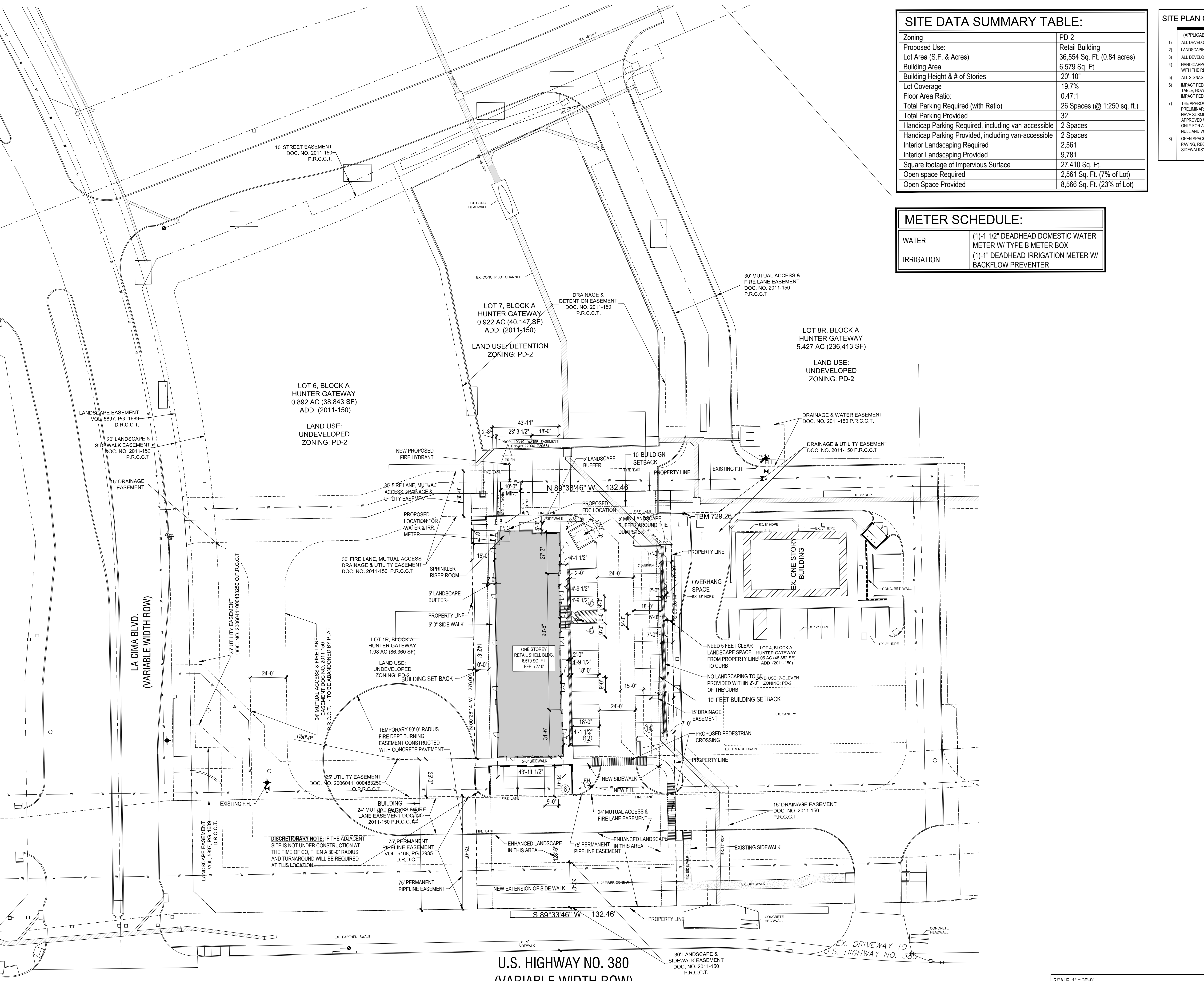
DATE: 04/09/2024



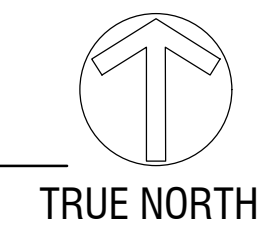
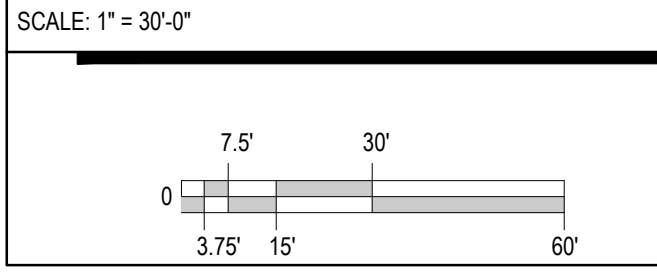
Revisions:

Sheet Information:
SITE PLAN

Sheet No:
A1.01



1 RETAIL SHELL BUILDING SITE PLAN
 A1.01 SCALE: 1" = 30'-0"



U.S. HIGHWAY NO. 380
 (VARIABLE WIDTH ROW)

LA CIMA BLVD.
 (VARIABLE WIDTH ROW)

DISCRETIONARY NOTE: IF THE ADJACENT SITE IS NOT UNDER CONSTRUCTION AT THE TIME OF CO, THEN A 30'-0" RADIUS AND TURNAROUND WILL BE REQUIRED AT THIS LOCATION.

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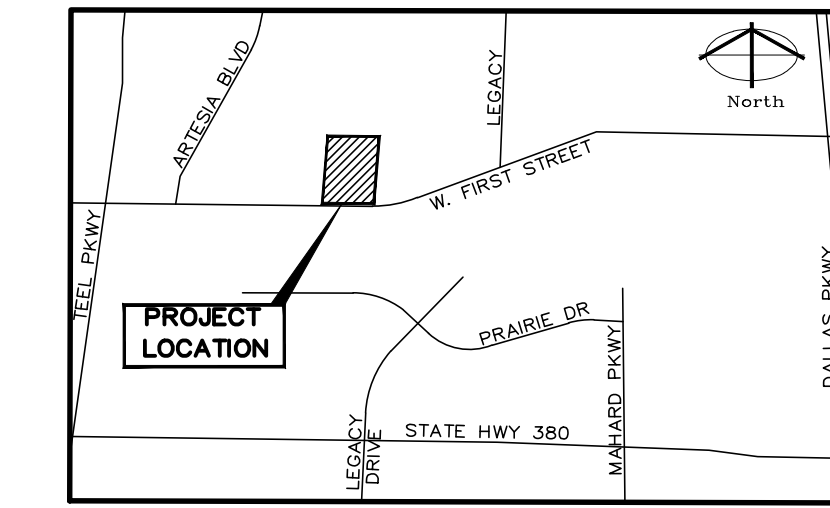
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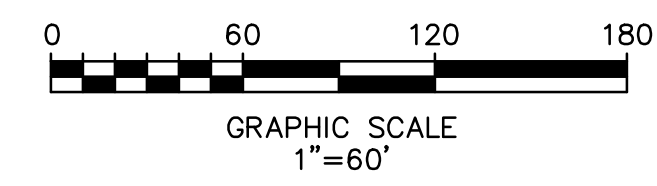
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LOCATION MAP



NOTE: WS ELEV'S OBTAINED FROM STAR TRAILS PHASE 17 AND 18. FLOOD STUDY OF DOE BRANCH TRIBUTARY 6, DATED DEC. 11, 2023.

FLOOD PLAIN AREA = 188,454 S.F.

NOTE: NO IMPROVEMENTS ALLOWED TO EXISTING STRUCTURE OR SURROUNDING AREA WITHOUT AN UPDATED SITE PLAN.

- LEGEND**
- 585-
 - EXISTING CONTOUR
 - EXISTING CURB
 - PROPOSED CURB
 - EXISTING PARKING COUNT
 - PROPOSED PARKING COUNT
 - EXISTING FIRE LANE, ACCESS & UTILITY EASEMENT
 - PROPOSED FIRE LANE
 - EXISTING FIRE HYDRANT
 - PROPOSED FIRE HYDRANT

WATER METER SCHEDULE

NO.	SIZE	TYPE	DESCRIPTION
1	3"	DOMESTIC	PROPOSED
2	1"	IRRIGATION	PROPOSED
3	2"	DOMESTIC	EXISTING
4	2"	IRRIGATION	EXISTING
5	2"	IRRIGATION	PROPOSED

SITE DATA CHART

ZONING:	PD-126 (OFFICE)
PROPOSED USE:	CHURCH
GROSS LOT AREA:	1,134,982 SQ. FT. or 26.056 AC.
EXISTING BUILDING AREA:	29,975 SQ. FT.
PROPOSED BUILDING AREA:	41,075 SQ. FT.
EXISTING BUILDING HEIGHT:	24'-11" ~ SINGLE STORY
PROPOSED BUILDING HEIGHT:	35'-4" PARAPET ~ SINGLE STORY
LOT COVERAGE:	379,532 SQ. FT. (33.4%)
FLOOR AREA RATIO:	0.06:1
PARKING	
REQUIRED*	325
PROVIDED	247
INTERIOR LANDSCAPE REQUIRED**	5,370 SQ. FT.
INTERIOR LANDSCAPE PROVIDED***	9,004 SQ. FT.
IMPERVIOUS COVER AREA	414,500 SQ. FT. ~ (36.5%)
OPEN SPACE REQUIRED (7% REQ'D)	79,449 SQ. FT.
OPEN SPACE PROVIDED	629,496 SQ. FT. ~ (55.4%)

* 1 SPACE PER 3 SEATS (1000 SEATS)
** 15 S.F. PER PROPOSED PARKING SPACE (358 SPACES)
*** PROPOSED / ALTERNATE PARKING AREA ONLY

General Notes

- All development standards shall follow Town Standards.
- Landscaping shall conform to landscape plans approved by the Town of Prosper.
- All development standards shall follow Fire Requirements per the Town of Prosper.
- Handicapped parking areas and building accessibility shall conform to the Americans with Disabilities Act (ADA) and with the requirements of the current, adopted Building Code.
- All signage is subject to Building Official approval.
- Impact fees will be accessed in accordance with the land use classification(s) identified on the Site Data Summary Table; however, changes to the proposed land use at the time of CO and/or finish-out permit may result in additional impact fees and/or parking requirements.
- The approval of a Preliminary Site Plan shall be effective for a period of two (2) years from the date that the Preliminary Site Plan is approved by the Planning and Zoning Commission, at the end of which time the applicant must have submitted and received the approval of a Site Plan by the Planning and Zoning Commission. If a Site Plan is not approved within such two (2) year period, the Preliminary Site Plan approval is null and void. If Site Plan approval is only for a portion of the property, the approval of the Preliminary Site Plan for the remaining property shall be null and void.
- Open Space requirements shall follow the Zoning Ordinance, per tract. Open Space shall not include vehicular paving, required parking lot landscape islands, building footprint, utility yards, required landscape setbacks, sidewalks, and detention pond.

FOUR AMENITIES PROVIDED DUE TO MAJOR CREEK ON PROPERTY:

- + 750 S.F. PATIO BETWEEN BUILDING AND CREEK
- + 30' LANDSCAPE EDGE ADJACENT TO FLOODPLAIN
- + 100' VISIBILITY CORRIDOR
- + BUILDING HAS MATERIALS COMMON TO ALL FOUR SIDES

NOTE: ROOF TOP MECHANICAL UNITS SCREENED BY BUILDING PARAPET.

SITE PLAN
DEVAPP 24-0037
PROSPER SCHOOL CHURCH ADDITION
BLOCK A, LOT 1R
 26.056 acres
 1,134,928 square feet
 situated in
TOWN OF PROSPER, DENTON COUNTY, TEXAS
L. HETHERLY SURVEY, ABSTRACT NO. 962

OWNER
 ROCK CREEK CHURCH
 2860 FISHTRAP ROAD
 PROSPER, TEXAS 75078
 (469)815-5253

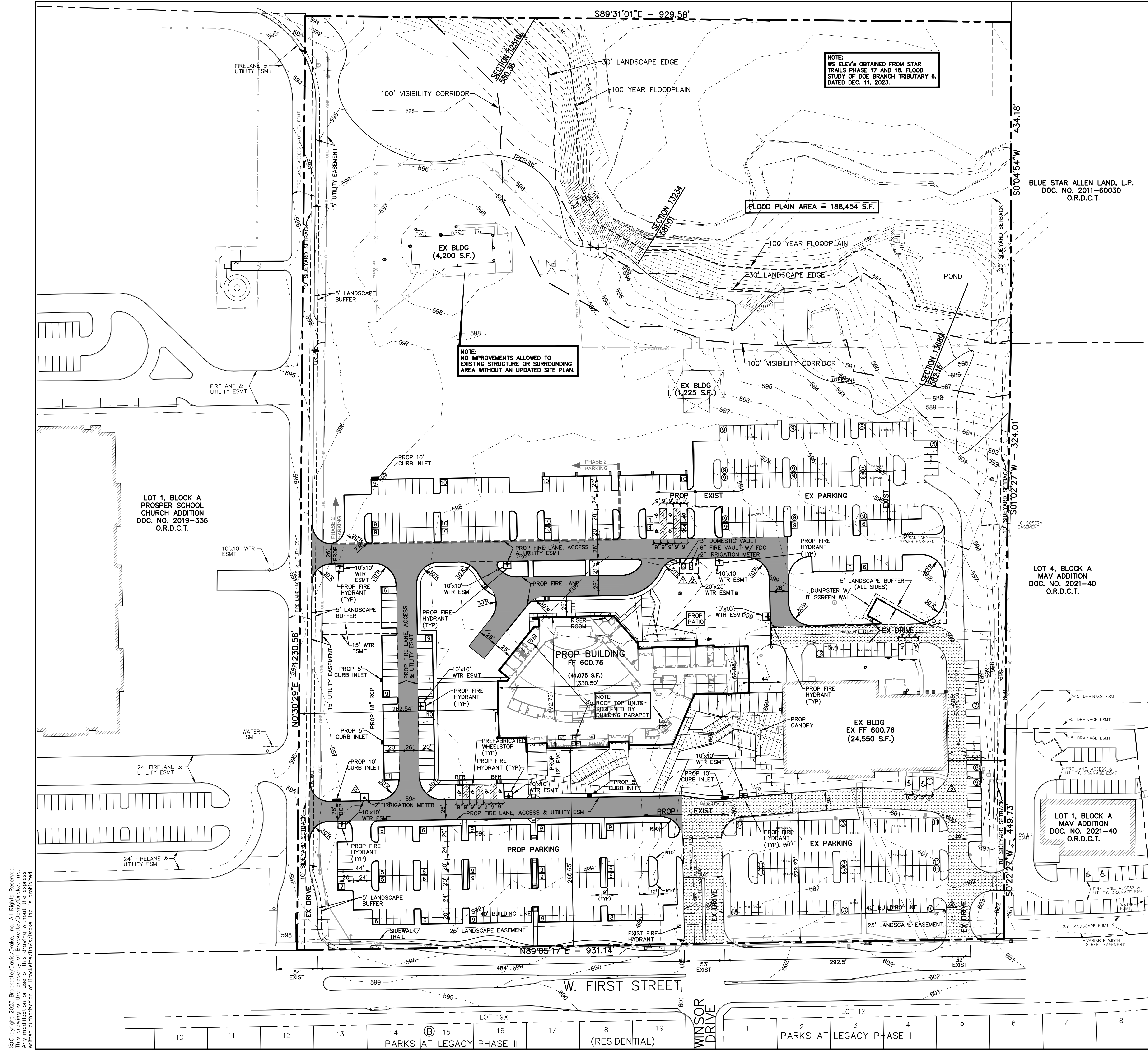
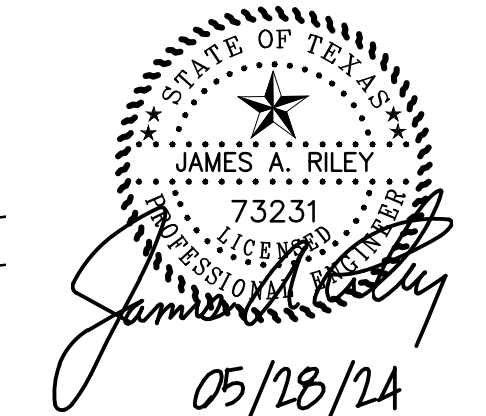
OWNER'S REPRESENTATIVE
 GOFF COMPANIES
 2221 LAKESIDE BOULEVARD
 SUITE 700
 RICHARDSON, TEXAS 75082
 DIRK DALHAUSER
 dddalhausser@goffcompanies.com
 (214)716-5100

ARCHITECT
 OXLEY ARCHITECTS
 ANDREW OXLEY
 aoo@oxleyarchitects.com
 (817)380-8566

LANDSCAPE ARCHITECT
 SMR LANDSCAPE ARCHITECTS, INC.
 1708 NORTH GRIFFIN STREET
 DALLAS, TEXAS 75202
 (214)871-0083
 BRIAN ADAMS, R.L.A.
 badams@smr-la.com

ENGINEER
 BROCKTIE DAVIS DRAKE, INC
 12377 MERIT DRIVE
 SUITE 1100
 DALLAS, TEXAS 75251
 (214)624-3647
 JAMES RILEY, P.E.
 jriley@bddeng.com

SURVEYOR
 VOTEX SURVEYING
 10440 N. CENTRAL EXPRESSWAY
 SUITE 800
 DALLAS, TEXAS 75231
 (469)333-8831



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State: TX\City: Prosper\Project: Prosper School Church - Prosper\Plans: 003\Site: 02.015.dwg



PLANNING

To: Mayor and Town Council

From: David Hoover, AICP, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Planned Development Ordinance for Prosper Arts District

Town Council Meeting – June 11, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Conduct a Public Hearing to consider and act upon an ordinance amending Chapter 3, Sections 1 and 2, of the Town of Prosper Zoning Ordinance to add Commercial Drone Delivery Hub use, standards, and definition. (ZONE-24-0010)

Future Land Use Plan:

Not Applicable.

Comprehensive Plan:

The proposed Ordinance fulfills the Comprehensive Plan goals to maintain and enhance the high quality of life and small town feel currently available and expected by Prosper residents.

Zoning:

The proposal is a text amendment to the Town of Prosper Zoning Ordinance. Commercial Drone Delivery Hub is only permitted by Specific Use Permit in three zoning districts: Commercial, Commercial Corridor, and Industrial.

The following would apply to existing Planned Developments with a base zoning of Commercial, Commercial Corridor, or Industrial:

- (a) If the allowed uses are specifically listed in the development standards, a Commercial Drone Delivery Hub would not be allowed.
- (b) If the development standards do not specifically list the allowed uses but rather refer back to those uses allowed in the base zoning district, then a Commercial Drone Deliver Hub would be allowed by Specific Use Permit.

Thoroughfare Plan:

Not Applicable.

Parks Master Plan:

Not Applicable.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached document as to form and legality.

Attached Documents:

1. Ordinance

Description of Agenda Item:

In some surrounding municipalities, some retailers have provided drone delivery as an alternative to driving to the store. Should this use be allowed in the Town of Prosper, certain criteria are proposed to ensure its property development.

The purpose of this request is to add Commercial Drone Delivery Hubs to the Zoning Ordinance. Two definitions will be added to define this use and the drone staging area, as follows:

Commercial Drone Delivery Hub – An area of land, structural surface, building, or structure with one or more designated drone staging areas for use by unmanned aircraft, including but not limited to those defined in Section 44801 of Title 49, United States Code, as amended, to distribute commercial goods by air. This includes any appurtenant areas used or intended for use for unmanned aircraft system buildings, structures, and other facilities.

Drone Staging Areas – A designated area over which an unmanned aircraft completes the final phase of the approach, to a hover or a landing, and from which an unmanned aircraft initiates take-off. The drone staging area includes both the launch pads and any required safety areas and may include areas for the outdoor storage of goods, materials, containers, trailers or other equipment.

A commercial drone delivery hub is allowed with a Specific Use Permit in the Commercial, Commercial Corridor, and Industrial districts and when certain requirements are met. These requirements are elaborated in this staff report.

When a detached accessory building is occupied or intended to be occupied for an accessory commercial drone delivery hub, the floor area is limited to a maximum of 10% of the total floor area of the building containing the primary use.

Drone Staging Areas:

The drone staging area must be designated on an approved site plan. The drone staging area must not be placed:

- i. Within any required building setbacks;
- ii. Within any required landscape buffer;
- iii. Within fire lanes, easements, maneuvering aisles, customer pick-up lanes, or required loading zones and parking spaces; or

iv. So as to obstruct visibility or interfere with pedestrian or vehicle circulation.

When located at grade, any goods, materials, containers, trailers, or other equipment must be screened according to the requirements for open storage contained in this Zoning Ordinance. Landing pads are exempt from this screening requirement. The Planning & Zoning Commission may waive these requirements with approval of a site plan.

When a drone staging area is on top of a building, any roof-mounted mechanical equipment, excluding landing pads, is subject to the mechanical screening requirements of the Zoning Ordinance. Any additional structure, parapet wall, screening, safety railing, or other appurtenance associated with the commercial drone delivery hub is subject to the maximum height requirement of the zoning district, except a single mast up to 10 feet in height for a windsock may exceed the maximum height requirement.

Antennas:

Antennas and antenna support structures are subject to the requirements of the Zoning Ordinance.

Proximity to Noise-Sensitive Uses:

The drone staging area for a commercial drone deliver hub shall not be located within 300 feet of any property upon which a dwelling, retirement housing facility or public park is located. The 300-foot buffer requirement may be reduced to 150 feet if the Town Council finds that issuance of the Specific Use Permit would not be detrimental or injurious to the public health, safety, or general welfare of the neighborhood.

The measurement of the required buffer is to be made in a straight horizontal line from the edge of the drone staging area to the closest property line of a property containing a dwelling, retirement housing facility use, or public park.

Parking:

Parking is not required for an accessory commercial drone delivery hub use. Loading spaces shall be provided for a commercial drone delivery hub pursuant to the requirements in the Zoning Ordinance for commercial, commercial corridor, and industrial uses. Loading spaces are not required for an accessory commercial drone delivery hub use.

The Planning & Zoning Commission may decrease the amount of required parking for a site by up to 10% to accommodate the drone staging area for a commercial drone delivery hub with approval of a site plan. The parking reduction is revoked if the commercial drone delivery hub use is removed.

Additional Criteria:

Nothing within the criteria for Commercial Drone Delivery Hubs shall prohibit the inclusion of site-specific standards or requirements, including those related to safety.

In the event of any conflict between this Ordinance and any state or federal law or regulation, the state or federal law or regulation shall apply.

Town Staff Recommendation:

Town Staff recommends approval of an ordinance amending Chapter 3, Sections 1 and 2, of the Town of Prosper Zoning Ordinance to add Commercial Drone Delivery Hub use, standards, and definition.

Planning & Zoning Commission Recommendation:

The Planning & Zoning Commission recommended approval of this item by a vote of 5-0 at their meeting on June 4, 2024.

Proposed Motion:

I move to approve/deny an ordinance amending Chapter 3, Sections 1 and 2, of the Town of Prosper Zoning Ordinance to add Commercial Drone Delivery Hub use, standards, and definition.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE TOWN'S ZONING ORDINANCE BY AMENDING EXISTING SUBSECTION 1.3(D), "TRANSPORTATION, UTILITY, AND COMMUNICATIONS USES," OF SUBSECTION 1.3, "SCHEDULE OF USES," OF SECTION 1, "USE OF LAND AND BUILDINGS," OF CHAPTER 3, "PERMITTED USES AND DEFINITIONS," BY ADDING "COMMERCIAL DRONE DELIVERY HUB" AS A PERMITTED USE WITH A SPECIFIC USE PERMIT IN THE COMMERCIAL, "C," COMMERCIAL CORRIDOR, "CC," AND INDUSTRIAL, "I," ZONING DISTRICTS WITH CONDITIONAL DEVELOPMENT STANDARDS; AMENDING EXISTING SUBSECTION 1.4, "CONDITIONAL DEVELOPMENT STANDARDS," OF SECTION 1, "USE OF LAND AND BUILDINGS," OF CHAPTER 3, "PERMITTED USES AND DEFINITIONS," BY ADDING CONDITIONAL DEVELOPMENT STANDARDS FOR ANY "COMMERCIAL DRONE DELIVERY HUB" USE; AMENDING EXISTING SUBSECTION 2.2 OF SECTION 2, "DEFINITIONS," OF CHAPTER 3, "PERMITTED USES AND DEFINITIONS," BY ADDING A DEFINITION OF "COMMERCIAL DRONE DELIVERY HUB"; PROVIDING FOR A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public notice and public hearing as required by law, the Planning and Zoning Commission of the Town of Prosper, Texas, has recommended amending the Town's Zoning Ordinance to encompass those amendments as set forth herein; and

WHEREAS, after public notice and public hearing as required by law, and upon due deliberation and consideration of the recommendation of said Planning and Zoning Commission and of all testimony and information submitted during said public hearing, the Town Council of the Town of Prosper, Texas, has determined that it is in the public's best interest and in furtherance of the health, safety, morals, and general welfare of the citizens of the Town to amend the Town's Zoning Ordinance as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Prosper, and they are hereby approved and incorporated into the body of this Ordinance as if restated herein in their entirety.

SECTION 2

From and after the effective date of this Ordinance, existing Subsection 1.3(D), "Transportation, Utility, and Communications Uses," of Subsection 1.3, "Schedule of Uses," of Section 1, "Use of Land and Buildings," of Chapter 3, "Permitted Uses and Definitions," of the Town's Zoning Ordinance, is hereby amended by adding "Commercial Drone Delivery Hub" as a permitted use with a specific use permit in the Commercial, "C," Commercial Corridor, "CC," and Industrial, "I," zoning districts with conditional development standards, to read as follows:

SECTION 1.3(D) TRANSPORTATION, UTILITY AND COMMUNICATIONS USES	Residential Districts							Non-Residential Districts								
	A - Agricultural	SF - Single Family	DTSF - Downtown	TH - Townhome	2F - Two Family	MF - Multifamily	MH - Mobile Home	O - Office	DTO - Downtown	NS - Neighborhood	DTR - Downtown	R - Retail	DTC - Downtown	C - Commercial	CC - Commercial	I - Industrial
Commercial Drone Delivery Hub														51	51	51

SECTION 3

From and after the effective date of this Ordinance, existing Subsection 1.4, “Conditional Development Standards,” of Section 1, “Use of Land and Buildings,” of Chapter 3, “Permitted Uses and Definitions,” of the Town’s Zoning Ordinance, as amended, is hereby amended by adding new Conditional Development Standards for “Commercial Drone Delivery Hubs,” to read as follows:

“1.4 Conditional Development Standards

* * *

51. Commercial Drone Delivery Hubs

These regulations apply to a commercial drone delivery hub use.

- a) Commercial Drone Delivery Hubs:
 - 1) A commercial drone delivery hub is allowed with a specific use permit in the C, CC and I districts when the requirements of this section are met.
 - 2) When a detached accessory building is occupied or intended to be occupied for an accessory commercial drone delivery hub, the floor area is limited to a maximum of 10% of the total floor area of the building containing the primary use.

- b) Drone Staging Areas
 - 1) The drone staging area must be designated on an approved site plan.
 - 2) The drone staging area must not be placed:
 - i. Within any required building setbacks;
 - ii. Within any required landscape buffer;

- iii. Within fire lanes, easements, maneuvering aisles, customer pick-up lanes, or required loading zones and parking spaces; or
 - iv. So as to obstruct visibility or interfere with pedestrian or vehicle circulation.
 - 3) When located at grade, any goods, materials, containers, trailers, or other equipment must be screened according to the requirements for open storage contained in this Zoning Ordinance. Landing pads are exempt from this screening requirement. The Planning & Zoning Commission may waive these requirements with approval of a site plan.
 - 4) When a drone staging area is located on top of a building:
 - i. Any roof-mounted mechanical equipment, excluding landing pads, is subject to the mechanical screening requirements of this Zoning Ordinance; and
 - ii. Any additional structure, parapet wall, screening, safety railing, or other appurtenance associated with the commercial drone delivery hub is subject to the maximum height requirement of the zoning district, except a single mast up to 10 feet in height for a windsock may exceed the maximum height requirement.
 - 5) Antennas and antenna support structures are subject to the requirements of this Zoning Ordinance.
 - 6) Proximity to Noise-Sensitive Uses
 - i. The drone staging area for a commercial drone delivery hub shall not be located within 300 feet of any property upon which a dwelling, retirement housing facility, or public park is located. The 300-foot buffer requirement may be reduced to 150 feet if the Town Council finds that issuance of the specific use permit would not be detrimental or injurious to the public health, safety, or general welfare of the neighborhood.
 - ii. The measurement of the required buffer is to be made in a straight horizontal line from the edge of the drone staging area to the closest property line of a property containing a dwelling, retirement housing facility use, or public park.
- c) Parking and Loading
 - 1) Parking is not required for an accessory commercial drone delivery hub use.
 - 2) Loading spaces shall be provided for a commercial drone delivery hub pursuant to the requirements in the Zoning Ordinance for commercial,

commercial corridor, and industrial uses. Loading spaces are not required for an accessory commercial drone delivery hub use.

- 3) The Planning & Zoning Commission may decrease the amount of required parking for a site by up to 10% to accommodate the drone staging area for a commercial drone delivery hub with approval of a site plan. The parking reduction is revoked if the commercial drone delivery hub use is removed.
- d) Nothing herein shall prohibit the inclusion of site-specific standards or requirements, including those related to safety.
- e) In the event of any conflict between this Ordinance and any state or federal law or regulation, the state or federal law or regulation shall apply.”

SECTION 4

From and after the effective date of this Ordinance, Subsection 2.2 of Section 2, “Definitions,” of Chapter 3, “Permitted Uses and Definitions,” of the Town’s Zoning Ordinance, is hereby amended by adding definitions of “Commercial Drone Delivery Hub” and “Drone Staging Area,” to read as follows:

“2.2

* * *

Commercial Drone Delivery Hub – An area of land, structural surface, building, or structure with one or more designated drone staging areas for use by unmanned aircraft, including but not limited to those defined in Section 44801 of Title 49, United States Code, as amended, to distribute commercial goods by air. This includes any appurtenant areas used or intended for use for unmanned aircraft system buildings, structures, and other facilities.

* * *

Drone Staging Area – A designated area over which an unmanned aircraft completes the final phase of the approach, to a hover or a landing, and from which an unmanned aircraft initiates take-off. The drone staging area includes both the launch pads and any required safety areas, and may include areas for the outdoor storage of goods, materials, containers, trailers, or other equipment.

* * *”

SECTION 5

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, and any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.

SECTION 8

This Ordinance shall become effective from and after its adoption and publication as required by law; however, the provisions of this Ordinance shall not be applicable to any residential development or tract of land for which one or more final plats has been approved by the Town as of the effective date of this Ordinance.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS __ DAY OF _____, 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney