

Agenda

Prosper Town Council Meeting

Prosper Town Hall, Council Chambers 250 W. First Street, Prosper, Texas Tuesday, January 09, 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. 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. Presentation to the Town of Prosper for receiving the Commission for Accreditation of Parks and Recreation Agencies (CAPRA) award. (DB)
- 2. Presentation regarding the 2023 Mayor's Fitness Challenge. (DB)

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.

- Consider and act upon the minutes from the December 12, 2023, Town Council Work Session meeting. (MLS)
- 4. Consider and act upon the minutes from the December 12, 2023, Town Council Regular meeting. (MLS)
- Consider acceptance of the November 2023 monthly financial report. (CL)
- 6. Consider and act upon an ordinance amending Ordinance No. 2022-54 (FY 2022-2023 Annual Budget). (CL)
- Consider and act upon an ordinance amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget). (CL)
- 8. Consider and act upon approving an agreement between Aclara Technologies LLC and the Town of Prosper for maintenance and support from Aclara, a sole source provider, and consider and act upon approving an amendment to the existing Aclara Maintenance Agreement between Aclara Technologies LLC and the Town of Prosper to add Aclara Network Freedom to the existing Maintenance Agreement; and authorizing the Town Manager to execute the same. (CL)
- 9. Consider and act upon approval of the purchase and installation of a shade structure for the Cynthia A. Cockrell Elementary School Playground. (DB)
- 10. Consider and act upon approving a new Lease Agreement for Dylan Drive property housing Park Operations and authorizing the Town Manager to execute documents for same. (DB)
- 11. Consider and act upon approving the annual purchase of ammunition and range supplies from GT Distributors, Inc. and authorizing the Town Manager to execute documents for the same. (DK)
- 12. Consider and act upon a resolution approving a Service Agreement with Flock Group, Inc. for the lease of flock safety automatic license plate recognition (ALPR) cameras and authorizing the Town Manager to execute documents for the same. (DK)
- Consider and act upon a Multiple Use Agreement (MUA) between the Town of Prosper, Texas and the Texas Department of Transportation (TxDOT) for the construction, maintenance, and operation of a public Fixed License Plate Reader System; and to authorize the Town Manager to execute documents for the same. (DK)
- 14. Consider and act upon approving a Service Agreement between Honeywell International, Inc., dba US Digital Designs by Honeywell, and the Town of Prosper regarding fire station alerting equipment and authorizing the Town Manager to execute documents for the same. (SB)
- Consider and act upon authorizing the Town Manager to execute the First Amendment to the Interlocal Agreement between the City of Celina, Texas, and the Town of Prosper, Texas, related to cost participation in construction of interim asphalt improvements on Legacy Drive from Frontier Parkway to Parvin Road. (HW)
- Consider and act upon an ordinance repealing the Town's Juvenile Curfew Ordinance, found in Article 8.04 of Chapter 8 of the Code of Ordinances. (TW)

Page 2 of 6

Page 2

- 17. Consider and act upon an ordinance amending Section 1.09.017 of the Code of Ordinances relative to the carrying of firearms in Town parks, and Sections 8.03.001 and 8.01.002 of the Code of Ordinances relative to the carrying and discharge of firearms in Town buildings or in the Town limits. (TW)
- Consider and act upon an ordinance amending the Code of Ordinances by adding a new Article 8.09 to Chapter 8 Prohibiting the Dumping of Trash on Public or Private Property. (TW)
- 19. Consider and act upon an ordinance amending Chapter 4, Section 5.2 Location of Required Screening, of the Town of Prosper Zoning Ordinance to modify the screening requirements for trash and recycling collection areas. (ZONE-23-0025) (DH)
- 20. Consider and act upon an ordinance amending the Town of Prosper Zoning Ordinance by amending conditional development standards for restaurants contained in Subsection 1.4 of Section 1 of Chapter 3; amending non-residential landscaped area requirements contained in Subsection 2.6(C) of Section 2 of Chapter 4; repealing existing Subsection 4.9 of Section 4 of Chapter 4 related to loading space requirements and replacing it with a new Subsection 4.9; adding a new Subsection 4.10 of Section 4 of Chapter 4 related to stacking requirements; amending the location of required screening contained in Subsection 5.2 of Section 5 of Chapter 4; and amending provisions related to adjacency of certain uses to residential zoning contained in Subsection 9.11 of Section 9 of Chapter 4. (ZONE-23-0033) (DH)
- 21. Consider and act upon on ordinance amending Chapter 3, Section 1.4, Subpart 38 Automobile Sales/Leasing, Used, of the Town of Prosper Zoning Ordinance to provide additional criteria for this use. (ZONE-23-0026) (DH)
- Consider and act upon a request for a Façade Plan for Gates of Prosper, Phase 3, Block B, Lot 2, on 15.8± acres, located north of US 380 and west of Preston Road. The property is zoned Planned Development-67 (PD-67) Gates of Prosper. (DEVAPP-23-0165) (DH)
- 23. Consider and act upon an ordinance to rezone for a Specific Use Permit (SUP) for a Concrete Batching Plant, on 5.0± acres, located south of West First Street and west of South Dallas Parkway. (S20-0002) (DH)
- 24. Consider and act upon an ordinance to rezone 0.4± acres from Single Family-15 (SF-15) to Planned Development-124 (PD-124), for Bryant's Addition, Block 11, Lots 1, 11, and 12, located on the northeast corner of South Coleman Street and East Third Street. (ZONE-23-0027) (DH)
- 25. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Michael Bryant & Curtis Klieger and the Town of Prosper relative to 105 South Coleman Street. (DH)
- Consider and act upon an ordinance to rezone 0.5± acres from Single Family-15 (SF-15) to Planned Development-125 (PD-125), for Bryant's Addition, Block 22, Lots 7, 8, and 9, located on the northwest corner of South Parvin Street and East Second Street. (ZONE-23-0028) (DH)
- 27. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Kevin & Jennifer Pittman and the Town of Prosper relative to 202 South Parvin Street. (DH)

Page 3 of 6

28. 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)

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.

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.]

<u>Items for Individual Consideration:</u>

- 29. Conduct a public hearing and consider and act upon a request for a Planned Development for a House of Worship on 26.1± acres, on Prosper School Church Addition, Block A, Lot 2, located north of West First Street and west of South Legacy Drive. The property is zoned Agricultural. (ZONE-23-0030) (DH)
- 30. Conduct a public hearing to consider and act upon a request for a Specific Use Permit (SUP) to allow Retail Stores and Shops, a Convenience Store (without Gas Pumps), Dry Cleaning, Minor, and Gymnastics/Dance Studio uses on 3.6± acres on Windsong Ranch Office Addition, Block A, Lot 2, located south of Parvin Road and east of North Teel Parkway. The property is zoned Planned Development-103 (PD-103) Windsong Ranch Office. (ZONE-23-0023) (DH)
- 31. Conduct a public hearing to consider and act upon an amendment to Chapter 3, Section 1.4 Conditional Development Standards of the Town of Prosper Zoning Ordinance to modify requirements related to gas pumps. (ZONE-23-0039) (DH)
- 32. Conduct a public hearing to consider and act upon amending Chapter 2, Section 13 Multifamily District; Chapter 4, Section 4.3 Non-residential and multifamily parking provisions; and Chapter 4, Section 8 Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024) (DH)
- 33. Consider and act upon approving a Professional Services Agreement between Dunaway Associates, L.P. and the Town of Prosper, Texas, for the preparation of a Parks, Recreation & Open Space Master Plan, and authorizing the Town Manager to execute documents for the same. (DB)
- 34. Consider and act upon awarding CSP No. 2024-09-B to McMahon Contracting LP, related to construction services for the Teel Parkway (US 380 First Street) project; and authorizing the Town Manager to execute a construction agreement for same. (HW)

Page 4 of 6 Page 4

- 35. Consider and act upon an ordinance repealing existing Article 13.08, "Right-of-Way Management," of Chapter 13 "Utilities," of the Town's Code of Ordinances and replacing it with a new Article 13.08, "Right-of-Way Management". (HW)
- 36. Discussion regarding nonprofit support options. (RB)
- 37. 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 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 receive legal advice regarding land use and development issues.

Section 551.074 - To discuss appointments to the Board of Adjustment/Construction Board of Appeals, Parks & Recreation Board, Library Board, Prosper Economic Development Corporation Board, Planning & Zoning Commission, and the Community Engagement Committee, 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 the Town Hall, located at 250 W. First Street, Prosper, Taccessible to the general public at all times, and Friday, January 5, 2024, and remained so posted convened.	exas 75078, a place convenient and readily said Notice was posted by 5:00 p.m., on
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.

Page 5 of 6

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) 569-1011 at least 48 hours prior to the meeting time.

Item 3.



MINUTES

Prosper Town Council Work Session Prosper Town Hall – Council Chambers

250 W. First Street, Prosper, Texas
Tuesday, December 12, 2023

Call to Order/ Roll Call.

The meeting was called to order at 5:02 p.m.

Council Members Present:

Mayor David F. Bristol
Mayor Pro-Tem Craig Andres
Deputy Mayor Pro-Tem Marcus E. Ray arrived at 5:29 p.m.
Councilmember Amy Bartley
Councilmember Chris Kern
Councilmember Jeff Hodges
Councilmember Charles Cotten

Staff Members Present:

Mario Canizares, Town Manager
Michelle Lewis Sirianni, Town Secretary
Terry Welch, Town Attorney
Chuck Ewings, Assistant Town Manager
Hulon Webb, Director of Engineering Services
David Hoover, Development Services Director
Frank Jaromin, Director of Public Works
Doug Kowalski, Police Chief

Items for Individual Consideration

1. Discussion regarding the traffic signal warrant process. (HW)

Mr. Webb introduced Kelly Parma, Senior Project Manager with Lee Engineering to provide the presentation.

Mr. Parma presented an overview of how their firm processes and collects data during a traffic study. He also reviewed the nine (9) warrants that are evaluated and what each entail in determining if a traffic signal is recommended or not based on those criteria. It was noted that a traffic signal is being recommended at Gee and Acacia Road due to the traffic study recently conducted.

Mr. Webb added that the design process will take approximately three (3) months and an additional nine (9) to twelve (12) months for procurement and installation.

The Town Council discussed funds for the project, crosswalk flashers, and the opening of additional lanes, which should help traffic flow until the light is fully installed.

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:

Page 1 of 2

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

Section 551.072 – To discuss and consider 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.

The Town Council recessed into Executive Session at 5:31 p.m.

Reconvene into Work Session.

The Town Council reconvened into the Work Session at 6:00 p.m.

Adjourn.

The meeting was adjourned at 6:00 p.m.

These minutes were approved on the 9th day of January 2024.

	APPROVED:
	David F. Bristol, Mayor
ATTEST:	
Michelle Lewis Sirianni, Town Secretary	_

Page 2 of 2

Item 4.



MINUTES

Prosper Town Council Meeting

Prosper Town Hall, Council Chambers 250 W. First Street, Prosper, Texas Tuesday, December 12, 2023

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 Craig Andres
Deputy Mayor Pro-Tem Marcus E. Ray
Councilmember Amy Bartley
Councilmember Chris Kern
Councilmember Jeff Hodges
Councilmember Charles Cotten

Staff Members Present:

Mario Canizares, Town Manager Michelle Lewis Sirianni, Town Secretary Terry Welch, Town Attorney Chuck Ewings, Assistant Town Manager David Hoover, Development Services Director Hulon Webb, Director of Engineering Suzanne Porter, Planning Manager Chris Landrum, Finance Director Ryan Patterson, Assistant Finance Director James Edwards, Human Resources Director Frank Jaromin, Director of Public Works Mary Ann Moon, Economic Development Director Dan Baker, Parks and Recreation Director Wilson Haynes, Senior Communications Specialist Kellen Land, Help Desk Technician Doug Kowalski, Police Chief

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

Mike Martin with Hope Fellowship led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

Announcements of recent and upcoming events.

Councilmember Kern made the following announcements:

We would like to thank all those who attended the annual Christmas Festival this year. We had great weather and a fantastic turnout of over 7,000 people. An extra special thanks to our Parks and Recreation Department for all their hard work, as well as to all the staff who helped and volunteered, and the sponsors for allowing the Town to make the event bigger and better each year.

Be on the lookout this week through the Prosper Parks and Recreation Facebook page for this year's Light the Night holiday lighting contest winners. Winners to be announced on social media on Friday, December 15.

Thank you to everyone who has and continues to donate to the Salvation Army Red Kettle Campaign. This past Saturday, Prosper Mayor, David Bristol, and members of the Town Council and staff were out collecting donations from generous shoppers at Kroger on Preston Road to support neighbors who battle poverty, addiction, and homelessness. You can still donate online to The Salvation Army of North Texas McKinney Corps Team. Show your support today and help the Town of Prosper reach and beat their goal of \$2,000 dollars.

Reminder that Town Hall Offices will be closed on Monday, December 25 and Tuesday, December 26 for the Christmas Holiday as well as Monday, January 1 for the New Year's Holiday. Trash services will be delayed by one day due to the holidays. The special bulk drop off location at Public Works will be closed on Saturday, December 23.

The Prosper Community Library will be closed Saturday, December 23 thru Tuesday, December 26 for the Christmas Holiday, as well as Monday, January 1 for the New Year's Holiday, and lastly,

A reminder to citizens that the Tuesday, December 26 Town Council meeting has been canceled. We wish everyone a Happy Holiday Season!

Councilmember Bartley thanked Cornerstone and Prosper Ladies Association for their holiday drives and success in assisting those in the community.

Mayor Bristol thanked the Salvation Army and encouraged residents to continue to donate to the Red Kettle Campaign.

Presentations.

1. Presentation to the Town of Prosper for the Award for Excellence in Financial Reporting from the Government Finance Officers Association of Texas (GFOA). (CL)

Mayor Bristol presented the GFOA award to members of the Finance Department.

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.

- 2. Consider and act upon the minutes from the November 28, 2023, Town Council Work Session meeting. (MLS)
- 3. Consider and act upon the minutes from the November 28, 2023, Town Council Regular meeting. (MLS)
- 4. Consider and act upon awarding RFP No. 2024-03-B for stop loss insurance for the Town's self-insurance fund, effective January 1, 2023, and authorizing the Town Manager to execute all documents for the same. (JE)
- 5. Consider and act upon approving the purchase of a wastewater inspection software from ITpipes Opco, LLC, a sole source provider; and authorizing the Town Manager to execute documents for the same. (FJ)
- 6. Consider and act upon approving the purchase of water meters from Core & Main, a sole source provider; and authorizing the Town Manager to execute documents for the same. (FJ)

Page 11

- 7. Consider and act upon approving a Master Cooperative Purchasing Agreement between the Town of Prosper and the Sheriffs' Association of Texas for the procurement of vehicles and authorize the Town Manager to execute documents for same. (CL)
- 8. Consider and act upon the approval of purchases of new and replacement vehicles, upfitting and equipment for FY24 utilizing cooperative purchasing agreements and approved purchasing methods and authorize the Town Manager or his/her designee to execute documents related to said purchases. (CL)
- Consider and act upon approving an Interlocal Agreement between the Town of Prosper and the City of Denton for the procurement of goods and services and authorize the Town Manager to execute documents for the same. (CL)
- 10. Consider and act upon accepting the 2023 FY23 COPS Hiring Program grant award from the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office). (DK)
- 11. Consider and act upon awarding CSP No. 2024-01-B to DDM Construction Corporation, related to construction services for the Preston Road/Prosper Trail Dual Left Turn Lanes and Coit Road/US 380 Southbound Dual Left Turn projects; and authorizing the Town Manager to execute a construction agreement for same. (HW)

Mayor Bristol requested to pull item #4.

Mayor Pro-Tem Andres made a motion to approve items 2 and 3, and 5 through 11. Deputy Mayor Pro-Tem Ray seconded that motion. Motion carried unanimously.

Mayor Bristol stated his concern of the timeframe of the item, the difference between a 24/12 and Paid Contract, the deductible, and if the Town would be able to have a firm bid by October 1.

Mr. Dave Gibson, the Town's consultant with Holmes Murphy, answered and explained the differences in each item. He was agreeable to providing a bid to the Town by October 1.

Mayor Bristol made a motion to approve item 4. Councilmember Cotten seconded that motion. Motion carried unanimously.

CITIZEN COMMENTS

Beckett, Boy Scout from Prosper Pack 380 asked what one main issue the Town is currently facing today.

Mr. Canizares responded by noting that due to the amount of growth, the Town is experiencing increased traffic. Therefore, has been prioritizing the building of roadways and infrastructure.

Items for Individual Consideration:

12. Consider and act upon Resolution 2023-82 of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Town's FM 1461 12-inch Water Line Relocation project; determining the public use and necessity for such acquisition; authorizing the acquisition of property

Page 3 of 8

rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. (HW)

Mr. Webb introduced this item noting the water line relocation project. The proposed resolution is requesting advance authorization to pursue acquisition by eminent domain if standard negotiations are unsuccessful.

Mayor Pro-Tem Andres made a motion to approve Resolution 2023-82 of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Town's FM 1461 12-inch Water Line Relocation project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. Councilmember Cotten seconded that motion.

Councilmember Cotten – In Favor
Councilmember Hodges – In Favor
Deputy Mayor Pro-Tem Ray – In Favor
Mayor Bristol – In Favor
Mayor Pro-Tem Andres – In Favor
Councilmember Kern – In Favor
Councilmember Bartley – In Favor

Motion carried with a 7-0 vote.

13. Consider and act upon Resolution 2023-83 of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain wastewater line easements and temporary construction easements for the construction of the Town's Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. (HW)

Mr. Webb introduced this item noting wastewater line project. The proposed resolution is requesting advance authorization to pursue acquisition by eminent domain if standard negotiations are unsuccessful.

Mayor Pro-Tem Andres made a motion to approve Resolution 2023-83 of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain wastewater line easements and temporary construction easements for the

construction of the Town's Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. Councilmember Cotten seconded that motion.

Councilmember Cotten – In Favor Councilmember Hodges – In Favor Deputy Mayor Pro-Tem Ray – In Favor Mayor Bristol – In Favor Mayor Pro-Tem Andres – In Favor Councilmember Kern – In Favor Councilmember Bartley – In Favor

Motion carried with a 7-0 vote.

14. Consider and act upon approval of Raymond Community Park Guaranteed Maximum Price Contract #1 for Site Preparation and authorize the Town Manager to execute documents for the same. (DB)

Mr. Baker provided a brief history of the park project and this being the first of two awards. This item is for the initial phase of the project for the site preparation. Mr. Baker noted the schedule of the work, which is set to begin in January, and the cost of the initial phase, with funding being provided from the 2020 Bond Program.

Councilmember Hodges made a motion to approve and award the Raymond Community Park Guaranteed Maximum Price Contract #1 for Site Preparation and authorize the Town Manager to execute documents for the same. Councilmember Cotten seconded that motion. Motion carried unanimously.

15. Consider and act upon Ordinance 2023-84 amending Article 3.14 – Signs of the Town of Prosper Code of Ordinances to modify certain wall signs and development sign regulations. (DH)

Mr. Hoover stated the proposed amendment addresses the standards for a wall sign and a development sign. For wall signs, it would limit the location to two sides of the building, and for development signs, would limit the size to 32 square feet with a recommended maximum height being reduced from 12 to 10 feet. The Planning and Zoning Commission unanimously recommended approval. Staff recommends approval.

The Town Council discussed the current signs being grandfathered, provision for sign districts such as the Gates of Prosper, sign permits, and placement of signs based on the location of the front of a building.

Councilmember Cotten made a motion to approve an ordinance amending Article 3.14 – Signs of the Town of Prosper Code of Ordinances to modify certain wall signs and development sign regulations, and further, (1) the maximum height of a development sign shall not exceed 8 feet; and (2) wall signs shall not be permitted on any façade that does not front on an entrance, public thoroughfare, or interior roadway within a development. Councilmember Bartley seconded that motion. Motion carried unanimously.

16. Consider and act upon amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024) (DH)

Mayor Bristol stated that he is recommending this item be tabled to a later date.

Councilmember Bartley made a motion to table amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024) to January 9, 2024. Deputy Mayor Pro-Tem Ray seconded that motion. Motion carried unanimously.

17. Conduct a public hearing to consider amending Chapter 3, Section 1.4 – Conditional Development Standards and Chapter 4 – Development Requirements of the Town of Prosper Zoning Ordinance to modify requirements related to drive-throughs. (ZONE-23-0033) (DH)

Mr. Hoover stated staff is proposing amendments to the location of drive-throughs, landscape screening, and stacking of escape lane standards. Mr. Hoover provided examples of kinds of businesses that have drive-throughs and their requirements based on the Zoning Ordinance, as well as provided a review of each amendment. The Planning and Zoning Commission voted 5-2 in favor with specific concerns regarding the landscaping and associated maintenance requirements. Staff is recommending approval.

The Town Council discussed adjacencies of drive-throughs, how the amendments relate to existing Planned Developments (PD's), landscaping, and landscaping islands.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

The Town Council further discussed the depth of landscaping islands.

Cameron Reaves, Planning and Zoning Commissioner, spoke to his vote of opposition. Mr. Reaves commented that it was based on the landscaping with the recommendation of using evergreens, which could result in a safety issue due to the maximum height requirement and shielding visibility.

Councilmember Cotton made a motion to approve amending Chapter 3, Section 1.4 – Conditional Development Standards and Chapter 4 – Development Requirements of the Town of Prosper Zoning Ordinance to modify requirements related to drive-throughs, and Section 2.6(C)(2)(i)(i) of Chapter 4 shall require that landscape islands shall be a minimum of 5 feet. Councilmember Bartley seconded that motion. Motion carried with a 4-3 vote. Mayor Bristol, Deputy Mayor Pro-Tem Ray, and Councilmember Hodges voting in opposition.

18. Consider and act upon the 2024 Prosper Town Council Regular meeting schedule. (MLS)

Ms. Lewis Sirianni reviewed the proposed 2024 meeting dates.

Deputy Mayor Pro-Tem Ray made a motion to approve the 2024 Prosper Town Council Regular meeting schedule. Councilmember Hodges seconded that motion. Motion carried unanimously.

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

Councilmember Bartley and Deputy Mayor Pro-Tem Ray provided a Downtown Advisory Committee report.

Mayor Pro-Tem Andres stated a future update will be forthcoming regarding the McKinney Urban Transit Committee.

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

No comments were made.

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 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.

The Town Council recessed into Executive Session at 7:51 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 8:27 p.m.

No action was taken.

Adjourn.

The meeting was adjourned at 8:27 p.m.

These minutes were approved on the 9th day of January 2024.

APPROVED:

David F. Bristol, Mayor

Page 7 of 8 Page 15

ATTEST:

Michelle Lewis Sirianni, Town Secretary





FINANCE

To: Mayor and Town Council

From: Chris Landrum, Finance Director

Through: Mario Canizares, Town Manager

Bob Scott, Deputy Town Manager

Re: November 2023 Monthly Financial Report

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider acceptance of the November 2023 monthly financial report.

Description of Agenda Item:

The Town Charter requires the submission of monthly financial reports to the Town Council. In summary, both revenues and expenditures are within the expected ranges and no unexpected events have occurred that require significant changes in original projections.

The attached monthly financial report for November 2023 was prepared in the old format. This format is not particularly "user friendly" and staff is looking to reformat the monthly financial reports after the ERP software conversion.

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. Monthly Financial Report – November 30, 2023

Town Staff Recommendation:

Town staff recommends Town Council vote to accept submission of the monthly financial report for the period November 2023 in compliance with the requirements of the Town Charter.

Proposed Motion:

I move to accept the November 2023 Monthly Financial Report in compliance with charter requirements.





MONTHLY FINANCIAL REPORT as of November 30, 2023 Cash/Budgetary Basis

Prepared by Finance Department

January 9, 2024

TOWN OF PROSPER, TEXAS

MONTHLY FINANCIAL REPORT November 2023

Table of Contents

General Fund	3
General Fund Charts	4 - 7
Crime Control and Prevention Special Purpose District	8
Fire Control, Prevention, and Emergency Medical Services Special Purpose District	9
TIRZ #1 - Blue Star	10
TIRZ #2	11
Debt Service Fund	12
Special Revenue Fund	13
Park Dedication and Improvement Fund	14
East Thoroughfare Impact Fees Fund	15
West Thoroughfare Impact Fees Fund	16
Water Impact Fees Fund	17
Wastewater Impact Fees Fund	18
Impact Fee Chart	19
Vehicle and Equipment Replacement Fund	20
Health Insurance Fund	21
Water-Sewer Fund	22 - 23
Water-Sewer Fund Charts	24 - 26
Storm Drainage Utility Fund	27
Solid Waste Fund	28
Solid Waste Fund Chart	29
Capital Projects Fund-General	30 - 31
Capital Projects Fund-Water/Sewer	32

GENERAL FUND

		Original		Budget		Amended	(Current Year	Cur	rent Year	Current Remaining			Р	rior Year	Change from
		Budget	Α	djustment		Budget		YTD Actuals	Encu	mbrances	Budget Balance	YTD Percent	Note	YT	TD Actuals	Prior Year
DEVENUES																
REVENUES	_	24 446 424	,		,	24 446 424	.	4 245 465	<u>,</u>		ć 40.000.0EC	60/		۲.	4 200 004	C0/
Property Taxes	\$	21,146,121	\$	-	\$	21,146,121	\$	1,215,165	\$	-		6%	1	\$	1,288,094	-6%
Sales Taxes		11,091,492		-		11,091,492		1,924,998		-	9,166,494	17%	_		1,693,179	14%
Franchise Fees		3,221,816		-		3,221,816		138,791		-	3,083,025	4%	2		107,567	29%
Building Permits		3,700,000		-		3,700,000		1,108,288		-	2,591,712	30%			721,109	54%
Other Licenses, Fees & Permits		2,180,050		-		2,180,050		343,657		-	1,836,393	16%			255,344	35%
Charges for Services		1,296,023		-		1,296,023		113,840		-	1,182,183	9%			126,604	-10%
Fines & Warrants		300,500		-		300,500		65,806		-	234,694	22%			64,806	2%
Intergovernmental Revenue (Grants)		37,840		-		37,840		-		-	37,840	0%			46,577	-100%
Interest Income		750,000		-		750,000		115,630		-	634,370	15%			60,043	93%
Miscellaneous		63,751		-		63,751		24,954		-	38,797	39%			35,720	-30%
Park Fees		814,100		-		814,100		74,082		-	740,019	9%			118,202	-37%
Transfers In		1,297,102		6,084		1,303,186		226,834		-	1,076,352	17%			205,889	10%
Total Revenues	\$	45,898,795	\$	6,084	\$	45,904,879	\$	5,352,045	\$	-	\$ 40,552,834	12%		\$	4,723,133	13%
EXPENDITURES														١.		
Administration	\$	9,991,267	\$	10,728	\$	10,001,995	\$	1,495,502	\$	656,673		22%		\$	1,089,852	37%
Police		9,595,898		-		9,595,898		964,210		344,174	8,287,515	14%			704,699	37%
Fire/EMS		10,562,840		(2,028)		10,560,812		1,307,637		577,073	8,676,101	18%			1,104,207	18%
Public Works		4,567,242		-		4,567,242		265,657		324,766	3,976,819	13%			279,739	-5%
Community Services		7,486,803		-		7,486,803		878,293		418,580	6,189,931	17%			661,797	33%
Development Services		4,139,855		(2,616)		4,137,239		384,227		75,674	3,677,337	11%			352,486	9%
Engineering		2,684,047		-		2,684,047		293,857		50,000	2,340,190	13%			229,527	28%
Transfers Out		-		-		-		-		-	-	0%				0%
Total Expenses	\$	49,027,952	\$	6,084	\$	49,034,036	\$	5,589,383	\$	2,446,940	\$ 40,997,714	16%		\$	4,422,308	26%
REVENUE OVER (UNDER) EXPENDITURES	\$	(3,129,157)	\$	-	\$	(3,129,157)	\$	(237,338)						\$	300,826	
Beginning Fund Balance October 1						15,011,987		15,011,987								
Ending Fund Balance				-	\$	11,882,831	\$	14,774,649								

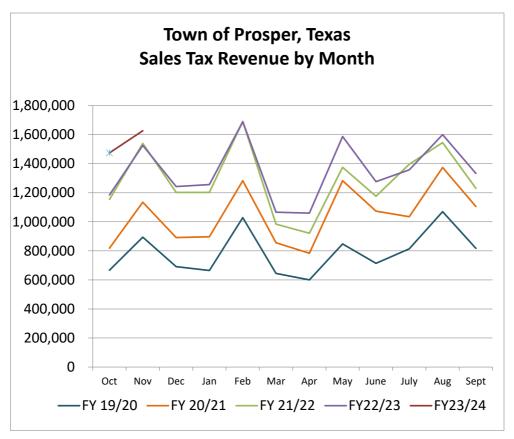
Notes

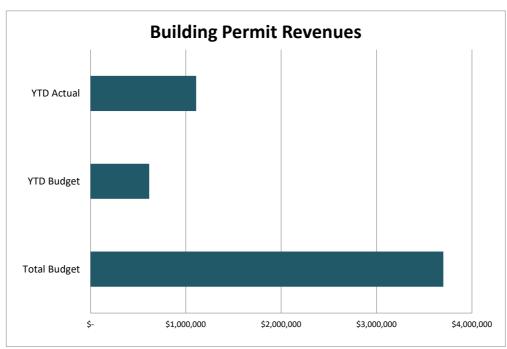
- 1 Property taxes are billed in October and the majority of collections occur December through February.
- 2 Franchise fees and other various license and fees are paid quarterly or annually.
- 3 Fund Balance Contingency per Charter and Reserve for FY23 = \$9,586,518 (21%).

GENERAL FUND REVENUE

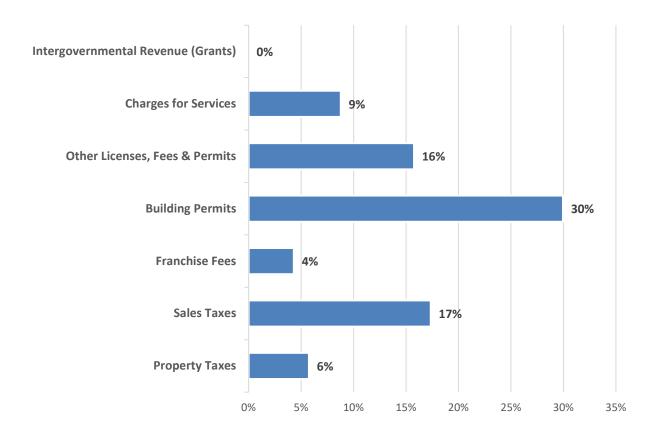
Current YTD to Prior Year YTD Actual Comparison

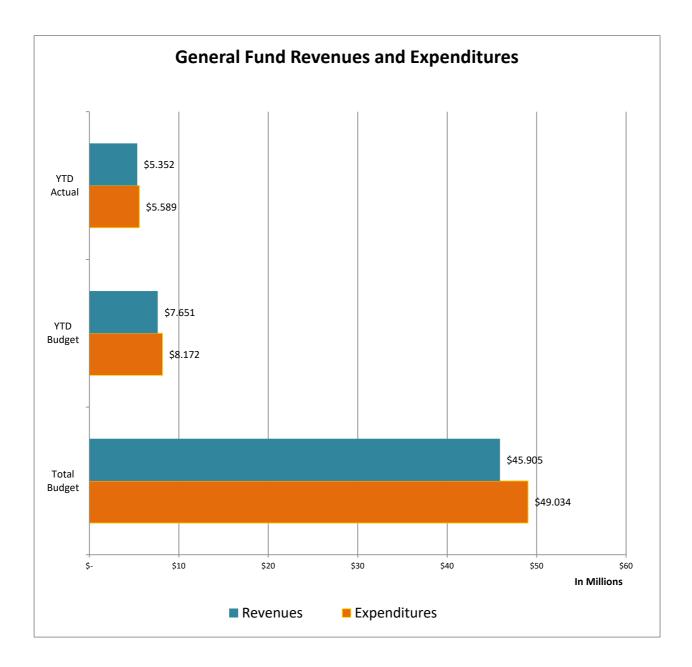






GENERAL FUND YTD REVENUE % OF ANNUAL BUDGET





CRIME CONTROL AND PREVENTION SPECIAL PURPOSE DISTRICT

	Original	•		Amended	C	urrent Year	Current Year	Cu	urrent Remaining			Pr	ior Year	Change from
	Budget	Adju	ıstment	Budget	١	TD Actual	Encumbrances	E	Budget Balance	YTD Percent	Note	YT	D Actual	Prior Year
REVENUES														
Sales Tax - Town	\$ 3,060,806	\$	- \$	3,060,806	\$	510,631	\$ -	\$	2,550,175	17%		\$	446,565	14%
Interest Income	1,200		-	1,200		-	-		1,200	0%			356	-100%
Other	-		-	-		-	-		-	0%			-	0%
Total Revenue	\$ 3,062,006	\$	- \$	3,062,006	\$	510,631	\$ -	\$	2,551,375	17%		\$	446,921	14%
EXPENDITURES														
Personnel	\$ 3,167,364	\$	- \$	3,167,364	\$	431,789	\$ -	\$	2,735,575	14%		\$	346,899	24%
Other	1,200		-	1,200		-	-		1,200	0%			(10,109)	-100%
Total Expenditures	\$ 3,168,564	\$	- \$	3,168,564	\$	431,789	\$ -	\$	2,736,775	14%	<u> </u>	\$	336,789	28%
REVENUE OVER (UNDER) EXPENDITURES	\$ (106,558)	\$	- \$	(106,558)	\$	78,842						\$	110,132	
Beginning Fund Balance October 1				210,707		210,707							302,439	
Ending Fund Balance Current Month			\$	104,149	\$	289,549					=	\$	412,571	

FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES SEPCIAL PURPOSE DISTRICT

		Original	Budget	Amended Budget		Current Ye		Current Year	Cu	rrent Remaining			Pri	or Year	Change from
		Budget	Adjustment		Budget	,	YTD Actual	Encumbrances	В	Budget Balance	YTD Percent	Note	YTE) Actual	Prior Year
REVENUES															
Sales Tax - Town	\$	3,060,806	\$	- \$	3,060,806	\$	515,152	\$ -	\$	2,545,654	17%		\$	446,156	15%
Interest Income		600		-	600		1,432	-		(832)	239%			413	247%
Other		-		-	-		-	-		-	0%			-	0%
Total Revenue	\$	3,061,406	\$	- \$	3,061,406	\$	516,584	\$ -	\$	2,544,822	17%		\$	446,569	16%
EXPENDITURES				_					_						00/
Personnel	\$	3,026,823	Ş	- \$	3,026,823	\$	339,561	\$ -	\$	2,687,262	11%		\$	310,983	9%
Other	<u> </u>	2,400		-	2,400					2,400	0%			(10,109)	-100%
Total Expenditures	\$	3,029,223	\$	- \$	3,029,223	\$	339,561	\$ -	\$	2,689,662	11%		\$	300,873	13%
REVENUE OVER (UNDER) EXPENDITURES	\$	32,183	\$	- \$	32,183	\$	177,023						\$	145,695	
Beginning Fund Balance October 1					495,556		495,556							203,982	
Ending Fund Balance Current Month				\$	527,739	\$	672,579						\$	349,677	

TIRZ #1 - BLUE STAR

	Original	Budget		Amended	C	urrent Year	Cur	rrent Remaining			Prio	r Year	Change from
	Budget	Adjustment		Budget	,	YTD Actual	В	Budget Balance	YTD Percent	Note	YTD	Actual	Prior Year
REVENUES													
Impact Fee Revenue:													
Water Impact Fees	\$ -	\$	- \$	-	\$	-	\$	-	0%		\$	-	0%
Wastewater Impact Fees	750,000		-	750,000		73,372		676,628	10%			23,259	215%
East Thoroughfare Impact Fees	-		-	-		-		-	0%			-	0%
Property Taxes - Town (Current)	1,108,174		-	1,108,174		-		1,108,174	0%			-	0%
Property Taxes - Town (Rollback)	-		-	-		-		-	0%			-	0%
Property Taxes - County (Current)	236,601		-	236,601		-		236,601	0%			-	0%
Sales Taxes - Town	1,372,209		-	1,372,209		150,832		1,221,377	11%			153,243	-2%
Sales Taxes - EDC	1,149,225		-	1,149,225		126,322		1,022,903	11%			128,341	-2%
Interest Income	6,000		-	6,000		8,635		(2,635)	144%			4,441	94%
Transfer In	-		-	-		-		-	0%			-	0%
Total Revenue	\$ 4,622,209	\$	- \$	4,622,209	\$	359,161	\$	4,263,048	8%		\$	309,285	16%
EXPENDITURES													
Professional Services	\$ 6,000	\$	- \$	6,000	\$	-	\$	6,000	0%		\$	-	0%
Developer Rebate	4,616,209		-	4,616,209		-	\$	4,616,209	0%			-	0%
Transfers Out	-		-	-		-	\$	-	0%			-	0%
Total Expenses	\$ 4,622,209	\$	- \$	4,622,209	\$	-	\$	4,622,209	0%	Ī	\$	-	0%
REVENUE OVER (UNDER) EXPENDITURES			\$	-	\$	359,161					\$	309,285	
Beginning Fund Balance October 1				989,032		989,032						301,260	
Ending Fund Balance Current Month			\$	989,032	\$	1,348,193					\$	610,545	

TIRZ #2

	(Original	Budg	get A	mended	Cui	rrent Year	Current Remaining			Prior Y	ear	Change from
		Budget	Adjustr	ment	Budget	YT	TD Actual	Budget Balance	YTD Percent	Note	YTD Ac	tual	Prior Year
REVENUES													
Property Taxes - Town (Current)	\$	39,537	\$	- \$	39,537	\$	-	\$ 39,537	0%		\$	-	0%
Property Taxes - Town (Rollback)		-		-	-		-	-	0%			-	0%
Property Taxes - County (Current)		8,441		-	8,441		-	8,441	0%			-	0%
Sales Taxes - Town		-		-	-		-	-	0%			-	0%
Sales Taxes - EDC		-		-	-		-	-	0%			-	0%
Interest Income		1,200		-	1,200		228	972	19%			86	166%
Total Revenue	\$	49,178	\$	- \$	49,178	\$	228	\$ 48,950	0%		\$	86	166%
EXPENDITURES													
Professional Services	\$	-	\$	- \$	-	\$	-	\$ -	0%		\$	-	0%
Developer Rebate		49,178		-	49,178		-	49,178	0%			-	0%
Transfers Out		-		-	-		-	-	0%			-	0%
Total Expenditures	\$	49,178	\$	- \$	49,178	\$	-	\$ 49,178	0%]	\$	-	0%
REVENUE OVER (UNDER) EXPENDITURES				\$	-	\$	228				\$	86	
Beginning Fund Balance October 1					25,501		25,501					25,189	
Ending Fund Balance Current Month				\$	25,501	\$	25,729				\$	25,275	

DEBT SERVICE FUND

		Original	Budget		Amended	Cı	ırrent Year	Current Year	Current Remaining			Р	rior Year	Change from
		Budget	Adjustment		Budget	Υ	TD Actual	Encumbrances	Budget Balance	YTD Percent	Note	Ϋ́	TD Actual	Prior Year
REVENUES														
Property Taxes-Delinguent	\$	75,000	Ś	- \$	75,000	\$	(1,888)	\$ -	\$ 76,888	-3%		\$	25,663	-107%
Property Taxes-Current	*	15,069,531	*	- '	15,069,531	,	653,377	-	14,416,154	4%	1	*	668,791	-2%
Taxes-Penalties		40,000		-	40,000		2,748	-	37,252	7%			4,043	-32%
Interest Income		20,000		-	20,000		14,251	-	5,749	71%			3,082	362%
Transfer In		· -		-	, <u>-</u>		-	-		0%			· -	0%
Total Revenues	\$	15,204,531	\$	- \$	15,204,531	\$	668,488	\$ -	\$ 14,536,043	4%		\$	701,579	-5%
EXPENDITURES											\perp			
Professional Services	\$		\$	- \$	-	\$	-		\$ -	0%		\$	-	0%
Bond Administrative Fees		20,000		-	20,000		1,000	-	19,000	5%			-	0%
2013 GO Refunding Bond		185,000		-	185,000		-	-	185,000	0%			-	0%
2014 GO Bond Payment		335,000		-	335,000		-	-	335,000	0%			-	0%
2015 GO Bond Payment		1,365,700		-	1,365,700		-	-	1,365,700	0%			-	0%
2015 CO Bond Payment		475,000		-	475,000		-	-	475,000	0%			-	0%
2016 GO Debt Payment		-		-	-		-	-	-	0%			-	0%
2016 CO Debt Payment		90,000		-	90,000		-	-	90,000	0%			-	0%
2017 CO Debt Payment		450,000		-	450,000		-	-	450,000	0%	├ 2		-	0%
2018 GO Debt Payment		150,000		-	150,000		-	-	150,000	0%			-	0%
2018 CO Debt Payment		500,000		-	500,000		-	-	500,000	0%			-	0%
2019 CO Debt Payment		340,022		-	340,022		-	-	340,022	0%			-	0%
2019 GO Debt Payment		165,000		-	165,000		-	-	165,000	0%			-	0%
2020 CO Debt Payment		265,000		-	265,000		-	-	265,000	0%			-	0%
2021 CO Debt Payment		260,000		-	260,000		-	-	260,000	0%			-	0%
2021 GO Debt Payment		1,290,000		-	1,290,000		-	-	1,290,000	0%			-	0%
2022 GO Debt Payment		2,289,052		-	2,289,052		-	-	2,289,052	0%	IJ		-	0%
Bond Interest Expense		6,772,662		-	6,772,662		-	-	6,772,662	0%			_	0%
Total Expenditures	\$	14,952,436	\$	- \$	14,952,436	\$	1,000	\$ -		0%	1	\$	-	0%
REVENUE OVER (UNDER) EXPENDITURES	\$	252,095	\$	- \$	252,095	\$	667,488					\$	701,579	
Beginning Fund Balance October 1					1,330,265		1,330,265						2,619,367	
Ending Fund Balance Current Month				\$	1,582,360	\$	1,997,753					\$	3,320,946	

Notes

- 1 Property taxes are billed in October and the majority of collections occur December through February.
- 2 Annual debt service payments are made in February and August.

SPECIAL REVENUE FUNDS

Γ	Original	Budget	Amended	Current Year	Current Year	Current Remaining			Prior	Year	Change from
	Budget	Adjustment	Budget	YTD Actual	Encumbrances	Budget Balance	YTD Percent	Note	YTD A	Actual	Prior Year
Police Donation Revenue	\$ 15,500	\$ - \$	15,500	\$ 2,627	\$ -	,	17%		\$	2,647	-1%
Fire Donation Revenue	15,500	-	15,500	2,645	-	12,855	17%			2,568	3%
Child Safety Revenue	28,000	-	28,000	-	-	28,000	0%			-	0%
Court Security Revenue	8,000	-	8,000	2,171	-	5,829	27%			2,025	7%
Court Technology Revenue	7,500	-	7,500	1,788	-	5,712	24%			1,692	6%
Municipal Jury revenue	150	-	150	44	-	106	29%			40	10%
Interest Income	2,425	-	2,425	17,907	-	(15,482)	738%			2,477	623%
Interest Income CARES/ARPA Funds	180,000	-	180,000	56,474	-	123,526	31%			20,755	172%
Tree Mitigation	-	-	-	-	-	-	0%			244,038	-100%
Escrow Income	-	-	-	-	-	-	0%			-	0%
Cash Seizure Forfeit	=	-	=	-	-	=	0%			-	0%
Miscellaneous	3,000	-	3,000	-	-	3,000	0%			-	0%
CARES Act/ARPA Funding	6,102,367	-	6,102,367	-	-	6,102,367	0%			-	0%
Transfer In	-	-	-	-	-	-	0%			-	0%
Total Revenue	\$ 6,362,442	\$ - \$	6,362,442	\$ 83,656	\$ -	\$ 6,278,786	1%		\$	276,241	-70%
EXPENDITURES											
LEOSE Expenditure	\$ 6,500	\$ - \$	6,500	\$ -	\$ 3,955	\$ 2,545	61%		\$	3,300	-100%
Court Technology Expense	13,950	-	13,950	-	-	13,950	0%	ó		-	0%
Court Security Expense	16,860	-	16,860	-	-	16,860	0%			-	0%
Police Donation Expense	26,872	-	26,872	-	-	26,872	0%			-	0%
Fire Donation Expense	10,000	-	10,000	-	-	10,000	0%			-	0%
Child Safety Expense	3,000	-	3,000	-	-	3,000	0%			-	0%
Tree Mitigation Expense	=	-	=	-	-	=	0%			-	0%
Police Seizure Expense	12,995	-	12,995	-	-	-	0%			-	0%
CARES Act/ARPA Funding	=	-	=	-	-	=	0%			-	0%
Transfer Out (ARPA Funds)	6,348,861	-	6,348,861	-	-	6,348,861	0%			-	0%
Transfer Out (Tree Mitigation Funds)	-	-	-	200,000	-	(200,000)	0%			-	0%
Transfer Out (Escrow Funds)	-	-	-	-	-	-	0%			-	0%
Total Expenses	\$ 6,439,038	\$ - \$	6,439,038	\$ 200,000	\$ 3,955	\$ 6,222,088	3%		\$	3,300	5961%
_								_			
REVENUE OVER (UNDER) EXPENDITURES	\$ (76,596)	\$ - \$	(76,596)	\$ (116,344)					\$	272,941	
Beginning Fund Balance October 1			2,353,529	2,353,529						567,535	
					_						
Ending Fund Balance Current Month		\$	2,276,933	\$ 2,237,185	_				\$	840,476	

Notes

PARK DEDICATION AND IMPROVEMENT FUNDS

	Original	В	Budget	Amended	(Current Year	Current Year	C	urrent Remaining			Pric	r Year	Change from
	Budget	Adj	ustment	Budget		YTD Actual	Encumbrances		Budget Balance	YTD Percent	Note	YTD	Actual	Prior Year
REVENUES														
Park Dedication-Fees	\$ 300,000	\$	- \$	300,000	\$	-	\$ -	\$	300,000	0%		\$	-	0%
Park Improvements	220,000		-	220,000		-	-		220,000	0%			-	0%
Contributions/Grants	-		-	-		-	-		-	0%			-	0%
Interest-Park Dedication	2,000		-	2,000		4,467	-		(2,467)	223%			3,199	40%
Interest-Park Improvements	4,050		-	4,050		7,024	-		(2,974)	173%			4,124	70%
Park Dedication - Transfers In	-		-	-	-	-	-		-	0%			-	0%
Total Revenue	\$ 526,050	\$	- \$	526,050	\$	11,492	\$ -	. \$	514,558	2%		\$	7,323	57%
EXPENDITURES														
Capital Project	800,000		-	800,000		-	-		800,000	0%			-	0%
Land Acquisition	913,800		(913,800)	-		-	-		-	0%			-	0%
Transfers Out	-		913,800	913,800		1,313,800	-		(400,000)	144%			-	0%
Total Expenses	\$ 1,713,800	\$	- \$	1,713,800	\$	1,313,800	\$ -	. \$	400,000	77%		\$	-	0%
REVENUE OVER (UNDER) EXPENDITURES	\$ (1,187,750)	\$	- \$	(1,187,750)	\$	(1,302,308)						\$	7,323	
Beginning Fund Balance October 1				2,316,978		2,316,978								
-														
Ending Fund Balance Current Month			\$	1,129,228	\$	1,014,670								
				, ,,,,,,	-	, ,								

EAST THOROUGHFARE IMPACT FEES FUND

	Project Budget	C	Current Year Original Budget	Current Year Budget Adjustment	urrent Year Amended Budget	С	urrent Year Actual	Curren Encumb		rrent Remaining Budget Balance	Prior Years Expenditure	Project Budget Balance
REVENUES												
East Thoroughfare Impact Fees		\$	1,200,000	\$ -	\$ 1,200,000	\$	202,624					
East Thoroughfare Other Revenue			-	-	-		-					
Interest-East Thoroughfare Impact Fees			100,000	-	100,000		23,634					
Total Revenues		\$	1,300,000	\$ -	\$ 1,300,000	\$	226,258	•				
EXPENDITURES												
Developer Reimbursements												
FM 1461 (SH289-CR 165)	\$ 175,000	\$	175,000	\$ -	\$ 175,000	\$	77,074	\$	-	\$ 97,927	\$	97,927
Cambridge Park Estates	250,000		250,000	-	250,000		-		-	250,000		250,000
Total Developer Reimbursements	\$ 425,000	\$	425,000	\$ -	\$ 425,000	\$	77,074	\$	-	\$ 347,927	\$ - \$	347,927
Capital Expenditures												
Coit Road (First - Frontier)	1,289,900		50,000	-	50,000		-		-	50,000	925,776	364,125
Impact Fee Study	50,000		-	-	-		-		-	-	8,646	41,354
Total Projects	\$ 1,339,900	\$	50,000	\$ -	\$ 50,000	\$	-	\$	-	\$ 50,000	\$ 934,422 \$	405,478
Transfer to Capital Project Fund	1,820,000		-	_	_		-			-		1,820,000
Total Transfers Out	\$ 1,820,000	\$	-	\$ -	\$ -	\$	-	\$	-	\$ -	\$ - \$	1,820,000
Total Expenditures	\$ 3,584,900	\$	475,000	\$ -	\$ 475,000	\$	77,074	\$	-	\$ 397,927	\$ 934,422 \$	2,573,405
REVENUE OVER (UNDER) EXPENDITURES					\$ 825,000	\$	149,184					
Beginning Fund Balance October 1					2,551,734		2,551,734					
Ending Fund Balance Current Month				-	\$ 3,376,734	\$	2,700,918					

WEST THOROUGHFARE IMPACT FEES FUND

			r	urrent Year	Cı	ırrent Year	-	Current Year							Project
		Project	C	Original	Ct	Budget		Amended	C	urrent Year	Current Year	Current Remaining	, P	Prior Years	Budget
		Budget		Budget	Α	djustment		Budget	·	Actual	Encumbrances	Budget Balance	-	xpenditure	Balance
								J							_
REVENUES															
West Thoroughfare Impact Fees				4,000,000		-		4,000,000		643,168					
West Thoroughfare Other Revenue				-		-		-		-					
Interest-West Thoroughfare Impact Fees				150,000		-		150,000		52,844	-				
Total Revenues			\$	4,150,000	\$	-	\$	4,150,000	\$	696,012	-				
EXPENDITURES															
Developer Reimbursements															
Parks at Legacy Developer Reimb		450,000		450,000		-		450,000		-		450,00	0		450,000
Star Trail Developer Reimb		1,500,000		1,500,000		-		1,500,000		-		1,500,00	0		1,500,000
Tellus Windsong Developer Reimb		571,668		571,668		-		571,668		_		571,66			571,668
Legacy Garden Developer Reimb		103,492		103,492		-		103,492		-		103,49	2		103,492
Total Developer Reimbursements	\$	2,625,160	\$	2,625,160	\$	-	\$	2,625,160	\$	-	\$ -	\$ 2,625,16	0 \$	- \$	2,625,160
Capital Expenditures															
Impact Fee Study		50,000		50,000		_		50,000		_	_	50,00	Λ		50,000
Fishtrap (Elem-DNT)		300,000		300,000		_		300,000				300,00			300,000
Teel - 380 Intersect		300,000		300,000		_		300,000		_	-				300,000
Total Projects	<u> </u>	650,000	Ċ	650,000	¢		-	650,000	\$			\$ 650,00		- \$	650,000
Total Projects	٠,	030,000	ڔ	030,000	۲		ڔ	030,000	٧		-	3 030,00	υ ,	- 7	030,000
Transfer to Capital Project Fund		-		-		-		-		-			-		-
Total Transfers Out	\$		\$	-	\$		\$	-	\$	-	\$ -	\$	- \$	- \$	-
Tatal Funan dituras		3,275,160	<u>,</u>	2 275 460	\$		\$	3,275,160	\$		\$ -	\$ 3,275,16	0 Ś	- \$	2 275 460
Total Expenditures	Ş	3,275,160	Ş	3,275,160	Ş		Ş	3,275,160	Ş	-	\$ -	\$ 3,275,16	0 \$	- \$	3,275,160
REVENUE OVER (UNDER) EXPENDITURES							\$	874,840	\$	696,012					
Beginning Fund Balance October 1								4,678,905		4,678,905					
Ending Fund Balance Current Month							\$	5,553,745	\$	5,374,917					

WATER IMPACT FEES FUND

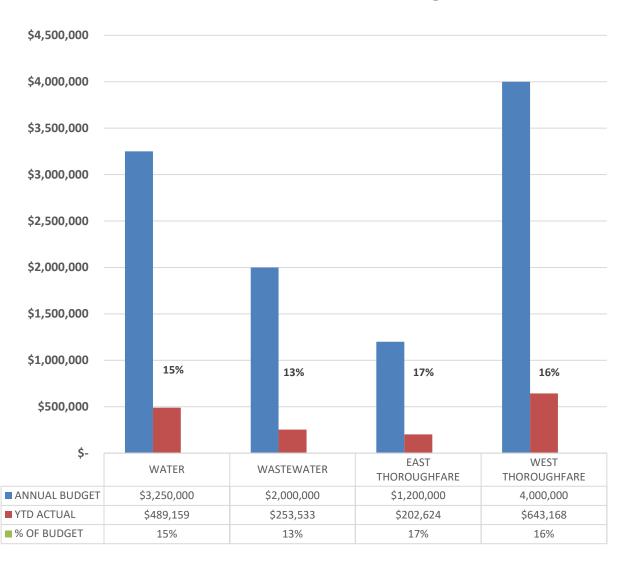
	Project Budget	Original Budge		urrent Year Budget Adjustment	et Amended		Current Year Actual		Current Year Encumbrances	Current Remaining Budget Balance		Prior Years expenditure	Project Budget Balance	
REVENUES														
Impact Fees Water		\$	3,250,000	\$	-	\$	3,250,000	\$	489,159					
Interest Income			200,000		-		200,000		70,465					
Total Revenues		\$	3,450,000	\$	-	\$	3,450,000	\$	559,624					
EXPENDITURES														
Developer Reimbursements														
Cambridge Park Estates	\$ -	\$	-	\$	-	\$	-	\$	-		\$	-		\$ -
Parks at Legacy Developer Reimb	319,981		319,981		-		319,981		-			319,981		319,981
Star Trail Developer Reimb	412,192		412,192		-		412,192		-			412,192		412,192
Victory at Frontier Developer Reimb	128,471		128,471		-		128,471		-			128,471		128,471
Westside Developer Reimb	300,000		300,000		-		300,000		-			300,000		300,000
TVG Windsong Developer Reimb	1,020,000		1,020,000		-		1,020,000		-			1,020,000		1,020,000
Total Developer Reimbursements	\$ 2,180,644	\$	2,180,644	\$	-	\$	2,180,644	\$	-	\$ -	\$	2,180,644	\$ -	\$ 2,180,644
Capital Expenditures														
12" Water Line - DNT	\$ 200,000	\$	24,250	\$	-	\$	24,250	\$	-	\$ -	\$	24,250	\$ 133,107	\$ 66,893
Lower Pressure Plane		\$	3,100,000	\$	(3,100,000)	\$	-	\$	-	\$ -	\$	-		\$ (3,100,000)
Lower Pressure Plane Easements	1,500,000		-		-		-		-	-		-	95	1,499,905
Impact Fee Study	100,000		100,000		-		100,000		-	-		100,000	41,761	58,239
Total Projects	\$ 1,800,000	\$	3,224,250	\$	(3,100,000)	\$	124,250	\$	-	\$ -	\$	124,250	\$ 174,962	\$ (1,474,962)
Transfer to CIP Fund	_		_		3,100,000		3,100,000		_	-		3,100,000	_	
Total Transfers Out	\$ -	\$	-	\$	3,100,000	\$	3,100,000	\$	-	\$ -	\$	3,100,000	\$ -	\$ -
Total Expenditures	\$ 3,980,644	\$	5,404,894	\$	-	\$	5,404,894	\$	-	\$ -	\$	5,404,894	\$ 174,962	\$ 705,682
REVENUE OVER (UNDER) EXPENDITURES						\$	(1,954,894)	\$	559,624					
Beginning Fund Balance October 1							7,133,053		7,133,053					
Ending Fund Balance Current Month					- -	\$	5,178,159	\$	7,692,677					

WASTEWATER IMPACT FEES FUND

		Project Budget	Current Year Original Budget		Current Year Budget Adjustment		Current Year Amended Budget		Current Year Actual		Current Year Encumbrances	Current Remaining Budget Balance		Prior Y Expend		Project Budget Balance	
REVENUES																	
Impact Fees Wastewater			\$	2,000,000	\$	-	\$	2,000,000	\$	253,533							
Interest Income				100,000		-		100,000		30,830							
Upper Trinity Equity Fee				300,000		-		300,000		37,000							
Total Revenues			\$	2,400,000	\$	-	\$	2,400,000	\$	321,363							
EXPENDITURES																	
Developer Reimbursements																	
TVG Westside Utility Developer Reimb	\$	222,502	\$	222,502	\$	-	\$	222,502	\$	-		\$	222,502		\$	222,502	
Prosper Partners Utility Developer Reimb		100,000		100,000		-		100,000		-			100,000			100,000	
Frontier Estates Developer Reimb		-		-		-		-		-			-			-	
LaCima Developer Reimb		150,000		150,000		-		150,000		-			150,000			150,000	
Brookhollow Developer Reimb		152,146		152,146		-		152,146		-			152,146			152,146	
TVG Windsong Developer Reimb		650,000		650,000		-		650,000		-			650,000			650,000	
All Storage Developer Reimb		168,732		168,732		-		168,732		-			168,732			168,732	
Legacy Garden Developer Reimb		86,711		86,711		-		86,711		-			86,711			86,711	
Total Developer Reimbursements	\$	1,530,091	\$	1,530,091	\$	-	\$	1,530,091	\$	-	\$ -	\$	1,530,091	\$	- \$	1,530,091	
Capital Expenditures																	
Doe Branch Wastewater Lines	Ś	975,000	Ś	212,000	Ś	_	Ś	212,000	\$	_	\$ -	\$	212,000	\$ 2	75,380 \$	699,620	
Impact Fee Study	·	100,000		-		_	Ċ	-		_	· -	•	-		41,761	58,239	
Total Projects	\$	1,075,000	\$	212,000	\$	-	\$	212,000	\$	-	\$ -	\$	212,000		17,141 \$	757,859	
Transfer to CIP Fund		_		_		_		_		_	-		_				
Total Transfers Out	\$		\$		\$		\$	-	\$	-		\$	-	\$	- \$	-	
Total Expenditures	\$	2,605,091	\$	1,742,091	\$	-	\$	1,742,091	\$	-	\$ -	\$	1,742,091	\$ 3	17,141 \$	2,287,950	
REVENUE OVER (UNDER) EXPENDITURES							\$	657,909	\$	321,363							
Beginning Fund Balance October 1								2,643,495		2,643,495							
Ending Fund Balance Current Month							\$	3,301,404	\$	2,964,858							

IMPACT FEE REVENUE

YTD Actual to Annual Budget



VEHICLE AND EQUIPMENT REPLACEMENT FUND

	Original		Budget		Amended	С	urrent Year		Current Year	Cı	urrent Remaining			Р	rior Year	Change from
	Budget	Α	djustment		Budget	١	/TD Actual	Е	ncumbrances		Budget Balance	YTD Percent	Note	ΥT	TD Actual	Prior Year
REVENUES																
Grant Revenue	\$ -	\$		- \$	-	\$	-	\$	-	\$	-	0%		\$	-	0%
Other Reimbursements	150,000			-	150,000		-		=		150,000	0%			-	0%
Interest Income	250,000			-	250,000		47,389		-		202,611	19%			14,509	227%
Charges for Services	1,478,966			-	1,478,966		246,494		-		1,232,472	17%			230,876	7%
Total Revenue	\$ 1,878,966	\$		- \$	1,878,966	\$	293,883	\$	-	\$	1,585,083	16%		\$	245,385	20%
EXPENDITURES																
Vehicle Replacement	\$ 772,500	\$		- \$	772,500	\$	-	\$	26,324	\$	746,177	3%		\$	51,045	-100%
Equipment Replacement	203,870			-	203,870		20,686		191,706		(8,522)	104%			9,461	119%
Technology Replacement	145,200			-	145,200		-		-		145,200	0%			-	0%
Total Expenditures	\$ 1,121,570	\$		- \$	1,121,570	\$	20,686	\$	218,030	\$	882,854	21%		\$	60,506	-66%
REVENUE OVER (UNDER) EXPENDITURES	\$ 757,396	\$		- \$	757,396	\$	273,198							\$	184,880	
Beginning Fund Balance October 1					5,334,214		5,334,214								3,957,862	
Ending Fund Balance Current Month				\$	6,091,610	\$	5,607,412	-						\$	4,142,742	

HEALTH INSURANCE FUND

		Original		Budget		Amended	Cu	rrent Year	Cu	rrent Year	Cu	rrent Remaining			Pr	or Year	Change from
		Budget	-	Adjustment		Budget	Y	TD Actual	Enc	umbrances	В	Sudget Balance	YTD Percent	Note	YTI	O Actual	Prior Year
REVENUES																	
Health Charges	\$	4,871,808	\$		- \$	4,871,808	\$	645,760	\$	-	\$	4,226,048	13%		\$	445,563	45%
Miscellaneous		250,000				250,000		3,020		-		246,980	1%			-	0%
Interest Income		5,000			-	5,000		4,612		-		388	92%			2,691	71%
Total Revenue	\$	5,126,808	\$		- \$	5,126,808	\$	653,392	\$	-	\$	4,473,416	13%		\$	448,253	46%
EXPENDITURES Contractual Services	\$	149,500	\$		- \$	149,500 4,969,439	\$	12,620 653,964	\$		\$	136,880 4,315,475	8% 13%		\$	27,036 446,438	-53% 46%
Employee Health Insurance Total Expenditures	_	4,969,439	Ś				ċ		<u>,</u>	-	,		13%	ŀ	ć	473,474	41%
Total Experiultures	Ş	5,118,939	Ş		· \$	5,118,939	Ş	666,584	ş	-	\$	4,452,355	13%	L	ş	4/3,4/4	4170
REVENUE OVER (UNDER) EXPENDITURES	\$	7,869	\$		\$	7,869	\$	(13,192)							\$	(25,221)	
Beginning Fund Balance October 1						389,018		389,018								552,615	
Ending Fund Balance Current Month					\$	396,887	\$	375,826							\$	527,394	

WATER-SEWER FUND

	Original	В	udget	Amended	С	urrent Year	Cu	rrent Year	Current Remaining			ı	Prior Year	Change from
	Budget	Adjı	ustment	Budget	,	YTD Actual	Enc	umbrances	Budget Balance	YTD Percent	Note	Y	TD Actual	Prior Year
REVENUES														
Water Charges for Services	\$ 23,114,755	\$	- \$	23,114,755	\$	3,909,732	\$	-	\$ 19,205,023	17%		\$	3,801,258	3%
Sewer Charges for Services	11,892,552		-	11,892,552		1,812,589		-	10,079,963	15%			1,718,451	5%
Licenses, Fees & Permits	377,705		-	377,705		90,763		-	286,942	24%			71,724	27%
Utility Billing Penalties	186,900		-	186,900		63,200		-	123,700	34%			45,024	40%
Interest Income	350,000		-	350,000		114,774		-	235,226	33%			43,968	161%
Other	3,494,342		-	3,494,342		133,441		-	3,360,901	4%			132,097	1%
Transfer In	-		-	-		-		-	-	0			-	0%
Total Revenues	\$ 39,416,254	\$	- \$	39,416,254	\$	6,124,501	\$	-	\$ 33,291,753	16%		\$	5,812,522	5%
EXPENDITURES														
Administration	\$ 1,138,944	\$	- \$	1,138,944	\$	267,508	\$	3,310	\$ 868,127	24%		\$	374,215	-29%
Debt Service	4,609,584		-	4,609,584		-		-	4,609,584	0%	1		-	0%
Water Purchases	12,704,415		-	12,704,415		961,621		-	11,742,794	8%			884,482	9%
Sewer Management Fee	4,560,895		-	4,560,895		800,247		-	3,760,648	18%			800,986	0%
Franchise Fee	689,851		-	689,851		114,975		-	574,876	17%			88,255	30%
Public Works	8,226,657		(4,056)	8,222,601		835,371		411,313	6,975,916	15%			627,092	33%
Transfer Out	9,255,356		4,056	9,259,412		197,285		-	9,062,128	2%			190,766	3%
Total Expenses	\$ 41,185,702	\$	- \$	41,185,702	\$	3,177,007	\$	414,623	\$ 33,258,548	9%		\$	2,965,796	7%
REVENUE OVER (UNDER) EXPENDITURES	\$ (1,769,448)	\$	- \$	(1,769,448)	\$	2,947,494						\$	2,846,726	
Beginning Working Capital October 1				17,832,990		17,832,990							12,669,408	
Ending Working Capital			\$	16,063,542	\$	20,780,484						\$	15,516,134	

- 1 Annual debt service payments are made in February and August.
- 2 Minimum Ending Working Capital balance for FY23 = \$8,278,513 (25%).

WATER-SEWER FUND

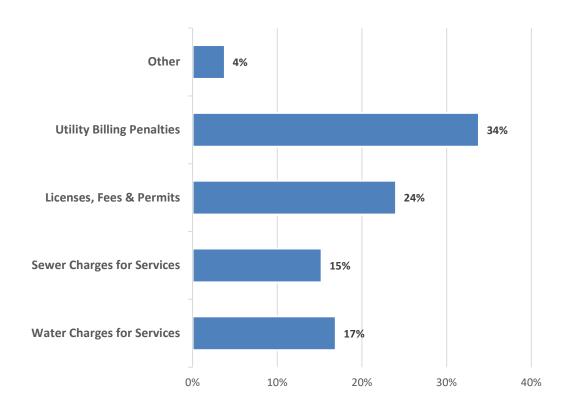
	Nov-	23		Nov	<i>r</i> -22		Growth %
	 WATER		SEWER	WATER		SEWER	Change
# of Accts Residential	12,849		12,145	11,905		11,178	8.28%
# of Accts Commercial	455		410	421		376	8.53%
Consumption-Residential	135,686,800		81,626,876	133,293,800		80,467,203	1.66%
Consumption-Commercial	21,617,020		15,017,950	24,881,070		14,336,720	-6.59%
Consumption-Commercial Irrigation	29,052,730			27,681,500			4.95%
Avg Total Res Water Consumption	10,540			11,189			-5.80%
Billed (\$) Residential	\$ 931,848	\$	742,984	\$ 910,589	\$	710,305	3.33%
Billed (\$) Commercial	\$ 207,375	\$	126,224	\$ 235,389	\$	124,765	-7.37%
Billed (\$) Commercial Irrigation	\$ 258,488			\$ 247,909			4.27%
Total Billed (\$)	\$ 1,397,710	\$	869,208	\$ 1,393,887	\$	835,070	1.70%

	Avg. Temp (°F)	# Rain Days		Rainfall		
Month	FY2	4	FY2024	FY2023	Average	Cumulative
October	68°	8	11.30	5.65	8.48	8.48
November	58°	2	0.57	5.82	3.20	11.67
December				3.43	3.43	15.10
January				1.29	1.29	16.39
February				4.51	4.51	20.90
March				2.69	2.69	23.59
April				1.20	1.20	24.79
May				3.62	3.62	28.41
June				2.35	2.35	30.76
July				0.47	0.47	31.23
August				0.07	0.07	31.30
September				1.18	1.18	32.48
Annual		10.00	11.87	32.28	32.48	

Weather Data: https://www.wunderground.com/history/monthly/KDAL/date/2023-10

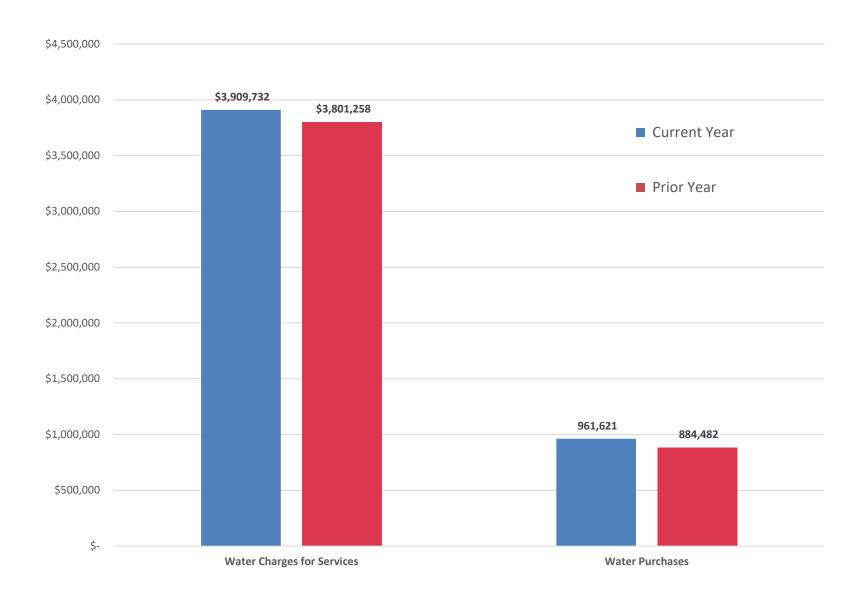
Average	e Total Residen	tial Water Con	sumption by N	/lonth
			Four Year	Cumulative
	FY2024	FY2023	Average	Average
October	19,061	20,110	17,424	17,424
November	10,540	11,190	11,104	28,528
December		6,273	7,256	35,784
January		8,049	6,727	42,511
February		5,914	6,381	48,891
March		5,839	6,436	55,327
April		10,053	9,333	64,660
May		14,092	12,345	77,005
June		14,281	13,323	90,328
July		16,992	17,885	108,212
August		23,095	23,040	131,252
September		26,836	19,429	150,681
TOTAL (gal)	29,601	162,724	150,681	

WATER/SEWER REVENUE YTD % OF ANNUAL BUDGET

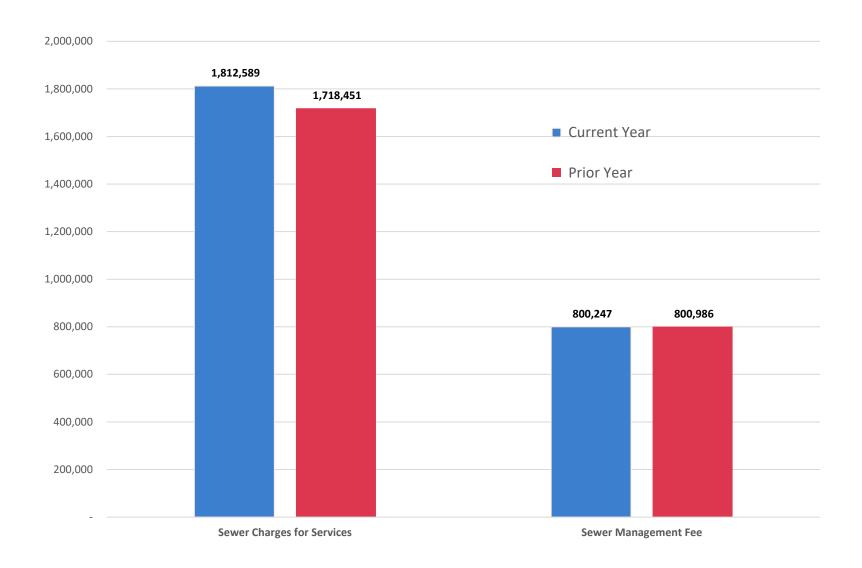


WATER REVENUE AND EXPENSE

Current YTD to Prior Year YTD Actual Comparison



SEWER REVENUE AND EXPENSE Current YTD to Prior Year YTD Actual Comparison



STORM DRAINAGE UTILITY FUND

	Original	Budget		Amended	Current Year	Current Year	С	Current Remaining			Pı	ior Year	Change from
	Budget	Adjustme	nt	Budget	YTD Actual	Encumbrances		Budget Balance	YTD Percent	Note	YT	D Actual	Prior Year
REVENUES													
Storm Drainage Utility Fee	\$ 825,000	\$	- :	\$ 825,000	\$ 151,483	\$ -	- \$	673,517	18%		\$	139,403	9%
Drainage Review Fee	-		-	-	-	-		-	0%			-	0%
Interest Income	1,800		-	1,800	1,460	-	-	340	81%			(408)	-458%
Other Revenue	3,000		-	3,000	-	-	-	3,000	0%			-	0%
Transfer In	-		-	-	-	-	-	-	0%			-	0%
Total Revenue	\$ 829,800	\$	-	\$ 829,800	\$ 152,944	\$ -	- \$	676,856	18%		\$	138,995	10%
EXPENDITURES													
Personnel Services	\$ 329,605	\$	- :	\$ 329,605	\$ 25,559	\$ -	- \$	304,046	8%		\$	19,480	31%
Debt Service	219,463		-	219,463	-	-	-	219,463	0%	2		-	0%
Operating Expenditures	153,221	(2	028)	151,193	4,584	-	-	146,609	3%			10,128	-55%
Capital Expenditures	225,000		-	225,000	-	-		225,000	0%			-	0%
Transfers Out	107,996	2	.028	110,024	18,899	-	-	91,125	17%	1		17,999	5%
Total Expenses	\$ 1,035,285	\$	-	\$ 1,035,285	\$ 49,042	\$ -	- \$	986,243	5%		\$	47,607	3%
REVENUE OVER (UNDER) EXPENDITURES	\$ (205,485)	\$	- :	\$ (205,485)	\$ 103,902						\$	91,388	
Beginning Working Capital October 1				380,410	380,410							632,579	
Ending Working Capital Current Month			_	\$ 174,925	\$ 484,312						\$	723,967	

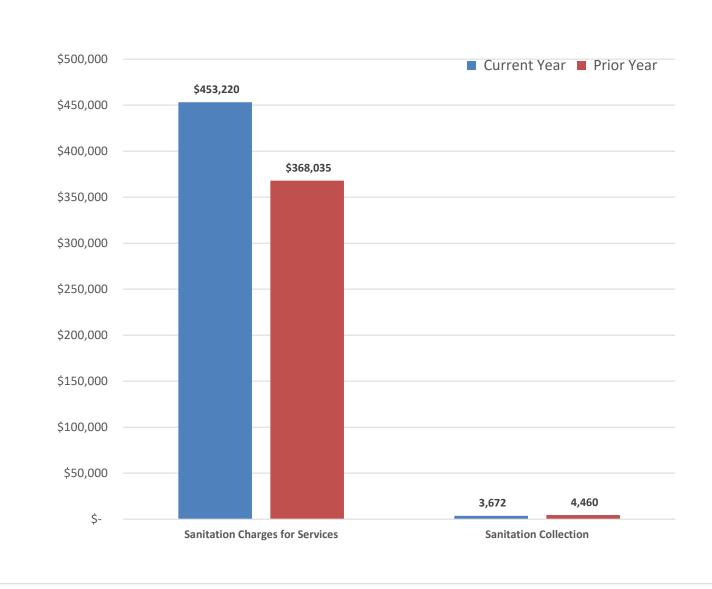
- 1 Capital project funds are transferred as needed; General fund transfers are made monthly.
- 2 Annual debt service payments are made in February and August.

SOLID WASTE FUND

	Original	Budget	Amended	Cu	rrent Year	Cu	rrent Year	Cu	irrent Remaining			Pr	ior Year	Change from
	Budget	Adjustment	Budget	Υ	TD Actual	Enc	umbrances	В	Budget Balance	YTD Percent	Note	YT	D Actual	Prior Year
REVENUES														
Sanitation Charges for Services \$	2,979,722	\$ -	\$ 2,979,722	\$	453,220	\$	-	\$	2,526,502	15%		\$	368,035	23%
Interest Income	-	-	-		1,234		-		(1,234)	0%			321	285%
Transfer In	2,050,000	-	2,050,000		-		-		2,050,000	0%			-	0%
Total Revenues \$	5,029,722	\$ -	\$ 5,029,722	\$	454,454	\$	-	\$	4,575,268	9%		\$	368,355	23%
EXPENDITURES														
Administration \$	2,325,554	\$ (1,955,000)	\$ 370,554	\$	1,704	\$	-	\$	368,850	0%		\$	-	0%
Sanitation Collection	2,668,887	-	2,668,887		3,672		-		2,665,215	0%			4,460	-18%
Capital Expenditure	-	1,955,000	1,955,000		-		1,950,480		4,520	100%			-	0%
Debt Service	-	-	-		-		-		-	0%			-	0%
Transfer Out	-	-	-		-		-		-	0%			-	0%
Total Expenses \$	4,994,441	\$ -	\$ 4,994,441	\$	5,376	\$	1,950,480	\$	3,038,585	39%		\$	4,460	21%
REVENUE OVER (UNDER) EXPENDITURES \$	35,281	\$ -	\$ 35,281	\$	449,078							\$	363,895	
Beginning Working Capital October 1			6,018		6,018									
		<u>-</u>	-			_								
Ending Working Capital		<u>-</u>	\$ 41,299	\$	455,096	_								

SOLID WASTE REVENUE AND EXPENSE

Current YTD to Prior Year YTD Actual Comparison



TOWN OF PROSPER, TEXAS MONTHLY FINANCIAL REPORT November 30, 2023

CAPITAL PROJECTS FUND - GENERAL

	Project		Current Year Original	Current Year Budget		urrent Year Amended	Current Year	Current Year	Current Remaining	Prior Years	Project Budget
	Budget		Budget	Adjustment		Budget	Actual	Encumbrances	Budget Balance	Expenditure	Balance
REVENUES			4 077 405	A		4 077 405	*				
Grants		\$, ,	\$ -	\$	1,877,105	\$ -				
Property Taxes-Delinquent			0	-			(6,366)				
Property Taxes-Current			8,502,003	-		8,502,003	19,309				
Taxes-Penalties			0	-		-	520				
Contributions/Interlocal Revenue			-	-		-	-				
Bond Proceeds			-	-		-					
Interest Income			-	-		-	751,070				
Other Revenue			-	-		-	-				
Transfers In - General Fund			-	-		-	-				
Transfers In - Impact Fee Funds			-	-		-	-				
Transfers In - Escrows			-	-		-	-				
Transfers In - Parks			-	-		-	1,513,800				
*Transfers In/Out - Bond Funds			-	-		-	<u> </u>				
Total Revenues		\$	10,379,108	\$ -	\$	10,379,108	\$ 2,278,333				
EXPENDITURES West Prosper Roads	\$ 14,168,	000								14,017,321	151,508
•	. , ,		-	-		-	-	-	-	, ,	,
Fishtrap (seg 2) PISD Reimbursement	1,063,		-	-		-	-	-	-	940,631	122,402
DNT Main Lane (US 380 - FM 428)	2,557,		-	-		-	-	-	-	-	2,557,062
Coit Rd (First-Frontier) 4 Lns	6,500,		-	-		-	-	-	- (0.010)	801	6,499,199
First St (DNT to Coleman)	24,786,		-	-		-	3,219	-	(3,219)	2,142,264	22,641,084
First Street (Elem-DNT) 4 Lanes	30,879,		-	-		-	-	-	-	7,418,615	23,461,115
Preston Road / First Street Dual Left Turns (Design & C			-	-		-	-	-	-	-	900,000
First St (Coit-Custer) 4 Lanes	27,269,		-	-		-	1,767	-	(1,767)	18,463,886	8,803,448
Preston/Prosper Trail Turn Lane	900,		-	-		-	157	5,507	(5,664)	150,538	743,797
Craig Street (Preston-Fifth)	450,	000	-	-		-	-	-	-	313,073	136,928
First Street (Teel - Gee Road)	6,025,	000	-	-		-	-	-	-	4,789,978	1,235,022
Gee Road (First Street - Windsong)	5,414,	933	-	-		-	-	-	-	3,016,368	2,398,566
Coleman (Gorgeous - Prosper Trail)	1,500,	000	-	-		-	-	-	-	554,557	945,443
Coleman (Prosper Trail - PHS)	720,	000	-	-		-	-	-	-	-	720,000
Legacy (Prairie - First Street)	11,425,	000	-	-		-	-	-	-	698,272	10,726,729
Coit/US 380 SB Turn Lanes	300,	000	-	-		-	157	5,061	(5,218)	23,986	270,796
Parvin (FM 1385 - Legacy)	500,	000	-	-		-	-	-	-	500,000	-
US 380 Deceleration Lanes - Denton County	500,	000	-	-		-	-	-	-	-	500,000
Safety Way	800,	000	-	-		-	-	-	-	-	800,000
Gorgeous/McKinley	700,	000	-	-		-	-	-	-	-	700,000
Renaming of Fishtrap Road to W. First Street	80,		-	-		-	-	-	-	2,877	77,123
Gee Road (US 380FM 1385)	2,200,		-	-		-	-	-	-	106,028	2,093,972
Frontier (Legacy-DNT)	300,		-	_		-	_	-	-	300,000	
First Street (Coleman)	500,		_	_		_	_	_	_	209	499,791
Star Trail, Phase 5: Street Repairs	1,450,		-	_		-	_	-	_	-	1,450,000
Prosper Trail (Coit - Custer) - 2 WB lanes	400,		_	_		_	_	_	_	_	400,000
Windsong Pkwy/380 Dual L Turns	22,						500	22,300	(22,800)		-
Teel Parkway (US 380 - First Street Rd) NB 2 Lanes (Design)	5,850,		_	_		_	1,444		(1,444)	194,933	5,653,623
US380 Median Lighting	485,		_	-		_	-,	-	(1,444)	465,912	19,088
Fifth Street Quiet Zone	500,		_	_		_	_	_	_	405,512	500,000
	65,		-	-		-	-	60.350	(60.3E0)	-	
Traffic Signal - Fishtrap & Artesia Boulevard	,		-	-		-	-	60,250	(60,250)	-	4,750
Traffic Signal - DNT/Frontier	265,		-	-		-	-	83,000	(83,000)	-	182,000
Traffic Signal - Teel Pkway & Prairie Drive	65,		-	-		-	-	40,750	(40,750)	-	24,250
Signl Sdy/Beacon Aca	128,	500	4.476.555	-			-	128,300	(128,300)	-	-
Capital Expenditures	4 440 670)	4,176,553	-	_	4,176,553		- 24F 100	4,176,553		
Total Street Projects	\$ 149,670,	355 \$	4,176,553	\$ -	\$	4,176,553	\$ 7,245	\$ 345,168	\$ 3,824,140	\$ 54,100,247 \$	95,217,696

TOWN OF PROSPER, TEXAS MONTHLY FINANCIAL REPORT November 30, 2023

CAPITAL PROJECTS FUND - GENERAL

	Project Budget		Current Year Original Budget	В	ent Year udget ustment	Current Year Amended Budget		Cı	urrent Year Actual	Current Year Encumbrances	rent Remaining udget Balance	Prior Years Expenditure	Project Budget Balance
Turf Irrigation SH289	68,0	00 \$	-	\$	_	\$	_	\$	_	\$ -	\$ -	48,935	19,065
US 380 Median Design (Green Ribbon)	821,2		-		-	•	-	•	-		-	65,800	755,450
Tanner's Mill Phase 2 Design	1,396,4	00	-		-		-		-	-	-	1,385,109	11,291
Lakewood Preserve, Phase 2	4,982,2	55	-		-		-		-	-	-	, , , <u>-</u>	4,982,255
Pecan Grove Ph II	70,4	57	-		-		-		-	-	-	68,958	1,499
Gee Road Trail Connection	700,0	00	-		-		-		-	-	-	-	700,000
Downtown Pond Improvements	120,0	00	-		-		-		-	-	-	11,760	108,240
Raymond Community Park	19,800,0	00	-		-		-		-	-	-	808,342	18,991,658
Coleman Median Landscape (Victory-Preston)	650,0	00	-		-		-		-	-	-	454,811	195,189
Prosper Trail Median Landscape	275,0	00	-		-		-		-	-	-	150,723	124,277
Windsong Parkland Dedication	1,913,80	00	-		-		-		1,913,800	-	(1,913,800)	-	
Froniter Park Pond Repairs	473,0	00	-		-		-		-	-	-	-	473,000
Prosper Trail Screening (Preston - Deer Run)	750,0	00	-		-		-		-	-	-	-	750,000
Total Park Projects	\$ 32,020,1	51 \$	-	\$	-	\$	-	\$	1,913,800	\$ -	\$ (1,913,800) \$	2,994,439 \$	27,111,923
PD Car Camera and Body worn Camera System	387,2	25 \$	-	\$	_	\$	_	\$	-	\$ -	\$ -	16,900	370,325
Station #3 Quint Engine	1,495,0		-		-		-		-		-	1,469,880	25,120
Station #3 Ambulance	495,0	00	-		_		-		_	_	-	454,891	40,109
Parks & Public Works, Phase 1	\$ 1,200,0		-		_		-		_	_	-	-	1,200,000
Awnings for Storage	19,8		-		-		-		-	-	-	11,100	8,700
Public Safety Complex, Phase 2-Design	1,578,2		-		_		-		_	_	-	1,562,823	15,467
Public Safety Complex, Phase 2-Dev Costs	647,3		-		-		-		-	-	-	123,716	523,609
Public Safety Complex, Phase 2-Construction	14,500,0	00	-		-		-		-	-	-	14,499,866	134
Public Safety Complex, Phase 2-FFE	1,274,3		-		-		-		(491)	-	491	1,099,946	174,930
Fire Station #4 - Design	623,5		-		-		-			-	-	472,987	150,568
Fire Station #4 - Engine	1,250,0		-		_		-		_	_	-	1,222,787	27,213
Fire Station #4 - Ambulance	552,0		-		_		-		_	_	-	124,407	427,593
Fire Station #4 - Other Costs	8,2		-		_		-		_	_	-	8,250	,
Fire Station #4 Construction	10,168,1		-		_		-		_	_	-	-	10,168,195
Parks and Public Works Parking Lot	1,000,0		-		-		-		-	-	-	-	1,000,000
Interim Community Center	2,250,0		-		-		-		-	-	-	-	2,250,000
Finish Out Interior Spaces Town Hall First and Second Floor	650,0		-		-		-		-	-	-	-	650,000
Emergency Warning Sirens	206,8		-		-		-		-	296,887	(296,887)	-	(90,000
Total Facility Projects	\$ 38,305,9	12 \$	-	\$	-	\$	-	\$	(491)	\$ 296,887	\$ (296,396) \$	21,067,553 \$	16,941,963
Transfer Out		_	_		_		_		_	-	-	-	
Total Expenditures	\$ 219,996,4	28 \$	4,176,553	\$	-	\$ 4,176,5	53	\$	1,920,554	\$ 642,055	\$ 1,613,945 \$	78,162,238 \$	139,271,582
REVENUE OVER (UNDER) EXPENDITURES						\$ 6,202,5	55	\$	357,779				
Beginning Fund Balance (Restricted for Capital Projects) October	1					77,609,7	02		77,609,702				
Ending Fund Balance (Restricted for Capital Projects) Current Mo	n+h				_	\$ 83,812,2		\$	77,967,481				

TOWN OF PROSPER, TEXAS MONTHLY FINANCIAL REPORT November 30, 2023

CAPITAL PROJECTS FUND-WATER/SEWER

	Project Budget	C	Current Year Original Budget	Current Year Budget Adjustment	(Current Year Amended Budget	Cı	urrent Year Actual	Current Year Encumbrances	Current Remaining Budget Balance	Prior Year Expenditure	Project Budget Balance
REVENUES												
Interest Income		\$	-	\$ -	\$	-	\$	351,702				
Bond Proceeds			-	-		-		-				
Transfers In			-	-		-		-				
Transfers In - ARPA Funds			6,348,980	-		6,348,980		-				
Transfers In - Impact Fee Funds			-	-		-		-				
Transfers In - Bond Funds			-	-		-		-				
Total Revenues		\$	6,348,980	\$ -	\$	6,348,980	\$	351,702				
EXPENDITURES												
Lower Pressure Plane Pump Station Design	\$ 17,978,338	\$	-	-		-		-	-	-	\$ 10,661,282 \$	7,317,056
LPP Water Line Phase, 2A	11,452,762		-	-		-		-	-	-	-	11,452,762
Broadway (Parvin-Craig)	150,000		-	-		-		-	-	-	-	150,000
Fishtrap (Elem-DNT) (Legacy Water Line)	15,000		-	-		-		-	-	-	15,000	-
Doe Branch Parallel Interceptor	5,000,000		-	-		-		-	-	-	-	5,000,000
Doe Branch, Phase 3 WWTP	55,000,000		6,348,980	-		6,348,980		-	-	6,348,980	-	55,000,000
Wilson Creek WW Line	400,000		-	-		-		-	-	-	-	400,000
Parks & Public Works, Phase 1	600,000		-	-		-		-	-	=	=	600,000
DNT (Prosper Trail - Frontier Parkway) 12-inch WL	4,500,000		-	-		-		-	-	-	-	4,500,000
Upper Doe Branch WW Line (Teel-PISD Stadium)	4,050,000		-	-		-		-	-	-	-	4,050,000
DNT Water Line Relocation (US 380 - First St)	2,146,650		-	-		-		-	-	-	837	2,145,813
Water Line Relocation Frontier	3,400,000		-	-		-		-	-	=	239,561	3,160,439
Total Water & Wastewater Projects	\$ 104,692,750	\$	6,348,980	\$ -	\$	6,348,980	\$	-	\$ -	\$ 6,348,980	\$ 10,916,679	93,776,071
Old Town Regional Pond #2	48,386		-	-		-		-	-	-	31,210	17,177
Total Drainage Projects	\$ 48,386	Ş	-	Ş -	\$	-	\$	-	Ş -	\$ -	\$ 31,210 \$	17,177
Transfer out			-	-		-		-	-	-	-	
Total Expenses	\$ 104,741,136	\$	6,348,980	\$ -	\$	6,348,980	\$	-	\$ -	\$ 6,348,980	\$ 10,947,889	93,793,247
REVENUE OVER (UNDER) EXPENDITURES					\$	-	\$	351,702				
Beginning Fund Balance (Restricted for Capital Projects) Oct	ober 1					40,601,835		40,601,835				
Ending Fund Balance (Restricted for Capital Projects) Currer	nt Month				\$	40,601,835	\$	40,953,537				



FINANCE

To: Mayor and Town Council

From: Chris Landrum, Finance Director

Through: Mario Canizares, Town Manager

Bob Scott, Deputy Town Manager

Re: Amending Ordinance No. 2022-54 (FY 2022-2023 Annual Budget)

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Ordinance No. 2022-54 (FY 2022-2023 Annual Budget). (CL)

Description of Agenda Item:

The proposed ordinance is amending the following balances for the FY 2022-2023 Budget:

General Fund

Several Streets and Facility special projects came about that were not included in the original budget. Staff identified savings in Development Services that could be used to fund these special projects. Some of the projects include Town Hall security upgrades, sign and signal upgrades, school sign and marking upgrades and street lighting. Budgetary controls require departments in the General Fund to remain within the budget. A budget transfer is requested from Development Services to Public Works to comply with budgetary controls.

Crime Control and Prevention District Fund

The Crime Control and Prevention District Fund was created to support the cost of crime control and prevention and includes salaries and benefits for designated personnel. The approved policy for this fund is to maintain a maximum cash balance of \$25,000 at year-end, to expend all resources on an annual basis. This policy requires budgeted expenditures to be increased by \$65,000 from \$2,713,065 to \$2,778,065.

Fire Control, Prevention, and Emergency Medical Services District Fund

The Fire Control, Prevention, and Emergency Medical Services District Fund was created for fire safety and emergency medical services programs and includes salaries and benefits for designated personnel. The approved policy for this fund is to maintain a maximum cash balance of \$25,000 at year-end, to expend all resources on an annual basis. This policy requires budgeted expenditures to be increased by \$69,000 from \$2,753,479 to \$2,822,479.

TIRZ #1 Fund ltem 6.

TIRZ #1 revenues are restricted and reimbursable for expenditures of TIRZ #1. All revenues received are reimbursed on an annual basis. This requires expenditures to be increased by \$318,000 from \$3,414,592 to \$3,732,592.

TIRZ #2 Fund

TIRZ #2 revenues are restricted and reimbursable for expenditures of TIRZ #2. All revenues received are reimbursed on an annual basis. This requires expenditures to be increased by \$350 from \$41,006 to \$41,356.

Special Revenue Fund

The Special Revenue Fund accounts for revenues that are restricted to a specific use. Escrow payments are included in this fund. The escrow agreements are reviewed as a part of the capital projects process. These funds are held as a liability until they are no longer available to be returned to the developer or are earned by the Town. This requires a revenue estimate to increase by \$845,120 from \$77,225 to \$922,345 and expenditures to increase by \$845,120 from \$135,058 to \$980,178. The proceeds will be transferred to the General Capital Projects Fund.

Health Fund

The Health Fund accounts for contributions and expenses related to the Town's self-insurance. An actuarial study was required on three retirees for their impact on the Health Fund. This requires an increase of budgeted expenses by \$9,450 from \$4,931,365 to \$4,940,815.

These changes have been reviewed in detail and approved by the Finance Committee.

Budget Impact:

Crime Control and Prevention District Fund expenditures will increase by \$65,000; Fire Control, Prevention, and Emergency Medical Services District Fund expenditures will increase by \$69,000; TIRZ #1 Fund expenditures will increase by \$318,000; TIRZ #2 Fund expenditures will increase by \$350; Special Revenue Fund revenues will increase by \$845,120 and expenditures will increase by \$845,120; Health Fund expenditures will increase by \$9,450 in FY 2022-2023.

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. Ordinance
- 2. Exhibit A

Town Staff Recommendation:

Town Staff recommends approval of amending Ordinance No. 2022-54 (FY 2022-2023 Annual Budget) to provide funding increased expenditures in the General Fund, Crime Control and Prevention District Fund, Fire Control, Prevention, and Emergency Medical Services District Fund, TIRZ #1 Fund, TIRZ #2 Fund, Stormwater Drainage Utility Fund, Wastewater Impact Fee Fund, West Thoroughfare Impact Fee Fund, and Health Fund.

Proposed Motion:

I move to approve amending Ordinance No. 2022-54 (FY 2022-2023 Annual Budget) to provide funding increased expenditures in the General Fund, Crime Control and Prevention District Fund, Fire Control, Prevention, and Emergency Medical Services District Fund, TIRZ #1 Fund, TIRZ #2 Fund, Stormwater Drainage Utility Fund, Wastewater Impact Fee Fund, West Thoroughfare Impact Fee Fund, and Health Fund.

Page 2 of 2

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING ORDINANCE NO. 2022-54 (FY 2022-2023 BUDGET) TO FUND INCREASED EXPENDITURES OF \$65,000 IN THE CRIME CONTROL AND PREVENTION DISTRICT FUND BUDGET; INCREASED EXPENDITURES OF \$69,000 IN THE FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FUND BUDGET; INCREASED EXPENDITURES OF \$318,000 IN THE TIRZ #1 FUND BUDGET; INCREASED EXPENDITURES OF \$350 IN THE TIRZ #2 FUND BUDGET; INCREASED REVENUES OF \$845,120 AND INCREASED EXPENDITURES OF \$845,120 IN THE SPECIAL REVENUE FUND; INCREASED EXPENDITURES OF \$9,450 IN THE HEALTH FUND; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council"), has investigated and determined that it will be beneficial and advantageous to the residents of the Town of Prosper, Texas ("Prosper"), to amend Ordinance No. 2022-54 (FY 2022-2023 Budget) for the purposes listed in Exhibit "A," attached hereto and incorporated herein by reference; and

WHEREAS, the changes will result in budgeted funds being allocated.

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

SECTION 1

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

SECTION 2

Amendment to Ordinance No. 2022-54 (FY 2022-2023 Budget). Ordinance No. 2022-54 (FY 2022-2023 Budget) is hereby amended to allow for increases to appropriations as shown in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 3

<u>Savings/Repealing Clause</u>. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 4

<u>Severability</u>. 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, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 5

TOWN OF PROSPER, TEXAS

Effective Date. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 9TH DAY OF JANUARY, 2024.

	David F. Bristol, Mayor
ATTEST TO:	
Michelle Lewis Sirianni, Town Secretary	
APPROVED AS TO FORM AND LEGALITY:	
Terrence S. Welch, Town Attorney	

EXHBIT "A" BUDGET AMENDMENT FISCAL YEAR 2022-2023 January 9, 2024

FUND	CATEGOR	RY	DESCRIPTION		ΑN	IENDMENT
General Fund						
	EXPENDI					505 000 00
		Public Works	Street and Facility Projects			506,000.00
		Development Services	Cover Street and Facility Projects	Net Budget Amendment	-	(506,000.00)
				Net Budget Amendment	Ş	-
Crime Contro	l and Prev	ention Special Purpose District				
	EXPENDI					
		Personnel	Personnel adjustment to balance to \$25,000	cash	\$	65,000.00
				Net Budget Amendment	\$	65,000.00 65,000.00
Fire Control,		n and Emergency Medical Service	es Special Purpose District			
	EXPENDI		Developed a disenter and the below on the COT 000		,	60,000,00
		Personnel	Personnel adjustment to balance to \$25,000	Net Budget Amendment	<u>۲</u>	69,000.00 69,000.00
				Net Budget Amendment	Ş	69,000.00
TIRZ #1						
	EXPENDI	TURES				
		Developer Reimbursement	Higher Impact Fee Revenues than expected		\$	318,000.00
				Net Budget Amendment	\$	318,000.00
TIRZ #2						
	EXPENDI					
		Developer Reimbursement	Higher Sales Tax Revenues than expected		\$	350.00
Constal Barre				Net Budget Amendment	Ş	350.00
Special Reve	nue Funa REVENUE	2				
	KEVENUE	Escrow Income	Escrow Funds Revenue Earned		\$	845,120.00
		Escrow meanic		Net Estimate Adjustment		
	EXPENDI	TURES				,
		Other-Escrow Funds	Escrow Funds transferred to CIP		\$	845,120.00
				Net Budget Amendment	\$	845,120.00
Health Fund						
	EXPENSE				_	
		Operating Expense	OPEB Valuation for Three Potential Retiree F	lealth Plan	\$	9,450.00

9,450.00

Net Budget Amendment \$



FINANCE

To: Mayor and Town Council

From: Chris Landrum, Finance Director

Through: Mario Canizares, Town Manager

Bob Scott, Deputy Town Manager

Re: Amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget)

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget). (CL)

Description of Agenda Item:

Budget Amendments

Debt Service Fund

The Debt Service Fund accounts for the accumulation of resources and the payment of long-term debt. The sale of debt took place late in the budget process. A final debt service schedule was not available until late in the process. A budget amendment is required to increase expenditures by \$795,430 from \$14,952,436 to \$15,747,866.

Park Development Fund

A budget amendment is required to increase expenditures by \$1,150,000 from \$1,713,800 to \$2,863,800. The increase will partially fund the Lakewood Park project.

PO Roll

Supply Chain Delays - Equipment/Vehicles

There have been delays in procuring vehicles and equipment due to supply chain issues. A total of \$706,750 in P.O.s are requested to roll related to this. The specific details can be found on the detailed PO Roll page. Below is a summary of the amounts by fund for rolls requested for supply chain issues.

Fund	PO Roll Amount
General Fund	\$199,368.78
Water & Sewer Fund	\$17,856.26
VERF Fund	\$489,525.17
TOTAL	\$706,750.21

Long-term Special Projects

Certain projects, once approved, are expected to take more than a year to complete. These projects may not necessarily result in the creation of a capital asset. Examples include software implementation, Americans with Disability Act transition plans, and smaller infrastructure/facility improvement projects. Many municipalities transfer the funding for these special projects to a multi-year fund. The request is to roll purchase orders related to long-term special projects to the fiscal year 2023-2024 and then transfer them to the appropriate multi-year fund. Below is a summary of these requests.

Fund	Special Project	Amount
General Fund	Downtown Park Pond Project	\$2,295.00
General Fund	ADA Transition Plan	\$11,220.00
General Fund	ERP Implementation	\$382,105.23
General Fund	EPL Laserfiche Conversion	\$6,462.50
General Fund	EDA Broadband Grant	\$16,500.00
	TOTAL	\$418,582.73

Capital Projects Funded by Impact Fees

In the past, capital projects funded by impact fees were budgeted and accounted for in the impact fee funds. A more efficient approach in this situation is to transfer the funding to the suitable multi-year fund. Therefore, the request is to roll the purchase orders and transfer them to the relevant multi-year fund.

Fund	Project	Amount
Water Impact Fee Fund	2151-WA 12" Water Line DNT	\$35,121.36
Water Impact Fee Fund	Impact Fee Survey	\$41,760.85
Wastewater Impact Fee Fund	Doe Branch WW Line	\$526,006.97
Wastewater Impact Fee Fund	Impact Fee Survey	\$58,239.14
East Thoroughfare Impact	Coit Road (First-Frontier)	\$367,539.53
Fee	·	
East Thoroughfare Impact	Impact Fee Survey	\$41,353.69
Fee		
West Thoroughfare Impact	Impact Fee Survey	\$41,353.69
Fee		
	TOTAL	\$1,127,853.53

Other PO Roll Request

The PO for Pattillo, Brown & Hill, LLP for \$8,175 is requested to be rolled to use these services for the ERP implementation process and for consulting to take production of the Annual Comprehensive Financial Plan in-house.

The Motorola Solutions, Inc. PO for \$356,722.72 is awaiting final acceptance by the Police Department before it may be invoiced.

These changes have been reviewed in detail and approved by the Finance Committee.

Budget Impact:

The Debt Service Fund expenditures will increase by 795,430 and the Park Development Fund expenditures will increase by \$1,150,000.

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. Ordinance
- 2. Exhibit "A" Detail of Budget Amendment
- 3. Exhibit "B" Fund Summaries
- 4. Detailed List of Purchase Order Roll

Town Staff Recommendation:

Town Staff recommends approval of amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget) to provide funding increased expenditures in the Debt Service Fund and the Park Development Fund.

Proposed Motion:

I move to approve amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget) to provide funding increased expenditures in the Debt Service Fund and the Park Development Fund.

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING ORDINANCE NO. 2023-60 (FY 2023-2024 BUDGET) TO FUND INCREASED EXPENDITURES OF \$795,430 IN THE DEBT SERVICE FUND BUDGET AND INCREASED EXPENDITURES OF \$1,150,000 IN THE PARK DEVELOPMENT FUND BUDGET; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council"), has investigated and determined that it will be beneficial and advantageous to the residents of the Town of Prosper, Texas ("Prosper"), to amend Ordinance No. 2023-60 (FY 2023-2024 Budget) for the purposes listed in Exhibit "A," attached hereto and incorporated herein by reference; and

WHEREAS, the changes will result in budgeted funds being allocated and an overall net increase in the budget for funding from fund balance.

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

SECTION 1

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

SECTION 2

Amendment to Ordinance No. 2023-60 (FY 2023-2024 Budget). Ordinance No. 2023-60 (FY 2023-2024 Budget) is hereby amended to allow for increases to appropriations as shown in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 3

<u>Savings/Repealing Clause</u>. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed Ordinance, nor shall the repeal prevent prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of conflicting ordinances shall remain in full force and effect.

SECTION 4

<u>Severability</u>. 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, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 5

TOWN OF PROSPER, TEXAS

Effective Date. This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 9TH DAY OF JANUARY, 2024.

	David F. Bristol, Mayor
ATTEST TO:	
Michelle Lewis Sirianni, Town Secretary	
APPROVED AS TO FORM AND LEGALITY:	

Terrence S. Welch, Town Attorney

\$1,150,000.00

EXHBIT "A" BUDGET AMENDMENT FISCAL YEAR 2022-2023 January 9, 2024

FUND CATEGORY DESCRIPTION **AMENDMENT Debt Service Fund EXPENDITURES** Debt Service on Future Issue Correction \$ 795,430.00 **Net Budget Amendment** \$ 795,430.00 **Park Development Fund EXPENDITURES** Transfer Out Correction \$1,150,000.00

Net Budget Amendment

General Fund FY2023-2024 Budget Amendment and PO Roll

REVENUE	Adopted Budget	Amendments	PO Roll	Amended Budget
Property Taxes	21,146,121	-	-	21,146,121
Sales Tax	11,091,492	-	-	11,091,492
Franchise Fees	3,221,816	-	-	3,221,816
Licenses, Permits, and Fees	5,792,150	-	-	5,792,150
Charges for Services	1,296,024	-	-	1,296,024
Fines & Warrants	300,500	-	-	300,500
Investment Income	750,000	-	-	750,000
Transfers In	1,297,102	-	-	1,297,102
Miscellaneous	144,150	-	-	144,150
Park Fees	821,600	-	-	821,600
Grants	37,840	-	-	37,840
(blank)	-	-	-	-
TOTAL REVENUE	45,898,795	-	-	45,898,795
EXPENDITURES	Adopted Budget	Amendments	PO Roll	Amended Budget
Administration	9,800,919	-	8,175	9,809,094
Police Services	9,583,528	-	416,623	10,000,151
Fire Services	10,562,449	-	-	10,562,449
Public Works	4,727,062	-	90,681	4,817,743
Community Services	7,355,779	-	42,337	7,398,116
Development Services	4,139,855	-	2,057	4,141,912
			,	
Engineering	2,684,047	-	4,393	2,688,440
Engineering Capital Dedicated	2,684,047 -	-	•	2,688,440 -
	2,684,047 - -	- - -	•	2,688,440 - 433,883
Capital Dedicated	2,684,047 - - - 48,853,639	- - -	4,393	-
Capital Dedicated Transfer to Long-term Special Projects	-	- - -	4,393 - 433,883	433,883
Capital Dedicated Transfer to Long-term Special Projects TOTAL EXPENDITURES	48,853,639	- - -	4,393 - 433,883	433,883 49,851,788

Water Sewer Fund FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendment	PO Roll	Amended Budget
Water Charges for Service	23,114,755	-	-	23,114,755
Sewer Charges for Service	11,892,552	-	-	11,892,552
Sanitation Charges for Services	-	-	-	-
Licenses, Permits, and Fees	377,705	-	-	377,705
Penalties	1,900	-	-	1,900
Utility Billing Penalties	185,000	-	-	185,000
Investment Income	350,000	-	-	350,000
Other	3,494,342	-	-	3,494,342
TOTAL REVENUES	39,416,254	-	-	39,416,254
EXPENDITURES				
Administration	1,138,064	-	17,856	1,155,920
Debt Service	4,610,464	-	-	4,610,464
Franchise Fee Expense	689,851	-	-	689,851
Water Purchases	12,704,415	-	-	12,704,415
Sewer Management Fees	4,560,895	-	-	4,560,895
Public Works	9,410,363	-	-	9,410,363
TOTAL EXPENDITURES	33,114,052	-	17,856	33,131,908
OTHER FINANCING				
Transfers Out	8,071,650			8,071,650
Net Change in Fund Balance	(1,769,448)			(1,787,304)
Beginning Net Assets	11,488,750			15,497,416
Ending Net Assets	9,719,302			13,710,112

DEBT SERVICE FUND FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendment	PO Roll	Amended Budget
Property Taxes	15,184,531	-	-	15,184,531
Investment Income	-	-	-	-
Other	20,000	-	-	20,000
TOTAL REVENUES	15,204,531	-	-	15,204,531
EXPENDITURES	Adopted Budget	Amendment	PO Roll	Amended Budget
Administrative Fees	20,000	-	-	20,000
Principal	6,840,722	-	-	6,840,722
Interest	5,458,264	-	-	5,458,264
Debt Service on Future Issue	2,633,450	795,430	-	3,428,880
TOTAL EXPENDITURES	14,952,436	795,430	-	15,747,866
Net Change in Fund Balance	252,095			(543,335)
Beginning Fund Balance	540,443			1,341,641
Ending Fund Balance	792,538			798,306

PARK DEVELOPMENT FUND FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendment	PO Roll	Amended Budget
Park Dedication Fees	300,000	-	-	300,000
Park Dedication-Interest	2,000	-	-	2,000
Park Improvement Fees	220,000	-	-	220,000
Park Improvement-Interest	4,050	-	-	4,050
Grants-Improvement Fund	-	-	-	-
TOTAL REVENUES	526,050	-	-	526,050
EXPENDITURES				
General-Park Dedication	963,800	-	-	963,800
General-Park Improvement	750,000	-	-	750,000
Park Dedication Transfer to CIP (Lakewood)	-	400,000	-	400,000
Park Improvement Transfer to CIP (Lakewood)	-	750,000	-	750,000
TOTAL EXPENDITURES	1,713,800	1,150,000	-	2,863,800
Net Change in Fund Balance	(1,187,750)			(2,337,750)
Beginning Fund Balance	3,583,784			2,963,827
Ending Fund Balance	2,396,034			626,077

VERF Fund FY2023-2024 Budget Amendment and PO Roll

REVENUES		Adopted Budget	Amendments	PO Roll	Amended Budget
Charges for Service		1,478,966	-	-	1,478,966
Other		150,000	-	-	150,000
Interest Income		250,000	-	-	250,000
	TOTAL REVENUES	1,878,966	-	-	1,878,966
EXPENDITURES		Adopted Budget	Amendments	PO Roll	Amended Budget
Technology Expenses		145,200	-	-	145,200
Vehicle Expenses		772,500	-	434,189	1,206,689
Equipment Expenses		203,870	-	55,336	259,206
	TOTAL EXPENDITURES	1,121,570	-	489,525	1,611,095
Net Change in Fund Balance		757,396			267,871
Beginning Fund Balance		4,505,130			4,988,631
Ending Fund Balance		5,262,526			5,256,502

WATER IMPACT FEE FUND FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendments	PO Roll	Amended Budget
Impact Fees	3,250,000	-	-	3,250,000
Investment Income	200,000	-	-	200,000
TOTAL REVENUES	3,450,000	-	-	3,450,000
EXPENDITURES				
Operations-Developer Agreements	2,180,644	-	-	2,180,644
Capital	124,250	-	93,361	217,611
TOTAL EXPENDITURES	2,304,894	-	93,361	2,398,255
Transfers In	-	-	-	-
Transfers Out	(3,100,000)	-	-	(3,100,000)
Total Other Financing Sources (Uses)	(3,100,000)	-	-	(3,100,000)
Net Change in Fund Balance	(1,954,894)	1		(2,048,255)
Beginning Fund Balance	4,364,498			10,187,246
Ending Fund Balance	2,409,604			8,138,991

WASTEWATER IMPACT FEE FUND FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendments	PO Roll	Amended Budget
Impact Fees	2,000,000	-	-	2,000,000
Equity Fees	300,000	-	-	300,000
Investment Income	100,000	-	-	100,000
TOTAL REVENUES	2,400,000	-	-	2,400,000
EXPENDITURES				
Operations-Developer Agreements	1,630,091	-	-	1,630,091
Capital	112,000	-	584,246	696,246
TOTAL EXPENDITURES	1,742,091	-	584,246	2,326,337
Transfers In	-	-	-	-
Transfers Out	-	-	-	-
Total Other Financing Sources (Uses)	-	-	-	-
Net Change in Fund Balance	657,909			73,663
Beginning Fund Balance	2,535,117			4,619,805
Ending Fund Balance	3,193,026			4,693,468

EAST THOROUGHFARE IMPACT FEE FUND FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendments	PO Roll	Amended Budget
Impact Fees	1,200,000	-	-	1,200,000
Investment Income	100,000	-	-	100,000
TOTAL REVENUES	1,300,000	-	-	1,300,000
EXPENDITURES				
Operations-Developer Agreements	475,000	-	-	475,000
Capital	-	-	408,893	408,893
TOTAL EXPENDITURES	475,000	-	408,893	883,893
Transfers In	-	_	-	-
Transfers Out	-	-	-	-
Total Other Financing Sources (Uses)	-	-	-	-
Net Change in Fund Balance	825,000			416,107
Beginning Fund Balance	1,420,159			2,849,272
Ending Fund Balance	2,245,159			3,265,379

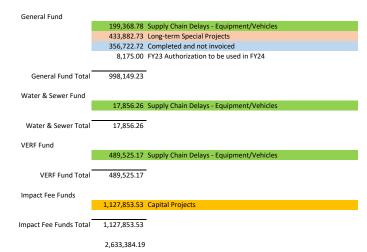
WEST THOROUGHFARE IMPACT FEE FUND FY2023-2024 Budget Amendment and PO Roll

REVENUES	Adopted Budget	Amendments	PO Roll	Amended Budget
Impact Fees	4,000,000	-	-	4,000,000
Investment Income	150,000	-	-	150,000
TOTAL REVENUES	4,150,000	-	-	4,150,000
EXPENDITURES				
Operations-Developer Agreements	2,675,160	-	-	2,675,160
Capital	300,000	-	41,354	341,354
TOTAL EXPENDITURES	2,975,160	-	41,354	3,016,514
Transfers In	-	-	-	-
Transfers Out	-	-	-	-
Total Other Financing Sources (Uses)	-	-	-	-
Net Change in Fund Balance	1,174,840			1,133,486
Beginning Fund Balance	2,385,418			6,321,772
Ending Fund Balance	3,560,258			7,455,258

Item 7.

FY2023 Proposed PO Roll

Vendor Vendor Name	Fiscal Yr	PO # Line	# Line Status	PO Date QTY		Line Item Amt	Encumb Amt	Invoice Pymnts	Balance	Account #	Fund	Department	ACCOUNT	PROJECT	ROLL STATUS	Account Description	Notes / Comments
2610 Teague Nall and Perkins Inc	2023	22321	1 0	6/30/2022	1.00	24,900.00	24,900.00	22,605.00	2,295.00	100-5410-60-01	100	60	5410	NO	YES	Professional Services	Downtown Park Pond Project
2585 Kimley-Horn and Associates	2023	22396	1 0	9/22/2022	1.00	15,000.00	15,000.00	13,500.00	1,500.00	100-5410-98-01	100	98	5410	NO	YES	Professional Services	Special Project 2215-ST, ADA Transition Plan
2585 Kimley-Horn and Associates	2023	22396	4 0	9/22/2022	1.00	29,800.00	29,800.00	23,840.00	5,960.00	100-5410-98-01	100	98	5410	NO	YES	Professional Services	Special Project 2215-ST, ADA Transition Plan
2585 Kimley-Horn and Associates	2023	22396	6 O	9/22/2022	1.00	9,400.00	9,400,00	5,640.00	3,760.00	100-5410-98-01	100	98	5410	NO	YES	Professional Services	Special Project 2215-ST, ADA Transition Plan
3153 TDIndustries, Inc	2023	23025	1 0	10/20/2022	1.00	592,036.60	592.036.60	501,355.73	90.680.87	100-5480-50-05	100	50	5480	NO	YES	Contracted Services	Roll to FY24 - Supply Chain issues with coils for HVAC repair for Town Hall
3498 Sciens, LLC	2023	23139	1 0	12/29/2022	1.00	65,700.00	65,700,00	50.400.00		100-5410-10-03	100	10	5410	NO	YES	Professional Services	Per CL - Will need to roll to FY24 (Consulting related to ERP)
2776 Tyler Technologies, Inc.			1 0	12/29/2022	1.00	851,358.69	851,358.69	481,775.96		100-5418-10-03	100		5418	YES	YES		Roll to FY24 - ERP Implementation
600 Halff Associates			1 0	1/13/2023	1.00	63,000.00	63,000.00	50,477.50		100-5410-60-01	100	60	5410	NO	YES		Roll to FY24 - Federally funded TxDOT related 380 landscape project that has been delayed
2477 Pattillo, Brown & Hill, LLP			1 0	1/18/2023	1.00	44,575.00	44,575.00	36,400.00	,	100-5410-10-03	100	10	5410	NO	YES		Roll to FY24
2776 Tyler Technologies, Inc.			1 0	6/12/2023	1.00	200.00	200.00	0.00		100-5419-10-05	100		5419	YES	YES		EPL Laserfiche Conversion
2776 Tyler Technologies, Inc.			2 0	6/12/2023	40.00	10.000.00	10.000.00	3.937.50		100-5419-10-05	100	10	5419	YES	YES		EPL Laserfiche Conversion
2776 Tyler Technologies, Inc.			3 0	6/12/2023	1.00	200.00	200.00	0.00		100-5419-10-05	100		5419	YES	YES		EPL Laserfiche Conversion
4020 M&M Extendo LLC			1 0	6/26/2023	1.00	8.368.00	8.368.00	0.00		100-5620-20-01	100		5620	NO NO	YES		Mobile Command Ctr will not be delivered until 11/2023
3988 Lit Fiber LLC						-,	-/		-,				5410	YES			
3988 Lit Fiber LLC			1 0	2/20/2023	1.00	70,723.84	70,723.84 17.680.96	57,523.84		100-5410-10-99-2308-GR	100			YES	YES		Federal Portion
			2 0	2/20/2023	1.00	17,680.96	,	14,380.96		100-5410-10-99-2308-GR			5410		YES		Local Portion
469 Motorola Solutions, Inc.			1 0	12/29/2022	1.00	356,722.72	356,722.72	0.00	/	100-6140-20-01	100		6140		YES		Upfront costs for In-car and Body-worn camera and Evidence Management System
3225 Enterprise FM Trust			1 0	9/15/2023	1.00	51,532.50	51,532.50	0.00		100-6160-20-01	100	20	6160	NO	YES	·	2023 Police Pursuit Tahoe
2730 Silsbee Ford, Inc			1 0	8/21/2023	1.00	42,337.00	42,337.00	0.00		100-6160-60-02	100		6160	NO	YES		2023 Ford F150 4x2 Crew Cab (Growth Position - Unit #6236)
3797 ODP Business Solutions			1 O - Seq 3	7/25/2023	1.00	2,056.99	2,056.99	0.00		100-5220-40-03	100		5220	NO	YES		Per CL PO will be rolled to FY24 - 2nd Floor/Engineering Office Reconfig - Shipping Delays
3797 ODP Business Solutions			1 O - Seq 2	7/25/2023	1.00	4,393.42	4,393.42	0.00		100-5220-98-01	100	98	5220	NO	YES		Per CL PO will be rolled to FY24 - 2nd Floor/Engineering Office Reconfig - Shipping Delays
3797 ODP Business Solutions			1 O - Seq 1	7/25/2023	1.00	17,856.26	17,856.26	0.00	,	200-5220-50-98	200		5220	NO	YES		Per CL PO will be rolled to FY24 - 2nd Floor/Engineering Office Reconfig - Shipping Delays
2715 Vermeer Texas-Louisiana			1 0	6/8/2023	1.00	185,815.78	185,815.78	0.00		410-6140-50-03	410		6140		YES		VacTron Replacement
3837 Deere & Company	2023	23315	1 0	5/31/2023	1.00	55,335.75	55,335.75	0.00		410-6140-60-02	410	60	6140	NO	YES	CAPITAL EXPENSE-EQUIPMENT	Verticutter Replacement
1532 Rush Truck Center, Houston	2023	23296	1 0	5/18/2023	1.00	183,925.14	183,925.14	0.00		410-6160-50-02	410		6160	NO	YES	Capital-Vehicles	Peterbuilt Dump Truck - Replaces Unit 5201
2730 Silsbee Ford, Inc	2023	23431	1 0	9/11/2023	1.00	64,448.50	64,448.50	0.00	64,448.50	410-6160-50-02	410	50	6160	NO	YES	Capital-Vehicles	2024 Ford F350 Replacement - Replaces Unit 5211
573 Freese & Nichols	2023	22146	4 0	1/5/2022	1.00	7,700.00	7,700.00	0.00	7,700.00	630-5410-50-00-2151-WA	630	50	5410	YES	YES	Prof Svcs DNT Water Line 12"	
573 Freese & Nichols	2023	22146	5 O	1/5/2022	1.00	17,500.00	17,500.00	0.00	17,500.00	630-5410-50-00-2151-WA	630	50	5410	YES	YES	Prof Svcs DNT Water Line 12"	
573 Freese & Nichols	2023	22146	6 O	1/5/2022	1.00	30,050.00	30,050.00	26,512.35	3,537.65	630-5410-50-00-2151-WA	630	50	5410	YES	YES	Prof Svcs DNT Water Line 12"	
573 Freese & Nichols	2023	22146	8 0	1/5/2022	1.00	16,150.00	16,150.00	10,075.96	6,074.04	630-5410-50-00-2151-WA	630	50	5410	YES	YES	Prof Svcs DNT Water Line 12"	
573 Freese & Nichols	2023	22146	9 0	1/5/2022	1.00	10,250.00	10,250.00	9,940.33	309.67	630-5410-50-00-2151-WA	630	50	5410	YES	YES	Prof Svcs DNT Water Line 12"	
573 Freese & Nichols	2023	23196	1 O - Seg 1	2/20/2023	1.00	100,000.00	100,000.00	41,760.85	58,239.15	630-5410-50-00-2210-WA	630	50	5410	YES	YES	Prof Svcs Impact Fee Survey	
3780 Claymoore Engineering, Inc	2023	22222	3 O	3/31/2022	1.00	160,000.00	160,000.00	16,000.00	144,000.00	640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Svcs Upr Doe Brnch WW Line	e
3780 Claymoore Engineering, Inc			4 0	3/31/2022	1.00	6,500,00	6,500.00	0.00		640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Svcs Upr Doe Brnch WW Line	
3780 Claymoore Engineering, Inc	2023	22222	5 O	3/31/2022	1.00	16,000,00	16,000.00	0.00		640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Svcs Upr Doe Brnch WW Line	
3780 Claymoore Engineering, Inc	2023		6 O	3/31/2022	1.00	64,000.00	64,000.00	25.600.00	-,	640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Sycs Upr Doe Brnch WW Line	
3780 Claymoore Engineering, Inc			7 0	3/31/2022	1.00	20.000.00	20,000.00	0.00	,	640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Svcs Upr Doe Brnch WW Line	
3780 Claymoore Engineering, Inc			8 0	3/31/2022	1.00	14,000.00	14.000.00	0.00		640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Svcs Upr Doe Brnch WW Line	
3780 Claymoore Engineering, Inc			9 0	3/31/2022	1.00	28.500.00	28.500.00	0.00		640-5410-50-00-2152-WW	640	50	5410	YES	YES	Pro Svcs Upr Doe Brnch WW Line	
3357 Lockwood Andrews & Newnam, Inc			1 0	3/21/2023	1.00	499.106.00	499.106.00	240.499.03	-,	640-5410-50-00-2152-WW	640		5410	YES	YES	Pro Svcs Upr Doe Britch WW Line	
573 Freese & Nichols			1 O - Seg 2	2/20/2023	1.00	100.000.00	100.000.00	41.760.86		640-5410-50-00-2210-WW	640	50	5410	YES	YES	Prof Svcs Impact Fee Survey	
573 Freese & Nichols			2 O - Seq 3	2/20/2023	1.00	50.000.00	50.000.00	8.646.31		660-5410-50-00-2210-ST	660	50	5410	YES	YES	Impact Fee Study E Through	
2926 Cobb, Fendley & Assoc., Inc.			3 O	1/30/2017	1.00	60,500.00	60,500.00	0.00	,	660-6610-50-00-1710-ST	660		6610		YES	Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.			5 0	1/30/2017	1.00	40.000.00	20.000.00	24.000.00		660-6610-50-00-1710-ST	660	50	6610	YES	YES	Coit Road (First - Frontier)	
			7 0	1/30/2017	1.00	57,600.00	57.600.00	47.370.00	-,	660-6610-50-00-1710-ST	660	50	6610	YES	YES		
2926 Cobb, Fendley & Assoc., Inc.							- /	/								Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.	2023		9 0	1/30/2017	1.00	110,000.00	110,000.00	93,500.00		660-6610-50-00-1710-ST	660	50	6610	YES	YES	Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.			10 0	1/30/2017	1.00	12,720.00	12,720.00	0.00		660-6610-50-00-1710-ST	660		6610		YES	Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.			11 0	1/30/2017	1.00	95,000.00	95,000.00	13,300.00		660-6610-50-00-1710-ST	660	50	6610	YES	YES	Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.			12 0	1/30/2017	1.00	19,280.00	19,280.00	0.00	-,	660-6610-50-00-1710-ST	660		6610		YES	Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.			13 0	1/30/2017	1.00	80,000.00	80,000.00	18,390.47	- /	660-6610-50-00-1710-ST	660		6610		YES	Coit Road (First - Frontier)	
2926 Cobb, Fendley & Assoc., Inc.			14 0	1/30/2017	1.00	83,000.00	83,000.00	0.00		660-6610-50-00-1710-ST	660	50	6610		YES	Coit Road (First - Frontier)	
3698 Lowery Property Advisors, Inc			1 0	7/26/2023	1.00	6,000.00	6,000.00	0.00		660-6610-50-00-1710-ST	660		6610	YES	YES	Coit Road (First - Frontier)	
573 Freese & Nichols	2023	23196	1 - Seq 4	2/20/2023	1.00	50,000.00	50,000.00	8,646.31		680-5410-50-00-2210-ST	680	50	5410	YES	YES	Prof Svcs Impact Fee Survey	
									2,633,384.19	Roll to FY24							





FINANCE

To: Mayor and Town Council

From: Chris Landrum, Finance Director

Through: Mario Canizares, Town Manager

Robert B. Scott, Deputy Town Manager

Re: Aclara Network Freedom Agreement and Maintenance Amendment 2

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving an agreement between Aclara Technologies LLC and the Town of Prosper for maintenance and support from Aclara, a sole source provider, and consider and act upon approving an amendment to the existing Aclara Maintenance Agreement between Aclara Technologies LLC and the Town of Prosper to add Aclara Network Freedom to the existing Maintenance Agreement; and authorizing the Town Manager to execute the same. (CL)

Description of Agenda Item:

This is an approved FY 2023-2024 non-discretionary package to add maintenance services to the Town's DCUs, as well as add additional support to the Town's Aclara system. Due to ongoing service issues with Aclara, and not having a maintenance contract on our DCUs, the additional support that comes with this agreement is necessary to keep the Town's water meter system running smoothly. The addition of Network Freedom will give the Town a single point of contact and shift the monitoring, as well as maintenance and repairs of the Aclara system, from the Town to Aclara. This agreement will vastly decrease staff time spent on communication of issues, freeing them up to focus on their job-related duties in both Public Works, Information Technology, and Utility Billing, as well as decreasing costs currently incurred by the Town for any work that needs to be done on the system. This agreement consolidates all Aclara Technologies LLC services and software into one agreement and price.

The Aclara Technology System is the Town's automated utility meter reading system. Aclara is the sole manufacturer and seller of Aclara products and services.

Budget Impact:

This is a ten-year agreement which will be funded from Utility Billing Contract Services, 200-5480-10-08, at the following rates: Years 1-4: \$106,721; Year 5: \$109,922.39; Year 6: \$113,220; Year 7: \$116,616.67; Year 8: \$120,115.17; Year 9: \$123,718.62; Year 10: \$127,430.18.

Item 8.

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. Aclara Network Freedom Agreement
- 2. Amendment No. 2 to Maintenance Agreement

Town Staff Recommendation:

Town Staff recommends approving an agreement between Aclara Technologies LLC and the Town of Prosper for maintenance and support from Aclara, a sole source provider, and consider and act upon approving an amendment to the existing Aclara Maintenance Agreement between Aclara Technologies LLC and the Town of Prosper to add Aclara Network Freedom to the existing Maintenance Agreement; and authorizing the Town Manager to execute the same.

Proposed Motion:

I move to approve an agreement between Aclara Technologies LLC and the Town of Prosper for maintenance and support from Aclara, a sole source provider, and consider and act upon approving an amendment to the existing Aclara Maintenance Agreement between Aclara Technologies LLC and the Town of Prosper to add Aclara Network Freedom to the existing Maintenance Agreement; and authorizing the Town Manager to execute the same.

Page 2 of 2

ACLARA NETWORK FREEDOM AGREEMENT

This Aclara Network Freedom Agreement ("Agreement") is dated this ______ day of _____, 20____, by and between Aclara Technologies LLC, a limited liability company of the State of Ohio with offices at 77 Westport Plaza, Suite 500, St. Louis, Missouri 63146 ("Aclara"), and Town of Prosper, a Texas corporation with offices located at 250 W. First Street, P.O. Box 307, Prosper, TX 75078 ("Customer").

WHEREAS, Aclara provides certain network-as-a-service offerings, professional services and deliverables to its customers:

WHEREAS, Customer desires to move their Aclara RF network to a network-as-a-service offering, professional services and/or deliverables described herein, and Aclara desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

IN CONSIDERATION OF the following terms and conditions, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Aclara agrees to perform the Services and provide the Deliverables for Customer pursuant to the terms of this Agreement.

ARTICLE 1. DEFINITIONS

Certain terms used in this Agreement are defined in this Article 1. Other terms used in this Agreement are defined where they are used and have the meanings there indicated. The word "and" shall mean "and" as well as "or," unless otherwise specified.

- 1.1 "Aclara Network Freedom or Aclara Network" means the network as a service offering comprised of the Aclara System Data Collector Units, as well as the licensed radio frequencies from the Federal Communications Commission and backhaul services from third party communications providers which together establish and maintain secure local area networks connecting the Aclara RF Water MTUs to the Aclara RF Water Data Collector Units, and a secure, long-range wide area wireless network connecting the Aclara System Data Collector Units to the Hosted AclaraONE® System for Customer's use for the Aclara System.
- 1.2 "Service Levels" means a designation of the effect of an Issue on the Customer's use of the Aclara Network. The Severity of an Issue is initially defined by the Customer or Aclara and confirmed by Aclara. Until the Issue has been resolved, the Severity Level may be raised or lowered based on Aclara's analysis of impact to business. The four Severity Levels are:

Severity Level	Description			
1	Requires immediate attention— Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.			
	Aclara's Network is disrupted in such a way that interval data from 5% or more of all Installed MTUs are not or might not be received in the Hosted AclaraONE® System within 12 hours. No workaround available.			
	Examples include non-receipt of data transmissions at the Hosted AclaraONE® System, missing data transmissions from large, geographically regionalized grouping of MTUs.			
	Severity level 1 shall be assigned for any disruption which impacts safety or legal liability (e.g. DCU not attached properly).			
2	Requires priority attention - Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.			
	Aclara network is degraded or disrupted in such a way that interval data from 3% or more of all Installed MTUs are not or might not be received in the Hosted AclaraON System within 12 hours. Workaround within the System is reasonably acceptable to Customer and is in place.			
	Examples include service disruption at DCUs, localized Network degradation, loss of redundancy.			
3	Requires attention – Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.			
	Aclara Network outage or malfunction with regard to functionality or receipt of transmitted data but does not result in a Network degradation or disruption.			
	Examples include a DCU outage where redundancy is still in place.			
4	There is a problem or issue with no loss of service and no business impact. Operational incident which does not involve an equipment outage but may cause an inconvenience and does not impact business operations or functionality of the Aclara Network. Should be resolved after more serious Incidents have been resolved.			
	Examples include annoying non-stop tamper messages, or a problem with Documentation.			

- 1.3 **"Aclara Personnel**" means all employees of Aclara, Aclara's subcontractors and their employees, or any other personnel assigned by Aclara to provide work pursuant to this Agreement. Aclara Personnel shall not include any Customer Personnel.
- **"Aclara Wireless Network"** (AWN) means an Aclara-managed private, backhaul network over public cellular infrastructure.
- 1.5 "Hosted AclaraONE® System" means the information technology infrastructure used by or on behalf of Aclara in performing the services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Aclara or through the use of third-party services.
- "Confidential Information" means includes, without limitation, (a) non-public information and/or private business information developed, collected or created by Party (b) a Party's Proprietary Information and (c) trade secret information including technical or non-technical data, formulae, patterns, compilations, client lists, business plans, programs, devices, methods, techniques, drawings, diagrams or processes, data, databases, software, specifications, in any form or format that (i) are not generally known in the trade or business of a Party, (ii) have direct or indirect, tangible or intangible, actual or potential value, (iii) are not readily ascertainable from publicly available information, and (iv) are the subject of reasonable protection measures taken by Party.
- 1.7 **"Contracted Read Success Rate"** means at least one read during the time period established in Schedule 1, Performance Metrics.
- 1.8 "Contracted Coverage" means the Customer's meter population that will be accessible by the DCUs in the Aclara Network, assuming that an MTU is functioning and is properly installed. Contracted coverage will include all of the meter locations Customer Meter List with GPS Coordinates provided to Aclara to perform its Propagation Study, unless specifically excluded by mutual written agreement.
- 1.9 "Customer Meter List with GPS Coordinates" means a list of all the Customer's meter locations (with GPS Coordinates) to be covered by the Aclara Network. An initial list will be provided at the time of contract signing in order for Aclara Personnel to complete an updated Propagation Study.
- 1.10 "Customer Personnel" means all employees of Customer, Customer's subcontractors and their employees, or any other persons or entities assigned by Customer to provide materials, services or labor in furtherance of Customer's installation, deployment and use of the Aclara Network. Customer Personnel shall not include any Aclara Personnel.
- 1.11 "**Data Collection Unit or DCU**" means the data collection units installed as part of the Aclara System, including all their hardware, firmware, software, and licenses.
- 1.12 **"Effective Date"** means the date of Aclara's Solution Performance and Network Design team signing off that the Network is performing satisfactorily.
- 1.13 **"Field Installation Plan"** means a plan prepared for any new or relocated DCU site location that is comprised of approach for DCU installation; engineering drawings, specifications and site plan

- (including exact mounting location, required pole height, if applicable; height of antenna, solar panel, and other DCU equipment.
- 1.14 **"Issue"** means a problem with the Aclara Network, identified by the Customer, which requires a response by Aclara to resolve.
- 1.15 **"Local Area Network"** means the network connecting the Aclara RF Water MTUs to the Aclara RF Water Data Collector Units.
- 1.16 **"Preliminary Network Audit"** refers to a physical and performance audit of the network conducted by the Aclara Solution Performance and Network Design team to confirm proper operations of the network, or determine updates and/or repairs needed, before the network is accepted into the Network Freedom program.
- 1.17 "Propagation Study" means the Aclara managed analysis of all the Customer's meter locations (utilizing GPS coordinates) in order to estimate the number of DCUs required to achieve the Contracted Read Success Rate and Contracted Coverage of DCU coverage of all plotted endpoints. The Propagation Study is used to confirm current DCU sites and develop Field Installation Plans for any new or relocated DCU sites.
- 1.18 **"Read Success Rate"** means the number of reads received in the Hosted AclaraONE® System divided by the expected number of reads as calculated in Schedule 1, Performance Metrics.
- 1.19 **"Renewal Period"** means each of one or more consecutive twelve (12) month periods following the first twelve (12) month term of this Agreement.
- 1.20 **"Solution Performance and Network Design team"** is the internal Aclara team responsible for Network Design (including Propagation studies), installation and repair of network infrastructure, and network analysis and troubleshooting of an Aclara RF AMI network.
- 1.21 "Suspect MTU" shall mean those MTUs that have not successfully transmitted data since installation or subsequent to installation have been damaged, had Radio Frequency transmission physically blocked, or have failed to successfully transmit for five (5) days. A Suspect MTU does not include a functioning MTU that has been properly installed and field verified by the Customer, but has not successfully connected to the Aclara Network since installation or subsequent to installation, has failed to successfully transmit for five (5) days due to lack of connectivity to a DCU. Specific details on determination of a Suspect MTU is shown in Schedule 1, Performance Metrics.
- 1.22 "Water MTUs" or "Water Meter Transmission Units" means the AMI communication devices that connect to the water meter.
- 1.23 "Work" means all obligations, duties and responsibilities of the Parties necessary to be performed by them in order to accomplish all of their respective obligations under this Agreement.

ARTICLE 2. TERM OF AGREEMENT

2.1. **Initial Term**.

The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for ten (10) years from the Effective Date, (see article 3.1).

2.2. Renewal Term. RESERVED

ARTICLE 3. NETWORK DELIVERABLES

Aclara shall procure, establish, implement, manage, and maintain the Aclara Network leased to Customer hereunder, including but not limited to responsibility for the following activities:

- 3.1 Preliminary Network Audit. Aclara will conduct a preliminary audit of the Network before this Agreement takes effect to determine the current operational status of the Network. This audit will include investigation through AclaraONE's network performance monitoring capabilities as well as a physical visit to each DCU site to determine the status of the hardware and make recommendations for repair, replacement, or updates to bring the Network to full operational status. Recommended repairs or replacements will be shared with the Customer and mutually agreed upon before the Work is undertaken. Such repairs or replacements are not priced into the Aclara Network Freedom Fee and will be performed on a time and materials basis charged to the customer outside of this Agreement. Aclara's Solution Performance and Network Design team must sign off that the Network is performing satisfactorily before this Agreement commences and Aclara takes over network as a service responsibility. If such Work is not agreed to or the Network cannot be corrected this Agreement is void.
- 3.2 <u>Licensed Radio Frequencies and Local Area Network</u>. Aclara shall manage and maintain licenses previously obtained from the Federal Communications Commission in Customer's name and on Customer's behalf for frequencies suitable for secure, reliable and flexible data-intensive two-way radio transmissions between the MTUs and DCUs to establish Local Area Networks connecting the MTUs to the DCUs.
- 3.3 <u>Backhaul Network Facilities</u>. Aclara shall manage and maintain data communications transport facilities to provide secure, reliable and flexible data-intensive two-way connectivity between the Local Area Networks and the Hosted AclaraONE® System to establish a backhaul. This will include moving any cellular backhaul services to the Aclara Wireless Network system.
- 3.4 <u>DCU Site Identification, Propagation Study, and Field Installation Plans</u>. Aclara will conduct an updated Propagation Study and will confirm current DCU sites appropriate for continued use. The updated Propagation Study may identify any necessary new or relocated DCU sites that can be located on Customer property, public rights of way, or other property where site acquisition costs can be minimized, and the likelihood of site acquisition can be achieved. The Propagation Study will identify DCU sites that will provide coverage to all of the Customer's meter locations provided in the list of meters for the Propagation Study. (See Contracted Coverage definition.) Aclara will provide the Customer with a Field Installation Plan for each new or relocated DCU site that will include the necessary engineering drawings and specifications required for the Customer/Aclara to secure acquisition and Prosper, Aclara Network Freedom Agreement

 5 | P a g e

permitting of the DCU sites. In preparing the Field Installation Plans for any new site, Aclara cannot assume that mounts onto Customer property (such as tanks and ladders) will be acceptable without written approval of the Customer.

- 3.5 <u>DCU Installation</u>. Aclara will confirm current DCU sites and install or relocate DCUs as needed to provide a sufficient number of DCUs that will provide the Contracted Read Success Rate and Contracted Coverage over the term of the Agreement.
- 3.6 Network Performance Manager (NPM). Aclara will supply a dedicated Network Performance Manager during the early stages of the Network Freedom transition to help Customer get the most out of their Aclara Network Freedom investment. The NPM will provide post contract and base installation support, additional expertise to help identify performance issues, and provide ongoing support until the Network is operating at optimal performance. The NPM will remain engaged until Aclara and the Customer mutually agree the Network is performing as expected.
- 3.7 <u>AMI Hardware Maintenance</u>. The hardware maintained under this Agreement shall include all DCUs continuing in service after transition to the Aclara Network Freedom services and any additional DCUs subsequently installed to maintain the Contracted Read Success Rate and Contracted Coverage. In the event of an Issue identified by Aclara or the Customer, response times are governed by the Service Levels defined as Severity Levels. The Issue shall remain open until network performance returns to the Contracted Read Success Rate, and/or Contracted Coverage has been achieved.

Aclara is responsible for maintaining the ongoing operability of the DCUs and the Aclara Network and the ability to achieve the Contracted Read Success Rate and Contracted Coverage throughout the Term of this Agreement. Damage to DCU hardware caused by natural circumstances and "acts of God" such as weather, fire, etc. will be the responsibility of Aclara. While still subject to these Service Levels, the cost of AMI Hardware Maintenance caused by third party damage is not included in this Agreement.

Aclara will update software, firmware and associated DCU components to ensure continued ongoing operations of the Customer's network, particularly given upgrades to other aspects of Aclara's infrastructure that could indirectly impact the Customer's network.

3.8 <u>Aclara Network Freedom Performance Monitoring</u>. Aclara will monitor the performance of the Aclara Network to ensure that the Contracted Read Success Rate is met in accordance with Schedule 1, Performance Metrics.

ARTICLE 4. CUSTOMER OBLIGATIONS

4.1 Approval of the Use of Aclara Recommended DCU Sites. Customer will be the final approver for use of any new or relocated DCU sites, whether the site is Customer owned or third party owned. Third party sites should not be considered "approved" until Customer provides written notice to Aclara to enter into an agreement with the property owner and obtain the applicable permits. Approval by Customer of Aclara Recommended DCU Sites shall not absolve Aclara of its responsibilities of the Contracted Read Success Rate.

4.2 <u>DCU Site Access.</u> Customer shall provide Aclara Personnel with such access during normal business hours to Customer's real and personal property, provided that Aclara provides one business day notice prior to access. Aclara Personnel are to be accompanied by Customer's staff when accessing the Customer's property. Customer will make every effort to arrange for access to property that is leased or licensed by Customer and as may be necessary for Aclara to perform its Work, during any new DCU installation and as required to perform services in accordance with this Agreement.

Customer determines what is sufficient time and resources, including qualified personnel, to perform its Work in accordance with the Contract.

Customer Personnel will reasonably cooperate with Aclara in the timely and efficient performance of Aclara's and Customer's respective obligations under the Agreement.

Customer will provide access to all data in the care, custody, and control of Customer reasonably necessary to complete all Work under the Agreement. Customer data, including meter readings and utility billing data, are considered to be Confidential Information and may not be disclosed by Aclara, or Aclara's agents, without the Customer's written permission. Aclara has no ownership rights of Customer data. At the termination or expiration of the Agreement, Aclara will cooperate with Customer to destroy or transfer any Customer data in the possession of Aclara within thirty (30) days following the expiration or termination of this Agreement.

- 4.3 **Technical Staff**. Customer shall be responsible for maintaining sufficient suitably trained technical staff to use the Hosted AclaraONE® on a day-to-day basis, including report handling. Aclara training for designated contacts shall be made available to Customer during implementation as specified in Exhibit A, Statement of Work.
- 4.4 <u>Support for Issue Investigation</u>. Customer shall support all reasonable requests by Aclara as may be required in Issue investigation and resolution. Aclara may access Customer's Aclara Network as part of this investigation.
- 4.5 <u>DCU Site Maintenance</u>. Customer is responsible for maintaining DCU Site Agreements and Leases.
- 4.6 <u>Additional Requirements</u>. Customer is responsible for procuring, installing and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to access the Customer Portal and obtain Maintenance Services from Aclara, all in accordance with specifications supplied and or approved in advance by Aclara. For the Customer Portal access, Aclara maintains responsibility from its servers to its firewall all in accordance with Aclara's specifications.
- 4.7 <u>Designation of Point of Contact</u>. Customer shall assign an individual or individuals to serve as the designated contact(s) for all communication with Aclara during Issue investigation and resolution.

4.8 <u>Proactive Monitoring</u>. Customer shall regularly monitor MTU performance and health, and perform maintenance required to resolve communication issues with Suspect MTUs to the extent those communication issues are not due to Issues with the Aclara Network.

ARTICLE 5. LICENSE GRANTS AND PERMITTED USE

Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, Aclara hereby grants Customer a non-exclusive, non-transferable right to use the Aclara Network during the Term, solely for its own internal business purposes in accordance with the terms and conditions herein.

ARTICLE 6. PAYMENT

6.1 **Billing Rate**.

The first term of the Aclara Network Freedom Fees shall be invoiced upon full execution of this Agreement; and invoiced annually, in advance, for each Renewal Period as set forth in the Maintenance Agreement and Schedule J, of the Maintenance Agreement.

6.2 **Due Dates for Payment**.

Payments for all invoices shall be due and payable thirty (30) days from the date of receipt. Any amounts not paid when due shall bear interest at the lesser of one and one half percent (1 ½%) per month or the highest permitted by law until paid. In the event that annually Fees remain unpaid for more than thirty (30) days after becoming due for payment, Aclara shall be entitled to withdraw Services.

6.3 **Taxes**.

Aclara shall be responsible for all corporate taxes measured by net income due to performance of, provision of or payment for Services or Work under this Agreement ("Aclara Taxes"). Customer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Aclara or its subcontractors) in relation to the Agreement or the performance of , provision of or payment for Services or Work under the Agreement other than Aclara Taxes ("Customer Taxes"). The price does not include the amount of any Customer Taxes. If Customer deducts or withholds Customer Taxes, Customer shall pay additional amounts so that Aclara receives the full Price without reduction for Customer Taxes. Customer shall provide to Aclara, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

ARTICLE 7. TERMINATION

7.1 <u>Termination</u>.

- (a) Customer and Aclara may terminate this Agreement at any time with thirty (30) days prior written notice to the other party.
- (b) either party may terminate this Agreement, effective upon delivery of at least ten (10) days prior written notice to the other party, (i) if the other party materially breaches this Agreement, and Prosper, Aclara Network Freedom Agreement $8 \mid P \mid a \mid g \mid e$

- (ii) further fails within thirty (30) days (or within such longer period as may be otherwise mutually agreed) after the non-breaching party provides the breaching Party with written notice of such breach; and
- (c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.2 <u>Effects of Termination</u>

Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;
- (b) Aclara shall cease all use of any Customer Data or Customer's Confidential Information and at the request of the Customer within a commercially reasonable time (i) return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Aclara directly or indirectly controls, provided however, Aclara that may retain copies of such information that is stored in Aclara's archive or back-up systems or as required by applicable law or Aclara's document retention policy;
- (c) Customer shall immediately cease all use of any Services or Aclara Materials and (i) promptly return to Aclara, or at Aclara's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Aclara Materials or Aclara's Confidential Information and (ii) permanently erase all Aclara Materials and Aclara's Confidential Information from all systems Customer directly or indirectly controls; provided that Customer may retain copies of such information that is stored in Customer's archive or back-up systems or as required by applicable law or Customer's document retention policy; and (iii) certify to Aclara in a signed written instrument that it has complied with the requirements of this Section 7.2(c);
 - (d) Aclara may disable all Customer and Authorized User access to the Aclara Materials;
- (e) if either Party terminates this Agreement pursuant to Section 7.1(b), Aclara shall be paid all Fees related to Deliverables provided and Services performed prior to the effective date of termination.

ARTICLE 8. CONFIDENTIALITY

8.1. Confidentiality.

From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), Confidential Information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed

orally, is identified as confidential when disclosed and within thirty (30) days thereafter, is summarized in writing and confirmed as Confidential Information. The Parties shall hold all Confidential Information of the other Party confidential, and shall not use or disclose it to others (except as is necessary to perform its obligations under the Contract and with the prior written consent of the disclosing Party). The Receiving Party shall maintain security measures designed to: (i) protect the security and confidentiality of the Confidential Information of the Disclosing Party; (ii) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information; and (iii) protect against unauthorized access to or use of such Confidential Information; provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this Section 8.

8.2. Exclusions.

Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that to the Receiving Party's reasonable knowledge was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3. **Compelled Disclosure**.

If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.1; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.3, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

8.4. In the event of a breach of this Section 8, the breaching party shall indemnify the non-breaching party for any Losses associated with the breach of this Section 8.

ARTICLE 9. INDEMNITY

For the purpose of this Section 9 only, "Customer Parties" shall mean Customer, its directors, officers, agents and employees, contractors and subcontractors (other than Aclara and Aclara Personnel), assignees, subsidiaries and affiliates, and each of them; "Aclara Parties" shall mean Aclara, its directors, officers, agents and employees, contractors and subcontractors at any tier, and the subcontractor's directors, officers, agents and employees, and each of them; and "Claims" shall mean third party claims, demands, suits or

causes of action. The Parties obligations under this Section 12 shall not be limited to their respective insurance coverage.

9.1. **General Indemnity for Network Deliverables**.

- 9.1.1. Aclara shall indemnify Customer Parties for any and all loss or liability, including the costs of settlements, judgments, damages and direct expense including reasonable attorney's fees, costs and expenses arising from Claims, whether based on statute or regulation or on theories of contract, tort, strict liability, or otherwise, which are brought against one or more Customer Parties by or on behalf of persons other than Customer Parties involving injuries or damages to persons or property arising from or in any manner relating to negligent acts or omissions of Aclara Parties under this Agreement provided: (i) Customer promptly notifies Aclara in writing of such claims; (ii) Customer fully cooperates with Aclara in assisting in the defense or settlement of such claims; and (iii) Aclara has the sole right to conduct the defense of such claims or to settle such claims. Aclara shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Customer, any suit or action brought against Customer Parties based upon such Claims. Further, provided that Customer promptly notifies Aclara in writing of any alleged violations described below, Aclara shall also indemnify Customer Parties for any and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Aclara Parties. Aclara's obligations under this Section 9.1.1 shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Customer Parties.
- 9.1.2. To the extent authorized by law, Customer shall indemnify Aclara Parties for any and all loss or liability, including the costs of settlements, judgments, damages and direct expense including reasonable attorney's fees, costs and expenses from Claims, at law or in equity, whether based on statute or regulation or on theories of contract, tort, strict liability, or otherwise, which are brought by or on behalf of persons other than Aclara Parties for injuries or damages to persons or property arising from or in any manner relating to acts or omissions of Customer Parties under this Master Agreement provided that: (i) Aclara promptly notifies Customer in writing of such Claims; (ii) Aclara fully cooperates with Customer in assisting in the defense or settlement of such Claims; and (iii) Customer has the sole right to conduct the defense of such Claims or to settle such Claims. Customer shall defend at its own expense, with counsel of its choosing, but reasonably acceptable to Aclara, any suit or action brought against Aclara Parties based upon such Claims. Further, provided that Aclara promptly notifies Customer in writing of any alleged violations described below, Customer shall also indemnify Aclara Parties for and all loss or liability for fines, fees or penalties for violations of any statutes, regulations, rules, ordinances, codes or standards applicable to the work arising from or relating to acts or omissions of Customer Parties. Customer's obligations under this **Section 9.1.2** shall be reduced to the extent of the negligence, gross negligence or willful misconduct of Aclara Parties.

ARTICLE 10. INSURANCE

10.1. Minimum Insurance Coverages.

In the event that Aclara's obligations hereunder require or contemplate performance of Services by Aclara's employees, or persons under contract to Aclara, to be done on Customer's property, or property of the Customer's customers, Aclara agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Customer. Further, in such event, Aclara shall maintain:

Prosper, Aclara Network Freedom Agreement

- 10.1.1. General Liability insurance on a one million dollar (\$1,000,000), per occurrence basis; and
- 10.1.2. Statutory workers compensation insurance.
- 10.1.3. Cyber Risk Liability and Technology Errors and Omissions Insurance. Aclara shall maintain cyber risk liability and technology errors and omissions insurance with a combined aggregate limit of not less than \$5,000,000.00. Such insurance shall cover errors, omissions or negligent acts in the delivery of Services under this Agreement. Such cyber risk liability insurance shall include coverage of claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and infringement, such as copyrights, trademarks, and service marks.
- 10.2. Customer shall be provided for as an additional insured or loss payee as its interest may appear on the policy referred to in Section 10.1.1 above.

ARTICLE 11. LIMITATION OF LIABILITY

- 11.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE, OR DATA OF THE OTHER PARTY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT, BREACH OF WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2. Each Party's total liability to the other Party in connection with this Agreement, whether in contract or in tort, shall be limited to the aggregate sum of payments made by Customer to Aclara under an applicable SOW or Purchase Order.

ARTICLE 12. FORCE MAJEURE

It is understood that, at times, unavoidable delays result from causes which may reasonably be presumed to be beyond the control of Aclara, or Customer such as: Acts of providence, floods, fortuitous events, unavoidable accidents, riots, strikes, and lock outs. Should the progress of the Services or Deliverables be or seem to be delayed at any time for such causes, the party claiming force majeure shall notify the counterparty in writing of the occurrence, in order that a record of same may be made. For force majeure events declared by Aclara, a corresponding extension of time for the completion of the Services or Deliverables shall be allowed by Customer. Aclara and Customer shall in good faith use such effort as is reasonable under all the circumstances known to it at the time to remove or remedy the cause(s) and mitigate the damage associated with a force majeure event.

ARTICLE 13. GENERAL CLAUSES

13.1. Relationship of the Parties.

Aclara is performing under the Agreement as an independent contractor. Aclara has the sole right and obligation to supervise, control, manage, and direct all work associated with the Deliverables and Services to be performed by all individuals and entities it assigns to perform work under this Agreement, which includes, but is not limited to, its employees, its contractors, and its subcontractors' employees, and Aclara

Prosper, Aclara Network Freedom Agreement

agrees that none of these persons or entities are employees or should be considered employees of Customer. As to these persons or entities Aclara assigns to perform work under this Agreement, Aclara will be solely responsible for: (a) the acts and omissions of all such persons and entities, (b) payment of compensation to such persons and entities, and (c) any injury to such persons in the course of their employment.

13.2. **Publicity**.

Neither Party may announce or release any information regarding this Agreement or its relationship with the other Party without the other Party's express prior written approval (which may be withheld in the other party's sole discretion). Neither Party shall use any trade name, trademark, service mark or any other information which identifies the other Party or any of the other Party's Affiliates in such Party's sales, marketing and publicity activities, including postings to the Internet, interviews with representatives of any written publication, television station or network, or radio station or network without the other Party's express prior written approval. Notwithstanding the foregoing, nothing in this Agreement shall prevent either Party from making such public disclosures as it, in its sole judgment, may deem appropriate to satisfy such Party's (or such Party's Parent's) disclosure obligations under any applicable law or requirement of any stock exchange.

13.3. **Assignment.**

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, provided however, that Aclara may assign this Agreement to an Affiliate, or to an entity acquiring all or substantially all of the assets of Aclara if the acquiring entity is an Affiliate, or, by operation of law, to an entity into which Aclara is merged if the surviving entity is an Affiliate, in each such case without prior approval of the other Party. In any such event, Aclara shall provide the other Party with prompt written notice of such assignment. As used herein, "Affiliate" means a company which either owns or controls Aclara or which Aclara owns or controls directly or indirectly, or is under common control directly or indirectly with Aclara through a common parent company.

ARTICLE 14. GOVERNING LAW AND DISPUTE RESOLUTION

14.1. **Governing Law**.

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, USA.

14.2. **Dispute Resolution**.

All disputes arising in connection with this Agreement, including any question regarding its existence or validity shall be resolved in accordance with this **Section 14**. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings. In the event that the parties choose arbitration, the decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

14.3. Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, to seek a restraining order, injunction, or similar order to enforce

Item 8.

the confidentiality provisions set forth in **Article 8**. Monetary damages shall only be available in accordance with **Article 11**.

ARTICLE 15. NOTICES

All notices, requests and demands, other than routine communications under this Agreement, will be in writing and will be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this **Article 15**), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

In the case of Aclara:

Aclara Technologies LLC Attn: Legal 77 Westport Plaza Drive Suite 500 St. Louis, MO 63146

With a copy (which shall not constitute Notice) to:

Hubbell Incorporated Attn: General Counsel 40 Waterview Drive Shelton, CT 06484

In the case of Customer:

Town of Prosper 250 W. First Street P.O. Box 307 Prosper, TX 75078

Either Party may from time to time change the individual(s) to receive notices under this paragraph and its address for notification purposes by giving the other prior written notice of the new individual(s) and address and the date upon which the change will become effective.

ARTICLE 16. ENTIRE AGREEMENT

This Agreement contains the entire agreement and all representations between the parties relating to the subject matter hereof, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

Item 8.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Aclara Technologies LLC		Town of Prosper, TX
	DocuSigned by:	
Signed:	tumi Premathilate	Signed:
Name:	Kumi Premathilake	Name:
Title:	DVP AMI and Services	Title:

Schedule 1

PERFORMANCE METRICS

A. CONTRACTED READ SUCCESS RATE

- 24 hour read rate success means 98.5% of endpoints.
- 72 hour read rate success means 99.5% of endpoints.

B. READ SUCCESS RATE CALCULATION

Aclara shall provide Read Success Rate and Suspect MTU reporting for the network each Friday.

Read Success Rate Reporting

Read Success Rate (RSR) reports are run for specific time periods to determine the network performance based on actual reads received versus reads expected for the active set of MTUs. This is calculated as follows:

of eligible MTUs = # of active MTUs - # of suspect MTUs

$$RSR = \frac{total \# of \ eligible \ MTUs \ with \ at \ least \ one \ read \ over \ the \ time \ period}{\# \ of \ eligible \ MTUs}$$

For purposes of RSR reporting for the Customer, reports will be run for a period of 7 days with the report start date 7 days prior to the report end date. Friday of each week, Aclara will provide RSR reporting with 14 (fourteen) values equal to the actual daily and 72 hour RSR calculated for end dates 5 to 11 days (inclusive) prior to the Friday reporting date.

Additionally, the aggregate period RSR deviation will be reported by calculation of the sum of differences between actual RSR and the Contracted Read Success Rate for each weekly reporting period, capped at 2% per period. Actual RSRs above the Contracted RSR shall be treated as having a 0% deviation.

An example of this calculation is provided using the dates in Table 1.

Table 1

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January 8	January 9	January 10	January 11	January 12	January 13	January 14
	RSR daily	RSR daily	RSR	RSR	RSR daily	RSR daily
	for 1/9	for 1/10	daily for	daily for	for 1/13	for 1/14

Prosper, Aclara Network Freedom Agreement

	RSR 72 hr for 1/7- 1/9	RSR 72 hr for 1/8- 1/10	1/11 RSR 72 hr for 1/9-1/11	1/12 RSR 72 hr for 1/10- 1/12	RSR 72 hr for 1/11- 1/13	RSR 72 hr for 1/12- 1/14
January 15	January 16	January 17	January 18	January 19	January 20	
RSR daily for 1/15					Report Day	
RSR 72 hr for 1/13-1/15						

The deviation between the actual RSR and contracted RSR results in a credit against the Aclara Network Freedom fee as listed in Exhibit B – Pricing Agreement.

A sample calculation follows:

	Actual RSR	RSR Deviation
RSR daily for 1/9	99.5%	0.0%
RSR daily for 1/10	98.3%	-0.2%
RSR daily for 1/11	98.8%	0.0%
RSR daily for 1/12	97.9%	-0.6%
RSR daily for 1/13	98.5%	0.0%
RSR daily for 1/14	99.0%	0.0%
RSR daily for 1/15	98.2%	-0.3%

Aggregate period RSR daily deviation = -0.2%

	Actual RSR	RSR Deviation
RSR 72 hr for 1/7-1/9	99.9%	0.0%
RSR 72 hr for 1/8-1/10	99.3%	-0.2%
RSR 72 hr for 1/9-1/11	99.8%	0.0%
RSR 72 hr for 1/10-1/12	99.9%	0.0%
RSR 72 hr for 1/11-1/13	99.5%	0.0%
RSR 72 hr for 1/12-1/14	99.6%	0.0%
RSR 72 hr for 1/13-1/15	99.2%	-0.3%

Aggregate period RSR 72 hour deviation = -0.07%

The above calculation will be performed weekly and the aggregate annual RSR deviation (if negative) will be used to calculate the annual credit up to a 100% credit, capped at 2% per weekly reporting period. In the example above, a total of 0.27% credit would be applied to the annual Aclara Network Freedom fee for the period of 1/7 - 1/15.

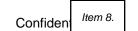
Item 8.

Suspect MTU Reporting. An MTU is considered a "suspect MTU" under the following conditions and is thus excluded from the total count of eligible MTUs for RSR calculations:

- Installed outside of Contracted Coverage
- MTU or DCU equipment failure due to tampering, damage, or vandalism
- Meter failure or incompatibility
- Last gasp alarm triggered and transmitted
- Not installed per MTU installation guidelines (i.e. installed under a metal lid without using a remote antenna)
- Moved without proper re-installation
- Location not properly maintained (i.e. sinking meter boxes, boxes covered by dirt or asphalt, MTU covered by standing water, etc.)
- Permanent RF blockage added post installation (new buildings, metal box on top of MTU, etc.)
- RF interference added post installation until the interference is mitigated by (a) cooperation by the interfering party (b) the interfering party reprogramming their frequencies (c) additional DCUs to compensate for the interference, and/or (d) FCC intervention.

During each week, Aclara will provide Customer information on the MTUs that have been identified as Suspect MTUs. The reporting will provide sufficient detail for the Customer to identify addresses associated with the Suspect MTU. MTUs that are functioning and have been properly installed and field verified by Customer will not be considered a "suspect MTU" and will not be removed from the RSR calculation.

Acalra - Prosper



AMENDMENT NO. 2 TO

MAINTENANCE AGREEMENT

This Amendment No. 2 ("Amendment No. 1") is entered into in duplicate effective as of the date last signed below by and between Aclara Technologies LLC ("ACLARA") and the Town of Prosper, a Texas Corporation ("Customer").

WHEREAS, ACLARA and Customer are parties to a certain Maintenance Agreement made effective on January 1, 2019 as amended by Amendment No. 1 dated March 16, 2020 (hereinafter "Agreement"); and

WHEREAS, Customer desires to add Network Freedom Services to the Maintenance Agreement; and

WHEREAS, this Amendment No. 2 modifies, alters or changes specific terms and conditions of the Agreement to reflect the changes in services being purchased;

NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants hereinafter expressed the parties hereby agree as follows:

- 1. Revised Schedule J to the Maintenance Agreement attached hereto is hereby incorporated into the Maintenance Agreement and replaces the former Schedule J in its entirety
- 2. Except as modified in this Amendment No. 2, the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 as of the date last signed below.

Aclara	Technologies	LLC

Town of Prosper, TX

By	By
Kumi Premathilake	Name
Title DVP AMI and Services	Title
12/20/2023 Date	Date

Acalra – Prosper



SCHEDULE J LEVEL OF MAINTENANCE SERVICES SELECTED

Customer:		ner: Town of Prosper, a Texas cor	poration	on	
Ad	dres	s: 250 W. First Street, Prosper,	TX 75	078	
 Billing frequency is annually in advance. If a Purchase Order number is required on Aclara invoices, please check here. 					
	a.	Selected Maintenance Level (check one) (Ann	ual Fi	st Term Price shown):	
		☑ AclaraONE Maintenance☑ Mobile Programmer	\$ \$	Included in Network Freedom fee Included in Network Freedom fee	
	b.	Supplemental Services: ☐ System Monitoring Service, Tier 2 ☐ DCU Maintenance Service, Tier 1 ☐ Aclara Wireless Network 100mb/mo	\$ \$ \$	Included in Network Freedom fee Included in Network Freedom fee	
	C.	 Network Freedom – Network Services¹ Network Freedom Year 1 EUS – Network S Network Freedom Year 2 EUS – Network S Network Freedom Year 3 EUS – Network S Network Freedom Year 4 EUS – Network S Network Freedom Year 5 EUS – Network S Network Freedom Year 6 EUS – Network S Network Freedom Year 7 EUS – Network S Network Freedom Year 8 EUS – Network S Network Freedom Year 9 EUS – Network S Network Freedom Year 9 EUS – Network S Network Freedom Year 9 EUS – Network S 	Service Service Service Service Service Service Service	98 \$ 106,799,00 98 \$ 106,799,00 98 \$ 106,799,00 98 \$ 109,922.39 98 \$ 113,220.06 98 \$ 116,616.67 98 \$ 120,115.17 98 \$ 123,718.62	

¹ Based on 12 DCU's.

Acalra – Prosper

3. Customer Designated Contact Information:

Designated Renewal Contact Information	Designated Contact Information
Name	Name
Title	Title
Address	Address
Address	Address
Telephone	Telephone
Fax	Fax
Cellular Phone	Cellular Phone
Email Address	Email Address
Designated Contact Information	Designated Contact Information
· ·	Designated Contact Information Name
Name	Name
· ·	
Name Title	Name Title Address
Name TitleAddress	Name
Name Title Address Address	Name Title Address Address
Name Title Address Address Telephone	Name Title Address Address Telephone



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: Shade Structure at Cockrell Elementary

Town Council Meeting – January 9

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approval of the purchase and installation of a shade structure for the Cynthia A. Cockrell Elementary School Playground.

Description of Agenda Item:

The Parks Department is partnering with Prosper Independent School District to purchase and have installed a large shade structure that will cover most of the existing play equipment at the Cynthia A. Cockrell Elementary School Playground. The anticipated and budgeted amount for the project was \$75,000 with the expectation that the PTO would cover half the cost. The quote came in higher than expected, so the Parks and Recreation Department has identified funds to cover the shortfall in another account to be able to complete the project. The Cockrell Elementary PTO is providing \$30,000 toward the project cost. Many of Prosper's older park playgrounds and school playgrounds provide little shade. Providing better shade will make the playground safer for use during the hot weather months. It will also extend the life of plastic playground components by reducing the amount of direct ultraviolet light falling onto the equipment.

Budget Impact:

The total cost of the shade structure including full installation is \$95,228. Funding for this contract is available in account 100-5190-60-01 (\$75,000) and 100-5480-60-02 (\$20,228). The Cockrell Elementary PTO is contributing \$30,000 towards the project.

Attached Documents:

- 1. Buy Board Purchasing Cooperative Quote
- 2. Buyboard Contract Summary

Town Staff Recommendation:

Town Staff recommends approval of the purchase and installation of a shade structure for the Cynthia A. Cockrell Elementary School Playground.

Proposed Motion:

I move to approve the purchase and installation of a shade structure for the Cynthia A. Cockrell Elementary School Playground.



JS

10661 Shady Trail Dallas, TX 75220 (P) 972-484-0600 (F) 972-484-0333

ADDRESS

Kurt Beilharz Prosper Cockrell Park 407 E. Main Street Prosper, TX 75078

SHIP TO

Kurt Beilharz

Prosper Cockrell Park Prosper, TX 75078

QUOTE#	DATE	EXPIRATION DATE
23-1952	10/03/2023	11/10/2023

PROJECT SALES REP

Playground Shade Canopy

DESCRIPTION	QTY	PRICE EACH	AMOUNT
Buyboard This is a Buyboard Purchasing Cooperative Quote. Pricing reflects Buyboard discounts as listed under Contract #679-22, Vendor #1501	1	0.00	0.00
CPIShade Shade Canopy: 60'x60'x15' entry height, 4 Post Hip Shade. Colors: TBD	1	60,078.00	60,078.00
Engineered Drawings Engineered Drawings	1	2,050.00	2,050.00
Freight Freight	1	1,600.00	1,600.00
InstallSC Shade Canopy Pier Drilling, Re-Bar Cages, Concrete, Dirt Haul Off & Installation of Canopy Posts & Top	1	29,500.00	29,500.00
Site Work Site Work: repair playground rubber surfacing, with contrasting color per customer selections.	1	2,000.00	2,000.00
Misc **Permits are required, but Fees are waived per City of Prosper for City owned Park. Inspection is necessary for Piers and Final.	0	0.00	0.00
Install Terms Installation charges, if quoted, are for a "standard" installation unless specifically noted otherwise. Installation charges are due upon completion. Standard installations generally require from 2-10 business days to complete, depending upon the amount and type of equipment, site conditions, weather, and schedule. Work may or may not be performed in consecutive days. The quote is based on the site being level and with no resilient surfacing (sand, gravel, bark, etc.) being in place. A charge will be assessed to level site or remove resilient surfacing based upon equipment/material costs and man hours required. Any and all permits and any fees associated with the permits are the	1	0.00	0.00

DESCRIPTION	QTY	PRICE EACH	AN	Item 9.
responsibility of owner/contractor.				
An additional charge will be required if digging of footing cannot be performed by equipment or if rock conditions are encountered. Additional man hours/jack hammers required to dig footings will be added to the contract price at a minimum of \$250/per jack hammer per day. Installation is based upon unrestricted access to site for equipment, i.e., Bobcats, concrete trucks, dump trucks, and miscellaneous work vehicles. Installers are not responsible for damages to irrigation, landscape and utilities. Protection for these items is the responsibility of the owner.				

**TOTAL \$95,228.00

Accepted By Accepted Date

Vendor Contract Information Summary

Vendor Child's Play, Inc.

Contact Kathy Robertson

Phone 972-484-0600

Email Kathy@childsplayinc.net

Vendor Website www.childsplayinc.net

TIN 75-2670715

Address Line 1 10661 Shady Trail

Vendor City Dallas

Vendor Zip 75220

Vendor State TX

Vendor Country USA

Delivery Days 10

Freight Terms FOB Destination

Payment Terms Net 30

Shipping Terms Freight prepaid by vendor and added to invoice

Ship Via Common Carrier

Designated Dealer No

EDGAR Received Yes

Service-disabled Veteran Owned No

Minority Owned No

Women Owned No

National Yes

No Foreign Terrorist Orgs Yes

No Israel Boycott Yes

MWBE No

ESCs 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17

States Texas

Contract Name Parks and Recreation Equipment, Products, and Installation

Contract No. 679-22

Effective 10/01/2022

Expiration 09/30/2025

Accepts RFQs Yes

Quote Reference Number 679-22

Return Policy All returns must be approved first by Child's Play



PARKS AND RECREATION

To: Mayor and Town Council

From: Dan Baker, Parks and Recreation Director

Through: Mario Canizares, Town Manager

Robyn Battle, Executive Director

Re: Dylan Dr. Lease Renewal – Park Ops

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approval of a lease agreement renewal for 101 Dylan Drive #D for the Park Operations facility.

Description of Agenda Item:

The lease agreement for 101 Dylan Dr. #D housing the Park Operations staff and equipment is up for renewal. The terms of the lease have not changed with the exception of an anticipated rent increase. The Town has leased space at this location since 2012.

Budget Impact:

Rent increased from \$2250 / month to \$2958.64 / month which is an increase of \$708.64 / month. Staff did anticipate an increase which was reflected in the FY 2023-2024 budget request and subsequent award. This expense is being funded from account100-5310-60-02.

Legal Obligations and Review:

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

Attached Documents:

1. Frontier Park Commercial Lease agreement

Town Staff Recommendation:

Town Staff recommends the approval of a lease agreement renewal for 101 Dylan Drive #D for the Park Operations facility.

Proposed Motion:

I move to approve a lease agreement renewal for 101 Dylan Drive #D for the Park Operations facility.

FRONTIER BUSINESS PARK

COMMERCIAL LEASE

This lease is made between **EFFIE CHRISTIE**, herein called Landlord, and **TOWN OF PROSPER**, herein called Tenant.

Landlord leases to Tenant the premises situated in Prosper, Collin County, Texas, described as 101 Dylan Dr., Suite D, Prosper, Texas, containing 3,600 sf, upon the following terms and conditions:

- 1. Term and Base Rental. The term of this lease is twenty-four (24) months commencing January 1, 2024 and terminating on December 31, 2025 or sooner as provided herein at the base monthly rental of Two Thousand Two Hundred Fifty and no/100 (\$2,250.00) Dollars, payable in twenty-four (24) monthly installments of \$2,250.00 in advance on the 1st day of each month for that month's rental, beginning January 1, 2024 and continuing for the remaining term of this lease. All rental payments shall be made to Landlord at the address specified below.
- 2. Late Charges. If Tenant fails to timely pay any month's rent, Tenant will pay Landlord an initial late charge of \$50.00 plus additional late charges of \$20.00 per day thereafter until rent is paid in full. If Landlord receives the monthly rent by the 3rd day of the month, Landlord will waive the late charges for that month. Any waiver of late charges under this paragraph will not affect or diminish any other right or remedy Landlord may exercise for Tenant's failure to timely pay rent (including reporting late payments to consumer reporting agencies).
- **3.** *Additional Rent.* In addition to the base rental provided in paragraph 1 above, Tenant shall pay on the 1st day of each month the following:
 - (a) Taxes and Insurance.
 - (1) Tenant agrees to pay, as additional rent, Tenant's pro rata share of the Tax and Insurance Expenses within ten (10) days following receipt of an invoice from Landlord stating the amount due.
 - (2) At or prior to commencement of this lease and at any time during the lease term, Landlord may deliver to Tenant a written estimate of the additional rent applicable to the leased premises which may be anticipated for Tax and Insurance Expenses during the calendar year in which this lease commences

- or for any succeeding calendar year, as the case may be. Based upon such written estimate, the monthly base rental shall be increased by one-twelfth (1/12) of the estimated additional rent.
- (3) Statements showing the actual Tax and Insurance Expenses, as well as the actual Common Area Maintenance Expenses as defined in paragraph 3.(b)(4) below, and Tenant's proportionate share thereof, hereinafter referred to as the "Statement of Actual Adjustment" shall be delivered by Landlord to Tenant after each calendar year. Within ten (10) days after the delivery by Landlord to Tenant of such Statement of Actual Adjustment, Tenant shall pay Landlord the amount of any additional rental shown on such statement as being due and unpaid. If such Statement of Actual Adjustment shows that Tenant has paid more than the amount of additional rental actually due from Tenant for the preceding calendar year and if Tenant is not then in default under this lease, Landlord may refund the amount of such excess to Tenant.
- (4) "Tax and Insurance Expenses" shall mean: (i) all ad valorem, rental, sales, use and other taxes (other than Landlord's income taxes), special assessments and other governmental charges, and all assessments due to deed restrictions and/or owner's associations which accrue against the property during the term of this lease; and (ii) all insurance premiums paid by Landlord with respect to the property including, without limitation, public liability, casualty, rental and property damage insurance.

(b) Common Area Maintenance.

- (1) In addition to the rental payable under paragraphs 1. and 3.(a) above, Tenant agrees to pay, as additional monthly rental, its pro rata share of the "Common Area Maintenance Expenses."
- (2) At or prior to the commencement of this lease and at any time during the lease term, Landlord may deliver to Tenant a written estimate of the additional rent applicable to the leased premises which may be anticipated for Common Area Maintenance Expenses during the calendar year in which this lease commences or for any succeeding calendar year, as the case may be.

- Based upon such written estimate, the monthly base rental shall be increased by one-twelfth (1/12) of said estimated additional rent.
- (3) The Statement of Actual Adjustment shall then include the actual Common Area Maintenance Expenses for the preceding period, and adjustments effected, as provided in Paragraph 3.(a)(3) above.
- (4) "Common Area Maintenance Expenses" shall mean all expenses (other than Tax and Insurance Expenses described above) incurred by Landlord for the maintenance, repair and operation of the project (excluding only structural soundness of the roof, foundation and exterior walls) including, but not limited to, management fees, utility expenses (if not separately metered), maintenance and repair costs, sewer, landscaping, trash and security costs (if furnished by Landlord), wages and fringe benefits payable to employees of Landlord whose duties are connected with the operation and maintenance of the project, amounts paid to contractors or subcontractors for work or services performed in connection with the operation and maintenance of the project, all services, supplies, repairs, replacements or other expenses for maintaining, repairing and operating the project, including, without limitation, common areas and parking areas and roof, exterior wall and foundation work that is not related to structural soundness.
- of any capital improvement to the project other than the reasonably amortized cost of capital improvements which result in the reduction of Insurance Expenses or Common Area Maintenance Expenses. Further, the term "Common Area Maintenance Expenses" shall not include repair, restoration or other work occasioned by fire, windstorm or other casualty with respect to which Landlord actually receives insurance proceeds, income and/or franchise taxes of Landlord, expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses, expenses for the renovating of space for new tenants, interest or principal payments on any mortgage or other indebtedness of Landlord, compensation paid to any

- employee of Landlord above the grade of building superintendent, or depreciation allowance or expense.
- (c) If the commencement date of this lease is a day other than the first day of a month or if the termination date is a day other than the last day of a month, the amount shown as due by Tenant on the Statement of Actual Adjustment shall reflect a proration based on the ratio that the number of days this lease was in effect during such month bears to the actual number of days in said month.
- (d) The failure of Landlord to exercise its rights hereunder to estimate expenses and require payment of same as additional rental shall not constitute a waiver of such rights, which rights may be exercised from time to time at Landlord's discretion.
- (e) If the nature of Tenant's business or use of the leased premises is such that additional costs are incurred by Landlord for cleaning, sanitation, trash collection or disposal services, Tenant agrees to pay as additional rental to Landlord the amount of such additional costs upon demand.
- 4. Use. Tenant shall use and occupy the premises as an office/warehouse for equipment storage and maintenance. The premises shall be used for no other purpose. Tenant must satisfy itself that the leased premises may be used as Tenant intends by independently investigating all matters relating to the use of the leased premises. Tenant agrees it is not relying on any warranty or representation made by Landlord, Landlord's agent or any broker concerning the use of the leased premises. Tenant acknowledges that only the leased premises may be used for Tenant's business purposes and that the parking area associated with the premises may only be used for Tenant or Tenant's employees and customers' personal vehicles. The parking area assigned to the leased premises is located adjacent to and along the front length of the premises, and Tenant agrees not to infringe on the parking area of other tenants at Frontier Business Park.
- 5. Prohibited Activities. Tenant shall not do or permit anything to be done in or about the leased premises nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the project or any of its contents or cause cancellation of any insurance policy covering said project or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the leased premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the project or injure or annoy them or use or allow the leased premises to be used for any improper, immoral, unlawful or objectionable purpose,

nor shall Tenant cause, maintain or permit any nuisance in, on or about the leased premises. Tenant shall not commit or suffer to be committed any waste in or upon the leased premises.

Tenant shall not do or permit to be done in or about the leased premises any of the following:

(a) commit any violation of any federal, state or municipal ordinance or any regulation, ordinance, order or directive of a governmental agency as such statutes, ordinances, regulations, order or directives that now exist or may hereafter concern the use, safety or environment of the property; (b) commit any violation of any Certificate of Occupancy covering or affecting the use of the property or any part thereof; (c) commit any public or private nuisance.

- order and maintenance of Premises. Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at its own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises, and shall surrender the same at termination hereof in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for all repairs required, excepting the roof, exterior walls and structural foundations, unless repairs to the roof, exterior walls or structural foundations are required as a result of negligence or damage on the part of Tenant, in which event Tenant shall be responsible for such repairs.
- **7.** Alterations. Tenant shall not, without first obtaining the written consent of Landlord, make any alterations, additions or improvements in, to or about the premises, including heating and air conditioning units, which shall be installed at Tenant's expense. Any alterations approved by Landlord and made by Tenant shall become part of the leased premises.
- **8.** *Ordinances and Statutes.* Tenant shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the premises, occasioned by or affecting the use thereof by Tenant.
- **9.** Assignment and Subletting. Tenant shall not assign this lease or sublet any portion of the premises without prior written consent of the Landlord, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of Landlord, may terminate this lease.
- **10.** *Utilities.* All applications and connections for necessary utility services on the demised premises shall be made in the name of Tenant only, and Tenant shall be solely liable for utility charges as they become due, including those for water, sewer, gas, electricity and telephone services.

Tenant acknowledges the premises are served by an on-site water well and an on-site septic system and agrees to refrain from water usage above that required in the normal course of Tenant's business and to refrain from the placement of any shop towels, feminine hygiene products or other heavy paper products in the toilet(s) located in the premises.

- 11. Entry and Inspection. Tenant shall permit Landlord or Landlord's agents to enter upon the premises at reasonable times and upon reasonable notice for the purpose of inspecting the same and will permit Landlord at any time within sixty (60) days prior to the expiration of this lease to place upon the premises any usual "to let" or "for lease" signs and permit persons desiring to lease the same to inspect the premises thereafter.
- **12.** *Possession.* If Landlord is unable to deliver possession of the premises at the commencement hereof, Landlord shall not be liable for any damage caused thereby nor shall this lease be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this lease if possession is not delivered within three (3) days of the commencement of the term hereof.
- 13. Indemnification of Landlord. To the extent allowed by Texas law, Tenant shall indemnify, defend and hold harmless Landlord, his successors, heirs and assigns, from any demands, actions, causes of action, obligations, loss, damage, liability or expense, including attorneys' fees and expenses, on account of or with respect to damage to property and injuries, including death, to any and all persons which may arise out of Tenant's occupancy of the premises, Tenant's action or inaction or result from any defect, deficiency or negligence in the leased premises, and Tenant shall defend at his own expense any suits or other proceedings brought against Landlord, his successors, heirs and assigns, or any of them, on account thereof, and shall pay all expenses and satisfy all judgments which may be incurred or rendered against them or any of them in connection herewith. Landlord shall not be liable for any damage or injury to Tenant or any other person or to any property occurring on the demised premises or any part thereof, and Tenant agrees to hold Landlord harmless from any claim for damages, no matter how caused, including, but not limited to, the negligence of Landlord or any defect in the leased premises.
- **14.** *Tenant Insurance.* Tenant, at its expense, shall maintain Fire Legal Liability (Damage to Premises Rented to You) in the amount of \$180,000.00 and Public Liability Insurance including bodily injury and property damage insuring Tenant with \$1,000,000.00 per occurrence minimum coverage. It is agreed and understood that Tenant shall have the obligation to provide insurance

coverage on furniture, equipment, machinery, goods and supplies owned by Tenant or brought onto the property by Tenant.

Tenant shall provide Landlord with a Certificate of Insurance showing Landlord as loss payee on fire legal liability coverage and additional insured on public liability coverage. The Certificate shall provide for ten days' written notice to Landlord in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Landlord or Tenant, Landlord and Tenant, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

- 15. Eminent Domain. If the premises or any part thereof or any estate therein or any other part of the building materially affecting Tenant's use of the premises shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent and any additional rent shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Tenant. Tenant shall not be entitled to any part of the award for such taking or payment in lieu thereof, but Tenant may file a claim for any taking of fixtures and improvements owned by Tenant and for moving expenses.
- 16. Destruction of Premises. In the event of a partial destruction of the premises during the term hereof from any cause, Landlord shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the premises. If such repairs cannot be made within said sixty (60) days, Landlord, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Landlord shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the leased premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Landlord may elect to terminate this lease whether the leased premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
- **17.** *Landlord's Remedies on Default.* The following events shall be deemed to be events of default by Tenant under this lease:

- (a) Tenant fails to pay any installment of rental or any other expense demanded by Landlord as herein provided and such failure continues for a period of ten days.
- (b) Tenant fails to comply with any term, provision or covenant of this lease other than the payment of rental or expenses demanded by Landlord and does not cure such failure within ten days after written notice thereof to Tenant.
- (c) Tenant or any guarantor of Tenant's obligations under this lease becomes insolvent, makes a transfer in fraud of creditors or shall make an assignment for the benefit of creditors.
- (d) Tenant or any guarantor of Tenant's obligations under this lease files a petition under federal or state bankruptcy laws or under any similar law or statute of the United States or any state thereof; or Tenant or any guarantor of Tenant's obligations under this lease is adjudged bankrupt or insolvent and proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease.
- (e) A receiver or trustee is appointed for the leased premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this lease.
- **(f)** Tenant deserts or vacates any portion of the leased premises.
- (g) Tenant does or permits to be done anything which creates a lien on the leased premises.
- (h) The business operated by Tenant is closed for failure to pay any required state sales tax or for any other reason.

Upon the occurrence of any default by Tenant as set forth above, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- (a) Terminate this lease, in which event Tenant shall immediately surrender the leased premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which he may have for possession or arrearages in rental, enter upon and take possession of the leased premises and expel or remove Tenant and any other person who may be occupying the leased premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor.
- (b) Enter upon and take possession of the leased premises and expel or remove Tenant and any other person who may be occupying the leased premises or any part thereof, by force

if necessary, without being liable for prosecution or any claim for damages therefor with or without having terminated the lease.

(c) Alter all locks and other security devices at the leased premises without terminating the lease.

No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the leased premises shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any event of default, to the aforesaid exercise of dominion over Tenant's property within the leased premises. Tenant agrees that any re-entry by Landlord may be pursuant to a judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise.

If Landlord elects to terminate this lease by reason of an event of default, then notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord the sum of all rental and other indebtedness accrued to date of such termination. If Landlord elects to repossess the leased premises without terminating this lease, then Tenant shall be liable for and shall pay to Landlord all rental and other indebtedness accrued to the date of such repossession, plus rental required to be paid by Tenant to Landlord during the remainder of the term of this lease until the date of expiration of such term diminished by any net sums thereafter received by Landlord through reletting the leased premises during such period (after deducting expenses incurred by Landlord in connection with reletting the leased premises).

18. Security Deposit. Tenant shall place with Landlord an additional security deposit in the amount of Two Thousand Forty-five (\$2,045.00) Dollars, which shall be added to Tenant's existing deposit in the amount of Nine Hundred and no/100 (\$900.00) Dollars, for a total of a Two Thousand Nine Hundred Forty-five and no/100 (\$2,945.00) Dollars to be held by Landlord as a security deposit for the performance of Tenant's obligations under this lease, including without limitation the surrender of possession of the premises to Landlord as herein provided. If Landlord applies any part of the deposit to cure any default of Tenant, Tenant shall on demand deposit with Landlord the amount so applied so that Landlord shall have the full deposit on hand at all times during the term of this lease. Within thirty (30) days after Tenant surrenders the leased premises and provides Landlord written notice of Tenant's forwarding address, Landlord will refund the security deposit less any amounts applied toward amounts owed by Tenant or other charges authorized by this lease.

- **19.** *Move Out Condition.* At the expiration of this lease, Tenant agrees to surrender the premises in the same condition as when received, except for normal wear and tear. Tenant will leave the leased premises in a clean condition free of all trash, debris, personal property, hazardous materials and environmental contaminants.
- **20.** Attorney's Fees. In case suit should be brought for recovery of the premises or for any sum due hereunder or because of any act which may arise out of the possession of the premises by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.
- 21. *Notices*. Any notice which either party may or is required to give shall be given by mailing the same, postage prepaid, to Tenant at _______ or Landlord at the address shown below or at such other places as may be designated by the parties from time to time.
- **22.** *Heirs, Assigns, Successors.* This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties hereto.
- 23. Automatic Renewal and Termination. This lease automatically renews on a month to month basis unless Landlord or Tenant provides the other party written notice of termination not less than thirty (30) days prior to the expiration date. If the lease automatically renews on a month to month basis, it will continue to renew on a month to month basis until either party provides written notice of termination to the other party, and the notice of termination will be effective on the last day of the month following the month in which the notice is given. Landlord will not be required to prorate rent even if Tenant surrenders the property before the termination date.
- **24.** *Option to Renew and Extend.* Tenant shall have the right to renew and extend this lease three (3) times in one year increments. All terms and condition of the lease shall remain the same, except the rental rate shall be subject to adjustment at Landlord's option.
- **25.** *Tenant Mailbox*. Tenant, at Tenant's option, is entitled to one mailbox slot in the cluster mailbox at Frontier Business Park and shall be provided a mailbox key by Tenant. Such key shall be returned to Landlord upon expiration of this lease or Tenant shall pay a \$100 lost key charge.
- **26. Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.
- **27.** *Entire Agreement.* The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following exhibits, if any, have been made a part of this lease before the parties' execution hereof.

Signed this	_ day of	, 2023.	
Landlord's Address:			
c/o Collin County Land Co.			
P. O. Box 610		EFFIE CHRISTIE, Lessor	
Prosper, Texas 75078			
972-346-3333			
972-346-3430 (fax)			
m		MOWN OF PROCEED	
Tenant's Address:		TOWN OF PROSPER	
101 Dylan Drive, Suite D			
Prosper, Texas 75078			
Phone:		Rv	

Property Manager:
Kathy Webster
Collin County Land Company
P. O. Box 610
Prosper, Texas 75078
972-346-3333
214-957-5875 cell
kwebster@collincountylandcompany.com



POLICE DEPARTMENT

To: Mayor and Town Council

From: Doug Kowalski, Chief of Police

Through: Mario Canizares, Town Manager

Re: FY24 Annual Purchase of Ammunition and Range Supplies

Town Council Meeting – January 9, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving the annual purchase of ammunition and range supplies from GT Distributors, Inc. and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

This item is being submitted as part of the Fiscal Year 2024 budgeted annual purchase in the amount of \$96,411.20 for ammunition and range supplies from GT Distributors, Inc. utilizing BuyBoard Contract #698-23.

Budget Impact:

The amount of \$96,411.20 is funded in Police Operations Ammunition Account #100-5215-20-01.

Attached Documents:

- 1. Vendor Quote
- 2. Buyboard Contract Information Summary

Town Staff Recommendation:

Town staff recommends the Town Council approve the annual purchase of ammunition and range supplies from GT Distributors, Inc. and authorizing the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve the annual purchase of ammunition and range supplies from GT Distributors, Inc. and authorizing the Town Manager to execute documents for the same.



 Quote
 QTE0

 Date
 12/18

 Page:
 1

GT Distributors - Austin 1124 New Meister Ln., Ste 100 Pflugerville TX 78660 (512) 451-8298 Ext. 0000

Bill To:

Prosper, Town of (TX) Attn: Accounts Payable

P.O. Box 307 Prosper TX 75078 Ship To:

Prosper, Town of (TX) 801 Safety Way Attn: Lt. Barrett Morris

PO #:

Prosper TX 75078

						pei ix	73070		
Purchase	Order No.	Customer 005576	ID	Salesperson ID	Shipping Metho		nent Terms	Reg Ship Date	2,850,184
Quantity	Item Num	<u> </u>	Descri	1	I NOTOKT BIKEOT	11451	UOM	1	Ext. Price
	FC-AE9AP	*		Cartridge 9Mm 12	24 Gr FMJ		M	\$285.53	\$21,414.7
20.00	CCI-53617	*	CCI Go	old Dot 9Mm +P 12	24 Grain		M	\$621.99	\$12,439.80
20.00	HORNADY	′-FR200*	Hornad	y Ammo Frontier 5	5.56 NATO 55gr FMJ		М	\$519.50	\$10,390.00
18.00	FC-LE2231	Г3*	Federal	Cartridge223 62	Gr. Tactical		М	\$1,913.53	\$34,443.54
5.00	HORNADY	′-80725*	Hornad	y 308 Win 168 Gr	Eld Match Tap		М	\$1,439.70	\$7,198.50
150	FOF-FF556	6R1-BX	Force o	n Force 5.56Marki	ing 20/BX Red		вх	\$18.99	\$2,848.50
60	FOF-FF9R	2-BX	Force o	n Force 9mm 50/E	3X Red		вх	\$36.99	\$2,219.40
5	HL-R-0152	6	Bacou/l	Howard Leight Ele	ctronic Ear Muff		EA	\$62.99000	\$314.9
61	OTIS-FG-2	23-645*	Otis We	Otis Weapon Cleaning System 5.56/ .223			Each	\$53.99	\$3,293.3
1	OTIS-FG-4	.016-AR*	Otis AR	Elite Range Box			Each	\$242.99	\$242.9
1	MMD-CRT	-15	Magna	Matic Defense (CF	RT-AR) Bolt Carrier Cl		EA	\$32.39	\$32.3
1	FIS-FISFA	K-TL	Fix It St	icks Field Armorer	's Toolkit w/ 5 Torqu		Each	\$585.00	\$585.00
2	FIS-PRKTL	-	Fix It St	icks Long Range (Competition Toolkit w/		Each	\$369.00	\$738.0
1	NOTES:		Notes:				EA	\$0.00	\$0.0
1	NOTES:		Phone Email:	ct Name: Lt. Barrei number: (972) 56 BMorris@prosper al Instructions: N/A	9-1032 tx.gov		EA	\$0.00	\$0.00
			Quotat	tion reflects BuyBo	oard Contract 698-23.				



Quote	QTE0	102500
Date	12/18	Item 11.
Page:	2	

GT Distributors - Austin 1124 New Meister Ln., Ste 100 Pflugerville TX 78660 (512) 451-8298 Ext. 0000

Bill To:

Prosper, Town of (TX) Attn: Accounts Payable

P.O. Box 307 Prosper TX 75078 Ship To:

Prosper, Town of (TX) 801 Safety Way Attn: Lt. Barrett Morris

PO #:

Prosper TX 75078

						1 1	ospei	1/				
Purchase	Order No.	Customer I	D	Salespersor	ı ID	Shipping Met	hod	Pavme	nt Terms	Req Ship Date	e Mast	er No.
MORRIS 18	DEC23 AM	005576		MPH		FACTORY DIRE	СТ	NET 15		0/0/0000	2,8	50,184
Quantity	Item Num	ber	Descri	ption		•	•		UOM	Unit Price	Ext. P	rice
MORRIS 18 Quantity 1	DEC23 AM	005576	Descri Contra Email I Notes: Quote Please Freight or lift-g Notes: Ammo lead-tir	mPH ption ct period 4/1/2 BuyBoard PO's is valid through reference que t may vary with pate requirement	3-3/3 to in 23 Jote nu quarnts.	IFACTORY DIRE 1/24. fo@buyboard.cor Jan. 2024. umber on PO. ntity changes	СТ	NET 15	UOM EA	0/0/0000 Unit Price \$0.00	2,8 Ext. P	50,184

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Morris, Barrett BMorris@prospertx.gov Your salesperson was James. We appreciate your business!

Subtotal	\$96,161.21
Misc	\$0.00
Tax	\$0.00
Freight	\$249.99
Total	Page 114

Light State of State

Vendor GT Distributors, Inc.

Contact DAVID CURTIS

Phone 512-451-8298

Email sales@gtdist.com

Vendor Website www.gtdist.com

TIN 74-2339528

Address Line 1 1124 New Meister Lane

Address Line 2 Suite 100

Vendor City Pflugerville

Vendor Zip 78660-6937

Vendor State TX

Vendor Country USA

Delivery Days 10

Freight Terms FOB Destination

Payment Terms Net 30

Shipping Terms Freight prepaid by vendor and added to invoice

Ship Via Common Carrier

Designated Dealer No

EDGAR Received Yes

Service-disabled Veteran Owned No

Minority Owned No

Women Owned No

National No

No Foreign Terrorist Orgs Yes

No Israel Boycott Yes

MWBE No

ESCs All Texas Regions

States All States

Contract Name Public Safety and Firehouse Supplies and Equipment

Contract No. 698-23

Effective 04/01/2023

Expiration 03/31/2026

Accepts RFQs Yes



POLICE DEPARTMENT

To: Mayor and Town Council

From: Doug Kowalski, Chief of Police

Through: Mario Canizares, Town Manager

Re: Flock Group, Inc. Service Agreement

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon a resolution approving a Service Agreement with Flock Group, Inc. for the lease of flock safety automatic license plate recognition (ALPR) cameras and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

In January 2023, the Town Council approved a two-year Service Agreement with Flock Group, Inc. for the purchase of a software and hardware situational awareness solution for automatic license plate readers, video, and audio detection. On November 28, 2023, the Town Council approved an updated 5-year Service Agreement to add additional functionality and services with the addition of several live-feed Condor cameras and FlockOS. After it was approved and executed, the vendor advised the services had not been correctly listed and submitted a revised Service Agreement. The revised Service Agreement includes the intended additional functionality and product integrations. In addition, the Service Agreement locks in pricing at the current rates for the next five (5) years and supersedes the originally approved agreements.

Budget Impact:

This will be funded in the FY24 Operating Budget with the first-year costing \$164,500.00 with the annual recurring costs for years two through 5 being \$160,000.00 per year. The total contract amount totaling \$804,500.00 to be budgeted in subsequent fiscal years.

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. Service Agreement
- 2. Sole Source Letter
- 3. Resolution

Town Staff Recommendation:

Item 12.

Town Staff recommends approving a resolution approving a Service Agreement with Flock Group, Inc. for the lease of flock safety automatic license plate recognition (ALPR) cameras and authorizing the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve a resolution approving a Service Agreement with Flock Group, Inc. for the lease of flock safety automatic license plate recognition (ALPR) cameras and authorizing the Town Manager to execute documents for the same.

Flock Safety + TX - Prosper PD

Flock Group Inc. 1170 Howell Mill Rd, Suite 210 Atlanta, GA 30318

MAIN CONTACT: Ashley Shambo @shley.shambo@flocksafety.com 9723109832



EXHIBIT A **ORDER FORM**

Customer: TX - Prosper PD
Legal Entity Name: TX - Prosper PD
TX - Prosper PD
Accounts Payable Email: sbrewer@prospertx.gov

Address: 101 S Main St Prosper, Texas 75078

Initial Term: 60 Months
Renewal Term: 24 Months
Payment Terms: Net 30

Billing Frequency: Annual - First Year at Signing.

Retention Period: 30 Days

Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
Flock Safety Platform			\$160,000.00
Flock Safety Flock OS			
FlockOS TM	Included	1	Included
Flock Safety LPR Products			
Flock Safety Falcon ®	Included	44	Included
Flock Safety Falcon ® Flex	Included	4	Included
Flock Safety Video Products			
Flock Safety Condor TM PTZ w/ LTE Service	Included	6	Included
Flock Safety FlockOS Add Ons			
Flock Safety Advanced Search	\$5,000.00	1	\$5,000.00

Professional Services and One Time Purchases

Item	Cost	Quantity	Total
One Time Fees			
Flock Safety Professional Services			
Condor Professional Services - Standard Implementation Fee	\$750.00	6	\$4,500.00
		Subtotal Year 1:	\$164,500.00
		Annual Recurring Subtotal:	\$160,000.00
		Discounts:	\$120,000.00
		Estimated Tax:	\$0.00
		Contract Total:	\$804,500.00

Billing Schedule

Billing Schedule	Amount (USD)
Year 1	
At Contract Signing	\$164,500.00
Annual Recurring after Year 1	\$160,000.00
Contract Total	\$804,500.00

*Tax not included

Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$120,000.00
Flock Safety Add-ons	\$0.00
Flock Safety Professional Services	\$0.00

Product and Services Description

Item 12.

Flock Safety Platform Items	Product Description	Terms	
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.	
Flock Safety Falcon® Flex	An infrastructure-free, location-flexible license plate reader camera that enables the Customer to self-install.	The Term shall commence upon execution of this Statement of Work.	
Flock Safety Condor™	Flock's pan, tilt, zoom (PTZ) or fixed cameras which capture video footage with the option to stream live video, capture and view video recordings, and upload videos.	The Term shall commence upon first installation and validation of Flock Hardware.	

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

FlockOS Features & Description

Package: Elite

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Convoy Search	Identify vehicles that have been seen together so you can verify a potential accomplice and getaway car used during a string of vehicle thefts; Show me vehicles that were seen near this specific car multiple times
Visual Search	Upload a suspect vehicle photo from and alternative source (i.e. CCTV, doorbell camera, mobile phone), and machine learning will match it to vehicles recorded by Flock Safety cameras in the past 30 days
Multi Geo Search	Perform single and multi-location-based searches to link a suspect vehicle to one, or multiple crime scenes
Custom Hot List Deconfliction Portal	Allows Flock users to identify overlapping investigations and provide the contact information of opted-in parties to facilitate collaboration.
Hot List Attachments	The ability to add case notes, photos, reports, and other relevant case information to Custom Hot List Alert
Unlimited Vehicle Description Alerts	Users can set up and receive notifications for suspect vehicles based on body type, make, color, location and timeframe. Notifications are sent via app, SMS or email when a vehicle matching the predetermined criteria passes a camera in your organization's network.
Real-Time Routing (Formerly Vehicle Pursuit)	Displays possible vehicle routes on the Map after Hot List Hits
Wing Gateway, Wing Cloud, Wing VMS	Unlocks access to purchase Wing.

DocuSign Envelope ID: 0FFAAA5C-40E7-4056-8DAB-9518661B2676

Custom Map Layers	Ability for customers (and Flock Admins) to add & Department and proprietary ESRI may FlockOS' Map experience.	
AVL Connection	Displays Automatic Vehicle Location (AVL) of Patrol Vehicles on the Map, providing additional situational awareness.	
CAD Connection Displays Computer Aided Dispatch (CAD) alerts such as 911 calls on the Map, providing addition context.		
Body Camera/Dash Camera Integration	Displays Body Worn Camera (BWC) locations on the Map, providing additional situational awareness.	
or Plans Displays interior floor plans of buildings on the Map, providing additional situational awareness		
Flock Safety built and maintained agency website that allows citizens to register their cameras that they may be viewed by law enforcement. Law enforcement can view each registered cam on the FlockOS map.		
Ability to sign into the Flock Safety platform via Okta Single Sign On (SSO). This increase and information security.		

Item 12.

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms of Service located at https://www.flocksafety.com/terms-and-conditions

The Parties have executed this Agreement as of the dates set forth below.

FLOCK	GROUP, INC.	Customer: TX - Prosper PD	
By: _	Docusigned by: Mark Smith AC5C931454C24F3	By:	
Name: _	Mark Smith	Name:	
Title:	General Counsel	Title:	
Date:	12/6/2023	Date:	
		PO Number:	

ftock safety

Sole Source Letter for Flock Safety™ ALPR Cameras and Solution

Flock Safety is the sole manufacturer and developer of the Flock Safety ALPR Camera. Flock Safety is also the sole provider of the comprehensive monitoring, processing, and machine vision services which integrate with the Flock Safety ALPR Camera.

The Flock Safety ALPR camera and devices are the only Law Enforcement Grade ALPR System to offer the following combination of proprietary features:

1. Partnerships:

- Flock Safety is the only LPR provider to officially partner with AXON to be natively and directly integrated into Evidence.com
- Flock Safety is the only LPR provider to be fully integrated into a dynamic network of Axon's Fleet 3 mobile ALPR cameras for patrol cars and Flock Safety's Falcon cameras
- Access to additional cameras purchased by our HOA and private business partners, means an ever-increasing amount of cameras and data at no additional cost
- Ability to potential access additional cameras from Flock Customers, including:
 TX Irving PD, at no additional cost

Vehicle Fingerprint Technology™:

- Patented proprietary machine vision to analyze vehicle license plate, state recognition, and vehicle attributes such as color, type, make and objects (roof rack, bumper stickers, etc.) based on image analytics (not car registration data)
- Machine vision to capture and identify characteristics of vehicles with a paper license plate and vehicles with the absence of a license plate
- Ability to 'Save Search' based on description of vehicles using our patented Vehicle Fingerprint Technology without the need for a license plate, and set up alerts based on vehicle description
- Only LPR provider with "Visual Search" which can transform digital images from any source into an investigative lead by finding matching vehicles based on the vehicle attributes in the uploaded photo
- Falcon Flex™: an infrastructure-free, location-flexible license plate reader camera that is easy to self install. Falcon Flex ties seamlessly into the Flock ecosystem with a small and lightweight camera with the ability to read up to 30,000 license plates and vehicle attributes on a single battery charge

3. Integrated Cloud-Software & Hardware Platform:

ftock safety

- Ability to capture two (2+) lanes of traffic simultaneously with a single camera from a vertical mass
- Best in class ability to capture and process up to 30,000 vehicles per day with a single camera powered exclusively by solar power
- Wireless deployment of solar powered license plate reading cameras with integrated cellular communication weighing less than 5lbs and able to be powered solely by a solar panel of 60W or less
- Web based footage retrieval tool with filtering capabilities such as vehicle color, vehicle type, vehicle manufacturer, partial or full license plate, state of license plate, and object detection
- Utilizes motion capture to start and stop recording without the need for a reflective plate
- Motion detection allows for unique cases such as bicycle capture, ATV, motorcycle, etc.
- On device machine processing to limit LTE bandwidth consumption
- Cloud storage of footage
- Covert industrial design for minimizing visual pollution

4. Transparency & Ethical Product Design:

- One-of-a-kind "Transparency Portal" public-facing dashboard that details the policies in place by the purchaser, as well as automatically updated metrics from the Flock system
- o Built-in integration with NCMEC to receive AMBER Alerts to find missing children
- Privacy controls to enable certain vehicles to "opt-out" of being captured

5. Integrated Audio & Gunshot Detection:

 Natively integrated audio detection capabilities utilizing machine learning to recognize audio signatures typical of crimes in progress (e.g., gunshots)

6. Live Video Integration:

- Ability to apply computer vision to third-party cameras using Wing™ LPR, transforming them to evidence capture devices using the same Vehicle Fingerprint technology offered on the Flock Safety Falcon™ ALPR cameras
- Wing™ Livestream integrates live stream traffic cameras, publicly or privately owned livestream security cameras into one cloud-based situational awareness dashboard to increase response time in mission-critical incidents
- Manage various government intelligence including ALPR, livestream cameras,
 CAD, automatic vehicle location (AVL) on Flock Safety's Wing™ Suite

f tock safety

 Access Wing™ Replay to unlock enhanced situational awareness with 7-day footage retention, Hot List Live Video Instant Replay, and downloadable MP4

7. Warranty & Service:

- Lifetime maintenance and support included in subscription price
- Flock Safety is the only fully integrated ALPR one-stop solution from production of the camera to delivery and installation
- Performance monitoring software to predict potential failures, obstructions, tilts, and other critical or minor issues

Thank you,

Garrett Langley CEO, Flock Safety

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AUTHORIZING AND APPROVING A SERVICE AGREEMENT WITH FLOCK GROUP INC., FOR THE LEASE OF FLOCK SAFETY AUTOMATIC LICENSE PLATE RECOGNITION (ALPR) CAMERAS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE NECESSARY DOCUMENTS FOR THE LEASE OF SAID EQUIPMENT AND SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper strives to provide for the safety and protection of its citizens and visitors by pursuing all available means of enhancing public safety preparedness and operational capabilities; and

WHEREAS, the Town Council agrees that the license plate reader cameras are a deterrent to crime and provide leads for law enforcement officers; and

WHEREAS, the acquisition of license plate reader cameras from Flock Group, Inc., a sole source provider, is in the best interests of the public health and safety.

NOW, THEREFORE, BE IT RESOLVED 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, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

The Town Council hereby authorizes and approves the lease of forty-eight (48) license plate reader cameras, six (6) PTZ cameras, and related services from Flock Group, Inc., in the amount of \$804,500.00 over the next five years, with a total FY 2024 expenditure of \$164,500.00 for a total of fifty-four (54) cameras.

SECTION 3

The Town Manager, or his designee, is authorized to execute all necessary documents on the Town's behalf and to issue purchase orders in conformity with this Resolution including, but not limited to, Agreements with the TX Department of Public Safety (TXDPS) and the TX Department of Transportation (TxDOT).

SECTION 4

This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS THE 9TH DAY OF JANUARY, 2024.

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: Doug Kowalski, Chief of Police

Through: Mario Canizares, Town Manager

Re: TxDOT Multiple Use Agreement

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon a Multiple Use Agreement (MUA) between the Town of Prosper, Texas and the Texas Department of Transportation (TxDOT) for the construction, maintenance, and operation of a public Fixed License Plate Reader System; and to authorize the Town Manager to execute documents for the same.

Description of Agenda Item:

In coordination with the Flock Service Agreement, the Texas Department of Transportation (TxDOT) requires a Multiple Use Agreement (MUA) to be approved in order to issue the permits necessary for ALPR cameras to be placed on TxDOT roads and in the TxDOT right-of-way.

This is a companion item to the Flock Service Agreement listed on the agenda.

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. Mutual Use Agreement

Town Staff Recommendation:

Town Staff recommends approving a Multiple Use Agreement (MUA) between the Town of Prosper, Texas and the Texas Department of Transportation (TxDOT) for the construction, maintenance, and operation of a public Fixed License Plate Reader System; and to authorize the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve a Multiple Use Agreement (MUA) between the Town of Prosper, Texas and the Texas Department of Transportation (TxDOT) for the construction, maintenance, and operation of a public Fixed License Plate Reader System; and to authorize the Town Manager to execute documents for the same.



MULTIPLE USE AGREEMENT

STATE OF TEXAS §
COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and Town of Prosper, hereinafter called the Town, party of the second part, is to become effective when fully executed by both parties.

<u>WITNESSETH</u>

WHEREAS	on the	_ day of _	, 2023, the governing body for	the <u>Town</u> , entered into
Resolution/0	Ordinance No		hereinafter identified by reference,	authorizing the <u>Town</u> 's
participation	in this agreeme	ent with the	e State; and	
WHEREAS	the <u>Town</u> has re	equested t	the State to permit the construction, main	tenance, and operation
of a public	Fixed License	Plate Rea	<u>ider System</u> on the highway right of way	, (ROADWAY <u>TX 289</u> ,
CONTROL	SECTION	NO.	33,2215741288054,-96.79986869707744,	33.260013521501165,-
96.78445281	.827842, 33.25998	804862324	<u>,-96.78459532232885</u>	

(General description of area including either the control number or GPS coordinates.)

Shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

WHEREAS the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the <u>Town</u> will enter into agreements with the State for the purpose of determining the respective responsibilities of the <u>Town</u> and the State reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

1. DESIGN AND CONSTRUCTION

The <u>Town</u> will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State. Any sidewalks, curb ramps and other pedestrian elements to be constructed, either on site or off site, by the <u>Town</u>, shall be in accordance with the requirements of Title II of the Americans With Disabilities Act (ADA) and with the Texas Accessibility Standards (TAS). Elements constructed by the <u>Town</u> and found not to comply with ADA or TAS shall be corrected at the entire expense of the <u>Town</u>.

2. INSPECTION

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

3. PARKING REGULATIONS

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1¹/₂ ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

4. PROHIBITION/SIGNS

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

5. RESPONSIBILITIES

Timely maintenance, repair and operation of the facility shall be entirely the responsibility of the <u>Town</u>. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. These responsibilities expressly include the timely maintenance and repair of any portion of the facility necessary to comply with the Americans with Disabilities Act. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow. If the State determines that the <u>Town</u> has failed to comply with these responsibilities, it will perform the necessary work and charge the <u>Town</u> the actual cost of the work.

6. FEES

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance, and operations thereof, and shall be subject to State approval.

- A. Retention Period. The <u>Town</u> shall maintain all books, documents, papers, accounting records and other evidence pertaining to fees collected and costs (hereinafter called the Records). The <u>Town</u> shall make the records available during the term of the Agreement and for four years from the date the Agreement is terminated, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.
- B. Audit Report. If fees are collected by the <u>Town</u> for use of the facility under this agreement, the <u>Town</u> will provide the State an annual audit report detailing the fees collected for the use of the facility and the costs associated with constructing, maintaining, and operating the facility within the same period. If the report shows more fees collected than expenses for the construction, or maintenance of the facility the <u>Town</u> must provide a multiple year plan detailing how the additional revenue will be used for construction, operation, or maintenance of the facility.

C. Availability. The State or any of its duly authorized representatives, the Federal Highway Administration, the United States Department of Transportation, Office of Inspector General, and the Comptroller General shall have access to the <u>Town</u>'s records that are directly pertinent to this Agreement for the purpose of making audits and examinations.

7. TERMINATION NOTICE

This Agreement shall remain in effect for the life of the Facility or until it is removed from within the jurisdiction of the State. Termination of the Agreement may take place if:

- A. This agreement is terminated in writing with the mutual consent of the parties.
- B. There is a breach of this Agreement. Any cost incurred due to a breach of this Agreement shall be paid by the breaching party. In addition, before this Agreement is terminated, the non-breaching party shall give the breaching party written notice of default and allow the breaching party ninety (90) days to cure the material breach. If the breach is not cured within ninety (90) days, then this Agreement may be terminated by the non-breaching party.
- C. The State determines that the performance of the Facility is no longer in the best interest of the State. At any future time the State determines that conditions have so changed that the existence or use of the Facility damages the highway facility, impairs safety, impedes traffic and constitutes a nuisance or is abandoned by the <u>Town</u> due to but not limited to lack of funds for the operation and maintenance of the Facility as outlined in this Agreement, the State shall remove the Facility as outlined in this Agreement, the State shall remove the Facility and restore the highway to its pre-use Facility condition and the <u>Town</u> Shall be responsible for any and all costs associated with the restoration, but no other cost.

8. MODIFICATION/TERMINATION OF AGREEMENT

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be

10. RESTORATION OF AREA

The <u>Town</u> shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The <u>Town</u> shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

11. PREVIOUS AGREEMENTS

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

12. INDEMNIFICATION

TO THE EXTENT ALLOWED BY LAW AND UP TO THE LIMITAIONS ON LIABILITY SET FORTH IN THE TEXAS TORT CLAIMS ACT, AS AMENDED THE TOWN WILL INDEMNIFY THE STATE AGAINST ANY AND ALL DAMAGES AND CLAIMS FOR DAMAGES, INCLUDING THOSE RESULTING FROM INJURY OR DEATH OF PERSONS OR FOR LOSS OF OR DAMAGE TO PROPERTY, ARISING OUT OF, INCIDENT TO OR IN ANY MANNER CONNECTED WITH THE CONSTRUCTION, OPERATI ON OR MAINTENANCE OF THE FACILITY, WHICH INDEMNIFICATION SHALL EXTEND TO AND INCLUDE ANY AND ALL COURT COSTS, ATTORNEY'S FEES AND EXPENSES RELATED TO OR CONNECTED WITH ANY CLAIMS OR SUITS FOR DAMAGES AND SHALL, IF REQUESTED IN WRITING BY THE STATE TO DO SO, ASSIST THE STATE OR RELIEVE THE STATE FROM DEFENDING ANY SUCH SUITS BROUGHT AGAINST IT. THE INDEMNIFICATION OF THE STATE SHALL EXTEND FOR A PERIOD OF TWO (2) YEARS BEYOND THE DATE OF TERMINATION OF THIS AGREEMENT.

No party to this agreement intends to waive, relinquish, limit, or condition its general governmental immunity from liability in any way.

Each party agrees and acknowledges that it is not an agent, servant, or employee of the other party and that under this provision each party is responsible only for its own acts and for those of its agents, servants, independent contractors, or employees. Such responsibility includes but is not limited to any claims or amounts arising or recovered under the "Workers Compensation Law," the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the <u>Town</u>. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State. Furthermore, the <u>Town</u> shall become fully subrogated to the State's rights of recovery and shall be entitled to maintain any action over and against any third party who may be liable for damages. The State agrees to execute and deliver instruments and papers and to otherwise do that which is necessary to secure such rights.

13. INSURANCE

The <u>Town</u> shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance, repair, and operation of the facility.

14. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The <u>Town</u> shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

17. CIVIL RIGHTS ASSURANCES

The <u>Town</u>, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the <u>Town</u> shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon and

hold the same as if said agreement had never been made or issued.

18. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

19. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

20. AUDIT

The State may conduct an audit or investigation of any aspect of this agreement. The <u>Town</u> must provide the State with access to any information the State considers relevant to the investigation or audit, The audit can include, but is not limited to, any contract for construction or maintenance of any facility or structure authorized by this agreement or any contract to provide a service to the <u>Town</u> if that service is authorized by this agreement.

21. AUTHORITY OF STATE AUDITOR

The State auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

22. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE

Texas Department of Transportation Maintenance Division 125 East 11th Street Austin, Texas 78701-2483 (Name of other party)

Town of Prosper 250 W. First Street Prosper, TX 75078

23. TIMELY PAYMENT

When required by any provision of this agreement requires a payment to be made to the State, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from the other party's construction, maintenance, repair or operation of the facility.

24. WARRANTS

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

List of Attached Exhibits:

Exhibit A - General Layout

Exhibit B - Metes and Bounds Description

Exhibit C - Approved Construction Plans

Exhibit D - Certificate of Insurance (TxDOT Form 1560)

Exhibit E - Attachment A (FHWA Additional Requirements)

IN WITNESS WH	IEREOF, the parties have	e hereunto affixed t	heir signature, the		
	on the	day of	, 20	, and the	
State on the	day of		20	_	
			STATE OF TEX	KAS	
TOWN OF		Transport effect of a	and approved for ation Commission for to ctivating and/or carrying blished policies or	he purpose and g out the orders,	
Ву:	Signature		heretofore approved and authorized by the Texas Transportation Commission.		
	Printed Name	By:	Director, Maintenan	ce Division	
	Title		Printed Name		
	Agency		Date		
Contact (Office and Telephone No		AL RECOMMENDED:		
			District Engine	ər	
			Printed Name		
			Date		

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519

PERMITTING JURISDICTION:

TEXAS DEPARTMENT OF TRANSPORTATION

TEXAS DOT FLOCK SAFETY

ON BEHALF OF

PROSPER POLICE DEPARTMENT

CONTACT LIST

PERMITTING

ALYSSA BOLICK ALYSSA.BOLICK@FLOCKSAFETY.COM

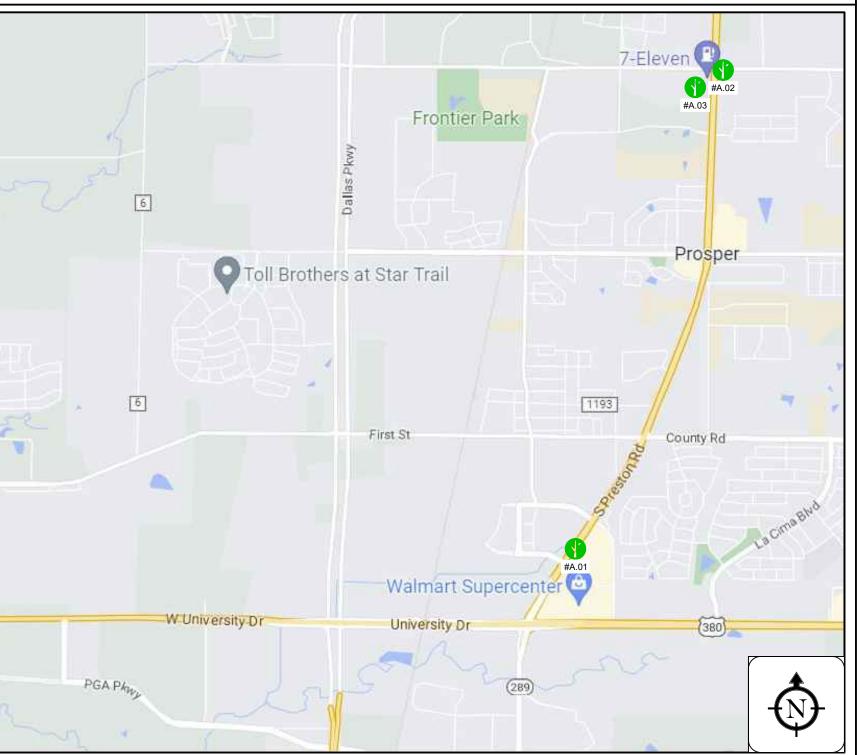
PROJECT MANAGER

CHLOE BOWDEN CHLOE.BOWDEN@FLOCKSAFETY.COM

SEE APPROVED PERMIT FOR LISTED INSPECTORS

DRA	AWING INDEX
T.01	COVER SHEET & LOCATION MAPS
T.02	SYMBOLOGY & ABBREVIATIONS
GN.01 - GN.02	GENERAL NOTES
A.01 - A.03	PLAN DRAWINGS
SPEC.01 - SPEC .02	EQUIPMENT & FOUNDATION DETAILS





PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

F	REV	DATE	BY	DESCRIPTION
		-	1	-
		-	-	-
		-	-	-
		-	-	-
Ţ	0	02/27/2023	ACC	PRELIM

HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519
PERMITTING JURISDICTION:
TEXAS DEPARTMENT OF
TRANSPORTATION

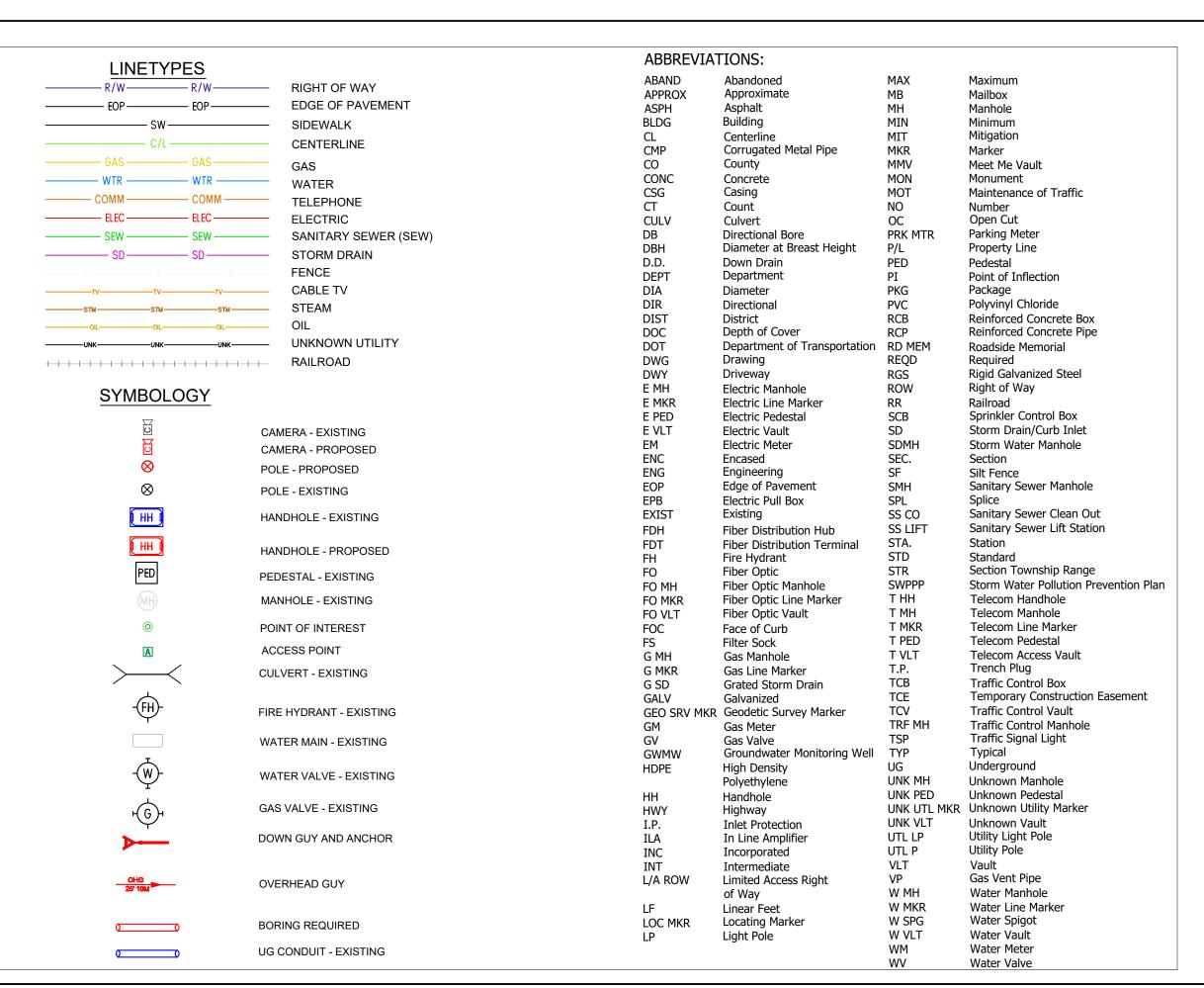
 COVER SHEET & LOCATION MAPS

 SHEET:
 REV:

 T.01
 0

Page 141

DOCUMENT HAS BEEN DRAWN BASED OFF THE MOST RECENT AVAILABLE DATA & AERIAL IMAGERY. THIS INCLUDES RIGHT OF WAY, EXISTING UTILITIES, & PRIVATE PROPERTY LINES. IT REMAINS THE RESPONSIBILITY OF OTHERS TO VERIFY & CONFLICTS ABOVE & BELOW GRADE. ALL CONSTRUCTION TO FOLLOW TEXAS DEPARTMENT OF TRANSPORTATION GENERAL GUIDELINES. DO NOT SCALE DRAWINGS. CALL 811 PRIOR TO DIGG



Item 13.

ITHIS SPACE LEFT INTENTIONALLY BLANK FOR STAME

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

1	REV	DATE	BY	DESCRIPTION
	ı	-	1	-
	1	-	-	-
	-	-	-	-
	-	-	-	-
	0	02/27/2023	ACC	PRELIM

HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519 PERMITTING JURISDICTION: TEXAS DEPARTMENT OF TRANSPORTATION

COVER SHEET & LOCATION MAPS

SHEET: REV:

T.02 0

Page 142

GENERAL & CONSTRUCTION NOTES

- 1. FLOCK SAFETY SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES 48 PRIOR TO CONSTRUCTION.
- 2. CONTRACTOR SHALL BE RESPONSIBLE TO APPLY AND OBTAIN AN APPROVED TRAFFIC CONTROL PLAN IN ACCORDANCE WITH MUTCD
- 3. CONTRACTOR SHALL BE RESPONSIBLE TO RESTORE ALL DISTURBED AREAS TO ORIGINAL CONDITION TO STATE DEPARTMENT OF TRANSPORTATION AND LOCAL AGENCY SATISFACTION AT NO ADDITIONAL COMPENSATION.
- 4. ALL WORK SHALL CONFORM TO ALL APPLICABLE ELECTRICAL CODES EXCEPT WHEN SATE DEPARTMENT OF TRANSPORTATION AND LOCAL AGENCY STANDARDS SUPERSEDE.
- 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH STATE AND LOCAL AGENCY SPECIFICATIONS UNLESS SPECIFICALLY STATED OR SHOWN OTHERWISE HEREIN.
- 6. THE WORK INVOLVING INSTALLATION OF FLOCK SAFETY ALPR CAMERAS INVOLVING TEMPORARY LANE CLOSURES ARE TO BE DONE BETWEEN THE HOURS OF 8:00AM AND 5:00PM. MONDAY THROUGH FRIDAY UNLESS OTHERWISE STATED BY THE DEPARTMENT.
- 7. WHEN INSTALLING FLOCK SAFETY PROVIDED POLES, A MINIMUM OF 2' SEPARATION SHALL BE MAINTAINED FROM ALL EXISTING UTILITIES AND STORM DRAIN STRUCTURES.
- 8. IF THE PROPOSED UTILITY CANNOT BE INSTALLED PER THE APPROVED PERMITTED PLAN AND BY GENERAL SPECIFICATIONS, A REVISED PLAN MUST BE PROVIDED TO THE DEPARTMENT FOR REVIEW AND APPROVAL PRIOR TO THE INSTALLATION OF PRODUCTS OR MATERIALS AT THE GIVEN LOCATIONS WHERE CONFLICTS OCCUR.

 8. ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITH LIKE-KIND SOD WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DISTURBED BY CONSTRUCTION SHALL BE RE-GRADED AND SODDED WITHIN (7) DAYS. BY ALL AREAS WITHIN GENERAL R/W DAYS WITHIN GENERAL
- 9. NO PEDESTRIAN PATHWAY IS TO BE REMOVED, BLOCKED, OR DISTURBED WITHOUT HAVING A SUFFICIENT DESIGNATED TEMPORARY PEDESTRIAN PATHWAY WITH ALL APPROPRIATE PEDESTRIAN MAINTENANCE OF TRAFFIC SIGNS IN PLACE PRIOR TO PATHWAY BEING AFFECTED.
- 10. ALL TEMPORARY PEDESTRIAN PATHWAYS MUST BE FIRM AND UNYIELDING.
- 11. ANY SIDEWALK DISTURBED WILL BE REPLACED BY SECTION WITHIN 72 HOURS TO GENERAL SPECIFICATIONS.
- 13. THE PERMITTEE SHALL NOTIFY THE GENERAL OF DATE OF COMPLETION, REQUEST A FINAL INSPECTION AND A NOTICE OF FINAL ACCEPTANCE.
- 14. ALL CONSTRUCTION AND/OR MAINTENANCE ON THE GENERAL RIGHT OF WAY SHALL CONFORM TO THE FEDERAL MANUAL ON UNIFORM TRAFFIC DEVICES, THE GENERAL ROADWAY AND TRAFFIC DESIGN STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, PLANS PREPARATION MANUAL AND DRAINAGE MANUAL.
- 15. ANY SIDEWALK DAMAGED AS A RESULT OF WORK BEING PERFORMED IN ASSOCIATION WITH THE PERMITTEE AND CONTRACTOR SHALL BE REMOVED AND REPLACED.
- 2.4 ANY AND ALL MATERIALS THAT MAY BECOME LOST, STOLEN OR DAMAGED SHALL BE REPLACED BY THE INSTALLER AT HIS SOLE EXPENSE, AND ANY TO ADDRESS EMERGENCY ISSUES ASSOCIATED WITH THE PROJECT.
- 17. NO STOCKPILING, STORING OR SEMI PERMANENT USE OF THE RIGHT OF WAY IS AUTHORIZED UNLESS SPECIFICALLY IDENTIFIED WITHIN THE PERMIT.
- 18. NO WORK SHALL BE PERFORMED DURING ANY STATE OR FEDERAL HOLIDAYS UNLESS OTHERWISE APPROVED BY THE GENERAL.
- 20. THE DEPARTMENT RESERVES THE RIGHT TO MAKE ADJUSTMENTS TO ANY PERMITTED METHODS OF INSTALLATION, SCOPE OF WORK AND RESTORATION THAT MAY BE REQUIRED TO POSITIVELY SUPPORT LIFE, SAFETY AND ENVIRONMENTAL WELL BEING OF ALL USERS OF THE TRANSPORTATION SYSTEM.
- 21. PERMITTEE SHALL NOT BEGIN ANY WORK ALONG GENERAL RIGHT-OF-WAY UNTIL THE INPECTION OF THE PERMIT ARE MET.
- 22. PRIOR TO CLOSING A LANE, THE PERMITTEE SHALL PROVIDE A SUTIABLE TRAFFIC CONTROL PLAN AS PER FEDERAL MANUAL TRAFFIC CONTROL STANDARDS DEPICTING ALL WORK BEING DONE. THE UTILITY OWNER IS NOT REQUIRED TO REPORT LANE CLOSURES FOR EMERGENCIES.
- 23. IT WILL BE THE RESPONSIBILITY OF THE PERMITTEE TO REPAIR ANY DAMAGE TO GENERAL FACILITIES AND/OR PRIVATE PROPERTY CAUSED BY CONSTRUCTION OF THE PROJECT.

DESIGN NOTES:

- 1. POLE AND FOUNDATION DESIGNED PER CURRENT STANDARD SPECIFICATIONS FOR STRUCTURAL SUPPORT FOR HIGHWAY SIGNS, LUMINAIRES AND TRAFFIC SIGNALS.
- 2. POLE DESIGN WIND SPEED IS 85 MPH, 110 MPH, 130 MPH, AND 150 MPH BASED ON A 300-YEAR MRI.
- 3. CONCRETE SHALL HAVE A MINIMUM 28-DAY DESIGN STRENGTH OF 3000 PSI, AND HAVE AT LEAST 505 POUNDS OF CEMENTITIOUS MATERIAL PER CUBIC YARD.
- 4. PROVIDE A FLAT BEARING SURFACE ON TOP SURFACE ON TOP SHAFT BELOW THE POLE BASE. SLOPE TOP SURFACE OF CONCRETE SHAFT OUTSIDE OF POLE BASE TO DRAIN AWAY FROM POLE.
- 5. DO NOT USE THIS DETAIL FOR SITES WHERE SOIL CONSISTS OF SOFT CLAY, PEAT OR ANY OTHER SOIL WHERE A SMALL DIAMETER REBAR (#5 OR SMALLER) OR METAL PROBE PENETRATES EASILY TO 6" OR MORE OF DEPTH WHEN THE FULL WEIGHT OF A PERSON IS APPLIED.

ADA COMPLIANCE NOTES:

- ALL SIDEWALK CONSTRUCTION SHALL BE IN ACCORDANCE WITH ADA TITLE II AND ALL FEDERAL, STATE, AND LOCAL STANDARDS.
- 2. USE STANDARD WATCH MANUAL PLANS FOR PEDESTRIAN CONTROL PLANS FOR CLOSURE OF SIDEWALK
- 3. MINIMUM SIDEWALK CLEAR PEDESTRIAN ACCESS ROUTE (PAR) IS 48" WIDE.
- 4. NO OBSTRUCTION IS PERMITTED ALONG THE WIDTH OF THE SIDEWALK UP TO 7'-0" IN HEIGHT.

COUNTY NOTES:

- CURRENT A.D.A. STANDARDS SHALL BE UPHELD AT ALL TIMES.
- 2. CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTY IN THE VICINITY OF THE CONSTRUCTION.
- 3. CONTRACTOR SHALL PROVIDE SAFE ACCESS PER CURRENT GENERAL STANDARDS FOR ALL PEDESTRIAN TRAFFIC REGULATIONS ON ALL EXCAVATIONS OPENED IN THE TRAFFIC ZONE CONTROL AREA.
- 4. CONTRACTOR SHALL RESTORE RIGHT-OF-WAY TO EQUAL OR BETTER CONDITION UPON COMPLETION OF WORK

GENERAL NOTES:

- 1. ALL WORK PERFORMED WITHIN THE GENERAL RIGHT-OF-WAY SHALL BE IN ACCORDANCE WITH THE CURRENT GENERAL STANDARDS
- 2. SHOULD A CONFLICT ARISE BETWEEN THE DETAILS SHOWN IN THE PLANS AND THE DEPARTMENT OF TRANSPORTATION STANDARDS, THE ENGINEER/PERMITTEE SHALL IMMEDIATELY CONFER WITH THE TRANSPORTATION STANDARDS, THE ENGINEER/PERMITTEE SHALL IMMEDIATELY CONFER WITH THE DEPARTMENT'S ENGINEER IN ORDER TO RESOLVE THE DISCREPANCY. IN NO CASE WILL ANYTHING LESS THAN THE DEPARTMENTS
- 3. ALL TRAFFIC STRIPING AND MARKINGS ARE TO BE LEAD-FREE, NON-SOLVENT BASED THERMOPLASTIC.
- 4. ALL DISTURBED AREA WITHIN THE RIGHT-OF-WAY WILL BE RESTORED TO ORIGINAL OR BETTER CONDITION BY GRADING AND SODDING IN AREA DISTURBED.
- 5. BURNING OF ANY MATERIAL OR DEBRIS IS PROHIBITED IN GENERAL RIGHT-OF-WAY.
- 6. ALL LANES MUST BE OPENED FOR TRAFFIC DURING AN EVACUATION NOTICE OF A CATASTROPHIC EVENT AND SHALL REMAIN OPEN FOR THE DURATION OF THE EVACUATION OR EVENT.
- 7. THE CONTRACTOR SHALL NOTIFY JURISDICTION PRIOR TO BEGINNING ANY CONSTRUCTION WITHIN GENERAL RIGHT-OF-WAY AS PER ISSUED PERMIT.
- 1.1 THIS PROJECT SHALL CONSIST OF THE FOLLOWING OPERATIONS:
- THE WORK PACKAGE IS FOR THE INSTALLATION OF FLOCK SAFETY ALPR CAMERAS WHICH INCLUDES BUT IS NOT LIMITED TO: FLOCK SAFETY PROVIDED POLES, POLE MOUNTED SOLAR PANELS, AND EXTERNAL BATTERY PACKAGES.

2.0 DRAWINGS

- 12. THE GENERAL RETAINS THE RIGHT TO MAKE ALTERATIONS TO THE PERMIT, ATTACHED SKETCH OR CHARACTER OF WORK AS MAY BE CONSIDERED 2.1 THE WORK SHALL BE PERFORMED IN STRICT ACCORDANCE WITH THE FOLLOWING ATTACHED DRAWINGS THAT ARE HEREBY MADE A PART OF THE NECESSARY OR DESIRABLE DURING THE PROGRESS OF THE WORK FOR SATISFACTORY COMPLETION OF THE PROPOSED CONSTRUCTION.

 STATEMENT OF WORK, BY THIS REFERENCE.
 - 2.2 INSTALLER SHALL RECEIVE FLOCK SAFETY MATERIALS AT A FLOCK SAFETY LEASED WAREHOUSE FACILITY OR AT THE LOCAL TSO LOCATED AT (CONTACT 24 HOURS IN ADVANCE): 1170 HOWELL MILL RD NW, ATLANTA, GA 30318.
 - ALL UNUSED AND REQUESTED SALVAGED MATERIAL TO BE RETURNED TO SAME ADDRESS
 - 2.3 THE RECEIPT OF ALL MATERIALS SHALL BE CONSTRUED AS CONCLUSIVE EVIDENCE THAT THE INSTALLER HAS MADE ALL NECESSARY EXAMINATION AND INSPECTIONS, AND IS SATISFIED AS TO THE QUALITY AND QUANTITY OF MATERIALS RECEIVED.

 - 2.5 ALL UNUSED MATERIALS SUPPLIED BY FLOCK SAFETY BUT NOT USED IN THE COMPLETION OF WORK SHALL BE RETURNED TO FLOCK SAFETY FOURTEEN (14) DAYS AFTER INSTALL COMPLETION. FLOCK SAFETY WILL ARRANGE FOR THE TRANSPORTATION OF THESE MATERIALS.

3.0 PERMITS

- 3.1 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 19. THE PERMITTED WORK SCHEDULE IS DEFINED AS MONDAY THROUGH FRIDAY 8:00AM TO 5:00PM UNLESS OTHERWISE NOTED WITHIN THE PERMIT.

 3.1 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 3.1 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 4.1 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 5.1 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 6.2 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 6.3 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 6.4 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 6.5 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 6.5 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR AGENCIES OF CITIES, COUNTIES, STATES, FEDERAL

 6.5 FLOCK SAFETY HAS OBTAINED OR WILL OBTAIN PERMITS FROM DEPARTMENTS AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PROVIDE FOR THE PLACING OF PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND ROADS AND PLACING PIPES AND/OR CABLE UNDER DITCH, TRACKS AND PLA
 - 3.2 CONTRACTOR SHALL OBTAIN ADDITIONAL PERMITS, IF REQUIRED, FOR EQUIPMENT ACCESS OR MOVEMENT ON PUBLIC ROADS AND RAILROADS. COPIES OF SUCH PERMITS SHALL BE FURNISHED TO FLOCK SAFETY.
 - 3.3 ALL TRAFFIC CONTROL, IF APPLICABLE, SHALL BE IN ACCORDANCE WITH LOCAL, STATE, COUNTY, OR PERMITTING AGENCY LAWS, REGUI AND REQUIREMENTS, AND WILL BE THE INSTALLER'S RESPONSIBILITY. TRAFFIC CONTROL PLANS PROVIDED BY CURRENT GENERAL DESIGN STANDARDS.

- 4.1 ALL PERSONNEL ARE REQUIRED TO ABIDE BY ALL RULES AND REGULATIONS SET FORTH IN THE FLOCK SAFETY REQUIREMENTS, RAILROAD SAFETY CODE AND GOVERNING JURISDICTION.
- 4.2 THE WORK UNDER THIS INSTALLATION WILL BE CONSTRUCTED ALONG RIGHTS OF WAY THAT MAY CONTAIN EXISTING AND OPERATIONAL UTILITIES. THE CONTRACTOR SHALL BE FULLY RESPONSIBLE FOR LOCATING EXISTING UTILITIES AND FOR COMPLIANCE WITH THE REQUIREMENTS OF ANY STATEWIDE AND/OR LOCAL AREA IN ADVANCE OF ANY EXCAVATION, BORING OR PLACING WORK AND THE CONTRACTOR SHALL LOCATE AND EXPOSE BY HAND ALL EXISTING SUBSURFACE PLANT. ANY DAMAGE CAUSED BY THE CONTRACTOR SHALL BE REPAIRED BY THE CONTRACTOR AT HIS SOLE EXPENSE AND ANY DELAY INCURRED SHALL NOT BE CAUSE FOR AN EXTENSION IN THE TIME OF THE CONTRACT.
- 4.3 INSTALLER SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF PUBLIC AND PRIVATE PROPERTIES. INSTALLER SHALL PROTECT, SHORE, BRACE, SUPPORT AND MAINTAIN ALL UNDERGROUND PIPES, CONDUITS, DRAINS AND OTHER SUBSURFACE STRUCTURES UNCOVERED OR OTHERWISE AFFECTED BY THE WORK.
- 4.4 INSTALLER SHALL BE RESPONSIBLE FOR ALL DAMAGE TO STREETS, ROADS, HIGHWAYS, SHOULDERS, DITCHES, EMBANKMENTS, CULVERTS, BRIDGES OR OTHER PUBLIC OR PRIVATE PROPERTY OR FACILITY, REGARDLESS OF LOCATION OR CHARACTER, WHICH MAY BE CAUSED BY THE WORK, OR BY MOVING, HAULING, OR OTHERWISE TRANSPORTING EQUIPMENT, MATERIALS OR WORKERS TO OR FROM WORK OR ANY SITE THEREOF, WHICH THE CONTRACTOR OR CUREON TRACTORS. WHETHER BY THE CONTRACTOR OR SUBCONTRACTORS.
- 4.5 DURING ALL PHASES OF CONSTRUCTION, THE INSTALLER SHALL MAINTAIN WORK AREAS IN A NEAT AND ORDERLY MANNER. CONSTRUCTION EQUIPMENT, MATERIAL AND SUPPLIES THAT ARE STORED ON THE RIGHT OF WAY SHALL NOT RESTRICT ACCESS TO SUCH RIGHT OF WAY OR THE RIGHT OF WAY ITSELF.

5.0 SECURITY

5.1 INSTALLER IS RESPONSIBLE FOR ALL SECURITY REQUIRED TO PROTECT HIS WAREHOUSE, LAYDOWN, AND STAGING AREA AND THE USE OF OUTSIDE PLANT WORK. SECURITY SHALL ALSO INCLUDE TRAFFIC CONTROL WHERE REQUIRED INCLUDING THE USE OF OFF DUTY POLICE OFFICERS.

6.0 STAKING AND SCHEDULING

- 6.1 ALL STAKING WILL BE PROVIDED BY FLOCK SAFETY. REQUIRED RIGHT OF WAY CLEARING SHALL BE COMPLETED PRIOR TO STAKING: THEREFORE, THE INSTALLER SHALL COORDINATE ALL CLEARING AND PLACING OPERATIONS WITH THE FLOCK SAFETY PROJECT SUPERVISOR TO AVOID DELAYS AND INTERFERENCE.
- 6.2 FLOCK SAFETY WILL PROVIDE RAILROAD, FLAGMEN AND SIGNALMEN AS REQUIRED; HOWEVER, THE CONTRACTOR SHALL BE REQUIRED TO COORDINATE ITS NEEDS FOR SUCH SIGNALMEN AND FLAGMEN WITH FLOCK SAFETY.
- 6.3 IN ADDITION TO THE SCHEDULING REQUIREMENTS IN THE GENERAL PROVISIONS, UPON REQUEST THE CONTRACTOR SHALL ALSO SUBMIT TO THI FLOCK SAFETY PROJECT SUPERVISOR, DAILY CREW ASSIGNMENT REPORTS SPECIFYING CREW AND CREW COMPOSITION AND WORK LOCATION.

7.0 SPECIAL CONSIDERATIONS

- 7.1 IN THE EVENT OF HIRING A CONTRATOR; DURING THE BIDDING PROCESS THE CONTRACTOR SHOULD CONSIDER THE FOLLOWING ITEMS:
- 7.1.1 ALL WASTE AND/OR ABANDONED MATERIALS TO BE REMOVED SHALL BE DISPOSED OF AT A "RECOGNIZED DUMP FACILITY" IN THE AREA AS DESIGNATED BY THE LOCAL GOVERNING AUTHORITY.

Item 13.

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

fłock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

	REV	DATE	BY	DESCRIPTION
	-	-	ı	-
)	-	-	ı	1
	-	-	ı	-
	-	-	1	-
	0	02/27/2023	ACC	PRELIM

ARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519 PERMITTING JURISDICTION: TEXAS DEPARTMENT OF TRANSPORTATION

COVER SHEET & LOCATION MAPS SHFFT RFV GN.01 U

Page 143

LOCATION DATA

Sheet	Name	Latitude	Longitude	Nearest Address
A.01	#16 S Pres	33.22157	-96.7999	130 TX-289, Prosper, TX 75078, US
A.02	#17 N Pres	33.26001	-96.7845	1921 N Preston Rd, Prosper, TX 75078, US
A.03	#18 N Pres	33.25998	-96.7846	1921 N Preston Rd, Prosper, TX 75078, USA

Item 13.

[THIS SPACE LEFT INTENTIONALLY BLANK FOR STAMP]

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

1	REV	DATE	BY	DESCRIPTION
	1	-	ı	-
	-	-	-	-
	-	-	-	-
	-	-	-	-
	0	02/27/2023	ACC	PRELIM

I HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

ITHIS SPACE LEET INTENTIONALLY BLANK FOR STAMPL

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519
PERMITTING JURISDICTION:
TEXAS DEPARTMENT OF
TRANSPORTATION

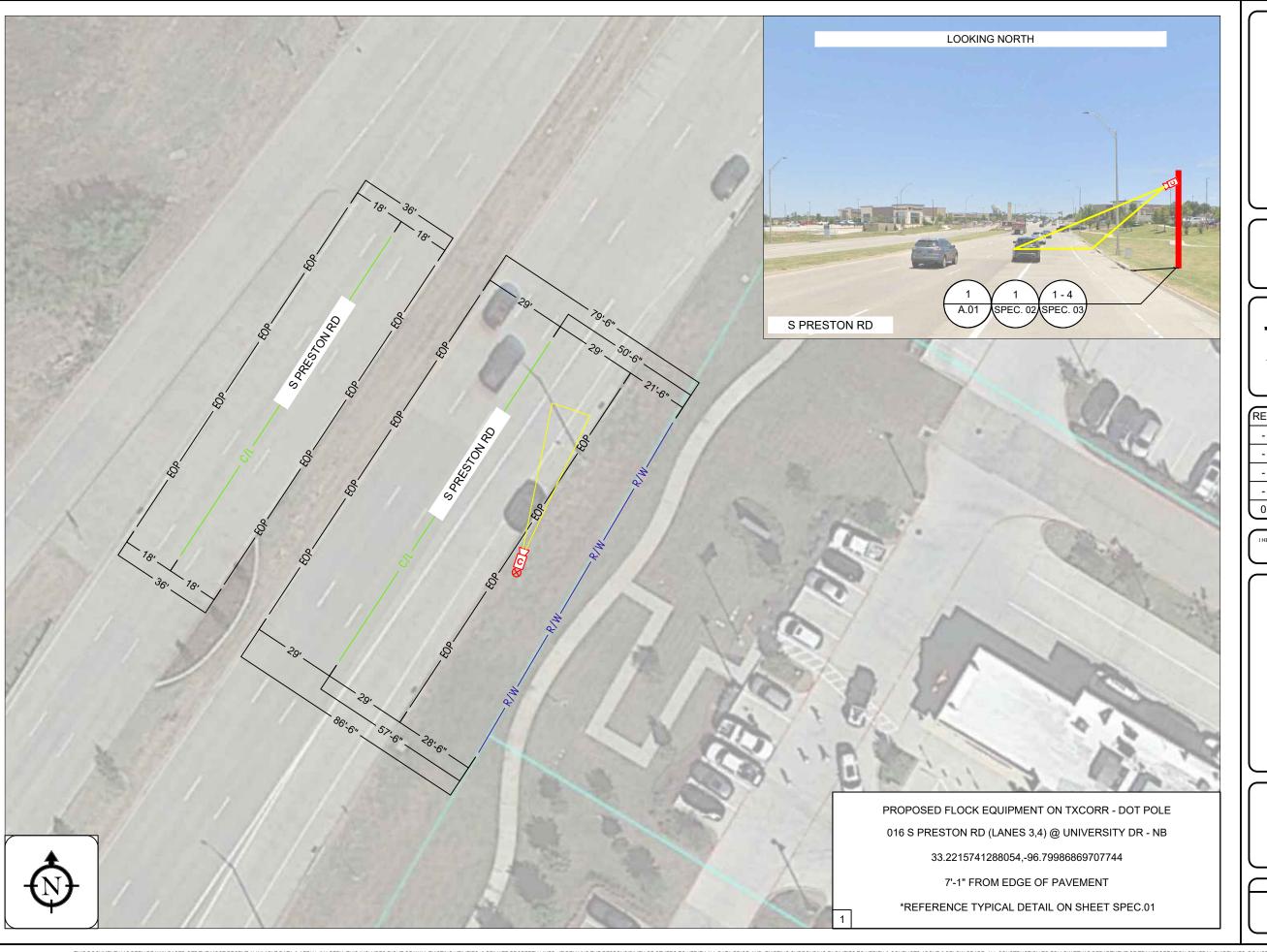
COVER SHEET & LOCATION MAPS

SHEET: REV:

GN.02

REV:

Page 144



......

ITHIS SPACE LEET INTENTIONALLY BLANK FOR STAL

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

REV	REV DATE		DESCRIPTION
		ı	-
-	-	-	-
-			-
-	-	-	-
0	02/27/2023	ACC	PRELIM

HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

THIS SPACE LEFT INTENTIONALLY BLANK FOR STAMP]

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519 PERMITTING JURISDICTION: TEXAS DEPARTMENT OF TRANSPORTATION

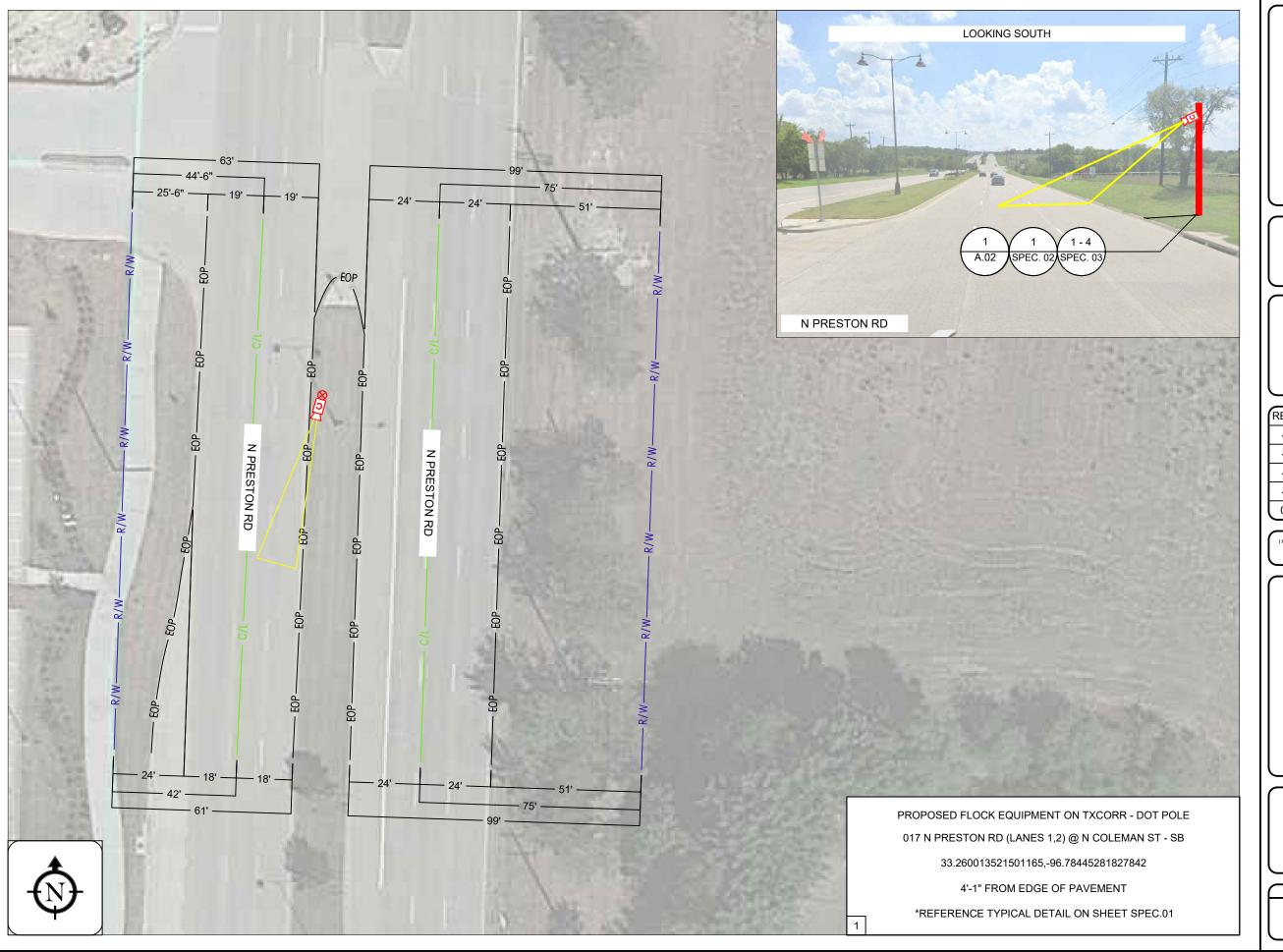
 COVER SHEET & LOCATION MAPS

 SHEET:
 REV:

 A.01
 0

THIS DOCUMENT HAS BEEN DRAWN BASED OFF THE MOST RECENT AVAILABLE DATA & AERIAL IMAGERY. THIS INCLUDES RIGHT OF WAY, EXISTING UTILITIES, & PRIVATE PROPERTY LINES. IT REMAINS THE RESPONSIBILITY OF OTHERS TO VERIFY & CONFLICTS ABOVE & BELOW GRADE. ALL CONSTRUCTION TO FOLLOW TEXAS DEPARTMENT OF TRANSPORTATION GENERAL GUIDELINES. DO NOT SCALE DRAWINGS. CALL 811 PRIOR TO DIGGING

Page 145



[THIS SPACE LEFT INTENTIONALLY BLANK FOR STAMP]

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

fłock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

REV	REV DATE		DESCRIPTION
		ı	-
-	-	-	-
-	-	-	-
1	-	-	-
0	02/27/2023	ACC	PRELIM

HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519 PERMITTING JURISDICTION: TEXAS DEPARTMENT OF TRANSPORTATION

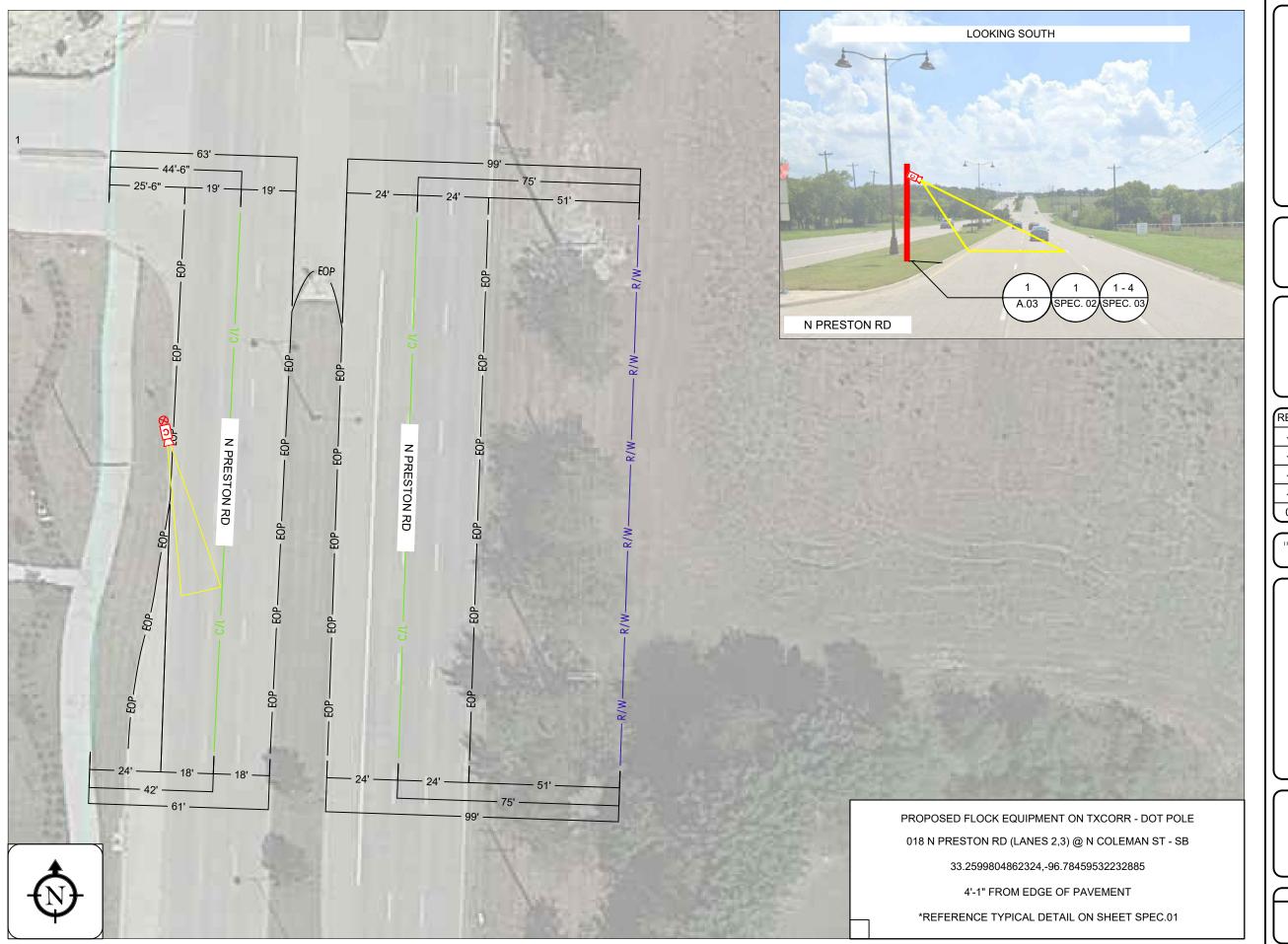
COVER SHEET & LOCATION MAPS

SHEET: REV:

A.02 0

THIS DOCUMENT HAS BEEN DRAWN BASED OFF THE MOST RECENT AVAILABLE DATA & AERIAL IMAGERY. THIS INCLUDES RIGHT OF WAY, EXISTING UTILITIES, & PRIVATE PROPERTY LINES. IT REMAINS THE RESPONSIBILITY OF OTHERS TO VERIFY & CONFLICTS ABOVE & BELOW GRADE. ALL CONSTRUCTION TO FOLLOW TEXAS DEPARTMENT OF TRANSPORTATION GENERAL GUIDELINES. DO NOT SCALE DRAWINGS. CALL 811 PRIOR TO DIGGING

Page 146



[THIS SPACE LEFT INTENTIONALLY BLANK FOR STAMP]

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

REV	REV DATE		DESCRIPTION
ı	-	ı	
ı	-	ı	-
ı	-	ı	-
1	-	1	
0	02/27/2023	ACC	PRELIM

I HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519 PERMITTING JURISDICTION: TEXAS DEPARTMENT OF TRANSPORTATION

COVER SHEET & LOCATION MAPS

SHEET: REV:

A.03 0

Page 147

THIS DOCUMENT HAS BEEN DRAWN BASED OFF THE MOST RECENT AVAILABLE DATA & AERIAL IMAGERY. THIS INCLUDES RIGHT OF WAY, EXISTING UTILITIES, & PRIVATE PROPERTY LINES. IT REMAINS THE RESPONSIBILITY OF OTHERS TO VERIFY & CONFLICTS ABOVE & BELOW GRADE. ALL CONSTRUCTION TO FOLLOW TEXAS DEPARTMENT OF TRANSPORTATION GENERAL GUIDELINES. DO NOT SCALE DRAWINGS. CALL 811 PRIOR TO DIGGING

Item 13.

fłock safety

Prosper PD - TX

LICENSE PLATE READER CAMERA INSTALLATION

2023

Index

1

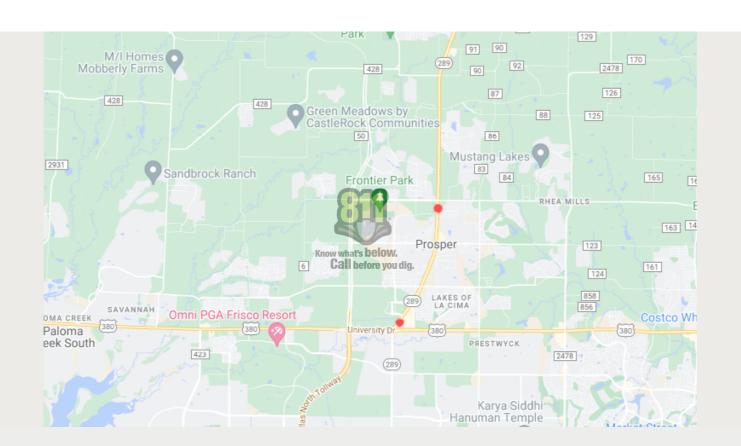
Cover Page

2

Camera Location Information

3-5

Site Plans



No.	Name	Address	Direction	Lat	Lng	Pole Type	Distance from Roadway (ft)
1	#16 S Preston Rd (lanes 3,4) @ University Dr - NB	130 TX-289, Prosper, TX 75078, US	Northbound	33.2215741288054	-96.79986869707744	TxCorr - DOT Pole	7.1
2	#17 N Preston Rd (Lanes 1,2) @ N Coleman St - SB	1921 N Preston Rd, Prosper, TX 75078, US	Southbound	33.260013521501165	-96.78445281827842	TxCorr - DOT Pole	4.1
3	#18 N Preston Rd (Lanes 2,3) @ N Coleman St - SB	1921 N Preston Rd, Prosper, TX 75078, USA	Southbound	33.2599804862324	-96.78459532232885	TxCorr - DOT Pole	4.1

Imagery ©2023 Airbus Report a map error

Distance: 7.1 ft.

Google



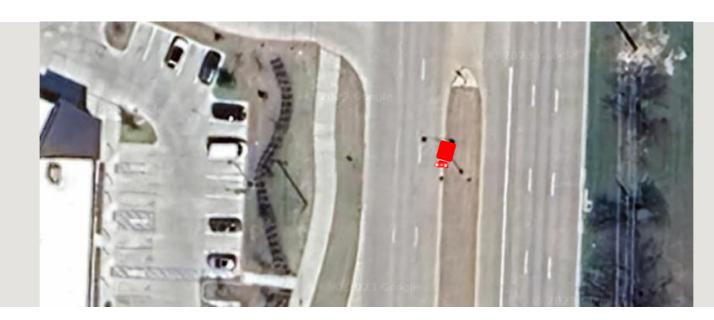
Property	Value
Camera Number	1
Name	#16 S Preston Rd (lanes 3,4) @ University Dr - NB
Address	130 TX-289, Prosper, TX 75078, US
Direction	Northbound
Lat	33.2215741288054
Lng	-96.79986869707744
Pole Type	TxCorr - DOT Pole
Distance from Roadway (ft)	7.1
Speed Limit	45

Position

Imagery ©2023 Airbus Report a map error

Distance: 4.1 ft.

Google

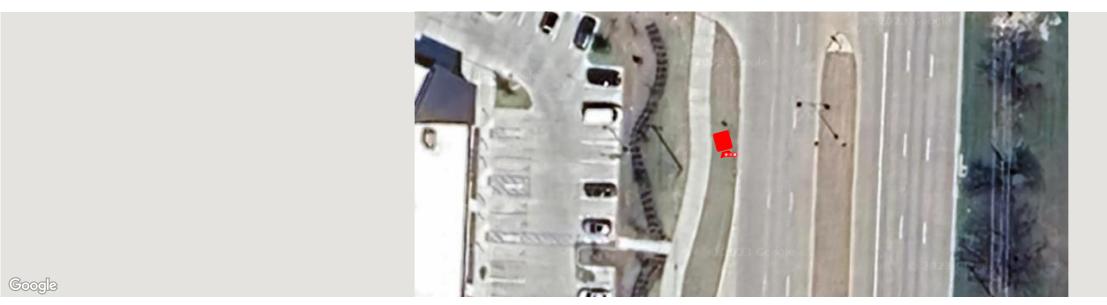


Property	Value
Camera Number	2
Name	#17 N Preston Rd (Lanes 1,2) @ N Coleman St - SB
Address	1921 N Preston Rd, Prosper, TX 75078, US
Direction	Southbound
Lat	33.260013521501165
Lng	-96.78445281827842
Pole Type	TxCorr - DOT Pole
Distance from Roadway (ft)	4.1
Speed Limit	55

Position



Distance: 4.1 ft.



Imagery ©2023 Airbus Report a map error

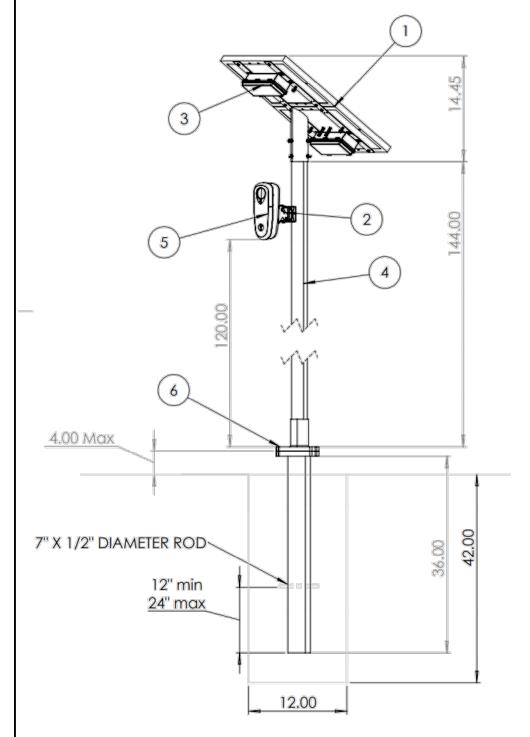
Property	Value
Camera Number	3
Name	#18 N Preston Rd (Lanes 2,3) @ N Coleman St - SB
Address	1921 N Preston Rd, Prosper, TX 75078, USA
Direction	Southbound
Lat	33.2599804862324
Lng	-96.78459532232885
Pole Type	TxCorr - DOT Pole
Distance from Roadway (ft)	4.1
Speed Limit	55

Position



Notes:

- 1. POLE IS 10 BWG TUBING (2.875" OD, 0.134" NOMINAL WALL THICINESS). SEE GENERAL NOTES ON TXDOT SLIP BASE DETAILS
- 2. THE PANEL ASSEMBLY MAY NOT EXCEED TWO BATTERY PACKS. THE NUMBER OF BATTERIES IS BASED ON POWER REQUIREMENTS.
- 3. MAX TOTAL WEIGHT OF ASSEMBLY IS 84 LBS



REVISIONS					
REV.	DATE	APPROVED			
1	Initial Release	12/08/2021	GM		
2	Dimension update	01/21/2022	GM		

ITEM NO.	PART NUMBER DESCRIPTION		WEIGHT (LB)	QTY.
1	701-00116	DOUBLE SOLAR PANEL WITH TOP MOUNT	17.0	1
2	702-00012 FLOCK SAFETY CAMERA MOUNT		2	1
3	3 701-00011 EXTERNAL BATTERY PAC		4.4	0-2
4	205-00102	12' - 10 BWG TUBING	41.21	1
5 701-0059		FLOCK SAFETY CAMERA	3.6	1
6	6 205-00101 TXDOT SLIP BASE SYSTEM		11	1

	NCES:				DEBURR AND BREAK SHARP EDGES	DO NOTSCALE DRAWING	REVISION	
DRAWN CHKID APPVID	NAME	SIGNATURE	DATE			TxDOT Slip	y System Base Sys	with tem
Q.A				MATERIAL	•	905-00	0021	A3
				WEIGHT:		SCALE 1:48	SHEET 1 OF 1	

Item 13.

[THIS SPACE LEFT INTENTIONALLY BLANK FOR STAM

PROSPER POLICE DEPARTMENT

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

REV	DATE	BY	DESCRIPTION
1	-	1	1
-	-	-	-
-	-	-	-
-	-	-	-
0	02/27/2023	ACC	PRELIM

I HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

THIS SPACE LEFT INTENTIONALLY BLANK FOR STAMP]

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519
PERMITTING JURISDICTION:
TEXAS DEPARTMENT OF
TRANSPORTATION

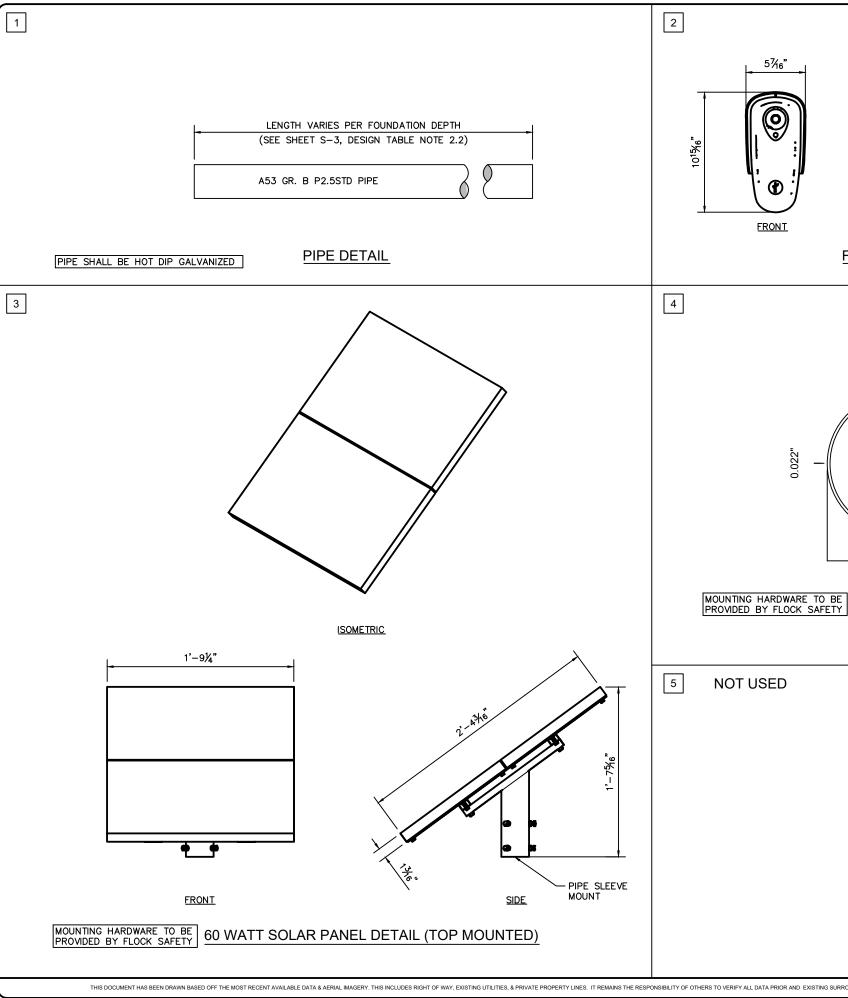
COVER SHEET & LOCATION MAPS

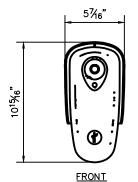
SHEET: REV:

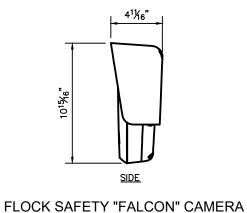
SPEC.01 0

THIS DOCUMENT HAS BEEN DRAWN BASED OFF THE MOST RECENT AVAILABLE DATA & AERIAL IMAGERY. THIS INCLUDES RIGHT OF WAY, EXISTING UTILITIES, & PRIVATE PROPERTY LINES. IT REMAINS THE RESPONSIBILITY OF OTHERS TO VERIFY & CONFLICTS ABOVE & BELOW GRADE. ALL CONSTRUCTION TO FOLLOW TEXAS DEPARTMENT OF TRANSPORTATION GENERAL GUIDELINES. DO NOT SCALE DRAWINGS. CALL 811 PRIOR TO DIGGING

Page 154







1 1/2" TO 3 1/2"

(38 MM TO 89 MM



ISOMETRIC

3/8" HEX

QUICK-RELEASE CLAMP FOR FIRM HOSE AND TUBE, 201

STAINLESS STEEL WITH 410 STAINLESS STEEL SCREW

MOUNTING HARDWARE TO BE PROVIDED BY FLOCK SAFETY

PROSPER POLICE DEPARTMENT

Item 13.

101 S MAIN ST, PROSPER, TX 75078

frock safety

1170 HOWELL MILL ROAD SUITE 210 ATLANTA, GA 30318

1	REV	REV DATE		DESCRIPTION
	ı	-	1	
	1	-	-	-
	ı	-	ı	-
	1	-	1	
	0	02/27/2023	ACC	PRELIM

I HEARBY CERTIFY THIS DOCUMENT WAS PREPARED BY MYSELF OR UNDER MY DIRECT SUPERVISION THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF TEXAS.

NOT USED

LICENSE PLATE READER CAMERA INSTALLATION

CASE NUMBER: 300519 PERMITTING JURISDICTION: TEXAS DEPARTMENT OF TRANSPORTATION

COVER SHEET & LOCATION MAPS REV: SHEET: SPEC.02 0

Page 155

THIS DOCUMENT HAS BEEN DRAWN BASED OFF THE MOST RECENT AVAILABLE DATA & AERIAL IMAGERY. THIS INCLUDES RIGHT OF WAY, EXISTING UTILITIES, & PRIVATE PROPERTY LINES. IT REMAINS THE RESPONSIBILITY OF OTHERS TO VERIFY & CONFLICTS ABOVE & BELOW GRADE. ALL CONSTRUCTION TO FOLLOW TEXAS DEPARTMENT OF TRANSPORTATION GENERAL GUIDELINES. DO NOT SCALE BRAWINGS. CALL 811 PRIOR TO DIGGING SCALL 811 PRIOR TO DIGG

Exhibit B

Flock Safety Tech Specs



License plate reading cameras that capture more evidence for your city.

Dual Solar Panels

- Voltage: 18-20V

- Weight: 25.73 lbs (with hardware)

Length: 21.25"Width: 28"

- Mount: Pole top or side of existing pole

Pole

- DOT Breakaway Pole - 12' installed height

- Diameter: 2.875" OD, 2.125" ID

- Material: 6061 Aluminum with black

coating

- Alloy: 6061 - Weight: 32 lbs

Camera

- Length: 8.75"

- Height: 5"

- Width: 2.875"

- Mounting: Adjustable band clamps

Mock

- Weight: 3lbs

- Footage: Uploads via integrated LTE

- Field of View: 15' wide, 65 distance

- Assembly: Flock Safety in Atlanta, GA

Install Anywhere



Solar & Existing Pole



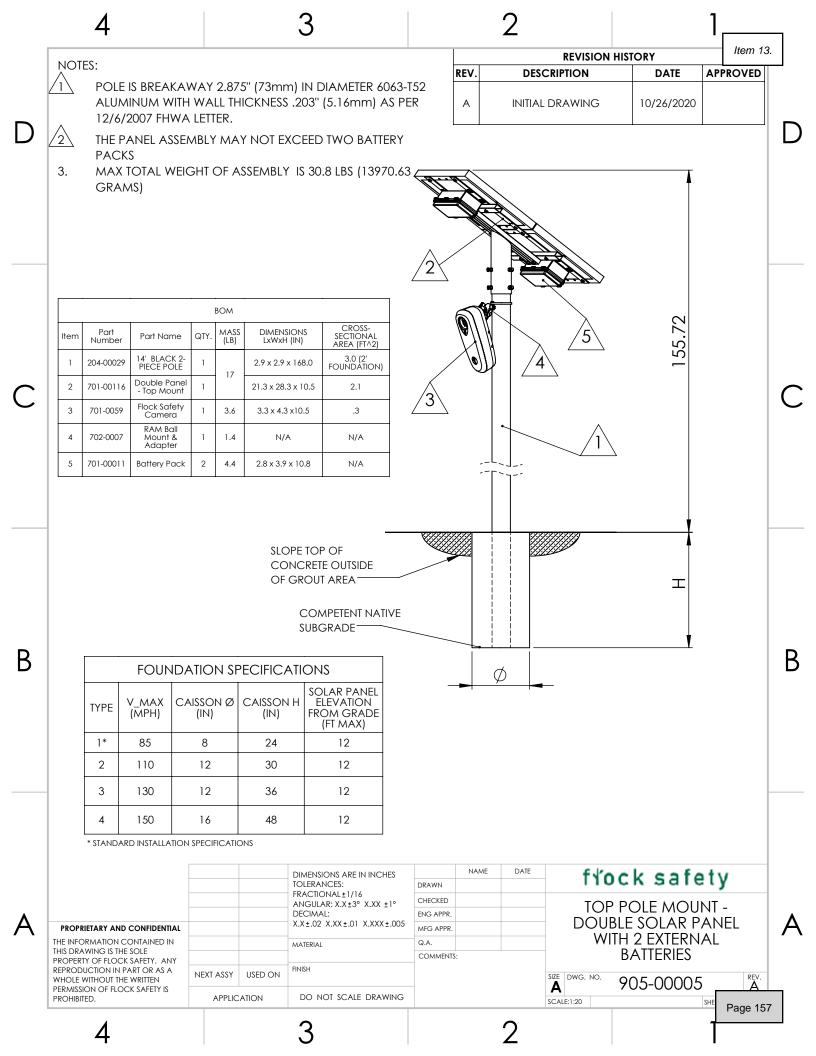
Solar & Flock Pole



Electric & Existing Pole

Page 156

Item 13.



4 3 2 1

NOTES:

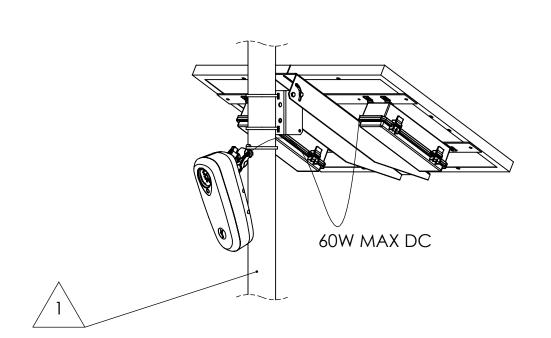
REVISION HISTORY

Item 13.

1 POLE SHOULD BE 2" - 3" IN DIAMETER

2. MAX WEIGHT OF SOLAR PANEL AND MOUNT IS 20.8 LBS (13063.45 GRAMS)

	REVISION HISTO	RY		
REV.	DESCRIPTION	DATE	AP	PROVED
Α	INITIAL DRAWING	6/9/2020	CC	RRIGAN
В	UPDATE BOM TABLE AND WEIGHTS	6/9/2020	CC	RRIGAN



BILL OF MATERIALS								
ITEM NO.	P/N	LIBRARY NAME	DESCRIPTION	QTY.	WEIGHT (LBS)			
1	701-00059	Flock Safety Camera	The Flock Safety LPR camera used in all install types	1	3.6			
2	701-00117	Double Panel - Side Mount	Double solar panel used for installation on existing utility, light, or traffic poles	1	15			
3	702-00007	RAM Ball Mount & Adapter	Mount used to secure the Flock Safety LPR Camera to either a Flock pole or an existing utility, light, or traffic pole	1	1.4			
4	701-00111	External Battery Pack	External battery used to increase battery capacity of the install for high traffic or low solar environments 2 4.4					
	·	DIMENSIONS ARE IN INCHES	NAME DATE FYOCK S	a f a	tv			

TIOCK Safety TOLERANCES: DRAWN FRACTIONAL±1/16 CHECKED ANGULAR: X.X±3° X.XX ±1° SIDE POLE MOUNT -DECIMAL: ENG APPR. X.X±.02 X.XX±.01 X.XXX±.005 DOUBLE SOLAR PANEL PROPRIETARY AND CONFIDENTIAL MFG APPR. WITH 2 EXTERNAL THE INFORMATION CONTAINED IN MATERIAL Q.A. THIS DRAWING IS THE SOLE **BATTERIES REV B** COMMENTS: PROPERTY OF FLOCK SAFETY. ANY REPRODUCTION IN PART OR AS A WHOLE WITHOUT THE WRITTEN FINISH NEXT ASSY USED ON SIZE DWG. NO. 905-00006 Α PERMISSION OF FLOCK SAFETY IS DO NOT SCALE DRAWING APPLICATION PROHIBITED. SCALE:1:20 Page 158

4

3

2

Item 13.

TEXAS DEPARTMENT OF PUBLIC SAFETY



STEVEN C. McCRAW
DIRECTOR
FREEMAN F. MARTIN
DWIGHT D. MATHIS
JEOFF WILLIAMS
DEPUTY DIRECTORS

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001 512/424-2000

www.dps.texas.gov



COMMISSION STEVEN P. MACH, CHAIRMAN NELDA L. BLAIR LARRY B. LONG STEVE H. STODGHILL DALE WAINWRIGHT

July 21, 2023

Chief Kowalski Prosper Police Department 801 Safety Way Prosper, TX 75078

Chief Kowalski,

The information provided by your agency articulates a valid law enforcement purpose and provides informative details of your intended use of the ALPR data. We are also in receipt of your Texas LPR file user agreements. Please present this document with your application to TxDOT as proof of DPS validation of meeting the necessary requirements on the law enforcement aspects of this proposal.

Sincerely,

Michelle Farris, Chief Crime Records Division



TOWN OF PROSPER POLICE DEPARTMENT

The primary purpose of the Prosper Police Department's Department Automated License Plate Readers (ALPR) system is to provide a tool for use by Patrol and Criminal Investigations personnel. This tool assists in the detection and apprehension of vehicles and/or persons traveling through the jurisdiction of the Prosper Police Department (PPD) in a vehicle that has license plates that have been entered either into the National Crime Index Computer (NCIC) or on the PPD ALPR Hotlist. The ALPR system can also be utilized by PPD Detectives and Analysts to assist in the development of leads that can eventually identify suspects who have committed crimes within the Town.

Doug Kowalski, Chief of Police

801 SAFETY WAY, PROSPER, TEXAS 75078

TEXAS DEPARTMENT OF PUBLIC SAFETY

CRIME RECORDS SERVICES

LICENSE PLATE READER (LPR) USER AGREEMENT

This document constitutes a User Agreement which sets forth the duties and responsibilities of the User Agency in order to gain access to the Texas Automated License Plate Reader (LPR) Database administered by the Texas Department of Public Safety (TXDPS). The User Agency shall be a criminal justice or law enforcement agency.

USER AGENCY: Prosper Police Department

ADDRESS: 801 Safety Way, Prosper, TX, 75078

The LPR Database shall consist of shared data from all participating local, state, and federal agencies, as well as TXDPS captured data, of the following information associated with a license plate captured by an LPR: license plate numbers; latitude and longitude coordinates indicating where the plate was captured; date/time of the capture; and Originating Agency Identifier (ORI) information of the agency capturing the information. The LPR Database shall be maintained, operated, and managed by TXDPS on a 24 hour, 7 days a week, 365 days a year basis.

A. USER AGENCY RESPONSIBILITIES

- 1. The User Agency may only access and use LPR information for official criminal justice purposes. LPR information shall not be accessed or used for any other purpose.
- 2. The User Agency shall allow TXDPS to share the User Agency's data contributed to the LPR Database with other authorized criminal justice or law enforcement agencies.
- 3. The User Agency shall provide its own internet connectivity and maintenance which meets Criminal Justice Information Services (CJIS) Security Policy requirements.
- 4. The User Agency shall retain sole ownership of, sole responsibility for, and exclusive control over the content of the information that it contributes to the LPR Database.
- 5. The User Agency shall, at will and at any time, update, correct, or delete the information that it contributes to the LPR Database.
- 6. The User Agency has the sole responsibility to ensure that the information it contributes to the LPR Database was not obtained and is not maintained in violation of any federal, state, or local law applicable to that agency.
- 7. The User Agency has sole responsibility and accountability for ensuring compliance with all laws, regulations, policies, and procedures applicable to its entry and sharing of information into the LPR Database, including but not limited to the federal Driver's Privacy Protection Act (18 U.S.C. §2721 et seq.) and the Texas Motor Vehicle Records Disclosure Act (Tex. Transp. Code Ch. 730).
- 8. The User Agency shall duly report to TXDPS, in writing, any instance in which LPR information is used in an unauthorized manner. Such notice shall be provided immediately, but no later than three (3) calendar days of when the User Agency first learned of the unauthorized use.
- 9. The User Agency has the duty, sole responsibility, and accountability to make reasonable efforts to ensure the accuracy, upon entry and continuing thereafter, of information that it contributes to the LPR Database.
- 10. The User Agency is solely responsible for the actions or omissions of its employees and officers.
- 11. The User Agency shall permit access to the LPR Database only to individual users who meet standard Texas Law Enforcement Telecommunications System (TLETS) credentials.

Page 1 of 3 TXDPS #LES201304161440

B. GENERAL TERMS

- 1. TXDPS shall notify the User Agency if it receives a challenge to or reasonable question about the accuracy of the information submitted by the User Agency in the LPR Database.
- 2. The minimum retention period for information to remain in the LPR Database shall be three (3) years, unless the User Agency indicates to TXDPS that a shorter retention period is required.
- 3. TXDPS will provide system training to the LPR Database users at no charge to the User Agency at a time and location to be designated by TXDPS. The obligation of TXDPS to incur training costs is conditional upon sufficient funds budgeted and available. No financial liability shall be incurred by TXDPS by virtue of this User Agreement beyond monies available to it for the purpose of fulfilling this User Agreement.
- 4. TXDPS reserves the right to immediately suspend service to the User Agency or an individual user when applicable policies are violated. Service may be reinstated, in TXDPS' sole discretion, upon receipt of satisfactory assurance that such violations have been corrected. All costs for reconnection service are the responsibility of the User Agency.
- 5. TXDPS shall have the authority to inspect and audit the equipment, records, and operations of the User Agency to determine the User Agency's compliance with standards and requirements associated with TLETS, Texas Crime Information Center (TCIC)/National Crime Information Center (NCIC), and of this User Agreement throughout the term and for a period of four (4) years after the termination of this User Agreement. The User Agency shall maintain records regarding the use and dissemination of information in the LPR Database and shall provide such records to TXDPS immediately upon its request.
- 6. Any waiver of any breach or default of this User Agreement by TXDPS shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

C. DURATION AND TERMINATION

- 1. This User Agreement is effective upon the date it is signed by the User Agency and shall remain in effect until terminated by TXDPS or the User Agency.
- 2. This User Agreement may be terminated at any time upon the mutual written consent of TXDPS and the User Agency.
- 3. TXDPS or the User Agency may terminate this User Agreement for convenience upon thirty (30) calendar days written notice to the other party.
- 4. TXDPS may terminate this User Agreement if the User Agency fails to comply with any provision of this User Agreement or is otherwise in default by providing written notice to terminate, which termination shall become effective immediately upon the User Agency's receipt of the notice.
- 5. In no event will termination by TXDPS give rise to any liability whatsoever on the part of TXDPS.
- 6. All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information by the User Agency as described in this User Agreement shall survive any termination.

D. NOTICES AND CONTACTS

The User Agency shall direct all correspondence to TXDPS regarding this User Agreement to the following address:

Texas Department of Public Safety Law Enforcement Support Division Attention: LPR Quality Control Analysts P.O. Box 4143

Austin, Texas 78765-4134

Email: TCIC.Operations@dps.texas.gov

TXDPS shall direct all correspondence to the User Agency regarding this User Agreement to the following address and contact person designated by the User Agency. The User Agency shall notify TXDPS within ten (10) calendar days of any change in this information:

Notices to the addresses shown above shall be deemed received: (i) when delivered in hand and a receipt granted; (ii) three (3) calendar days after it is deposited in the United States mail; or (iii) when received if sent by confirmed fax or confirmed email.

In WITNESS WHEREOF, the signatory for the User Agency hereby represents and warrants that it has full and complete authority to sign this User Agreement on behalf of the User Agency.

USER AGENCY:	
Signature: Noug Towalske	
Printed Name: Doug Kowalski	
Title: Chief of Police	
Date: 3/21/2023	
/ /	

Prosper Police Department 102.040 **General Orders** Subject **Automated License Plate Readers (ALPR)** Reference Administration **Effective Date Revised Date** March 27, 2023 **Related General Orders Related SOPs TPCA Recognition Program Standards Minimum Training Standards** 7.36 Level 1 Related Public Safety Software Information This Order replaces Policy 7.18 License Plate **Integrated Computer Systems, Motorola** Solutions, and SmartForce (LPR) Recognition System

I. PURPOSE

The purpose of this Order is to establish the guidelines and proper use of the Prosper Police Department (hereafter "PPD") use of an Automated License Plate Reader System (ALPRS).

II. PHILOSOPHY STATEMENT

- A. The ALPR systems utilize specialized digital cameras and computers to efficiently capture license plate images, convert them to text, quickly compare them to a large database of hot lists, and generate an alert when there is a match.
- B. Employees shall abide by the procedures set forth in this Order when using the ALPR systems thereby increasing the efficiency and effectiveness of this department's public safety efforts in a manner that also safeguards the privacy concerns of the general public.
- C. The ALPR systems shall be restricted to legitimate law enforcement uses for the purpose of furthering genuine law enforcement goals and enhancing public safety as approved by the Chief of Police. Such uses and goals include providing information to officers that will assist in on-going criminal investigations, crime prevention, crime reduction, crime detection, the apprehension of wanted persons, recovery of missing and endangered persons, and improving the quality of life in our community through identification and removal of stolen, unregistered, and uninsured motor vehicles. (TPCAF 7.36)

III. DEFINITIONS

- A. **Alert**: a visual and auditory notice, alarm, or message that is triggered when the LPR receives a potential hit on a license plate.
- B. **ALPR systems**: a generic term consisting of multiple configurations: mobile (vehicle mounted cameras), portable (stationary systems that are setup at a single point and moved when operations are complete; similar to a speed trailer or Skywatch tower),

Automated License Plate Reader

102.040

- and fixed (cameras mounted to a fixed object such as a traffic signal, light pole, or highway overpass).
- C. **Authorized Users**: Only employees, who have successfully completed the ALPR user training and have reviewed this Order, are authorized to operate ALPR systems and access ALPR data. Usage of vehicles equipped with ALPR hardware with ALPR activated is discouraged by employees not trained in system operation. (TPCAF 7.36)
- D. **Criminal Predicate**: Means that articulable information exists to establish sufficient facts to give a trained criminal justice officer, investigator, or employee reasonable suspicion to believe that a particular individual, entity, or vehicle is or may be involved in definable criminal activity or enterprise. (TPCAF 7.36)
- E. **Digital Evidence Storage System** Motorola or Integrated Computer Systems (ICS) (RMS)
- F. **Fixed LPR System** LPR Cameras that are permanently affixed to a structure, such as a pole, traffic barrier or bridge
- G. Hit: a read that matches a license plate that has been registered on one of the downloaded hot lists.
- H. **Hot List**: a database the ALPR system checks that contains a listing of license plate numbers from many sources, which may include but is not limited to:
 - 1. NCIC/TCIC lists: Stolen Plates, Wanted Persons, Missing or Endangered Persons, Supervised Release, Protective Orders, Violent Gang and Terrorist Organizations, Sexual Offenders, Department of Public Safety and Department of Motor Vehicle Records:
 - 2. Prosper Police Department locally compiled lists, i.e. Regions, Warrants, Scofflaw
- I. **Mobile LPR System** LPR cameras that can temporarily be moved to a location for a specified period of time for collection or deterrence,
- J. **Public View**: for purposes of this section, vehicles on a public roadway or that are on private property and whose license plates are visible from a public right of way. This includes places that the public has access to, such as parking lots.
- K. **Read**: a digital infrared image of a license plates and its associated data that is captured by the ALPR system.
- L. **Scan File**: the data obtained by the ALPR systems consisting of the license plate, images of the plate and related vehicle, and GPS coordinates of the vehicle at the time of the read.
- M. **System Administrator** the individual designated by the Chief of Police to coordinate the ALPR program
- N. **Texas DPS (TXDPS)** the state agency responsible for coordinating NCIC in Texas.

Page 2 of 6

IV. PROCEDURES

A. Training (TPCAF 7.36)

- 1. All authorized users must complete the department's required training prior to accessing PPD's ALPR systems.
- 2. The curriculum for ALPR is maintained by Support Services. In addition, all related training records are maintained by Support Services in SmartForce.
- 3. ALPR training curriculum is developed in coordination with ALPR vendors and shall meet all local, state, and federal requirements when applicable.
- 4. ALPR training is provided on as needed basis.

B. License Plate Recognition Systems (LPR) Usage

- 1. LPR system is a passive system, live data is not viewed.
- 2. Employees utilizing ALPR systems shall determine that the ALPR equipment is working properly and that the latest hot lists have been downloaded prior to use.
- 3. Employees shall ensure that hits and scan files obtained during their shift are transferred to the secure data storage at the conclusion of shift.
- 4. ALPR equipped vehicles shall be driven whenever possible unless prevented by maintenance or other issues.
- 5. The mobile ALPR systems should be active at all times during vehicle operation unless maintenance issues.
- 6. Portable ALPR systems shall not be left overnight without approval by the Operations Bureau Assistant Chief.
- 7. Personnel shall not erase or alter any ALPR information unless authorized to do so.
- 8. If employees encounter any problems during the operation of the ALPR systems, employees shall notify a supervisor immediately or contact a department sanctioned subject matter expert immediately.
- 9. Damage to Equipment. A user who damages ALPR equipment or discovers prior ALPR damage shall immediately report such damage to a supervisor.

C. Authorized Usage and Enforcement. (TPCAF 7.36)

1. ALPR systems may be accessed only if the criminal predict – as defined in this Order, has been met. (TPCAF 7.36)

Automated License Plate Reader System (ALPR)

102.040

- 2. Only employees, who have successfully completed the ALPR user training and have reviewed this Order, are authorized to operate ALPR systems and access ALPR data. Usage of vehicles equipped with ALPR hardware with ALPR activated is discouraged by employees not trained in system operation as defined in this Order.
- 3. Each employee using an ALPR system is responsible for ensuring functionality and proper camera alignment. Employees shall not attempt to modify or correct any deficiencies found, unless properly trained and authorized to do so.

4. Prohibited Use

- (a) The ALPR systems are the property of the Prosper Police Department. Officers may only access and use the systems and all related data for legitimate law enforcement purposes consistent with this department's official policies.
- (b) The following uses of the ALPR systems are specifically prohibited:
 - (1) Invasion of Privacy. Except when done pursuant to a court order or exigent circumstances, it is a violation to utilize the ALPR to record license plates out of public view, where there is a reasonable expectation of privacy.
 - (2) Harassment/Intimidation. It is a violation to use the ALPR systems and its associated data to harass or improperly intimidate any individual or group.
 - (3) Use Based on Classification. The ALPR systems and associated data shall not be used solely to target an individual or group based on race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, or disability.
 - (4) Personal Use. The ALPR systems and any associated data shall not be used for personal reasons and are only authorized for legitimate law enforcement purposes consistent with this department's official policies.

D. Steps Required Prior to Violator Contact

- 1. Due to the fact that:
 - (a) Hot lists may be updated more frequently than the ALPR systems synchronize with the platform; and
 - (b) There may be errors in the ALPR's recognition of the license plate (i.e. a letter "B" seen as a number "8");
 - (c) the following must be completed before contacting a violator:
 - (1) Visual Verification. Employees shall visually verify that the license plate on the vehicle of interest matches identically with the image of the license plate captured by the ALPR system including issuing state and alphanumeric characters.

Automated License Plate Reader System (ALPR)

102.040

(2) Computer Verification. Employees shall confirm hits through an active database (TLETS/NCIC) either on their MDC or by contacting Dispatch or CIC directly.

E. Independent Enforcement

1. Employees may still stop vehicles or take other appropriate police action where they have an independent reason for doing so, such as an unrelated traffic violation.

F. Use on Major Crimes/Incidents

 Employees should use the ALPR systems to conduct canvasses of the area immediately following homicides, shootings, robberies, kidnappings, sexual/aggravated assaults, AMBER alerts, and/or any other major crime or incident. The data obtained could corroborate or reveal matters vital to the investigation.

G. Data Security and Management

1. ALPR data shall be kept in a secure data storage system with access restricted to authorized persons only. This information is considered confidential to the extent permitted by law.

2. Scan files

Access to ALPR data or scan files shall be secured and controlled by a password-accessible login system, that documents user access by employee login, date, and time.

3. ALPR data obtained, used, or disseminated shall be governed by this General Order.

4. Retention

- (a) Vigilant Solutions
 - (1) ALPR scan files shall be retained for no longer than five (5) years unless required for evidence, by court order, or by law.
 - (2) Hits shall be retained no longer than necessary for legitimate law enforcement purposes.
 - (3) If a hot list attachment is made to the system, it shall be the responsibility of the hot list initiator to include an expiration date for the attachment in the system. If the hot list attachment is no longer needed before it is due to expire, the initiator shall immediately remove the hit from the system manually.
- (b) Flock Safety Program

- (1) ALPR scan files shall be retained for no longer than 30-days unless required for evidence, by court order, or by law.
- (2) Hits shall be retained no longer than necessary for legitimate law enforcement purposes.
- (3) If a hot list attachment is made to the system, it shall be the responsibility of the hot list initiator to include an expiration date for the attachment in the system. If the hot list attachment is no longer needed before it is due to expire, the initiator shall immediately remove the hit from the system manually.

5. Program Management

(a) The Operations Bureau Assistant Chief shall oversee the management of all ALPR systems.

6. Criminal Database Access

- (a) Employees, who are trained and have a legitimate law enforcement purpose, may access the collected data from the ALPR systems. Each user shall document a legitimate law enforcement purpose in the required auditing field, in order to search the database. (TPCAF 7.36)
- (b) A criminal or public safety interest must be present for legitimate access to the ALPR database. (TPCAF 7.36)
- (c) Data associated to the Flock Safety Program is securely stored, accessed and audited via the Flock Safety Program portal. (TPCAF 7.36)
- (d) Data associated to the Vigilant LPR Program is securely stored, accessed and audited via the Vigilant LEARN portal. (TPCAF 7.36)



Page 6 of 6

Page 169



CERTIFICATE OF INSURANCE

(Rev. 8/18)
Previous editions of this form may not be used.
Page 1 of 2

Agents should complete this form by providing all requested information, then either email, fax, or mail this form as noted at the bottom of page two. Copies of endorsements listed below are not required as attachments to this certificate.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the policies referenced in this certificate control over the terms of the certificate.

Insured: Flock Group Inc DBA Flock Safety

Street/Mailing Address: 1170 Howell Mill Rd NW

City/State/Zip: Atlanta, GA 30318

Phone Number: (866) 901 - 1781

WORKERS' COMPENSATION INSURANCE COVERAGE:

Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name: Travelers Property Casualty Company of America			Carrier Phone #: (800) 252 - 4633
Address: 1 Tower Sq Hartf	ord, CT, 06183-0001		City, State, Zip:	
Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability:
Workers' Compensation	UB-6T346569-23-I3-G	08/23/23	08/23/24	Not Less Than: Statutory - Texas

COMMERCIAL GENERAL LIABILITY INSURANCE:

Carrier Name: Travelers Property Casualty Company of America Address: 1 Tower Sq Hartford, CT, 06183-0001			Carrier Phone #: (800) 252 - 4633
			City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Commercial General Liability Insurance	H-630-9W194831TiL23	08/23/23	08/23/24	Not Less Than: \$ 600,000 each occurrence

BUSINESS AUTOMOBILE POLICY:

Carrier Name: The Charter Oak Fire Insurance Company Address: 1 Tower Sq Hartford, CT, 06183-0001			Carrier Phone #: (800) 252 - 4633 City, State, Zip:		
Business Automobile Policy	810-6T343696-23-I3-G	08/23/23	08/23/24	Not Less Than: \$ 600,000 combined single limit	

UMBRELLA POLICY (if applicable):

Carrier Name: Travelers Property Casualty Company of America			Carrier Phone #: (80	0) 252 - 4633
Address: 1 Tower Sq Harti	ford, CT, 06183-0001		City, State, Zip:	
Type of Insurance:	Policy Number:	Effective Date:	Expiration Date:	Limits of Liability:
Umbrella Policy	CUP-6T386924-23-I3	08/23/23	08/23/24	\$10,000,000

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named are in full force and effect. If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

Agency Name

Address

City, State, Zip Code

MARSH RISK & INSURANCE SERVICES

FOUR EMBARCADERO CENTER, SUITE 1100

SAN FRANCISCO, CA 94111

Authorized Agent's Phone Number

Authorized Agent Original Signature

9 | 23 Date

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.105.

- 1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
- 2. Any change in the authorized use of real property interest shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
- 3. Real property interest shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
- 4. This agreement will be revocable in the event that the real property interest facility ceases to be used or is abandoned.

EXHIBIT E



FIRE DEPARTMENT

To: Mayor and Town Council

From: Stuart Blasingame, Fire Chief

Through: Mario Canizares, Town Manager

Re: US Digital Designs Professional Services Agreement

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving a Service Agreement between Honeywell International, Inc., dba US Digital Designs by Honeywell, and the Town of Prosper regarding fire station alerting equipment and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

US Digital Designs by Honeywell is the incumbent sole source provider service to provide software maintenance and hardware repair services for the station alerting utilized by Prosper Fire Rescue. The agreement is for one year and includes the option for up to four (4) one-year renewals.

Budget Impact:

The annual cost of services is \$20,121.15 and is funded in the FY24 budget and includes a prorated fee for the new Central Fire Station. These services will be funded from account 100-5480-30-01.

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. Agreement
- 2. Quote
- 3. Sole Source Letter

Town Staff Recommendation:

Town Staff recommends approving a Service Agreement between Honeywell International, Inc., dba US Digital Designs by Honeywell, and the Town of Prosper regarding fire station alerting equipment and authorizing the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve a Service Agreement between Honeywell International, Inc., dba US Digital Designs by Honeywell, and the Town of Prosper regarding fire station alerting equipment and authorizing the Town Manager to execute documents for the same.



SERVICE AGREEMENT

This Service Agreement ("Agreement") is made by and between Honeywell International, Inc., dba US Digital Designs by Honeywell ("USDD"), with its principal place of business at 1835 East Sixth Street, Suite 27, Tempe, Arizona 85281, and the following entity ("Customer"):

Prosper Fire Department 1500 E First Street Prosper, TX 75078

Attn: Chief Stuart Blasingame Telephone: 972-347-2424

Email: sblasingame@prospertx.gov

- 1. **Recitals**. Customer requires USDD to provide Software maintenance and Hardware repair services for its USDD Phoenix G2 Fire Station Alerting System Products (as those terms are defined below). USDD has agreed to service Customer's System (as defined below) pursuant to the terms, conditions, and limitations of this Agreement. In consideration of the forgoing, and for other good and valuable consideration, the Parties hereby agree to the terms set forth in this Agreement.
- 2. **Definitions**. For purposes of this Agreement, the following terms shall have the following meanings:
 - a. "Additional Services" shall have the meaning set forth in Section 9, below;
 - b. "Application or App" shall mean the *Phoenix G2 FSA Mobile Application* for iOS and Android mobile devices.
 - c. "Commencement Date" shall be February 7, 2024.
 - d. "Hardware" means a physically tangible electro-mechanical system or sub-system and associated documentation provided to Customer by USDD, <u>provided however</u>, Hardware shall not include any televisions or monitors manufactured by third parties;
 - e. "Emergency Support" means telephone access for Customer's "System Administrator" (as defined below) to USDD's senior staff and engineers in the event of a Mission Critical Failure.

- f. "Mission Critical Failure" means a failure in the materials, workmanship or design of the System that causes any fire station served by the System to be incapable of receiving dispatches through all communications paths, provided however, that any such failure caused by operator error, internet or telephony service outages, misuse or neglect of the System or any cause outside of USDD's direct control does not constitute a Mission Critical Failure.
- g. "Services" shall have the meaning set forth in Section 3, below;
- h. "Software" means software programs, including embedded software, firmware, executable code, linkable object code, and source code, including any updates, modifications, revisions, customization requested by Customer, copies, documentation, and design data that are licensed to Customer by USDD;
- i. "System" means all Hardware and Software purchased by Customer either directly from USDD or authorized USDD Reseller under any contract, purchase order, or arrangement that is used exclusively by Customer as part of its fire station alerting system, <u>provided however</u>, that the term "System" specifically excludes any components, hardware, or software provided by third parties, including without limitation Customer's computers, lap tops, computer peripherals, monitors, televisions, routers, switches, operating systems, computer programs, applications, internet and network connections, and any other parts or items not provided to Customer directly by USDD;
- j. "Term" means the period of time during which this Agreement is in effect, including the Initial Term and all Additional Terms, as defined in Section 9, below.
- 3. **USDD Scope of Services**. During the Term of this Agreement, USDD agrees to provide Hardware repair service and Software updates and maintenance for the System (collectively the "Services"). Subject to all other terms and conditions contained in the Agreement, the Services shall include the following:
 - a. Technical phone support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;
 - b. Remote access support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;
 - c. Emergency Support, available 24 hours per day, for Customer's System Administrator in the event of a Mission Critical Failure;
 - d. Updates for all System Software, as and when released by USDD;
 - e. Twenty-four (24) App licenses per each ATX Station Controller that is part of the System and covered under this Agreement. Use of the App shall be strictly

- governed by the *Mobile Application End User's Agreement* that must be accepted by each user at the time the software is downloaded.
- f. Advance replacement of defective or malfunctioning Hardware (not otherwise covered under the USDD warranty applicable to the Hardware) subject to USDD's Return Material Authorization ("RMA") Process described below; and
- g. Ground shipping for the return of repaired Hardware.
- 4. **Claims**. Prior to requesting Services, Customer is encouraged to review USDD's online help resources. Thereafter, to make a valid claim hereunder, Customer must contact USDD technical support and describe the problem or defect with specificity. The first such contact must occur during the Term. USDD's technical support contact information can be found on USDD's web site: http://stationalerting.com/service-support/. Customer must use its best efforts to assist in diagnosting defects, follow USDD's technical instructions, and fully cooperate in the diagnostic process. Failure to do so shall relieve USDD of any further obligation hereunder.
- 5. Advance Replacement of Hardware. If a Hardware component requires repair during the Term, Customer shall initiate the RMA process as described below. Upon approval, USDD will cause shipment of a replacement Hardware component to Customer prior to the defective Hardware component being returned to USDD for repair. The replacement Hardware will be a product that is new or equivalent to new in performance and reliability and is at least functionally equivalent to the original Hardware. When a product is exchanged, any replacement item becomes the Customer's property and the replaced item becomes the property of USDD. Replaced Hardware provided by USDD in fulfillment of the Services must be used in the System to which this Agreement applies.
- **Return Material Authorization Process.** If a Customer makes a claim for an advanced 6. replacement of a Hardware component during the Term, the Customer shall provide USDD with the Hardware component model and serial number and failure information to initiate the RMA process. Upon USDD's issuance of the RMA, USDD will send the replacement Hardware, shipped postage paid ground shipping to the address provided by Customer. RMA requests approved between 12:00 a.m. and 2:00 p.m. Mountain Standard Time are shipped on the same business day. After 2:00 p.m. Mountain Standard Time, the replacement Hardware is shipped on the next business day. All RMA requests are processed on the business day on which the request was received, excluding holidays. Included with the shipped package will be return shipment instructions and a pre-paid return shipping label for the hardware that the Customer is returning. The original hardware must be returned in the shipping box provided by USDD. No goods will be accepted for exchange or return without a pre-approved RMA number. The original hardware must be shipped back within 10 days of receiving the replacement. Failure to return the original hardware will cause Customer to incur a replacement charge equal to full market value of the replacement Hardware.
- 7. **No Fault Found**. USDD reserves the right to charge 50% of the standard repair price if the returned Hardware is found to have no fault. Customer understands that this fee is intended to discourage return of Hardware prior to proper troubleshooting or return because the Hardware

is "old." Hardware returns will not be allowed if, upon examination of the returned Hardware component, it is determined that the Hardware was subjected to accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. In such event, USDD shall invoice Customer for the full market value of the replacement Hardware.

- 8. **Limitations**. The Services specifically and expressly exclude any repair, software installation, update, or other service that is necessitated by the Customer's misuse or neglect of the System, damage arising from Customer's failure to follow instructions relating to the product's use, cosmetic damage, including but not limited to scratches, dents and broken plastic on ports, alterations or repairs to the System made by any person other than an authorized USDD representative, failure of environmental controls or improper environmental conditions, modification to alter functionality or capability without the written permission of USDD, use with non-USDD products, any damage caused by fire, flood, vandalism, terrorism, riot, storm, lightning, or other acts of nature or civil unrest. The Services shall not include disassembly or re-installation of any Hardware at Customer's site. The Services shall not include the repair of any Hardware that is determined to be obsolete or irreparable in USDD's sole discretion. The Services shall not include repair or replacement of televisions or monitors manufactured by third parties. Repair or replacement of such components shall be subject exclusively to the manufacturer's warranty, if any. USDD shall not be liable to provide Services at any time when Customer is in breach of any obligation to USDD under this Agreement or any other contract.
- 9. **Additional Services by USDD**. Except for the Services, all other acts or performances requested or required of USDD by Customer ("Additional Services") will be charged at USDD's then current rates and will be in addition to all other fees and charges payable by Customer under this Agreement. Additional Services shall include (without limitation) Customer's use of Emergency Support in the absence of a Mission Critical Failure and any Services provided by USDD on a rush basis or during hours not included in the description of the Services set forth above. Customer shall pay all invoices for Additional Services within 30 days. Invoices remaining unpaid for more than 30 days shall bear interest at 18% per annum.
- 10. **Authorized Support Contacts**. In order to facilitate USDD's delivery of the Services, Customer shall appoint a minimum of one and a maximum of three contact people who are each authorized to make use of the support services ("Authorized Contacts"). The Customer must ensure that the Authorized Contacts have adequate expertise and experience to make an accurate description of malfunctions to make it possible for USDD to handle reports efficiently. Customer is responsible to select those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's network, hardware, and software systems. The Authorized Contacts must also have completed USDD product training.

At least one Authorized Contact should be available to assist USDD as needed during the support process. Authorized Contacts are responsible for coordinating any actions needed by Customer's personnel or contractors including obtaining additional information from field or dispatch personnel, data network or communications system troubleshooting, and physical inspection or actions on the System components.

- 11. **Customer Facilitation of Services**. Customer will be responsible for providing the following:
 - a. The provision of remote access to the System, as more specifically described in Section 12 below;
 - b. The procurement and/or provision of all computers, peripherals, and consumables (collectively "Customer Equipment"), including printer paper, toner and ink necessary for the operation, testing, troubleshooting, and functionality of the of the System;
 - c. Any configuration and regular maintenance that is normally undertaken by the user or operator as described in the operating manual for the Customer Equipment, including the replacement of UPS batteries as necessary;
 - d. Providing a stable means of data transmission between the System Gateway and each fire station serviced by the System necessary for the installation, testing and functionality of the of the System; such means of data transmission may include, but is not limited to, TCP/IP, data modems, leased lines, radios, etc;
 - e. The correct use of the System in accordance with USDD's operating instructions; and
 - f. The security and integrity of the System.
- 12. <u>Remote Access</u>. USDD requires remote network access to the Customer's System, including its Communications Gateways, Station Controllers, and other USDD-supplied equipment through Secure Shell (SSH) to perform implementation and support tasks under this Agreement. To enable this the Customer will provide USDD support personnel VPN or similar remote network access to the System for USDD support personnel ("Customer Support") to effectively troubleshoot critical or complex problems and to expedite resolution of such issues. Remote network access is also used to install core System software upgrades and customized software. USDD will only access Customer's System with the knowledge and consent of Customer.
 - a. <u>Alternative to Network Access</u>. If the Customer elects not to provide remote network access to the System, then USDD may not be able to perform some support functions. Customers that elect not to routinely provide network access may temporarily reinstate this access to allow USDD to perform the above services. The following services will not be performed without this access:
 - System software upgrades
 - System software customization
 - Network troubleshooting assistance including packet capture and network monitoring on USDD devices

- Detailed log analysis
- Bulk updates to System database tables
- Troubleshooting that requires low-level system access or large file transfer
- b. <u>Timely Access</u>. Customers much ensure that remote access is available prior to notifying USDD of a support request. In the event that the Customer is unable to provide remote access, USDD will not be required to provide support outside those tasks that do not require remote access, and any corresponding resolution response times will not apply.
- c. <u>Physical Security Tokens</u>. USDD has multiple software engineers that provide after-hours support and these engineers do not typically take security tokens from the USDD office. If the customer requires the use of physical security tokens this may delay after hours service.
- 13. Ongoing Service Term, Renewal and Termination. The initial term of this Agreement shall begin on the Commencement Date and shall continue for one year ("Initial Term"). Unless previously terminated as set forth in this Section, Customer may renew this agreement for four (4) additional one-year terms (each an "Additional Term") by giving written notice of Customer's intent to renew at least 30 days prior to the expiration of the Initial Term or any Additional Term, as the case may be, or by timely payment of the "Annual Fee" (as defined below). This Agreement may be terminated by either party by providing written notice of termination to the other party at least 30 days prior to the expiration of the Initial Term or any Additional Term. USDD may terminate this Agreement for any breach hereof upon 30 days written notice. The notice shall specify the nature of the breach. If Customer fails to cure the breach within 30 days, this Agreement shall be terminated. Notwithstanding the foregoing, USDD may terminate this Agreement immediately upon non-payment of any sum due from Customer under this Agreement or any other contract. Upon termination of this Agreement, all sums previously paid to USDD shall be nonrefundable.
- 14. **Annual Fees**. On or before the first day of the Initial Term and each Additional Term (each a "Due Date"), Customer shall pay USDD an Annual Fee in advance for the Services and to be delivered hereunder (the "Annual Fee"). The Annual Fee shall be the product of the total cumulative sales price of all Hardware, Software, and other tangible goods or equipment provided to Customer at any time under any circumstances ("Base Amount"), multiplied by .10 Customer acknowledges and agrees that the Base Amount is cumulative and will increase by the purchase price of all Software, Hardware and Services purchased in the future. USDD may calculate the Base Amount, determine the Annual Fee and invoice Customer therefore 45 days prior to the subject Due Date. Customer shall pay the Annual Fee on or before the Due Date or 30 days after the date of the invoice, whichever is later. Invoices remaining unpaid shall bear interest at 18% per annum. Annual Fees are nonrefundable.
- 15. **Reinstatement**. If Customer elects not to renew this Agreement for any Additional Term or otherwise terminates this Agreement, Customer may reinstate this Agreement upon the following terms:

- a. Reinstatement of this Agreement must occur within five (5) years from the Initial Term or the last Additional Term elected by Customer, whichever occurs later. USDD reserves the right to reinstate older Systems or not reinstate newer Systems in its sole discretion.
- b. The multiplier for calculation of the Annual Fee shall increase by no more than 3 percentage points from the multiplier stated above. The multiplier for the new Annual Fee shall be at the sole discretion of USDD.
- c. Customer shall pay a Reinstatement Fee along with the Annual Fee prior to the Commencement Date. The Reinstatement Fee and Annual Fee shall be calculated using the new multiplier described above. The Reinstatement Fee shall be a sum equal to two times the new Annual Fee, provided, however, if the System has been out of service and support for one year or less, the Reinstatement Fee shall be the amount of the new Annual Fee. The Reinstatement Fee is non-refundable.
- d. If Customer reinstates this Agreement and then declines to renew this Agreement for an Additional Term or otherwise terminate this Agreement, the System shall be deemed by USDD to have been abandoned by Customer. USDD will not provide further Services for the System, and Customer will not be allowed to reinstated service and support of the System through another Service Agreement.
- **Exclusions and Limitations.** USDD warrants that the Services performed hereunder will be carried out with due care and attention by qualified personnel. Defective Hardware subject to repair hereunder will be repaired to good working order. USDD does not warrant that the operation of the System, Hardware, Software, or any related peripherals will be uninterrupted or error-free. USDD is not responsible for damage arising from Customer's failure to follow instructions relating to the System's use. This Agreement does not apply to any Hardware or Software not used in conjunction with the System and for its intended purpose. This Agreement does not apply to monitors or televisions manufactured by third parties. Recovery and reinstallation of Hardware and user data (including passwords) are not covered under this Agreement. This Agreement does not apply to: (a) consumable parts, such as batteries, unless damage has occurred due to a defect in materials or workmanship; (b) cosmetic damage, including but not limited to scratches, dents and broken plastic on ports; (c) damage caused by use with non-USDD products; (d) damage caused by accident, abuse, misuse, flood, lightning, fire, earthquake or other external causes; (e) damage caused by operating the Product outside the permitted or intended uses described by USDD; (f) damage or failure caused by installation or service (including upgrades and expansions) performed by anyone who is not a representative of USDD or a USDD authorized installer or service provider; (g) a Product or part that has been modified to alter functionality or capability without the written permission of USDD; or (h) to any Product from which the serial number has been removed or defaced.

TO THE EXTENT PERMITTED BY LAW, THIS AGREEMENT AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY,

EXPRESS. OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, SPECIFICALLY DISCLAIMS ANY **AND ALL STATUTORY** OR **IMPLIED** WARRANTIES, INCLUDING. WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, **FITNESS FOR** A **PARTICULAR PURPOSE** WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS. If USDD cannot lawfully disclaim statutory or implied warranties then to the extent permitted by law, all such warranties shall be limited in duration to the duration of this express warranty and to repair or replacement service as determined by USDD in its sole discretion. No reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired. EXCEPT AS PROVIDED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY LAW, USDD IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO: LOSS OF USE; LOSS OF REVENUE; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODWILL; LOSS OF REPUTATION; AND LOSS OF, DAMAGE TO OR CORRUPTION OF DATA. USDD IS NOT RESPONSIBLE FOR ANY INDIRECT LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING PROGRAMMING OR REPRODUCING ANY PROGRAM OR DATA STORED OR USED WITH USDD PRODUCTS, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT.

ALL PRODUCT AND SERVICE CLAIMS ARE LIMITED TO THOSE EXCLUSIVE REMEDIES SET FORTH IN THIS SERVICE AGREEMENT. USDD'S AGGREGATE LIABILITY IN CONNECTION WITH THE REPAIR OR REPLACEMENT OF HARDWARE UNDER THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF THE AGGREGATE PURCHASE PRICE OF THE HARDWARE PAID BY CUSTOMER TO USDD (i) GIVING RISE TO THE CLAIM OR (ii) PROCURED BY CUSTOMER IN THE TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM AROSE. USDD'S AGGREGATE LIABILITY IN CONNECTION WITH SERVICES UNDER THIS AGREEMENT SHALL BE LIMITED TO CORRECTION OR RE-PERFORMANCE OF THE DEFECTIVE SERVICES OR REFUND OF FEES PAID FOR THE SERVICES, AT USDD'S SOLE ELECTION, IF CUSTOMER NOTIFIES USDD IN WRITING OF DEFECTIVE SERVICES WITHIN NINETY (90) DAYS OF THE DEFECTIVE SERVICES. CUSTOMER SHALL NOT BRING A LEGAL OR EQUITABLE ACTION AGAINST USDD MORE THAN ONE YEAR AFTER THE FIRST EVENT GIVING RISE TO A CAUSE OF ACTION, UNLESS A SHORTER LIMITATIONS PERIOD IS PROVIDED BY APPLICABLE LAW. USDD disclaims any representation that it will be able to repair any hardware under this Service Agreement or make a product exchange without risk to or loss of the programs or data stored thereon.

17. **Force Majeure**. Except for Customer's duty to pay sums due hereunder, neither USDD nor Customer will be liable to the other for any failure to meet its obligations due to any Force Majeure Event. As used herein, a "**Force Majeure Event**" is one that is beyond the reasonable control of the non-performing party and may include, but is not limited to: (a) delays or refusals to grant an export license or the suspension or revocation thereof, (b) embargoes, blockages,

seizure or freeze of assets, or any other acts of any government that would limit a Party's ability to perform the Contract, (c) fires, earthquakes, floods, tropical storms, hurricanes, tornadoes, severe weather conditions, or any other acts of God, (d) quarantines, pandemics, or regional medical crises, (e) labor strikes, lockouts, or pandemic worker shortages, (f) riots, strife, insurrection, civil disobedience, landowner disturbances, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property), and (g) shortages or inability to obtain materials or components. The Party unable to fulfill its obligations due to Force Majeure will promptly:

- a. notify the other in writing of the reasons for its failure to fulfill its obligations and the effect of such failure; and
- b. use responsible efforts to mitigate and/or perform its obligations.

If a Force Majeure Event results in a delay, then the date of performance will be extended by the period of time that the non-performing Party is actually delayed or for any other period as the Parties may agree in writing. In the event that a Force Majeure Event is ongoing for a period of time which is sixty (60) days or longer, USDD may provide notice to Customer that it is cancelling this Service Agreement.

- 18. **Headings and Usage**. The headings, captions, and section numbers contained herein are provided for convenience only and are not part of the terms of this Agreement. When the context of the words used in this Agreement indicate that such is the intent, words in the singular shall include the plural, and vice versa, and the references to the masculine, feminine or neuter shall be construed as the gender of the person, persons, entity, or entities actually referred to require.
- 19. **Waiver**. No failure or delay, in any one or more instances, to enforce or require strict compliance with any term of this Agreement shall be deemed to be a waiver of such term nor shall such failure or delay be deemed a waiver of any other breach of any other term contained in this Agreement.
- 20. **Governing Law; Parties in Interest**. This Agreement will be governed by and construed according to the laws of the State of Arizona without regard to conflicts of law principles and will bind and inure to the benefit of the successors and assigns of the Parties.
- 21. **Execution in Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original. The date of this Agreement shall be the latest date on which any Party executes this Agreement. The Parties acknowledge that they will be bound by signatures on this document which are made via electronic means (i.e., DocuSign) and which are transmitted by mail, hand delivery, facsimile and/or any other electronic method (email or otherwise) to the other Party. Such electronic signatures will have the same binding effect as any original signature, and electronic copies will be deemed valid.
- 22. **Entire Agreement**. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between or among them with respect to

the subject matter hereof. This Agreement may not be amended, altered, or changed except by the express written agreement of the Parties.

- 23. **Review**. The Parties acknowledge that they have had an adequate opportunity to review this Agreement, as well as the opportunity to consult legal counsel regarding this Agreement. Accordingly, the Parties agree that the rule of construction that a contract be construed against the drafter, if any, shall not be applied in the interpretation and construction of this Agreement.
- 24. **Assignment**. The Parties shall not assign, in whole or in part, the Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld. Notwithstanding the foregoing, USDD may freely transfer its rights under this Agreement in the event of a sale or transfer of all or substantially all of its assets or stock. Each Party binds itself, its successors, assigns, executors, administrators, or other representatives to the other Party hereto and to successors, assigns, executors, administrators, or other representatives of such other Party in connection with all terms and conditions of this Agreement.
- 25. **Savings Clause**. In the event any part, provision, or term of this Agreement is deemed to be illegal or unenforceable, this Agreement shall be construed as if such unenforceable part, provision, or term had not been included herein. Such illegal or unenforceable part, provision, or term shall be deemed revised to the extent necessary to cure its defect and such revision and the remainder of the Agreement shall be and remain in full force and effect.
- 26. **Images and Testimonials**. During the term of this Agreement, Customer agrees that USDD may take, make, or obtain images, pictures, photographs, commentary, and video and audio recordings of Customer's System and property and reproductions of the same in whole or in part, either digitally or in any other medium now known or later discovered (collectively "**Images**"). In addition, USDD may request Customer to provide testimonials, endorsements, feedback or other written or oral comments concerning Customer's experience with the System (collectively "**Testimonials**"). Customer consents to USDD's use of such Images and Testimonials for verification, training, and promotional purposes in USDD's sole discretion and agrees that all such Images and Testimonials shall remain the property of USDD and may be used and exploited in any media format.
- 27. **Customer Representative**. The undersigned representative of Customer hereby represents and warrants that s/he has the authority to bind Customer and that the execution, delivery, and performance by Customer under this Agreement will not violate the provisions of any law, rule, regulation, or policy, and will not conflict with or result in the breach or termination or constitute a default under any agreement or instrument to which Customer is a party.

Prosper Fire Department:	Honeywell International Inc., dba US Digital Designs by Honeywell			
By:	Ву			
Name:	Asim Akram, General Manager			
Its:				
Date:	Date:			



Budgetary Quote

1835 E Sixth Street, Suite 27 Tempe, Arizona 85281

Fax # 480-290-7896 Phone # 877-551-USDD

E-mail: sales@usdd.com

Date	Quote #
1-May-2023	24-PTX-001

This quote efective until 31 MAR 2022

Name / Address
Prosper Fire Department
1500 E. First Street
Prosper. Texas 75078
Attn: Chief Stuart Blasingame

stuart.blasingame@propserfire.com

		Terms		Rep	Project
ALL AMOUNTS QUOTED ARE IN US DOLLARS		Net 30			
Item	Description	Qty		Cost	Total
SrvAgrmt_Annl	Annual Service Fee - 07 February 2024 to 06 February 2025 Base Amount: \$134,204.90 Dispatch and original 2 Stations	1	\$ 1	13,420.49	\$ 13,420.49
SrvAgrmt_Annl	Annual Service Fee - Pro-rated 01 June 2024 to 06 February 2025 - Central Station Base Amount: \$97,439.88	1	\$	6,700.66	\$6,700.66
Thombryon for	l hygin agg				
Thank you for you	ir ousiness		Tot	al	\$ 20,121.15



Honeywell International, Inc., dba US Digital Designs by Honeywell.

1835 E 6th Street, Suite 27 Tempe, Arizona 85288

Phone: (602) 687-1730

Date: January 1, 2024 Customer: City of Prosper, Texas

911 Safety Way

Prosper, Texas 75078

RE: Sole Source Information – Phoenix G2 Fire Station Alerting System TO WHO IT MAY CONCERN:

The City of Prosper, Tx. and its Fire Department have been utilizing the Phoenix G2 Fire Station Alerting System (the "System") since 2015. USDD was acquired by Honeywell International, Inc. in 2022. USDD now does business under the name "Honeywell International, Inc., dba US Digital Designs by Honeywell." Nevertheless, USDD continues to design and manufacture the System. The City and its Fire Rescue Department are invested in the System which provides fast, reliable and concise fire and medical emergency alerts.

Honeywell International, by its brand US Digital Designs by Honeywell ("USDD") is the sole manufacturer and distributor of the Phoenix G2 Fire Station Alerting system. As the manufacturer of the System, USDD requires all installation of the station-level components of the System be performed by personnel trained and certified by USDD. USDD certification training is designed to acquaint the personnel with the special features of the System, the mission critical aspects of the System, and proper installation as recommended by USDD. Installation by a G2 Certified Installer allows USDD to warrant and provide service and support for the System.

US Digital Designs, Inc. ("USDD") is the sole manufacturer of the Phoenix G2 Fire Station Alerting System, including all hardware and software. The System design is proprietary in nature and integrates the dispatch side of the System currently installed at the City, allowing communication with the station side System to deliver fast and reliable alerts. No other fire station alerting systems manufactured by other companies can connect or operate within the System. As the manufacturer, US Digital Designs is able to offer the lowest factory-direct pricing to the City. No distributor of the Phoenix G2 System is able to provide pricing at a lower price. In addition, with the exception of certified installation companies authorized to perform "installation only" services, no other organization or entity is able or authorized to service and/or support the System.

Please let me know if I may answer any additional questions.

Best Regards,

ASIM AKRAM General Manager

Asim.akram@honeywell.com

Page 185



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: First Amendment to City of Celina ILA:

Parvin Road and Frontier Parkway (FM 1385 – DNT)

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 1. Acceleration of Infrastructure

Agenda Item:

Consider and act upon authorizing the Town Manager to execute the First Amendment to the Interlocal Agreement between the City of Celina, Texas, and the Town of Prosper, Texas, related to cost participation in construction of interim asphalt improvements on Legacy Drive from Frontier Parkway to Parvin Road.

Description of Agenda Item:

Legacy Drive between Frontier Parkway and Parvin Road, is an existing two-lane gravel road that is maintained by the Town of Prosper Public Works Department with regular grading of the roadway surface. Even with the routine maintenance of the pavement, the increase in traffic utilizing the roadway is contributing to a higher rate of deterioration as well as request for improvements to control the spread of dust migrating into adjacent homeowner properties.

The original Interlocal Agreement called for interim asphalt improvements to Parvin Road from east of FM 1385 to west of Legacy Drive, and this amendment adds interim asphalt improvements to Legacy Drive between Frontier Parkway and Parvin Road as depicted in attached Exhibit A. The City of Celina will add a change order to their current construction contract to accomplish this task and will maintain the asphalt improvements after the completion of the project, until such time as the road is improved with concrete.

Last year, the Town of Prosper Public Works Department constructed interim asphalt improvements to Legacy Drive from Parvin Road south to Joyce Hall Elementary where concrete pavement exists. The completion of the interim asphalt improvements on Legacy Drive from Frontier Parkway to Parvin Road will result in having an improved pavement surface (asphalt and concrete) on Legacy Drive from Frontier Parkway to First Street.

Budget Impact:

As outlined in the proposed First Amendment to the Interlocal Agreement with the City of Celina, the Town of Prosper agrees to contribute 50% of the total cost of the Legacy Drive interim asphalt improvements between Frontier Parkway and Pavin Road, currently estimated at \$206,356.25. Upon completion of the improvements, the City of Celina will assume maintenance responsibility of the asphalt improvements until the road is improved with concrete. Funding for this project is available in Account No. 100-5485-50-01 (Streets Department – Contract Services Annual Street Maintenance).

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the amendment as to form and legality.

Attached Documents:

1. First Amendment to Interlocal Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute the First Amendment to the Interlocal Agreement between the City of Celina, Texas, and the Town of Prosper, Texas, related to cost participation in construction of interim asphalt improvements on Legacy Drive from Frontier Parkway to Parvin Road.

Proposed Motion:

I move to authorize the Town Manager to execute the First Amendment to the Interlocal Agreement between the City of Celina, Texas, and the Town of Prosper, Texas, related to cost participation in construction of interim asphalt improvements on Legacy Drive from Frontier Parkway to Parvin Road.

FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND THE CITY OF CELINA, TEXAS, FOR IMPROVEMENTS TO PARVIN ROAD AND FRONTIER PARKWAY

THIS FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND THE CITY OF CELINA, TEXAS, FOR IMPROVEMENTS TO PARVIN ROAD AND FRONTIER PARKWAY ("First Amendment") is made and entered into by and among the TOWN OF PROSPER, TEXAS, a home-rule municipal corporation, hereinafter referred to as "Prosper," and the CITY OF CELINA, TEXAS, a home-rule municipal corporation, hereinafter referred to as "Celina." Prosper and Celina may from time to time herein be referred to collectively as "Parties" and individually as a "Party." The effective date of this Agreement is the date that the last of the Parties has executed the Agreement, after approval from their respective governing bodies (the "Effective Date").

WITNESSETH:

WHEREAS, on April 11, 2023, Celina and Prosper, entered into that certain Interlocal Agreement for improvements to Parvin Road and Frontier Parkway ("<u>Agreement</u>"), which addressed the service of construction of asphalt improvements to Parvin Road from east of FM 1385 to west of Legacy Drive (the "Parvin Project") and the design of Frontier Parkway from Legacy Drive to Dallas Parkway (the "Frontier Project") (and together hereinafter referred to as the "Projects"); and

WHEREAS, the Agreement allowed the Projects to be completed in the most economical manner by providing for shared costs and responsibilities between the Parties; and

WHEREAS, the Parties desire to add Legacy Drive between Parvin Road and Frontier Parkway ("Legacy Project"), as depicted in **Exhibit A**, attached hereto and incorporated herein for all purposes, to the construction project and determine the cost share for such additional project, which costs are provided by the change order in **Exhibit B**, attached hereto and incorporated herein for all purposes; and

WHEREAS, the Parties now desire to execute the First Amendment to make amendments to roles and responsibilities of the Parties, as provided in Section 2 of the Agreement, by adding terms for the Legacy Project.

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, covenant and agree as follows:

1. <u>Agreement Remains in Full Force and Effect</u>. The Parties acknowledge and agree that, except to the extent amended herein, all provisions and terms contained in the Agreement remain in full force and effect. In the event of a conflict between this First Amendment and the Agreement, the terms of this First Amendment shall control.

2. Amendments.

i. The title of the Agreement shall be amended to read as "INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND THE CITY OF CELINA, TEXAS, FOR IMPROVEMENTS TO ROADWAYS".

- ii. The Legacy Project, as defined herein, shall be added to the term "Projects", as defined in the Agreement.
- iii. In addition to the roles and responsibilities described in Section 2.1 of the Agreement, the Parties hereby agree to the following additional roles and responsibilities:
 - A. Celina will Assume primary responsibilities for the design and construction of the asphalt improvements for the Legacy Project, as described in **Exhibit A**, attached hereto and incorporated herein for all purposes. The design and construction of the Legacy Project will be provided for under a separate contract managed by Celina, for which bids will be requested in accordance with state law. Celina agrees to cause the Legacy Project to begin no later than ninety (90) days from the Effective Date of this First Amendment; however, Celina shall notify Prosper of any reasonable commercial delays of this start date for either Project necessitating an extension. After construction of the Legacy Project, Celina agrees to maintain the portion of Legacy Road improved by the Legacy Project, until such time as the road is improved with concrete.
 - B. Prosper will contribute fifty percent (50%) of the total cost of the Legacy Project, estimated costs of which are represented by the change order provided in **Exhibit B**, attached hereto and incorporated herein for all purposes. Prosper agrees to deliver such funds to Celina for the Legacy Project within ninety (90) days of Celina's award of a bid to a contractor for such Legacy Project, or within thirty (30) days of the Effective Date of this First Amendment if a bid award has been made prior to the Effective Date.
- iv. Section VI. "Notice" is hereby amended to change Celina's Representative to read as follows:

"City of Celina Attn: City Manager 142 N. Ohio Celina, TX 75009

- 3. <u>Binding Obligation</u>. This First Amendment shall become a binding obligation of the signatories upon execution by all signatories hereto. Celina and Prosper warrant and represent that the individuals executing this First Amendment on behalf of Celina and Prosper have full authority to execute this First Amendment and bind Celina and Prosper to the same.
- **4. Severability.** In the event any provision of this First Amendment shall be determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this First Amendment; (b) the unenforceable provision shall, to the extent possible and upon mutual agreement of the Parties, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this First Amendment shall, to the extent reasonably possible, remain in force as to the balance of its provisions and be interpreted to give effect to the intent of the Parties.
- **5.** <u>Notices.</u> Any notices required or permitted to be delivered hereunder shall be delivered in accordance with the terms provided by the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date last written below.

CITY OF CELINA, TEXAS

By:	
Name: Karla Stovall	
Title: Interim City Manager	
ATTEST:	
By:	
Name: Lauren Vaughan	
Title: City Secretary	
Date:	
Town or Progress Tryes	
TOWN OF PROSPER, TEXAS	
TOWN OF PROSPER, TEXAS	
,	
,	
By:Name: Mario Canizares	
By: Name: Mario Canizares Title: Town Manager	
By:Name: Mario Canizares	
By: Name: Mario Canizares Title: Town Manager	
By:	

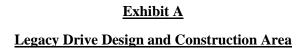




Exhibit B Parvin Project Change Order for Legacy Drive

	12.19.23							
	Apple Pavement Services							
	Parvin Road Improvements - Change Order Legacy Paving							
ITEM	DESCRIPTION	QTY	UOM	UNIT PRICE	TOTAL			
1.2	Traffic Control	1	EA	\$5,500.00	\$5,500.00			
1.4	Remove Existing Concrete Pavement	467	SY	\$22.50	\$10,507.50			
1.6	Pulverize, Mix with Cement & Compact Existing Road Material (6" Depth)	6805	SY	\$6.00	\$40,830.0			
1.10	2" HMAC Type D, Including Tack Coat & Prime Coat as Required	6805	SY	\$17.00	\$115,685.0			
1.11	4" HMAC Type B, Including Tack Coat & Prime Coat as Required	6805	SY	\$32.00	\$217,760.0			
1.13	Cross Driveway Tie in	1	EA	\$3,200.00	\$3,200.00			
1.14	Seed And Curlex	2200	SY	\$2.50	\$5,500.00			
1.23	Reflective Pavement Marking Ty I (Y) 4 Inch (DBL)	2,500	LF	\$1.50	\$3,750.0			
1.25	Reflective Pavement Marking Ty I (W) 24 Inch (SLD)	10	LF	\$15.00	\$150.00			
1.26	Reflective Pavement Marking Ty I (W) 4 Inch (SLD)	5,000	LF	\$0.75	\$3,750.0			
2.6	Asphalt Transition	2	EA	\$3,040.00	\$6,080.0			
		-		TOTAL	\$412,712.5			



TOWN ATTORNEY

To: Mayor and Town Council

From: Terrence S. Welch, Town Attorney

Through: Mario Canizares, Town Manager

Re: Ordinance Repealing Juvenile Curfew Ordinance

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance repealing the Town's Juvenile Curfew Ordinance, found in Article 8.04 of Chapter 8 of the Code of Ordinances.

Description of Agenda Item:

The 88th Texas Legislature (Regular Session) adopted House Bill 1819, effective September 1, 2023, which prohibits Texas municipalities from adopting or enforcing juvenile curfew ordinances. This ordinance repeals the Town's Juvenile Curfew Ordinance in its entirety.

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 adopt the attached ordinance repealing the Town's Juvenile Curfew Ordinance, found in Article 8.04 of Chapter 8 of the Code of Ordinances.

Proposed Motion:

I move to approve an ordinance repealing the Town's Juvenile Curfew Ordinance, found in Article 8.04 of Chapter 8 of the Code of Ordinances.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, REPEALING IN ITS ENTIRETY ARTICLE 8.04, "CURFEW FOR MINORS," OF CHAPTER 8, "OFFENSES AND NUISANCES," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS; MAKING FINDINGS; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper, Texas ("Town"), is a home-rule municipal corporation duly organized under the laws of the State of Texas; and

WHEREAS, Chapter 8, "Offenses and Nuisances," of the Prosper Code of Ordinances contains Article 8.04, entitled "Curfew for Minors," which article generally provides for a curfew making it unlawful for minors under 17 years of age to be in any public area between certain hours; and

WHEREAS, House Bill 1819, which was adopted by the 88th Texas Legislature, Regular Session, became effective on September 1, 2023, and which bill, in part, prohibits cities from adopting or enforcing an ordinance or other measure that imposes a curfew on juveniles; and

WHEREAS, as a consequence, the Town's juvenile curfew is no longer enforceable; and

WHEREAS, this ordinance amends the Code of Ordinances by repealing in its entirety the Town's Juvenile Curfew Ordinance.

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

SECTION 1

All of the above premises are found to be the true and correct legislative determinations of the Town of Prosper and they are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance, Article 8.04, "Curfew for Minors," of Chapter 8, "Offenses and Nuisances," of the Code of Ordinances of the Town of Prosper, Texas, is hereby repealed in its entirety.

SECTION 3

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 4

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 5

This ordinance shall become effective after its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 9TH DAY OF JANUARY, 2024.

	APPROVED:	
	David F. Bristol, Mayor	
ATTEST:		
Michelle Lewis Sirianni, Town Secretary		
APPROVED AS TO FORM AND LEGALITY:		
Terrence S. Welch, Town Attorney		



TOWN ATTORNEY

To: Mayor and Town Council

From: Terrence S. Welch, Town Attorney

Through: Mario Canizares, Town Manager

Re: Amending Current Firearms Provisions in the Code of Ordinances

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Section 1.09.017 of the Code of Ordinances relative to the carrying of firearms in Town parks, and Sections 8.03.001 and 8.01.002 of the Code of Ordinances relative to the carrying and discharge of firearms in Town buildings or in the Town limits.

Description of Agenda Item:

The 87th Texas Legislature (Regular Session) adopted House Bill 1927, effective September 1, 2021, which prohibited or limited in major respects municipal regulation of the carrying of firearms. Several provisions in the Town's Code of Ordinances, although not currently enforced, are outdated as a consequence of HB 1927.

Current Subsection (a) of Section 1.09.017 of the Code prohibits the carrying of firearms in Town parks. HB 1927 now generally allows the carrying of firearms in a public park (exceptions exist for various types of criminal offenders, family violence offenders, fugitives, etc.), so Subsection (a) of Section 1.09.017 has been repealed and existing Subsection (b) is now the only operative part of Section 1.09.017. That provision now prohibits the discharge of firearms in a park, and prohibits the carrying or discharge of fireworks, air guns, bows and arrows, slingshots or devices which project an object that would create a fire hazard or a danger to the public in a park.

Current Subsection (a) of Section 8.03.001 of the Code prohibits any person, other than a peace officer, to carry a firearm in any building where municipal court is held. Under HB 1927, the Town cannot prohibit the carrying of handguns in Town buildings except in limited situations: council meetings and the offices of the municipal court (as referenced in Section 46.03 of the Texas Penal Code). Consequently, this Ordinance brings Section 1.09.017 into compliance with HB 1927.

Current Section 8.03.002 has similar carrying provisions that are now restricted by HB 1927; however, the discharge of firearms as well as BB guns, pellet guns, air rifles, and paint guns remain illegal in the Town's corporate limits. The revisions to Section 8.03.002 eliminated the "carrying" provisions and still address the illegality of the discharge of the weapons listed above.

Budget Impact:

Item 17.

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 Section 1.09.017 of the Code of Ordinances relative to the carrying of firearms in Town parks, and Sections 8.03.001 and 8.01.002 of the Code of Ordinances relative to the carrying and discharge of firearms in Town buildings or in the Town limits.

Proposed Motion:

I move to approve an ordinance amending Section 1.09.017 of the Code of Ordinances relative to the carrying of firearms in Town parks, and Sections 8.03.001 and 8.01.002 of the Code of Ordinances relative to the carrying and discharge of firearms in Town buildings or in the Town limits.

Page 2 of 2

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SECTION 1.09.017, "FIREARMS, FIREWORKS, ETC." OF ARTICLE 1.09, "PARKS AND RECREATION," OF CHAPTER 1, "GENERAL PROVISIONS," AND ARTICLE 8.03, "FIREARMS AND WEAPONS," OF CHAPTER 8, "OFFENSES AND NUISANCES," OF THE CODE OF ORDINANCES RELATIVE TO THE POSSESSION AND/OR DISCHARGE OF FIREARMS AND OTHER WEAPONS, IN COMPLIANCE WITH STATE LAW REGARDING THE CARRYING AND DISCHARGE OF FIREARMS, AND REPEALING ANY INCONSISTENT PROVISION; MAKING FINDINGS; PROVIDING FOR A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town"), in the past has adopted ordinances that addressed the carrying of firearms on public property or in public buildings; and

WHEREAS, House Bill 1927, adopted by the 87th Texas Legislature, Regular Session, and effective on September 1, 2021, prohibited Texas municipalities from adopting or enforcing an ordinance or other measure that restricted certain specific gun rights; and

WHEREAS, as a result of the adoption of HB 1927 in 2021, certain previously adopted Town ordinances as passed are no longer enforceable and, as part of a periodic comprehensive review of Town ordinances, it is necessary for the Town to amend and/or repeal certain ordinance provisions that are inconsistent with HB 1927.

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, Section 1.09.017, "Firearms, Fireworks, etc." of Article 1.09, "Parks and Recreation," of Chapter 1, "General Provisions," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended to read as follows:

Sec. 1.09.017 Firearms, fireworks, etc.

It shall be unlawful for any person to discharge firearms, and carry or discharge fireworks, air guns, bows and arrows, slingshots or any device which would or could project any object which would or could create a fire hazard or any hazard or danger to the public in a park, except with joint written approval of the Parks and Recreation Director and the Town's Fire Chief, or his/her authorized agent and/or representative. Nothing herein shall conflict with any applicable state statute regulating the carrying or use of firearms."

SECTION 3

From and after the effective date of this ordinance, Article 8.03, "Firearms and Weapons," of Chapter 8, "Offenses and Nuisances," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended to read as follows:

ARTICLE 8.03. FIREARMS AND WEAPONS

Sec. 8.03.001 Carrying of Firearm; Discharge of Rifle, Handgun or Shotgun.

(a) It shall be unlawful for any person, other than a peace officer, to carry a firearm into the municipal court or any room or office utilized by the municipal court.

* * *

Sec. 8.03.002 Other Limitations on Discharge in Town Limits.

- (a) It shall be unlawful for any person to discharge any BB gun, pellet gun, gun, pistol, rifle, or firearm of any kind within the Town limits, except within a properly secured indoor firearms range, constructed, and maintained in accord with National Rifle Association specifications and standards, or upon a range owned and operated by a governmental entity.
- (b) The terms "gun," "pistol," "rifle," and "firearm" as used in this section shall not only be defined as to include all percussion weapons, but shall also include all air guns, air pistols, air rifles, paintball guns, and any other firearm using air pressure to propel a projectile.
- (c) This section shall not be construed to prohibit any peace officer from discharging a firearm in the performance of his duty, nor to prohibit any citizen from discharging a firearm when lawfully defending a person or property.
- (d) Any person, firm or corporation who violates any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined as provided in Section 1.01.009 of this Code for each such violation, and each and every day such violation continues shall be considered a separate offense; provided, however, such penal provision shall not preclude a suit to enjoin such violation."

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 become effective after its passage and publication, as required by state law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 9TH DAY OF JANUARY, 2024.

	APPROVED:	
	David F. Bristol, Mayor	
ATTEST:		
Michelle Lewis Sirianni, Town Secretary		
APPROVED AS TO FORM AND LEGALITY:		
Terrence S. Welch, Town Attorney		



TOWN ATTORNEY

To: Mayor and Town Council

From: Terrence S. Welch, Town Attorney

Through: Mario Canizares, Town Manager

Re: Ordinance Prohibiting the Dumping of Trash on Public or Private

Property

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending the Code of Ordinances by adding a new Article 8.09 to Chapter 8 Prohibiting the Dumping of Trash on Public or Private Property.

Description of Agenda Item:

There have been numerous complaints by property owners that third parties on occasion utilize their dumpsters or trash receptacles for the dumping of trash, without the consent of the property owner. This ordinance prohibits such unauthorized dumping of trash.

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 adopt an ordinance prohibiting the dumping of trash on public or private property without the consent of the property owner.

Proposed Motion:

I move to approve an ordinance amending Chapter 8 of the Code of Ordinances by adding a new Article 8.09 that prohibits the dumping of trash on public or private property without the consent of the property owner.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 8, "OFFENSES AND NUISANCES," OF THE CODE OF ORDINANCES BY ADOPTING A NEW ARTICLE 8.09, "DUMPING OF TRASH ON PUBLIC OR PRIVATE PROPERTY"; MAKING FINDINGS; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town"), is a home-rule municipal corporation duly organized under the laws of the State of Texas; and

WHEREAS, it has come to the attention of the Town that people are or have been illegally dumping trash, waste, and refuse in trash receptacles or dumpsters on private or public property without the consent of the owner; and

WHEREAS, the Town Council has determined it is in the best interest for the protection of the public health and general welfare of Town residents that this matter be addressed.

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, Chapter 8, "Offenses and Nuisances," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended by adding a new Article 8.09, "Dumping of Trash on Public or Private Property," to read as follows:

"ARTICLE 8.09. DUMPING OF TRASH ON PUBLIC OR PRIVATE PROPERTY

Sec. 8.09.001 Dumping of Trash on Public or Private Property.

Any person who places, throws, drops, dumps, deposits, or discards any garbage, trash, waste, rubbish, refuse, debris, or other deleterious substance on any public property, or on any private property of another without consent of the property owner, including the placing, throwing, dropping, dumping, depositing, or discarding of any garbage, trash, waste, rubbish, refuse, debris, or other deleterious substance in a trash receptacle or dumpster on any private property of another without consent of the property owner, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 8.09.002 Penalty.

Any person or business violating any provision of this article, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not to exceed \$2,000.00, and each and every day a violation continues shall constitute a separate offense."

SECTION 3

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 4

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5

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 and the Home Rule Charter of the Town of Prosper, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS THE 9TH DAY OF JANUARY, 2024.

	APPROVED:
	David F. Bristol, Mayor
ATTEST:	
Michelle Lewis Sirianni, Town Secretary	
APPROVED AS TO FORM AND LEGALITY:	
Terrence S. Welch, Town Attorney	



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: Zoning Ordinance Amendment – Dumpster Screening

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Chapter 4, Section 5.2 – Location of Required Screening, of the Town of Prosper Zoning Ordinance to modify the screening requirements for trash and recycling collection areas. (ZONE-23-0025)

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed amendment by a vote of 7-0. An Ordinance has been prepared for review and approval. The ordinance reflects the motion for approval, which included a minimum eight-foot screening wall height, gates the same height as the wall, and landscape and irrigation around the enclosure.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Town Attorney, Terrance Welch of Brown & Hofmeister, L.L.P., has approved the standard ordinance as to form and legality.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town Staff recommends approval of the ordinance amending Chapter 4, Section 5.2 – Location of Required Screening, of the Town of Prosper Zoning Ordinance to modify the screening requirements for trash and recycling collection areas.

Proposed Motion:

I move to approve the ordinance amending Chapter 4, Section 5.2 – Location of Required Screening, of the Town of Prosper Zoning Ordinance to modify the screening requirements for trash and recycling collection areas.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2024-

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING SUBPART E OF SUBSECTION 5.2, "LOCATION OF REQUIRED SCREENING," OF SECTION 5, "SCREENING FENCES AND WALLS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE ZONING ORDINANCE OF THE TOWN OF PROSPER; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; 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 Council of the Town of Prosper, Texas (the "Town Council"), has investigated and determined that the Zoning Ordinance should be amended; and

WHEREAS, after public notice and public hearing as required by law, the Planning & 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 & 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

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 Subpart E of Subsection 5.2, "Location of Required Screening," of Section 5, "Screening Fences and Walls," of Chapter 4, "Development Requirements," of the Zoning Ordinance of the Town of Prosper Texas, is hereby amended to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 5. SCREENING FENCES AND WALLS

5.2 Location of required screening.

E. Trash and recycling collection area requirements are as follows:

- 1. Trash and recycling collection areas shall be located to minimize visibility.
- Trash and recycling collection areas shall not be located between a building and street unless approved by the Director of Development Services, or his/her designee.
- 3. Collection area enclosures shall contain permanent walls on three sides with the service opening not directly facing any public right-of-way or any residentially zoned property, unless setback a minimum of 250 feet from the right-of-way or residentially zoned property. The fourth side will incorporate a metal gate of a height equal to the height of the wall to visually screen the dumpster or compactor. The metal gate shall be closed at all times unless the container(s) are being serviced.
- 4. Screening enclosures shall be visually and aesthetically compatible with the overall project.
- 5. Trash and recycling receptacles shall be screened with a minimum eight-foot clay fired brick or stone wall of sufficient height to entirely screen the container(s) and of a color that is consistent with the color of the primary building.
- Trash compactors shall be screened with a minimum eight-foot clay fired brick or stone wall of sufficient height to entirely screen the container(s) and of a color that is consistent with the color of the primary building.
- 7. Enclosure sizes and specifications shall be determined by the Town's trash and recycling contractor, subject to approval by the Director of Development Services, or his/her designee.
- 8. A row of Nellie R. Stevens Holly, or other evergreen species as approved by the Director of Development Services, or his/her designee, that is a minimum four feet in (4') height at the time of planting and has a mature height of a minimum six feet (6'), shall be planted in a minimum five-foot (5') wide landscaped area that borders the three permanent walls of the enclosure. If this required landscape area is located on the perimeter of the property, the perimeter landscape area may be used towards this requirement and will not need to be widened, provided that it is a minimum five feet (5') in width and can accommodate the required plantings. The required landscape area shall be irrigated.

The path used from the business door to the collection area enclosure shall remain clear of debris and food residue at all times."

SECTION 3

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, sentence, 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 4

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 from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5

Any person, firm, corporation, or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

This Ordinance shall become effective 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 9TH DAY OF JANUARY, 2024.

	David F. Bristol, Mayor	
	David F. Bristol, Mayor	
ATTEST:		
	_	
Michelle Lewis Sirianni, Town Secretary		

APPROVED AS TO FORM AND LEGALITY					
					T\/-
	APPRUVEU	$\Delta > 10$	F()RW	$\vdash (\neg \Delta)$	IY.

Terrence S. Welch, Town Attorney



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: Zoning Ordinance Amendment – Drive-through Requirements

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending the Town of Prosper Zoning Ordinance by amending conditional development standards for restaurants contained in Subsection 1.4 of Section 1 of Chapter 3; amending non-residential landscaped area requirements contained in Subsection 2.6(C) of Section 2 of Chapter 4; repealing existing Subsection 4.9 of Section 4 of Chapter 4 related to loading space requirements and replacing it with a new Subsection 4.9; adding a new Subsection 4.10 of Section 4 of Chapter 4 related to stacking requirements; amending the location of required screening contained in Subsection 5.2 of Section 5 of Chapter 4; and amending provisions related to adjacency of certain uses to residential zoning contained in Subsection 9.11 of Section 9 of Chapter 4. (ZONE-23-0033)

Description of Agenda Item:

On December 12, 2023, the Town Council approved the proposed amendment by a vote of 4-3. An ordinance has been prepared for review and approval. The ordinance reflects the motion for approval, which included a modification to the minimum width of the landscape island around the drive-through lanes from 10 feet to 5 feet, as listed in Chapter 4, Section 2.6(2)(i)(ii).

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Town Attorney, Terrance Welch of Brown & Hofmeister, L.L.P., has approved the standard ordinance as to form and legality.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town Staff recommends approval of the ordinance amending the Town of Prosper Zoning Ordinance by amending conditional development standards for restaurants contained in

Item 20.

Subsection 1.4 of Section 1 of Chapter 3; amending non-residential landscaped areal requirements contained in Subsection 2.6(C) of Section 2 of Chapter 4; repealing existing Subsection 4.9 of Section 4 of Chapter 4 related to loading space requirements and replacing it with a new Subsection 4.9; adding a new Subsection 4.10 of Section 4 of Chapter 4 related to stacking requirements; amending the location of required screening contained in Subsection 5.2 of Section 5 of Chapter 4; and amending provisions related to adjacency of certain uses to residential zoning contained in Subsection 9.11 of Section 9 of Chapter 4.

Proposed Motion:

I move to approve the ordinance amending the Town of Prosper Zoning Ordinance by amending conditional development standards for restaurants contained in Subsection 1.4 of Section 1 of Chapter 3; amending non-residential landscaped area requirements contained in Subsection 2.6(C) of Section 2 of Chapter 4; repealing existing Subsection 4.9 of Section 4 of Chapter 4 related to loading space requirements and replacing it with a new Subsection 4.9; adding a new Subsection 4.10 of Section 4 of Chapter 4 related to stacking requirements; amending the location of required screening contained in Subsection 5.2 of Section 5 of Chapter 4; and amending provisions related to adjacency of certain uses to residential zoning contained in Subsection 9.11 of Section 9 of Chapter 4.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SUBPART 26, "RESTAURANT," OF 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; AMENDING SUBPARTS 1, "PERIMETER REQUIREMENTS," AND 2, "INTERIOR PARKING REQUIREMENTS," OF SUBPART C, "NON-RESIDENTIAL LANDSCAPED AREA REQUIREMENTS," OF SUBSECTION 2.6, "LANDSCAPE AREA REQUIREMENTS," OF SECTION 2, "LANDSCAPING," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS." OF THE TOWN'S ZONING ORDINANCE: **EXISTING** "LOADING REPEALING SUBSECTION 4.9. REQUIREMENTS," OF SECTION 4, "PARKING, CIRCULATION, AND ACCESS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE AND REPLACING IT WITH A NEW SUBSECTION 4.9, "LOADING SPACE REQUIREMENTS": AMENDING SECTION 4, "PARKING, CIRCULATION, AND ACCESS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE BY ADDING A NEW SUBSECTION 4.10 ENTITLED "STACKING REQUIREMENTS"; AMENDING SUBPART A OF SUBSECTION 5.2, "LOCATION OF REQUIRED SCREENING," OF SECTION 5, "SCREENING FENCES AND WALLS," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE TOWN'S ZONING ORDINANCE; AMENDING SUBSECTION 9.11, "ADJACENCY OF CERTAIN USES TO RESIDENTIAL ZONING," OF SECTION 9, "ADDITIONAL AND SUPPLEMENTAL," OF CHAPTER 4, "DEVELOPMENT REQUIREMENTS," OF THE ZONING ORDINANCE OF THE TOWN OF PROSPER; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; 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 Council of the Town of Prosper, Texas (the "Town Council"), has investigated and determined that the Zoning Ordinance should be amended; and

WHEREAS, after public notice and public hearing as required by law, the Planning & 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 & 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

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 Subpart 26, "Restaurant," of 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, is hereby amended to read as follows:

"CHAPTER 3 PERMITTED USES

Section 1. USE OF LAND AND BUILDINGS

* * *

1.4 Conditional development standards.

* *

26. Restaurant.

- a) A Restaurant is permitted by Specific Use Permit in the NS Zoning District and is permitted by right in the O, DTR, R, DTC, C, and CC Zoning Districts subject.
- b) Restaurants with a drive-through are only permitted in the R, C, and CC Zoning Districts upon approval of a Specific Use Permit. Restaurants with drive-throughs shall not be developed on adjacent lots.
- c) Restaurants are only permitted in the O Zoning District, if the subject property is located along a roadway classified as a major or minor thoroughfare as defined by the Thoroughfare Plan.
- d) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 applies to restaurants with a drive-through.
- e) Restaurants that sell Alcoholic Beverages for on-premise consumption shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended, and any applicable local option elections.
- f) A Restaurant that sells Alcoholic Beverages for on-premise consumption shall not be located within the following:
 - Three hundred feet from a church, public hospital, public school and/or private school. However, Alcoholic Beverage Sales may be located within 300 feet of a private school if the holder of a license or permit holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
 - 2. One thousand feet from a private school if the Town Council receives a request for this additional spacing requirement from the board of the private school, and the

Town Council adopts such additional spacing requirements by resolution. Measurement for the distance between a Restaurant or Cafeteria where Alcoholic Beverages for on-premise consumption are sold and a church or public hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections.

- g) Measurement for the distance between a Restaurant where Alcoholic Beverages for on-premise consumption are sold and a public and/or private school shall be:
 - 1. In a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, and in a direct line across intersections; or
 - 2. If the Restaurant that sells Alcoholic Beverages for on-premise consumption is located on or above the fifth story of a multistory building, in a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, in a direct line across intersections, and vertically up the building at the Property Line to the base of the floor on which the Restaurant or Cafeteria is located.
- h) If a Restaurant receives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of Alcoholic Beverages for on-premise consumption, the use will no longer qualify as a Restaurant and will be classified and regulated by the Town as an Alcoholic Beverage Establishment under the Zoning Ordinance.
- i) There shall be no variances considered with regard to the regulations set forth herein."

SECTION 3

From and after the effective date of this Ordinance, existing Subparts 1, "Perimeter requirements," and 2, "Interior Parking Requirements," of Subpart C, "Non-residential Landscaped Area Requirements," of Subsection 2.6, "Landscape Area Requirements," of Section 2, "Landscaping," of Chapter 4, "Development Requirements," of the Town's Zoning Ordinance are hereby amended to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 2. LANDSCAPING

* *

2.6 Landscape area requirements.

* * *

- **C. Non-residential landscaped area requirements.** These standards apply to all non-residential uses. Any area within a PD containing landscaping standards shall comply with the standards set forth in the PD district.
 - 1. Perimeter requirements:

- a. A landscaped area consisting of living trees (as specified below), turf, or other living ground cover and being at least 25 feet in width measured from the property line interior to the property shall be provided adjacent to and outside of the right-of-way on all properties located adjacent to a major or minor thoroughfare as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - i. The landscaped area may be reduced to 15 feet for the portion of a property adjacent to a collector or equivalent street as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - ii. The landscaped area shall be increased to 30 feet for properties adjacent to Preston Road, University Drive, and Dallas Parkway.
 - iii. One large tree, three-inch caliper minimum per 30 linear feet of roadway frontage shall be planted within the required landscape area. The trees may be planted in groups with appropriate spacing for species.
 - iv. In the DTO District, one large tree, three inch caliper minimum per 30 linear feet of roadway frontage, excluding the width of driveways at the property line, shall be planted within the required landscape area. Where the width of the roadway frontage is greater than 80 feet, excluding the width of driveways at the property line, the number of large trees may be planted at a rate of one, three-inch large tree per 40 feet of roadway frontage, in lieu of the required one tree per 30 linear feet. The trees may be planted in groups with appropriate spacing for species. In the DTO District, the substitution of three small, ornamental trees for one large tree shall not be permitted.
 - v. A minimum of 15 shrubs with a minimum size of five gallons each will be planted in the landscaped area for each 30 feet of linear frontage.
 - vi. Parking abutting the landscape area shall be screened from the adjacent roadway. The required screening may be accomplished with shrubs or earthen berms.
 - vii. Unless there is parking adjacent to the landscape area, shrubs are not required in the landscape area in the DTO District.
 - viii. Required landscape areas adjacent to public streets shall be exclusive easements or other restrictions which could inhibit planting, growth, or permanence of landscaping.
 - ix. Berms ranging in height from three feet to six feet, and an overall minimum average of four and a half feet, shall be required along US 380, Frontier Parkway/FM 1461/Parvin Road, Custer Road/FM 2478, Preston Road, Dallas Parkway, and FM 1385.
- b. Where a non-residential development is adjacent to the property line of residential zoned parcels or areas shown as residential on the future land use plan, one large tree, three inch caliper minimum, will be planted on 30 foot centers in a 15 foot landscape area, with the following exceptions:

- i. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area where truck docks or loading spaces are adjacent to residentially zoned property or areas shown as residential on the future land use plan.
- ii. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area on any lot containing a drive-through restaurant, drive-in restaurant, and/or automotive use as defined in Chapter 4, Section 9.11(A) that is adjacent to a residential zoning district or area shown as residential on the future land use plan. All landscape screening materials shall be maintained in a manner to provided the intended screening.
- iii. In the DTO District, regardless of the adjacent use, zoning or future land use designation; the width of perimeter landscape area adjacent to the property line may be reduced to a minimum of five feet.
- iv. In the DTO District, in lieu of the required large trees, one small (ornamental) tree shall be planted 30 foot centers along the adjacent property lines."
- c. Where a non-residential development is adjacent to the property line of parcels zoned for uses other than residential or parcels not shown as residential on the future land use plan:
 - i. A five foot wide landscape area is required.
 - ii. If the property line is the centerline of a fire lane or drive aisle, the five foot wide landscape area will begin at the edge of the lane/aisle. If the drive aisle or fire lane only allows access to parking spaces, the landscape area may be eliminated or moved at the discretion of the town.
 - iii. The five foot wide landscape area may be eliminated for a building where the building is attached to another building and the attached buildings are shown on an approved site plan.
 - iv. One small tree and one five-gallon shrub shall be planted every 15 linear feet. These trees and shrubs may be clustered in lieu of placing them every 15 feet.
 - v. All uses containing a drive-in, drive-through, or that require stacking shall provide a ten foot wide landscape area along the perimeter of the property. If the property line is the centerline of a fire lane or drive aisle, the ten foot wide landscape area will begin at the edge of the lane/aisle. The landscape area shall contain a minimum three-inch caliper evergreen trees planted 15 feet oncenter with minimum five gallon shrubs planted three feet on center.
- 2. Interior parking requirements. Any non-residential parking area that contains 20 or more parking spaces shall provide interior landscaping, in addition to the required landscaped edge, as follows:

- a. Fifteen square feet of landscaping for each parking space shall be provided within the paved boundaries of the parking lot area.
- b. Where an existing parking lot area is altered or expanded to increase the number of spaces to 20 or more, interior landscaping shall be provided on the new portion of the lot in accordance with this section.
- c. All landscaped areas shall be protected by a raised six inch concrete curb. Pavement shall not be placed closer than four feet from the trunk of a tree unless a town approved root barrier is utilized.
- d. Landscaped islands shall be located at the terminus of all parking rows, and shall contain at least one large tree, three inch caliper minimum, with no more than 15 parking spaces permitted in a continuous row without being interrupted by a landscaped island. Where there is a minimum eight foot wide landscaped median between two rows of head-in parking, landscaped islands are required every 20 spaces.
- e. Landscaped islands shall be a minimum of 160 square feet, not less than nine feet wide and a length equal to the abutting space.
- f. Subject to approval by the town, islands may be grouped to form one large island.
- g. There shall be at least one large tree, three-inch caliper minimum, within 150 feet of every parking space. This minimum distance may be expanded with town approval in the event that required islands are grouped to form larger islands.
- h. Required parking lot trees may be consolidated into groups under the following conditions:
 - i. The number of required trees is one per ten parking spaces.
 - ii. Consolidated tree islands require 180 square feet per tree.
 - iii. The maximum run of parking spaces is increased from 15 to 30.
 - iv. This consolidation does not include the tree islands at the end of a row of parking or along perimeter parking rows that face a drive aisle or street.
 - v. A consolidated tree island shall not be located closer than five parking spaces from an end of row tree island.
- i. All uses containing a drive-in, drive-through, or that require stacking shall be subject to the following standards:
 - i. A minimum five foot wide landscape island shall be constructed around the outer edge of the drive-through lane(s) along the outer edge of the escape lane, extending from the point entry to the exit.

ii. The landscape island shall contain minimum three inch caliper evergreen trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center. Ornamental trees may be used in place of a portion of shrubs to create a mixture of species and types of vegetation. If the landscape island is located on the perimeter of the property, perimeter landscaping requirements may be applied towards this requirement.

* * *"

SECTION 4

From and after the effective date of this Ordinance, existing Subsection 4.9, "Loading Space Requirements," of Section 4, "Parking, Circulation, and Access," of Chapter 4, "Development Requirements," of the Town's Zoning Ordinance is hereby repealed and replaced with a new Subsection 4.9, Loading Space Requirements," to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.9 Loading space requirements.

- A. A minimum of one loading space shall be required for big box uses. Loading spaces for other non-residential uses may be required as determined by the Director of Development Services, if it is determined the use or configuration of the site warrants such.
- B. All non-residential uses providing loading spaces shall provide such loading spaces in accordance with the following requirements:
 - 1. A loading space shall consist of an area of a minimum of 12 feet wide and 30 feet long.
 - 2. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks. Each site shall provide a designated maneuvering area for trucks. (See Chapter 5, Section 2.3, Illustration H)."

SECTION 5

From and after the effective date of this Ordinance, Section 4, "Parking, Circulation, and Access," of Chapter 4, "Development Requirements," of the Town's Zoning Ordinance is amended by adding a new Subsection 4.10, "Stacking Requirements," to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

. . .

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.10 Stacking Requirements.

1. Stacking Space Definition

Stacking spaces provide the ability for vehicles to queue on site prior to receiving a service.

- 2. Stacking Space Size and Location
 - a. A stacking space shall be a minimum of nine feet wide and 20 feet long and shall not be located within or interfere with any other circulation driveway, parking space, or maneuvering aisle.
 - b. Stacking spaces shall be provided behind the vehicle bay door, middle of the service window, or middle of the service island, whichever is applicable.
 - c. The stacking/drive-through lanes shall not be placed between the building and the adjacent public right-of-way.
- 3. Number of Required Stacking Spaces (All Districts)

In all zoning districts, at the time any building or structure is erected or altered, stacking spaces shall be provided in the number and manner set forth in the following list of property uses:

- Automated teller machine (ATM): Three stacking spaces.
- Automobile oil change and similar establishments: Three stacking spaces per bay.
- Car wash: Three stacking spaces for drive-through, or one stacking space per bay.
- Dry cleaning, pharmacy, or other retail establishments with a drive-through: Three stacking spaces for first service window.
- Financial institution: Five stacking spaces per window or service lane.
- Kiosk (with food service): Five stacking spaces for first window, order board, or other stopping point.
- Kiosk (without food service): Two stacking spaces for first window, order board, or other stopping point.
- Restaurant with drive-through: Five stacking spaces for first window, order board, or other stopping point.
- 4. Single Stacking Space Required after the Final Window, Order Board, or Stopping Point

A single stacking space shall be provided after the final window, order board, or stopping point to allow vehicles to pull clear of the transaction area prior to entering an intersecting on-site driveway or maneuvering aisle.

5. Setback Requirement

Buildings and other structures shall be setback a minimum of ten feet from the back of the curb of the intersecting driveway or maneuvering aisle to provide adequate visibility and to allow vehicles to safely exit drive-through lanes and escape lanes prior to merging into intersecting driveways or maneuvering aisles.

- 6. Escape Lane Requirement for Drive-Through Facilities
 - a. An escape lane shall be provided for any use containing a drive-through facility.
 - b. An escape lane shall be provided in proximity to the first stopping point for any use containing a drive-through facility.
 - c. An escape lane shall be nine (9) feet in width and shall provide access around the entirety of the drive-through facility from the point of entry, around the stacking lane, and to the exit.

7. Landscape Requirements

Landscaping shall comply with the requirements set forth in Chapter 4, Section 2.6(C)."

SECTION 6

From and after the effective date of this Ordinance, Subpart A of Subsection 5.2, "Location of Required Screening," of Section 5, "Screening Fences and Walls," of Chapter 4, "Development Requirements," of the Town's Zoning Ordinance is hereby amended to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 5. SCREENING FENCES AND WALLS

* * *

5.2 Location of required screening.

A. When a boundary of a multifamily, institutional, or non-residential use sides or backs to a property that is zoned or designated on the future land use plan for residential (non-multifamily) uses, or when any institutional or non-residential use sides or backs to a MF District, a solid screening wall or fence of not less than six feet nor more than eight feet in height shall be erected on the property line separating these uses. The purpose of the screening wall or fence is to provide a visual barrier between the properties.

Any lot a containing drive-through restaurant, drive-in restaurant, and/or automotive use, as defined in Chapter 4, Section 9.11(A), and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan, shall have a screening wall eight feet in height and shall be maintained in a manner to provide the intended screening.

The owner of such property of the lesser restrictive use shall be responsible for and shall build the required wall or fence on his property line dividing his property from the more restrictive zoning district. In cases where the Planning and Zoning Commission finds this requirement to be better met by an irrigated living screen, the same may be substituted for the screening wall after a landscape plan has been prepared to demonstrate equal visual screening.

A screening wall or fence required under the provisions of this section, under a specific use permit, a Planned Development District, or other requirement shall be constructed of clay-fired brick masonry units or other suitable permanent materials which do not contain openings constituting more than 40 square inches in each one square foot of wall or fence surface, and the surface of such wall or fence shall constitute a visual barrier. All wall or fence openings shall be equipped with gates equal in height and screening characteristics to the wall or fence. Concrete masonry units, poured in place concrete, tilt-up concrete, or concrete panels may be used upon approval by the Planning and Zoning Commission.

Properties zoned for the DTC, DTR, or DTO District are only required to provide screening along property lines that are adjacent to properties shown as residential on the future land use plan. The screening shall consist of an eight foot cedar board-on-board wooden fence constructed in accordance with the fence ordinance as it exists or may be amended. In the DTO District, the height of the fence may be reduced to six feet.

* * *"

SECTION 7

From and after the effective date of this Ordinance, Subsection 9.11, "Adjacency of Certain Uses to Residential Zoning," of Section 9, "Additional and Supplemental," of Chapter 4, "Development Requirements," of the Zoning Ordinance of the Town of Prosper Texas, is hereby amended to read as follows:

"CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 9. ADDITIONAL AND SUPPLEMENTAL

* * *

9.11 Adjacency of certain uses to residential zoning.

A. All buildings, gasoline pump islands, vacuums, outdoor speakers, gasoline or fuel storage tanks, air and water dispensers, and other structures in conjunction with any automotive use shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan. No service bay shall face a residential zoning district or areas shown as residential on the future land use plan. An automotive use shall be defined as the sales, leasing, renting, servicing, repair, or washing of automobiles, boats, motorcycles, trucks, or any other motor vehicle.

- B. All buildings, structures, and outdoor speakers used in conjunction with any drive-through restaurant or drive-in restaurant shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan.
- C. Any lot containing a drive-through restaurant, drive-in restaurant, and/or an automotive use as defined in Chapter 4, Section 9.11(A) and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan shall comply with the landscape requirements set forth in Chapter 4, Section 2.6(C) and screening wall requirements set forth in Chapter 4, Section 5.2.
- D. The requirements listed in Chapter 4, Section 9.11(A) and 9.11(B) shall not apply to a drive-through restaurant, drive-in restaurant, and/or an automotive use within 200 feet of a residential zoning district that is separated from the residential area by an existing or future major thoroughfare identified on the town's thoroughfare plan."

SECTION 8

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, sentence, 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 9

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 from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 10

Any person, firm, corporation, or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 11

This Ordinance shall become effective 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 9TH DAY OF JANUARY, 2024.

	David F. Bristol, Mayor	
ATTEST:		
Michelle Lewis Sirianni, Town Secretary		
APPROVED AS TO FORM AND LEGALITY:		
Terrence S. Welch, Town Attorney		



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: Zoning Ordinance Amendment - Automobile Sales/Leasing, Used

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Chapter 3, Section 1.4, Subpart 38 – Automobile Sales/Leasing, Used, of the Town of Prosper Zoning Ordinance to provide additional criteria for this use. (ZONE-23-0026)

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed request by a vote of 7-0. An Ordinance has been prepared for review and approval.

For clarity, the stipulation in the new text stating:

Used vehicle sales are only permitted as an accessory use to new vehicle sales. (Prohibition includes car rental agencies.)

Has been modified to:

Used vehicle sales are only permitted as an accessory use to new vehicle sales. (Used vehicle sales are not allowed in association with car rental agencies.)

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Town Attorney, Terrance Welch of Brown & Hofmeister, L.L.P., has approved the standard ordinance as to form and legality.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town Staff recommends approval of an ordinance amending Chapter 3, Section 1.4, Subpart 38 – Automobile Sales/Leasing, Used, of the Town of Prosper Zoning Ordinance to provide additional criteria for this use.

Page 223

Item 21.

Proposed Motion:

I move to approve an ordinance amending Chapter 3, Section 1.4, Subpart 38 – Automobile Sales/Leasing, Used, of the Town of Prosper Zoning Ordinance to provide additional criteria for this use.

ORDINANCE NO. 2024-

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING SUBPART 38, "AUTOMOBILE SALES/LEASING, USED," OF SUBSECTION 1.4, "CONDITIONAL DEVELOPMENT STANDARDS," OF SECTION 1, "USE OF LAND AND BUILDINGS," OF CHAPTER 3, "PERMITTED USES AND DEFINITIONS," OF THE ZONING ORDINANCE OF THE TOWN OF PROSPER; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; 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 Council of the Town of Prosper, Texas (the "Town Council"), has investigated and determined that the Zoning Ordinance should be amended; and

WHEREAS, after public notice and public hearing as required by law, the Planning & 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 & 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

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 Subpart 38, "Automobile Sales/Leasing, Used," of Subsection 1.4, "Conditional Development Standards," of Section 1, "Use of Land and Buildings," Of Chapter 3, "Permitted Uses and Definitions," of the Zoning Ordinance of the Town of Prosper Texas, are hereby amended to read as follows:

"CHAPTER 3 PERMITTED USES AND DEFINITIONS

SECTION 1. USE OF LAND AND BUILDINGS

* * *

1.4 Conditional development standards.

* * *

- 38. Automobile Sales/Leasing, Used.
 - a) A Specific Use Permit is required in the Commercial and Commercial Corridor Districts.

- b) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 shall apply.
- c) Used vehicle sales are only permitted as an accessory use to new vehicle sales. (Used vehicle sales are not allowed in association with car rental agencies.)"

SECTION 3

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, sentence, 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 4

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 from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5

Any person, firm, corporation, or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of two thousand dollars (\$2,000.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

This Ordinance shall become effective 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 9TH DAY OF JANUARY, 2024.

	David F. Bristol, Mayor	
ATTEST:		
Michelle Lewis Sirianni, Town Secretary		

$^{\circ}$	
/ /	
	21

APPROVED AS TO FORM AND LEGALITY:
Terrence S. Welch, Town Attorney



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: Façade Plan for Gates of Prosper Phase 3

Town Council Meeting - January 9, 2024

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

Agenda Item:

Consider and act upon a request for a Façade Plan for Gates of Prosper, Phase 3, Block B, Lot 2, on 15.8± acres, located north of US 380 and west of Preston Road. The property is zoned Planned Development-67 (PD-67) Gates of Prosper. (DEVAPP-23-0165)

Description of Agenda Item:

Per Planned Development-67 (PD-67), façade plans are required to be approved by Town Council. The Façade Plan shows exterior elevations of the Restaurant and Retail buildings that are being proposed on the subject property as shown below:

Building A (Northern Building)

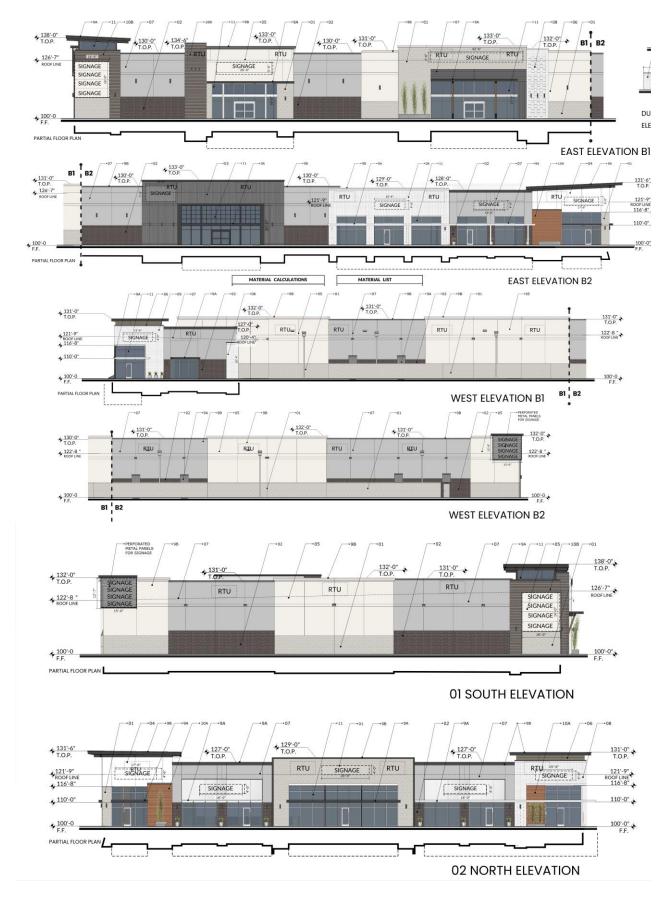


Page 229



Page 2 of 4

Building B (Southern Building)



Budget Impact:

There is no budgetary impact affiliated with this item.

Attached Documents:

- 1. Location Map
- 2. Façade Plan

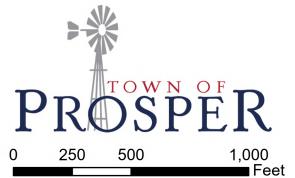
Town Staff Recommendation:

Town Staff recommends approval of the Façade Plan for Gates of Prosper, Phase 3, Block B, Lot 2, on 15.8± acres, located north of US 380 and west of Preston Road. The Planning & Zoning Commission approved this item and the corresponding Site Plan (DEVAPP-23-0164) by a vote of 7-0 on December 19, 2023.

Proposed Motion:

I move to approve/deny the Façade Plan for Gates of Prosper, Phase 3, Block B, Lot 2, on 15.8± acres, located north of US 380 and west of Preston Road.







DEVAPP-23-0165

Gates of Prosper Phase 3, Block B, Lot 2

Page 232

Facade Plan



GATES OF PROSPER PHASE III

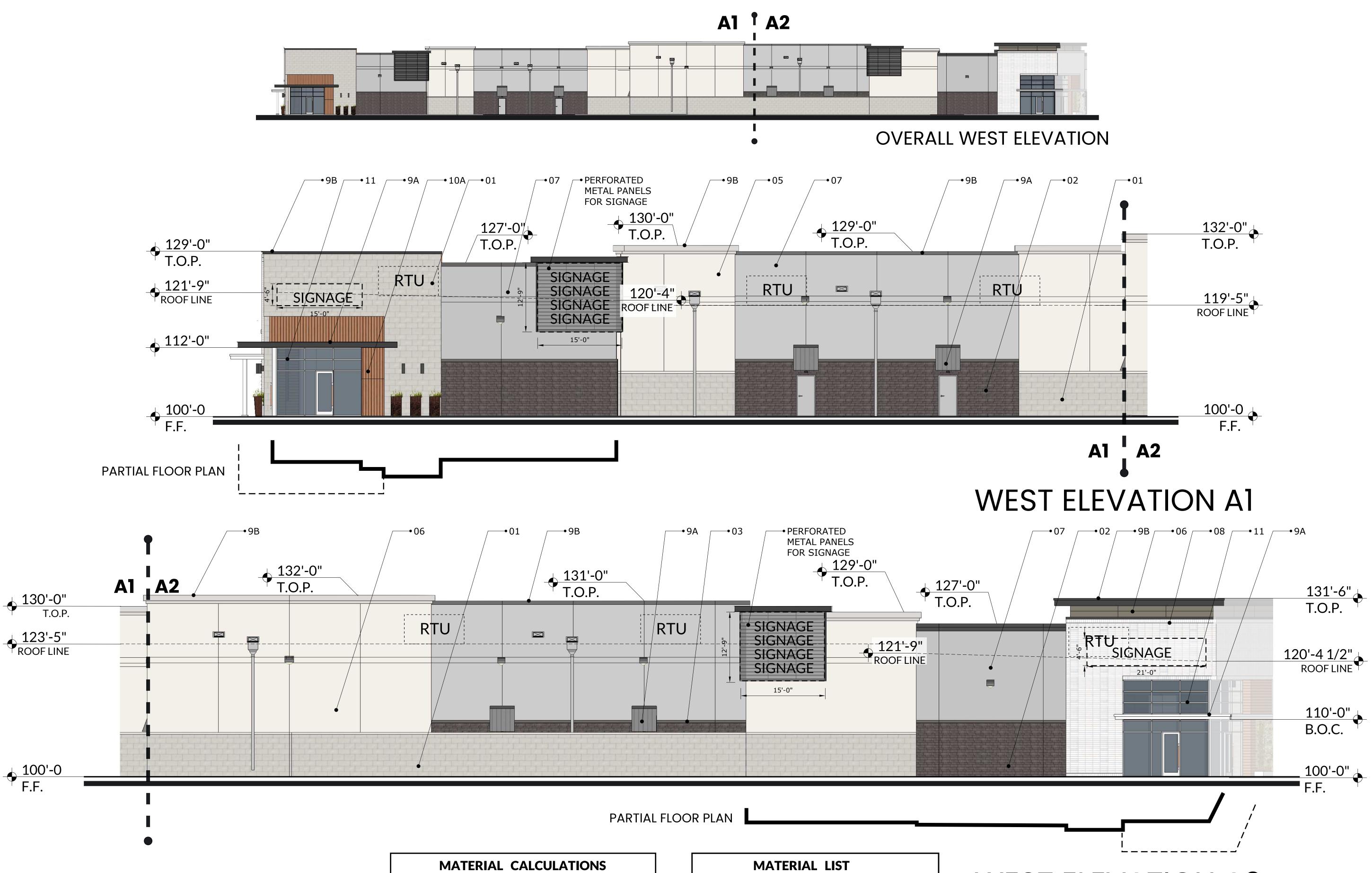
PROSPER, TX



BOARD 01

(11) GLAZING

SITE PLAN



ELEVATION NOTES

-THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTIONS DIVISION.

-ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW. ROOFTOP MOUNTED EQUIPMENT SHALL BE SCREENED BY A PARAPET WALL OR SCREENING WALL. SCREENING WALLS SHALL BE PER THE SPECIFICATIONS OF THE ZONING ORDINANCE.

-WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.

-ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BYTHE BUILDING INPSECTIONS DIVISION.

-WINDOWS SHALL BE MAXIMUM EXTERIOR VISIBLE REFLECTIVITY OF TEN(10) PERCENT.

-ANY DEVIATION FROM THE APPROVED FACADE PLAN WILL REQUIRE RE-APPROVAL BY THE TOWN OF

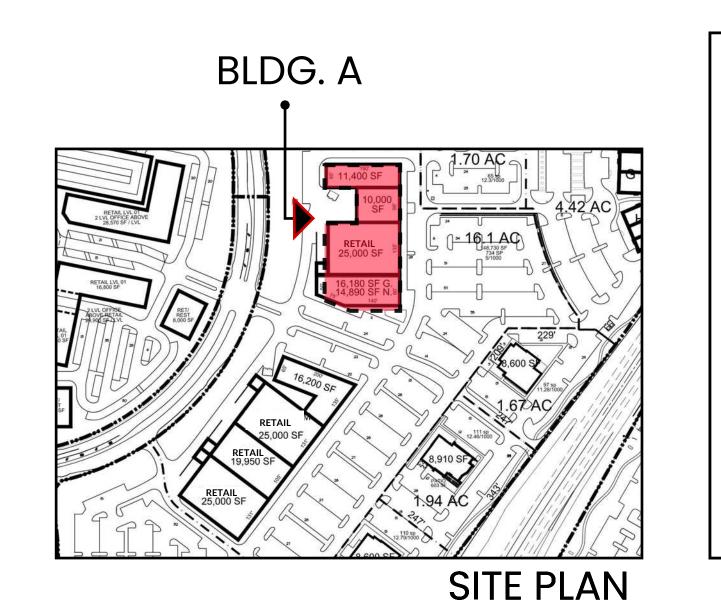
9,603 TOTAL SURFACE AREA SQ.FT. MATERIAL PERCENTAGES TAKEN FORM THE NET SURFACE Manufactured Smooth Limestone 1,440 **12%** 1,139 **Manufactured Dark Stone Total Stone** 2,579 **Dark Formliner** Tilt Wall Color 01 (Snowbound - SW 7004) Tilt Wall Color 02 (Shoji White - SW 7042) 2,474 Tilt Wall Color 03 (Anonymous - SW 7046) Tilt Wall Color 04 (Gray Matters - SW 7066) 2,747 **Total Tilt Wall** 5,273 **Total Masonry** Metal Canopy (9B) Metal Coping Wood Composite Material **Total Secondary Material**

Glazing

NET SURFACE AREA SQ.FT.

STONE 1) Manufactured Smooth Limestone (2) Manufactured Dark Stone TILT WALL (3) Painted Formliner (Cityscape - SW7067) (4) Tilt Wall Color 01 (Snowbound - SW 7004) 5 Tilt Wall Color 02 (Shoji White - SW 7042) 6 Tilt Wall Color 03 (Anonymous SW 7046) 7 Tilt Wall Color 04 (Gray Matters - SW 7066) 8 BRICK (9A) METAL CANOPY (9B) METAL COPING (10A) WOOD LIKE 10B WOOD LIKE CEMENTIOUS CEMENTIOUS BOARD 02 BOARD 01 (11) GLAZING

WEST ELEVATION A2



FACADE PLAN

GATES OF PROSPER, PHASE 03 BLOCK B, LOT 2 DEVAPP-23-0165 BEING 15.77 ACRES OUT OF THE BEN RENNISON SURVEY AVSTRACT NO.755 JOHN YARNELL SURVEY ABSTRACT NO.1038 COLLIN COUNTY SCHOOL LAND NO.SURVEY ABSTRACT NO.147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS

380 & 289 LP 1 COWBOYS WAY

ENGINEER/ SURVEYOR: CONTACT: NICHOLAS LINK CONTACT: RACHEL KORUS, P.E.

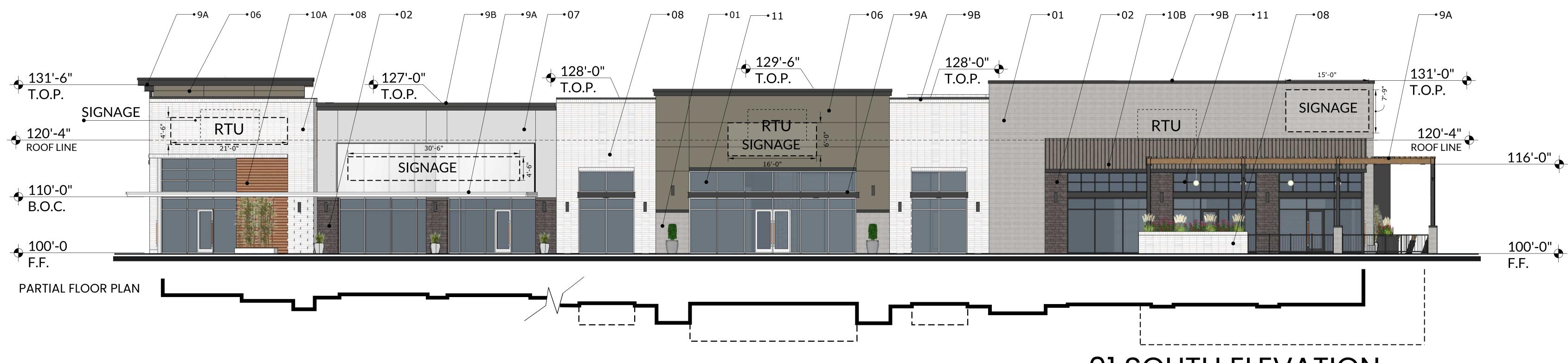
KIMLEY-HORN AND ASSOCIATES, INC. O'BRIEN ARCHITECTS PHONE: (972) 788-1010

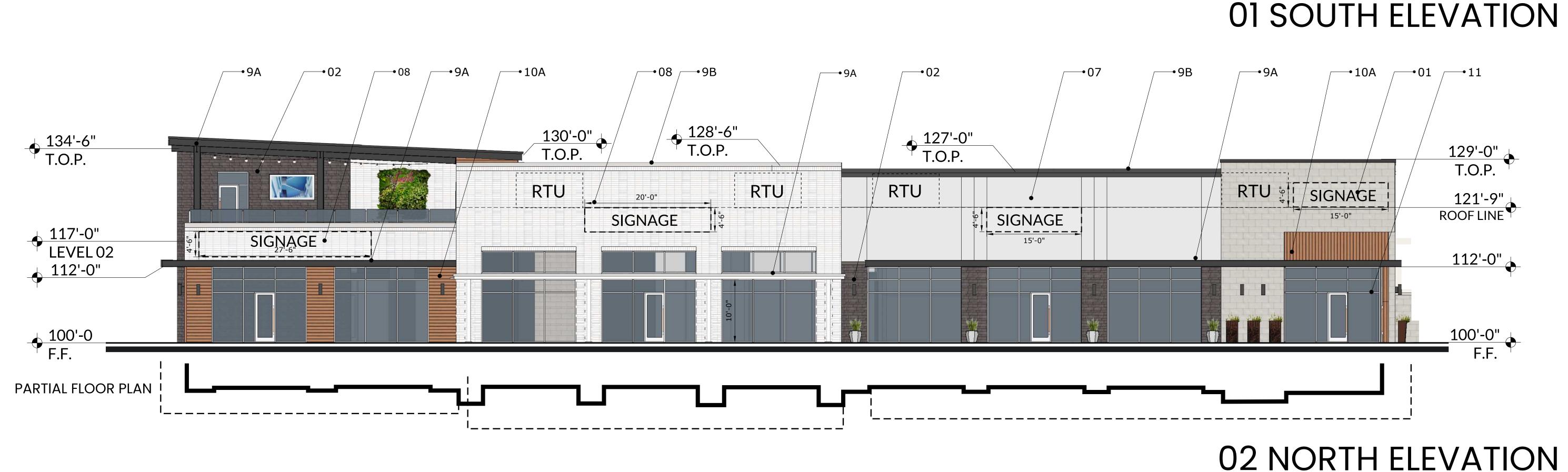
GATES OF PROSPER PHASE III



9,185

Item 22.





		•	
M	IATERIAL CALCULATIONS	SOUTH	NORTH
=	NET SURFACE AREA SQ.FT.	3,630	3,298
	TOTAL SURFACE AREA SQ.FT.	5,569	5,090
MAT	ERIAL PERCENTAGES TAKEN FORM THE NET SURFACE		
(1)	M	23%	12%
(1)	Manufactured Smooth Limestone	845	380
(3)	(a) M () ID I ()		12%
(2)	Manufactured Dark Stone	120	405
		27%	24%
	Total Stone	965	785
(3)	- 1 - 0	0%	0%
(3)	Dark Formliner	0	0
		0%	0%
(4)	Tilt Wall Color 01 (Snowbound - SW 7004)	0	0
(5)	Tile Wall Calanda (Shaii W/Lita SW 7042)	0%	0%
	Tilt Wall Color 02 (Shoji White - SW 7042)	0	0
(6)	Tilt Wall Color 03 (Anonymous SW 7046)	2%	0%
	Tilt Wall Color 03 (Anonymous - SW 7046)	61	0
$\overline{(7)}$	Tilt Wall Color 04 (Gray Matters - SW 7066)	17%	20%
	Till Wall Color 04 (Gray Watters - 3W 7000)	635	650
Total Tilt Wall	19%	20%	
	Total Tilt Wall	696	650
8 Brick	29%	37%	
	DITCK	1,040	1,208
	Total Masonny	74%	80%
	Total Masonry	2,701	2,643
(9A)	Metal Canopy 9B Metal Coping	10%	13%
Metal	ivietal Callopy (3) Ivietal Coping	375	413
(10)	Wood Composite Material	15%	7%
	Wood Composite Material		242
	Total Secondary Material	26%	20%
	Total Secondary Material	929	655
(11)	Glazing	53%	54%
	Glazilig	1,939	1,792

ELEVATION NOTES

-THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTIONS DIVISION.

-ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW. ROOFTOP MOUNTED EQUIPMENT SHALL BE SCREENED BY A PARAPET WALL OR SCREENING WALL. SCREENING WALLS SHALL BE PER THE SPECIFICATIONS OF THE ZONING ORDINANCE.

-WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.

-ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BYTHE BUILDING INPSECTIONS DIVISION.

-WINDOWS SHALL BE MAXIMUM EXTERIOR VISIBLE REFLECTIVITY OF TEN(10) PERCENT.

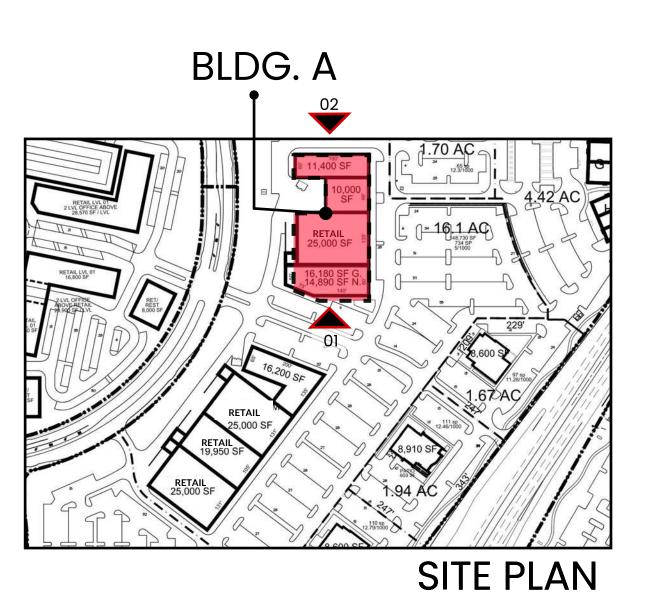
-ANY DEVIATION FROM THE APPROVED FACADE PLAN WILL REQUIRE RE-APPROVAL BY THE TOWN OF

GATES OF PROSPER PHASE III





MATERIAL LIST



FACADE PLAN

GATES OF PROSPER, PHASE 03 BLOCK B, LOT 2 DEVAPP-23-0165 BEING 15.77 ACRES OUT OF THE BEN RENNISON SURVEY AVSTRACT NO.755 JOHN YARNELL SURVEY ABSTRACT NO.1038 COLLIN COUNTY SCHOOL LAND NO.SURVEY ABSTRACT NO.147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS

380 & 289 LP 1 COWBOYS WAY

KIMLEY-HORN AND ASSOCIATES, INC. O'BRIEN ARCHITECTS



01 OVERALL EAST ELEVATION



02 OVERALL SOUTH ELEVATION



04 OVERALL NORTHEAST ELEVATION



03 SOUTHEAST CORNER ELEVATION

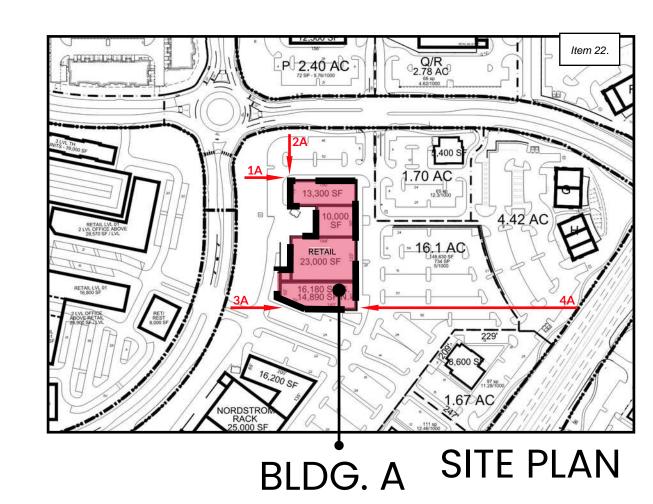


05 OVERALL NORTH ELEVATION





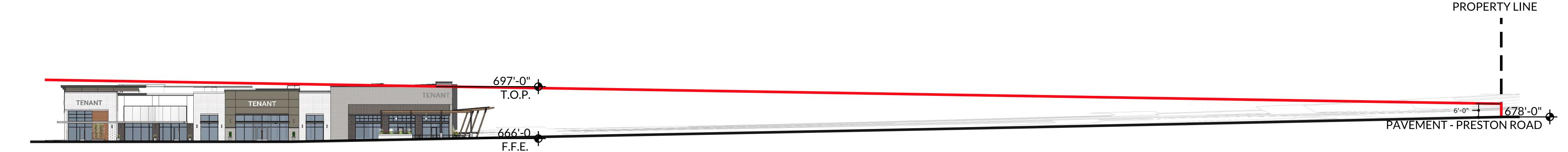




BUILDING A - SIGHTLINE 2A



BUILDING A - SIGHTLINE 3A



BUILDING A - SIGHTLINE 4A

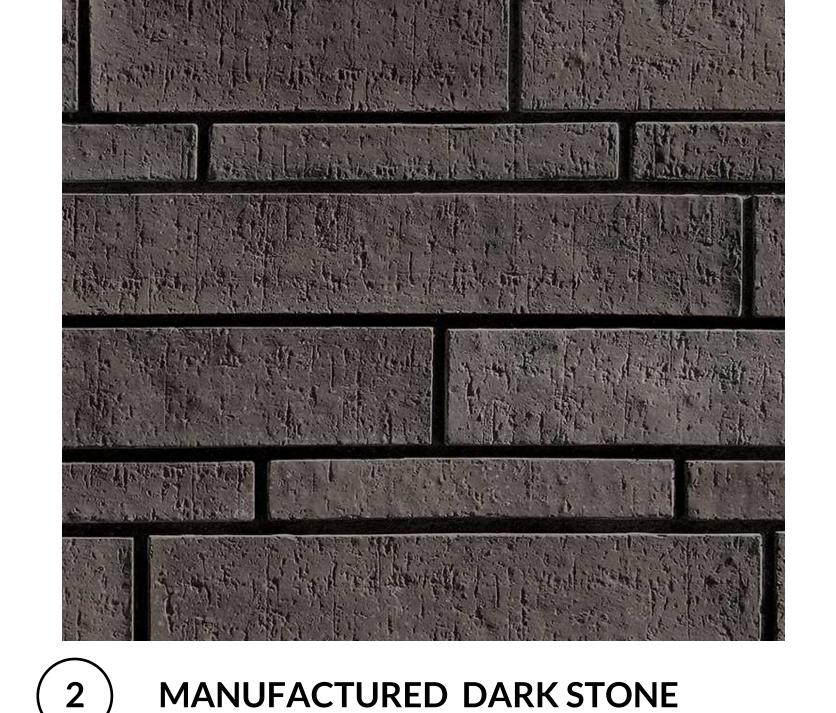
GATES OF PROSPER PHASE III





STONE





METAL

METAL CANOPY

SHERWIN WILLIAMS

IRON ORE - SW 7069

PAINTED:



METAL COPING

BERRIDGE - CHARCOAL



SIDING



Item 22.

(10A) WOOD LIKE CEMENTITOUS **BOARD**

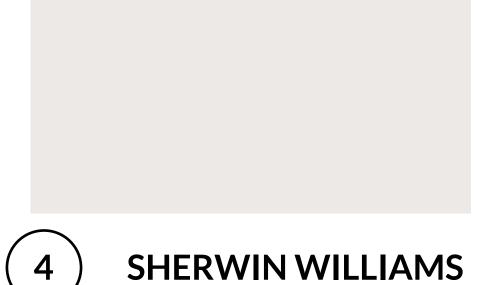
(10B) WOOD LIKE CEMENTITOUS **BOARD**

MANUFACTURED SMOOTH LIMESTONE

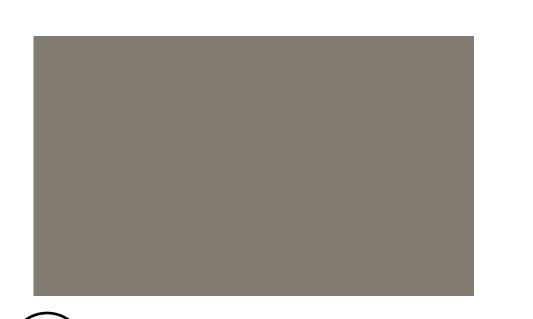
PAINT COLORS ON FACADE







SHERWIN WILLIAMS SNOWBOUND - SW 7004 SHOJI WHITE - SW 7042







SHERWIN WILLIAMS **GRAY MATTERS - SW 7066**

GLAZING

(9B)



VITRO GLAZING Solarban® 70 (2) Atlantica® + Clear **VISIBLE LIGHT REFLECTANCE: EXTERIOR: 10% INTERIOR: 13%**

BRICK



BRICK (PAINTED)

STOREFRONT SYSTEM



DARK BRONZE

FACADE PLAN

GATES OF PROSPER, PHASE 03 BLOCK B, LOT 2 DEVAPP-23-0165 BEING 15.77 ACRES OUT OF THE BEN RENNISON SURVEY AVSTRACT NO.755 JOHN YARNELL SURVEY ABSTRACT NO.1038 COLLIN COUNTY SCHOOL LAND NO.SURVEY ABSTRACT NO.147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS

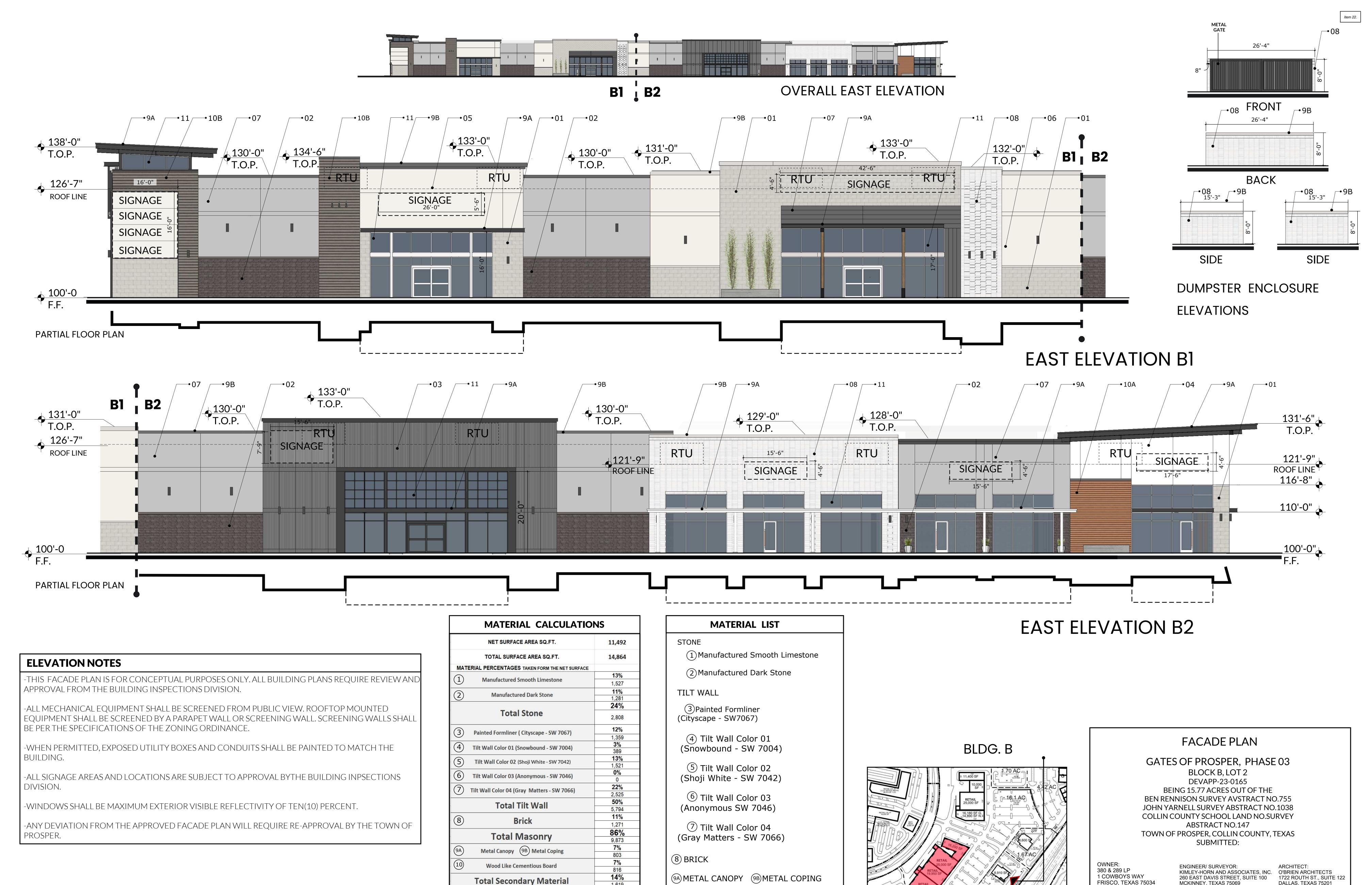
380 & 289 LP 1 COWBOYS WAY FRISCO, TEXAS 75034 CONTACT: NICHOLAS LINK PHONE: (972)497-4854

ENGINEER/ SURVEYOR: KIMLEY-HORN AND ASSOCIATES, INC. O'BRIEN ARCHITECTS CONTACT: RACHEL KORUS, P.E.

PHONE: (972) 788-1010

GATES OF PROSPER PHASE III





Glazing

GATES OF PROSPER PHASE III

PROSPER, TX



BLDG.B ELEVATIONS FRONT (EAST)

WOOD LIKE CEMENTIOUS

BOARD 02

(10A) WOOD LIKE

BOARD 01

(11) GLAZING

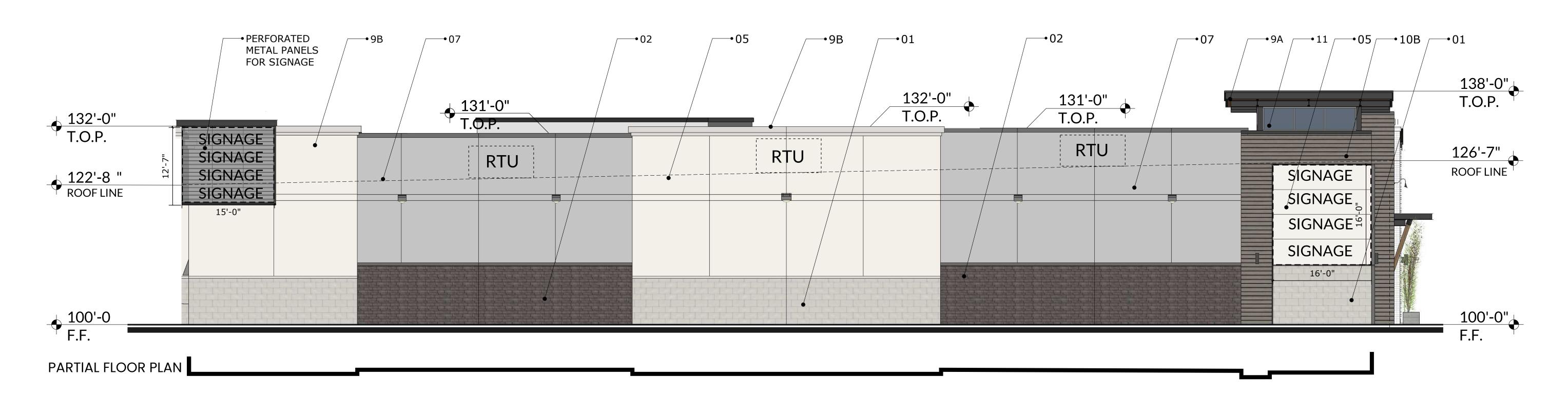
CEMENTIOUS

SITE PLAN

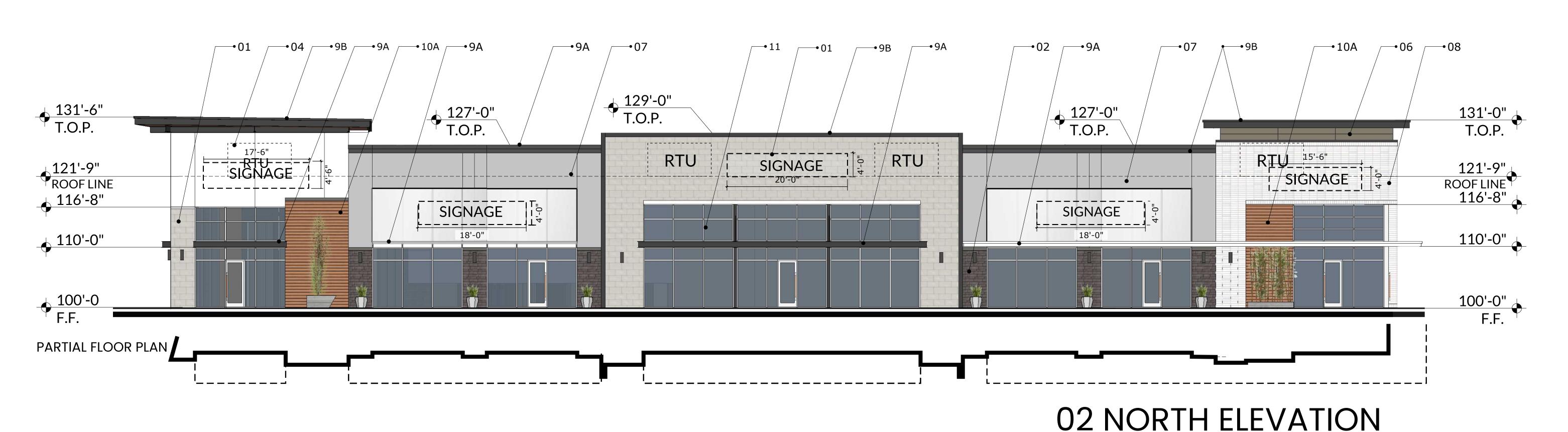
CONTACT: NICHOLAS LINK

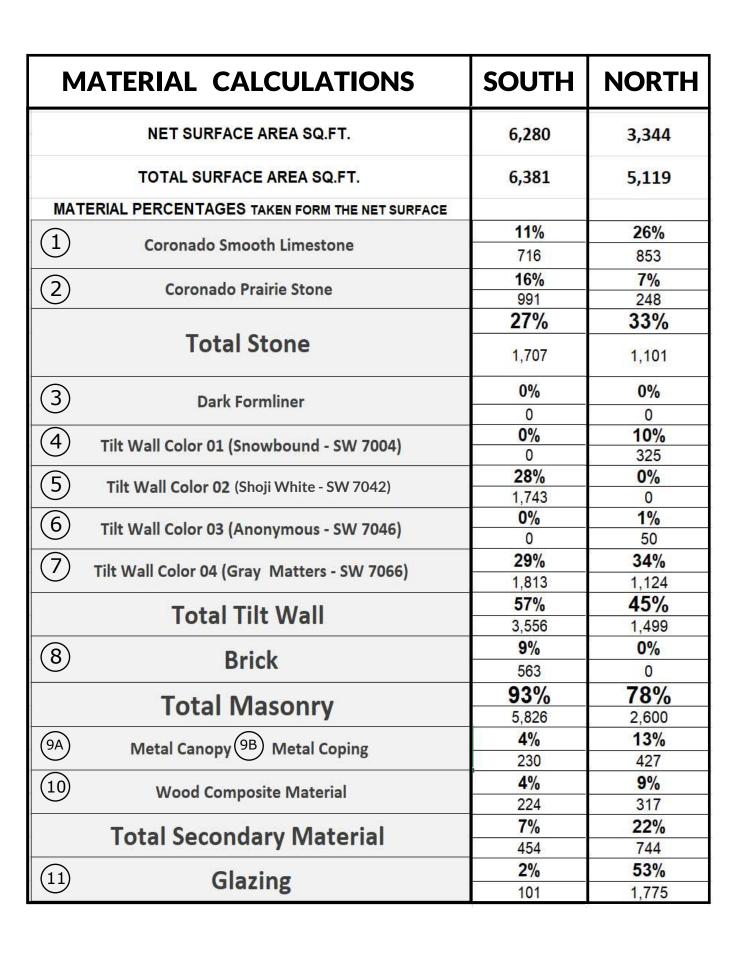
PHONE: (972)497-4854

CONTACT: RACHEL KORUS, P.E.



01 SOUTH ELEVATION





ELEVATION NOTES

-THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTIONS DIVISION.

-ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW. ROOFTOP MOUNTED EQUIPMENT SHALL BE SCREENED BY A PARAPET WALL OR SCREENING WALL. SCREENING WALLS SHALL BE PER THE SPECIFICATIONS OF THE ZONING ORDINANCE.

-WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.

-ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BYTHE BUILDING INPSECTIONS DIVISION.

-WINDOWS SHALL BE MAXIMUM EXTERIOR VISIBLE REFLECTIVITY OF TEN(10) PERCENT.

-ANY DEVIATION FROM THE APPROVED FACADE PLAN WILL REQUIRE RE-APPROVAL BY THE TOWN OF

GATES OF PROSPER PHASE III



MATERIAL LIST STONE 1) Manufactured Smooth Limestone (2) Manufactured Dark Stone TILT WALL (3)Painted Formliner (Cityscape - SW7067) (4) Tilt Wall Color 01 (Snowbound - SW 7004) 5 Tilt Wall Color 02 (Shoji White - SW 7042) 6 Tilt Wall Color 03 (Anonymous SW 7046) 7 Tilt Wall Color 04 (Gray Matters - SW 7066) 8 BRICK 9A METAL CANOPY 9B METAL COPING WOOD LIKE CEMENTIOUS (10A) WOOD LIKE CEMENTIOUS BOARD 01 BOARD 02 (11) GLAZING

BLDG. B \$ 11,400 SF \$ 10,000 SF SITE PLAN

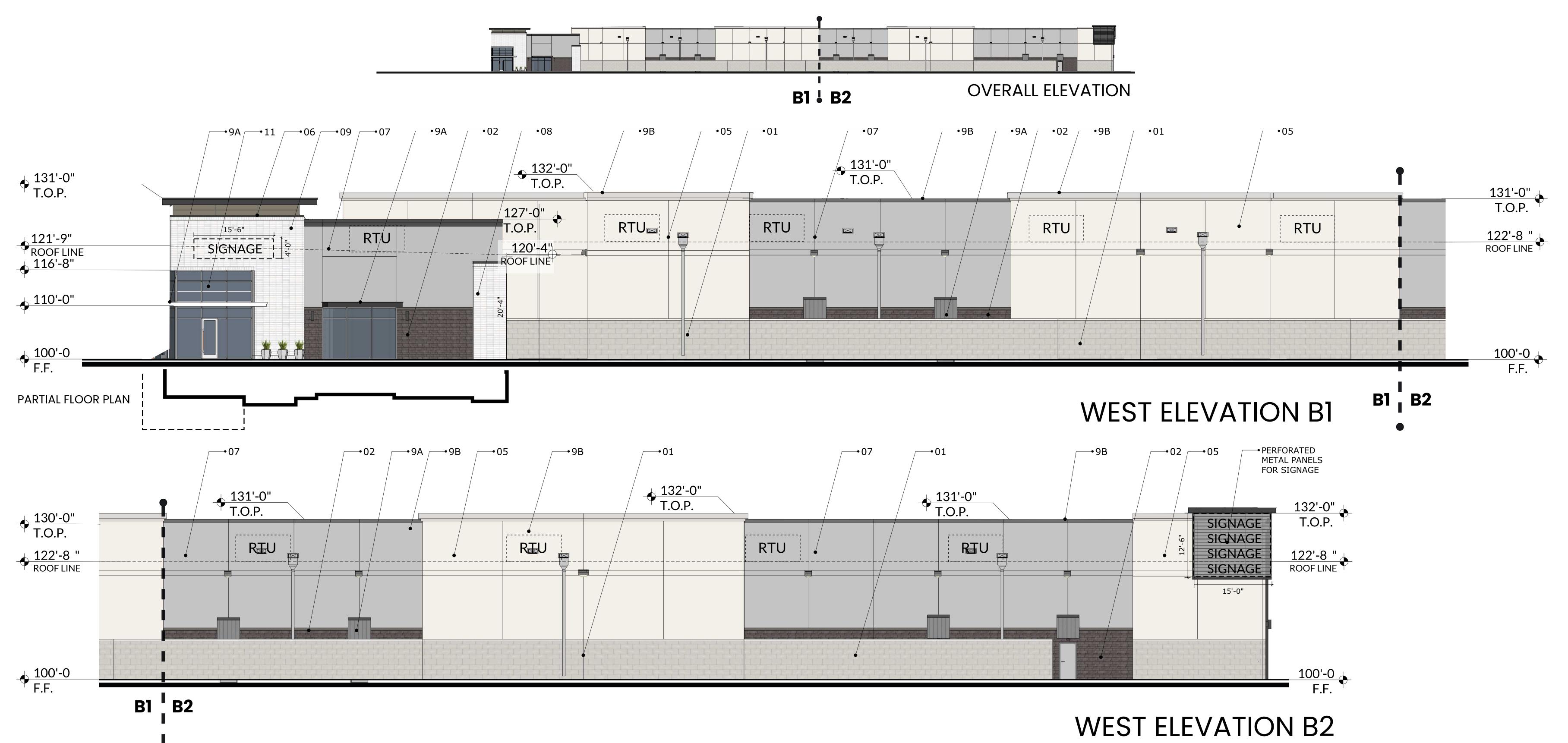
FACADE PLAN

GATES OF PROSPER, PHASE 03 BLOCK B, LOT 2 DEVAPP-23-0165 BEING 15.77 ACRES OUT OF THE BEN RENNISON SURVEY AVSTRACT NO.755 JOHN YARNELL SURVEY ABSTRACT NO.1038 COLLIN COUNTY SCHOOL LAND NO.SURVEY ABSTRACT NO.147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS **SUBMITTED:**

380 & 289 LP 1 COWBOYS WAY FRISCO, TEXAS 75034 CONTACT: NICHOLAS LINK PHONE: (972)497-4854

ENGINEER/ SURVEYOR: KIMLEY-HORN AND ASSOCIATES, INC. CONTACT: RACHEL KORUS, P.E.

ARCHITECT:



ELEVATION NOTES

-THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTIONS DIVISION.

-ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW. ROOFTOP MOUNTED EQUIPMENT SHALL BE SCREENED BY A PARAPET WALL OR SCREENING WALL. SCREENING WALLS SHALL BE PER THE SPECIFICATIONS OF THE ZONING ORDINANCE.

-WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.

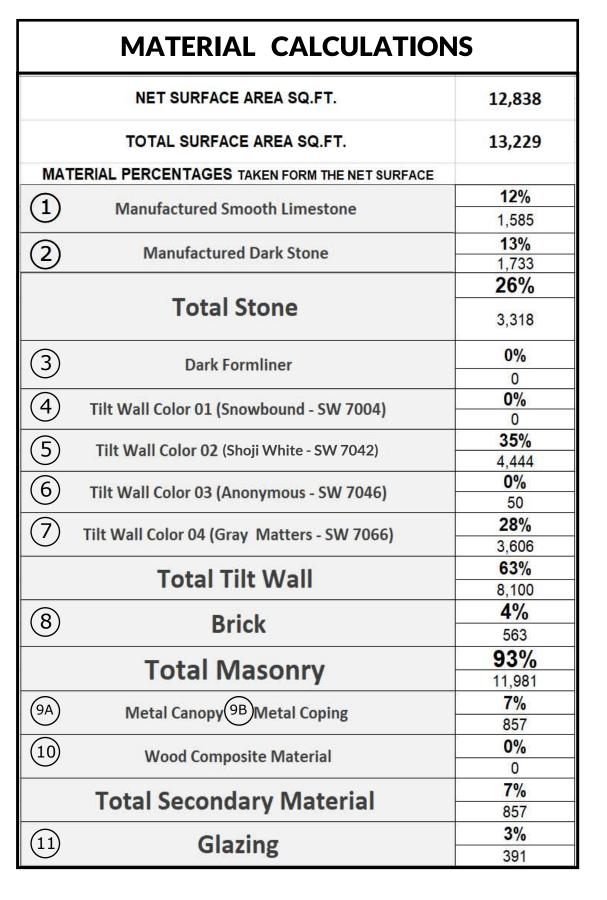
-ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BYTHE BUILDING INPSECTIONS DIVISION.

-WINDOWS SHALL BE MAXIMUM EXTERIOR VISIBLE REFLECTIVITY OF TEN(10) PERCENT.

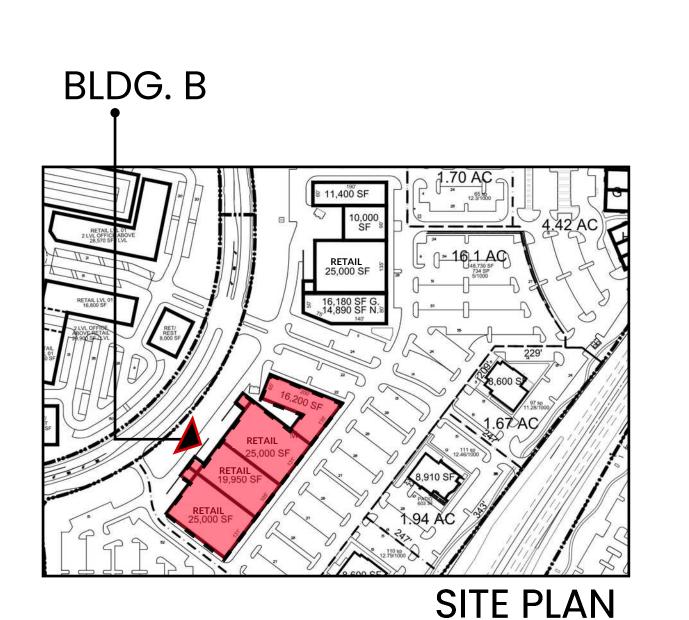
-ANY DEVIATION FROM THE APPROVED FACADE PLAN WILL REQUIRE RE-APPROVAL BY THE TOWN OF PROSPER.

GATES OF PROSPER PHASE III





MATERIAL LIST STONE 1) Manufactured Smooth Limestone (2) Manufactured Dark Stone TILT WALL (3) Painted Formliner (Cityscape - SW7067) (4) Tilt Wall Color 01 (Snowbound - SW 7004) 5 Tilt Wall Color 02 (Shoji White - SW 7042) 6 Tilt Wall Color 03 (Anonymous SW 7046) 7 Tilt Wall Color 04 (Gray Matters - SW 7066) 8 BRICK 9A METAL CANOPY 9B METAL COPING WOOD LIKE CEMENTIOUS (10A) WOOD LIKE CEMENTIOUS BOARD 02 BOARD 01 (11) GLAZING



FACADE PLAN GATES OF PROSPER, PHASE 03 BLOCK B, LOT 2 DEVAPP-23-0165 BEING 15.77 ACRES OUT OF THE BEN RENNISON SURVEY AVSTRACT NO.755 JOHN YARNELL SURVEY ABSTRACT NO.1038 ABSTRACT NO.147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS SUBMITTED: ARCHITECT: **ENGINEER/ SURVEYOR:** 380 & 289 LP KIMLEY-HORN AND ASSOCIATES, INC. 1 COWBOYS WAY 260 EAST DAVIS STREET, SUITE 100 FRISCO, TEXAS 75034 MCKINNEY, TEXAS 75069 CONTACT: NICHOLAS LINK CONTACT: RACHEL KORUS, P.E. PHONE: (972)497-4854





01 OVERALL EAST ELEVATION



02 OVERALL NORTH ELEVATION



04 EAST CLOSE UP ELEVATION



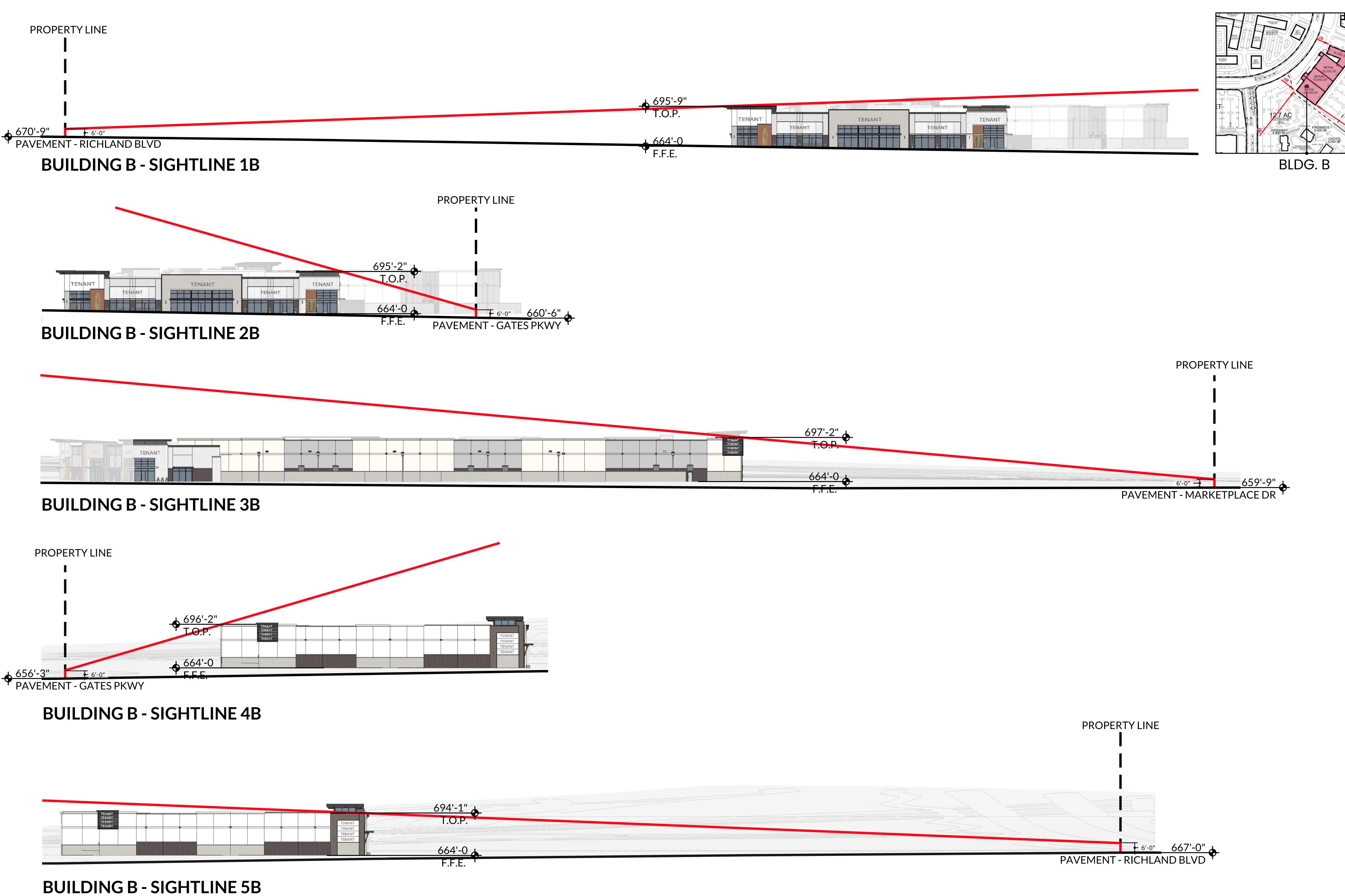
03 NORTHEAST CORNER ELEVATION



05 SOUTHEAST CORNER ELEVATION

GATES OF PROSPER PHASE III



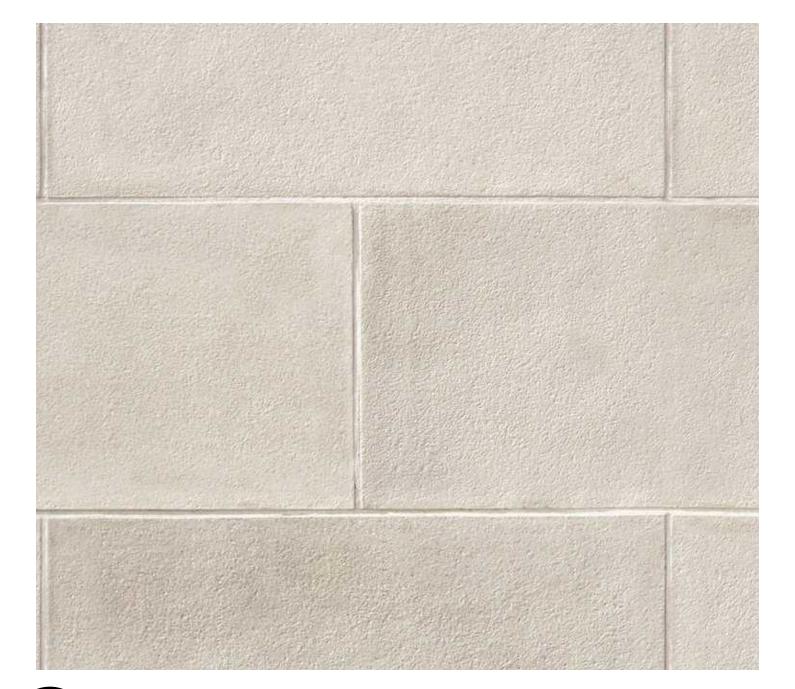


GATES OF PROSPER PHASE III



SITE PLAN

STONE

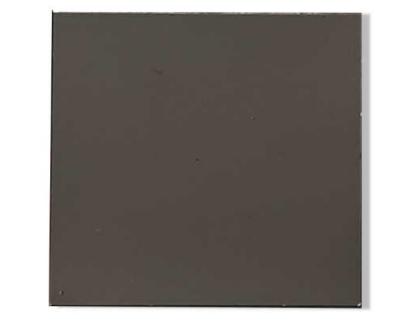






MANUFACTURED DARK STONE

METAL



METAL CANOPY PAINTED: SHERWIN WILLIAMS IRON ORE - SW 7069



METAL COPING BERRIDGE - CHARCOAL



SIDING

(10A) WOOD LIKE CEMENTITOUS **BOARD**

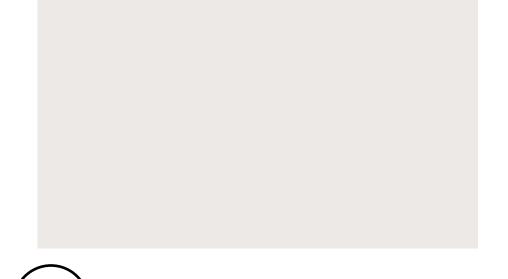


(10B) WOOD LIKE CEMENTITOUS **BOARD**

PAINT COLORS ON FACADE



SHERWIN WILLIAMS **CITYSCAPE - SW 7067**



BRICK

SHERWIN WILLIAMS SNOWBOUND - SW 7004



SHERWIN WILLIAMS SHOJI WHITE - SW 7042



4

6 SHERWIN WILLIAMS **ANONYMOUS - SW 7046**



SHERWIN WILLIAMS **GRAY MATTERS - SW 7066**

STOREFRONT SYSTEM



DARK BRONZE

VITRO GLAZING

EXTERIOR: 10%

INTERIOR: 13%

GLAZING

Solarban® 70 (2) Atlantica® + Clear

VISIBLE LIGHT REFLECTANCE:



GATES OF PROSPER PHASE III



PROSPER, TX

BRICK (PAINTED)

MATERIAL SAMPLE BOARD | SCALE : 1/8"= 1'-0" | 09.19.2023

GATES OF PROSPER, PHASE 03

FACADE PLAN

BLOCK B, LOT 2 DEVAPP-23-0165 BEING 15.77 ACRES OUT OF THE **JOHN YARNELL SURVEY ABSTRACT NO.1038**

ABSTRACT NO.147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS SUBMITTED:

380 & 289 LP 1 COWBOYS WAY FRISCO, TEXAS 75034

CONTACT: NICHOLAS LINK

PHONE: (972)497-4854

ENGINEER/ SURVEYOR: MCKINNEY, TEXAS 75069 CONTACT: RACHEL KORUS, P.E.

ARCHITECT: KIMLEY-HORN AND ASSOCIATES, INC. O'BRIEN ARCHITECTS PHONE: (972) 788-1010



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: Specific Use Permit Ordinance for Concrete Batching Plant

Town Council Meeting - January 9, 2024

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

Agenda Item:

Consider and act upon an ordinance to rezone for a Specific Use Permit (SUP) for a Concrete Batching Plant, on 5.0± acres, located south of West First Street and west of South Dallas Parkway. (S20-0002)

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed rezoning request, by a vote of 7-0. An ordinance has been prepared accordingly.

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. Ordinance
- 2. Settlement Agreement

Town Staff Recommendation:

Town Staff recommends approval of an ordinance to rezone for a Specific Use Permit (SUP) for a Concrete Batching Plant, on 5.0± acres, located south of West First Street and west of South Dallas Parkway.

Proposed Motion:

I move to approve/deny an ordinance to rezone for a Specific Use Permit (SUP) for a Concrete Batching Plant, on 5.0± acres, located south of West First Street and west of South Dallas Parkway.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING PROSPER'S ZONING ORDINANCE BY GRANTING A SPECIFIC USE PERMIT (SUP) FOR A CONCRETE BATCHING PLANT TO BE LOCATED ON A TRACT OF LAND CONSISTING OF 4.995 ACRES, MORE OR LESS, IN THE COLLIN COUNTY SCHOOL LAND SURVEY NO. 12, ABSTRACT NO. 147, BLOCK 4, TRACT 36, LOCATED AT 570 SOUTH DALLAS PARKWAY, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS; 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 of Prosper, Texas ("Prosper") has received a request from Vulcan Materials Company ("Applicant") for a Specific Use Permit (SUP) to allow for a Concrete Batching Plant on a tract of land zoned Planned Development- 19 (PD-19), consisting of 4.995 acres of land, more or less, in the Collin County School Land Survey No. 12, Abstract No. 147, Block 4, Tract 36, located at 570 South Dallas Parkway, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes; and

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

WHEREAS, all legal notices required to grant a Specific Use Permit (SUP) have been given in the manner and form set forth by law, Public Hearings have been held, and all other requirements of notice and completion of such 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:

SECTION 1

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

SECTION 2

Specific Use Permit Granted. The Town's Zoning Ordinance, as amended, is hereby amended as follows: Applicant is granted a Specific Use Permit (SUP) to allow the operation of a Concrete Batching Plant, on a tract of land zoned Planned Development-19 (PD-19), consisting of 4.995 acres of land, more or less, in the Collin County School Land Survey No. 12, Abstract No. 147, Block 4, Tract 36, located at 570 South Dallas Parkway, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A," attached hereto and

incorporated herein for all purposes as if set forth verbatim, subject to the following conditions of approval by the Town Council:

- 1. Vulcan Materials Company shall cease operations on the property on or before October 1, 2026, and shall remove all operations equipment from the property within 90 days of the date it ceases operations.
- 2. An on-site billing office is required to continue the Concrete Batching Plant use. All concrete deliveries from the physical Prosper location shall be billed as taxable to the Town of Prosper.
- 3. The Town of Prosper reserves the right to audit books to ensure that Prosper is the primary situs for tax revenue and upon inspections, if there are any failures to correct errors, the Town of Prosper reserves the right to revoke the SUP.

All development plans, standards, and uses for the Property shall comply fully with the requirements of all ordinances, rules, and regulations of the Town of Prosper, as they currently exist or may be amended.

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

Specific Use Permit Expiration Date. This SUP shall expire on October 1, 2026.

SECTION 4

<u>No Vested Interest/Repeal.</u> 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 5

<u>Unlawful Use of Premises.</u> 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 6

<u>Penalty.</u> Any person, firm, corporation, or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance, or 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 7

<u>Severability.</u> 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 8

<u>Savings/Repealing Clause.</u> Prosper's Zoning Ordinance 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 9

<u>Effective Date.</u> 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 THIS 9TH DAY OF JANUARY, 2024.

	David F. Bristol, Mayor
ATTEST:	
Michelle Lewis Sirianni, Town Secretary	

APPROVED AS	S TO FORM	аип і	ECVI ITA:

Terrence S. Welch, Town Attorney

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the last date set forth after the signature lines hereto ("Effective Date") by and between the Town of Prosper, Texas ("Town"), and Vulcan Materials Company, its affiliates and subsidiaries, legally authorized to do business in Texas ("Vulcan") (Town and Vulcan hereinafter may be referred to as "Party" or collectively as the "Parties"), for and in consideration of the mutual promises and covenants contained herein.

WHEREAS, Vulcan operates a concrete batch facility ("Operation") located at 570 S. Dallas Parkway, Prosper, Texas 75078 (the "Property," a legal description of which is attached to this Agreement as Exhibit A, and is incorporated by reference), which Operation involves generally the use of equipment, including but not limited to, mixers, cement batchers, aggregate batchers, conveyors, radial stackers, aggregate bins, cement bins, heaters, chillers, cement silos, batch plant controls, and dust collectors, and other equipment necessary for the production of concrete, together with all related appurtenances thereto (collectively, "Equipment"), as well as an on-site modular office; and

WHEREAS, on or about January 12, 2021, the Town adopted Ordinance No. 2021-02, which Ordinance approved a specific use permit for the Operation on the Property until October 1, 2024; and

WHEREAS, on or about January 9, 2024, the Town adopted Ordinance No. 2024-___, which Ordinance approved an extension of the Operation by specific use permit until October 1, 2026; and

WHEREAS, the forgoing approval of a specific use permit on the Property by the Town Council and this Agreement seek to incorporate, in part, the negotiated and agreed upon standards contained in the Ordinance granting the specific use permit on the Property, and to recognize Vulcan's reasonable investment-backed expectations in the Property and as more fully described herein; and

WHEREAS, with the ongoing development of properties along the Dallas North Tollway, the Operation is not a use generally compatible with such development, and but for this Agreement, the Town may not extend the Operation's specific use permit past the October 1, 2026, deadline referenced herein; and

WHEREAS, the Parties desire and have worked together to establish an agreedupon time period for the conclusion of the Operation on the Property and the eventual relocation of the Operation from the Property to another location; and

WHEREAS, in exchange for the agreed-upon Compliance Date and relocation, as well as the Town's extension of the Operation on the Property until October 1, 2026, the Parties desire to compromise, resolve, and settle any disputes regarding the Operation on the Property and to establish a Completion Date for the Operation on the

Property; and

WHEREAS, the Parties desire to enter into this Agreement to effectuate all of the foregoing.

- **NOW, THEREFORE,** for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Vulcan agree as follows:
- 1. <u>Vulcan's Agreement to Cease Operations on or before October 1, 2026</u>. Vulcan hereby agrees and affirms that (i) its Operation on the Property will cease on or before October 1, 2026; (ii) it already has recouped at least one hundred percent (100%) of its investment in the Operation on the Property; and (iii) it waives any rights or remedies it may have under subchapter A of Chapter 211 of the Texas Local Government Code, as amended. Further, Vulcan shall remove all Equipment from the Property, including the on-site modular office, as of the date it ceases its operations.
- **2.** Town's Agreement Not to Institute Amortization or Related Proceedings. In exchange for Vulcan's agreement to cease all Operation and related uses on the Property on or before October 1, 2026, the Town agrees that it will not institute, pursue or undertake any amortization processes or procedures against Vulcan and its nonconforming use of property (in the event a subsequent specific use permit is either denied or expires), pursuant to the Town's Zoning Ordinance and/or applicable provisions of state law.
- 3. <u>Covenant Running with the Land</u>. 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 Vulcan 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 owners of the Property, regardless of whether this Agreement is expressly referenced therein.
- 4. <u>Default</u>. 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.

- **5.** <u>Venue</u>. 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.
- **6.** <u>Notice</u>. 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

P.O. Box 307

Prosper, Texas 75078 Attention: Town Manager

If to Vulcan: Vulcan Materials Company

Corporate Office

1200 Urban Center Drive Birmingham, Alabama 35242 Attention: Mitchell M. Mataya

- 7. <u>Prevailing Party</u>. 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).
- **8.** <u>Entire Agreement.</u> 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.
- **9.** <u>Savings/Severability</u>. 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.
- **10.** <u>Binding Agreement</u>. 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.
- 11. <u>Authority to Execute</u>. This Agreement shall become a binding obligation on the signatories upon execution by all signatories 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. Vulcan warrants and represents that the individual executing this Agreement on behalf of Vulcan has full authority to execute this Agreement and bind Vulcan to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

- **12.** 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.
- **13.** <u>Mediation</u>. 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.
- 14. <u>Notification of Sale or Transfer; Assignment of Agreement</u>. Vulcan 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. Any new owner or transferee shall be bound by the terms of this Agreement.
- **15. 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.
- **16.** <u>Vested Rights/Chapter 245 Waiver</u>. The signatories hereto shall be subject to all ordinances of the Town, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code. This Section shall survive the termination of this Agreement.
- 17. 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.
- **18.** <u>Consideration</u>. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

- **19.** <u>Counterparts</u>. 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.
- **20.** <u>Time</u>. Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.
- **21.** 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.
- **22.** <u>Amendment</u>. 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 owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.
- **23.** <u>Miscellaneous Drafting Provisions.</u> 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.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

	TOWN:
	THE TOWN OF PROSPER, TEXAS
	By: Name: Mario Canizares Title: Town Manager, Town of Prosper
STATE OF TEXAS) COUNTY OF COLLIN)	
	vledged before me on the day of izares, Town Manager of the Town of Prosper, r, Texas.
	Notary Public, State of Texas My Commission Expires:

VULCAN:

VULCAN MATERIALS COMPANY

	By:	
	Name:	
	Title:	
		
STATE OF)	
COUNTY O	F	
	<u></u>	
This	instrument was acknowledged before me on the day of)f
	0000 his	
	of Vulcan Materials Company, known to be the perso	
whose nam	e is subscribed to the foregoing instrument, and that he executed the same	
	and as the act of Vulcan Materials Company.	
	Notary Public, State of	
	My Commission Expires:	_
	, 33	_

EXHIBIT A (Property Description)

BEING at that certain lot, tract, or parcel of land situated in the Collin County School Land Survey Abstract Number 147 in the Town of Prosper, Collin County, Texas, being all that certain tract of land conveyed by deed from Lattimore Materials Company, L. P. to A & J Owens, Ltd. recorded in Volume 5805, Page 4782, Land Records, Collin County, Texas and being more particularly described as follows:

BEGINNING at an iron rod set for corner, said point being the northwest corner of that certain tract of land conveyed by deed from Kipling Enterprises, LLC to G & H Properties, L.P. recorded in Volume 5565, Page 3107, Land Records, Collin County, Texas:

THENCE S 00"49'49° W, 468.69 feet with the west line of said G & H Properties tract to an iron rod set for corner by the north line of that certain tract of land conveyed by deed from Michael Ramoś to South Loop Development Corporation recorded in Volume 4185, Page 2346, Land Records, Collin County, Texas;

THENCE N 89"20'26° W, 428.34 feet with said north line of said South Loop Development Corporation tract and with the north line of that certain tract of land conveyed by deed from Hanson Aggregate Central, Inc. to Southern Star Concrete, Inc. recorded in Volume 5466, Page 5436, Land Records, Collin County, Texas, to an iron rod set for corner, said point being the most southerly southeast corner of that certain tract of land conveyed by deed from Michael Ramoś, Trustee, to McGinnis Farms, Inc. recorded in Volume 4919, Page 1793, Land Records, Collin County, Texas;

THENCE N 00"49'49° E, 466.27 feet with an east line of said McGinnis Farms tract to an iron set for corner at an inner of said McGinnis Farms tract:

THENCE S 89"23'47° E, 802.13 feet with a south line of said McGinnis Farms tract to an iron rod set for corner in the west line of Dallas Parkway, a public roadway having a variable width right-of-way;

THENCE along the arc of a curve to the right having a central angle of 00"18'04°, a radius of 3,808.10 feet, and arc length of 20.01, whose chord bears S 01"05'20° E, 20.01 feet with said west line of said Dallas Parkway to an iron rod set for corner in the north line of said G & H Properties tract;

THENCE N 89"23'47° W, 374.46 feet with said north line of said G & H Properties tract to the PLACE OF BEGINNING and containing 4.995 acres of land.



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 105 South Coleman Street

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 2. Development of Downtown as Destination

Agenda Item:

Consider and act upon an ordinance to rezone 0.4± acres from Single Family-15 (SF-15) to Planned Development-124 (PD-124), for Bryant's Addition, Block 11, Lots 1, 11, and 12, located on the northeast corner of South Coleman Street and East Third Street. (ZONE-23-0027)

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed rezoning request by a vote of 7-0.

An ordinance has been prepared accordingly. The Development Agreement between the Town of Prosper and Michael Bryant & Curtis Klieger, is also on the January 9, 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. Ordinance
- 2. Ordinance Exhibits

Town Staff Recommendation:

Town Staff recommends approval of an ordinance to rezone 0.4± acres from Single Family-15 (SF-15) to Planned Development-124 (PD-124), for Bryant's Addition, Block 11, Lots 1, 11, and 12, located on the northeast corner of South Coleman Street and East Third Street.

Proposed Motion:

I move to approve/deny an ordinance to rezone 0.4± acres from Single Family-15 (SF-15) to Planned Development-124 (PD-124), for Bryant's Addition, Block 11, Lots 1, 11, and 12, located on the northeast corner of South Coleman Street and East Third Street.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROPSPER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 0.40 ACRES, MORE OR LESS, SITUATED IN THE BRYANT'S ADDITION, BLOCK 11, LOTS 1, 11, AND 12, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, FROM SINGLE FAMILY-15 (SF-15) TO PLANNED DEVELOPMENT-124 (PD-124), 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-23-0027) from Michael Bryant and Curtis Klieger ("Applicants"), to rezone 0.40 acres of land, more or less, Bryant's Addition, Block 11, Lots 1, 11, and 12, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A", 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

<u>Findings Incorporated.</u> 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 0.40 acres of land, more or less, in the Bryant's Addition, Block 11, Lots 1, 11, and 12, Town of Prosper, Collin County, Texas, and all streets, roads, and alleyways contiguous and/or adjacent thereto are hereby zoned as Planned Development-124 and being more particularly described in Exhibit "A", 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 Intent and Purpose, attached hereto as Exhibit B; (2) the Development Standards, attached hereto as Exhibit C, 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

<u>Unlawful Use of Premises.</u> 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

<u>Penalty.</u> 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

<u>Severability.</u> 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

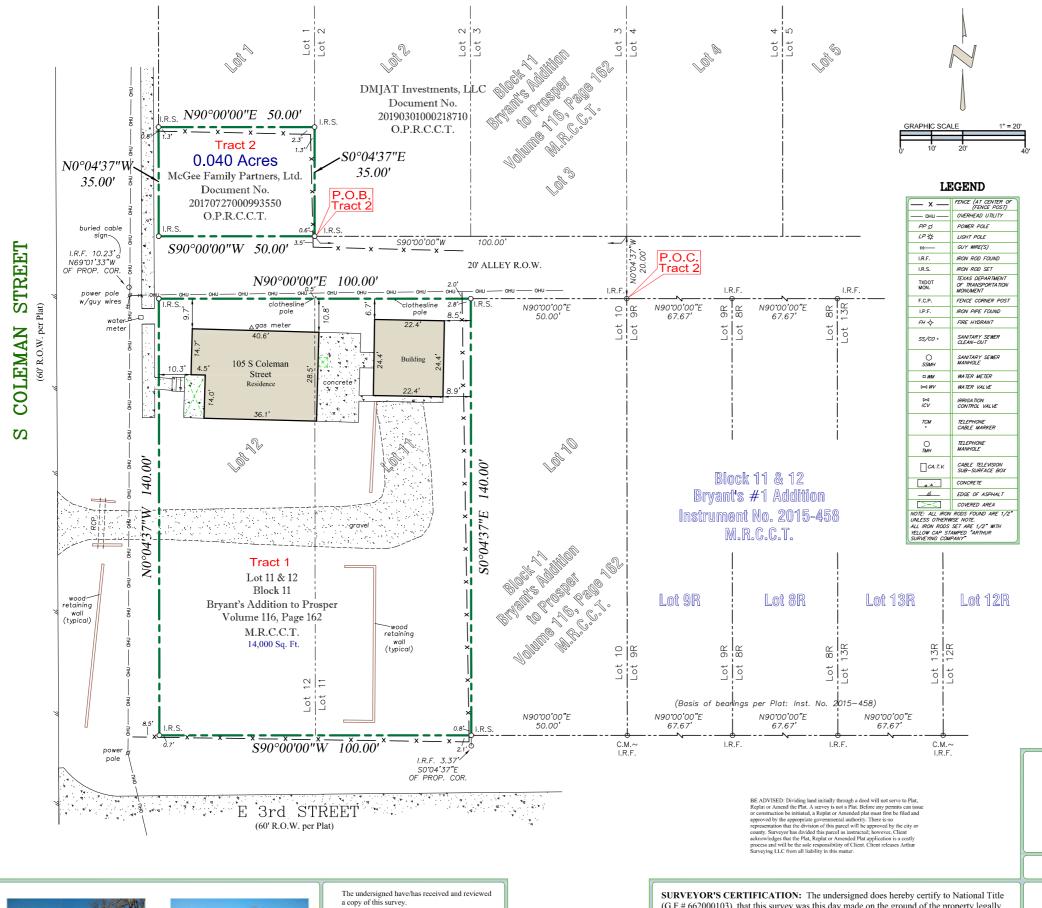
<u>Savings/Repealing Clause.</u> Prosper's Zoning Ordinance, as amended, shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal 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

<u>Effective Date.</u> 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 THIS 9TH DAY OF JANUARY 2024.

	David F. Bristol, Mayor
ATTEST:	
Michelle Lewis Sirianni, Town Secretary	
APPROVED AS TO FORM AND LEGALITY:	
Terrence S. Welch, Town Attorney	



LEGAL DESCRIPTION FOR TRACT 1:

BEING Lot 11 and 12, in Block 11, of Bryant's Addition to Prosper an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Volume 116, Page 162, of the Map Records of Collin County, Texas

LEGAL DESCRIPTION FOR TRACT 2:

BEING a 0.040 acre tract of lands situated in the Town of Prosper, Collin County, Texas, and being a portion of Lot 1, Block 11, of Bryant's Addition to Prosper, an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Volume 116, Page 162, of the Map Records of Collin County, Texas (M.R.C.C.T.), and being that same tract of land described by deed to McGee Family Partners, Ltd., as recorded in Document No. 20170727000993550, of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING from a ½ inch iron rod found for the northeast corner of Lot 10 of said Block 11, same being the northwest corner of Lot 9R, Block 11 & 12 of Bryant's #1 Addition, an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Instrument No. 2015-458, M.R.C.C.T., same being in the south line of a 20 foot wide alley right-of-way, same from which a ½ inch iron rod found for the northeast corner of said Lot 9R bears North 90 degrees 00 minutes 00 seconds East, a distance of 67.67 feet;

THENCE North 00 degrees 04 minutes 37 seconds West, traversing over and across said 20 foot wide alley, a distance of 20.00 feet to a point for the common south corner of Lots 3 and 4 of said Block 11;

THENCE South 90 degrees 00 minutes 00 seconds West, with the north line of said 20 foot wide alley and with the south lines of said Lot 3 and of Lot 2 of said Block 11, a distance of 100.00 feet to a ½ inch capped iron rod stamped "ARTHUR SURVEYING COMPANY" set (I.R.S.) for the southeast corner and POINT OF BEGINNING of the herein described tract, same being the southeast corner of said Lot 1;

THENCE South 90 degrees 00 minutes 00 seconds West, with the north line of said 20 foot wide alley, a distance of 50.00 feet to an I.R.S. for corner, same being in the east line of S Coleman Street (a 60 foot wide right-of-way);

THENCE North 00 degrees 04 minutes 37 seconds West, with the east line of said S Coleman Street, a distance of 35.00 feet to an I.R.S. for corner;

THENCE North 90 degrees 00 minutes 00 seconds East, traversing over and across said Lot 1, a distance of 50.00 feet to an I.R.S. for corner, same being in the west line of said Lot 2;

THENCE South 00 degrees 04 minutes 37 seconds East, with the west line of said Lot 2, a distance of 35.00 feet to the POINT OF BEGINNING and containing a total of 0.040 acres of land, more or less, and being subject to any and all easements that may affect.

BOUNDARY SURVEY

Lots 11 & 12 and a
0.040 Acre Portion of Lot 1, Block 11
Bryant's Addition to Prosper
Town of Prosper, Collin County, Texas

PC/TECH: RB/SWIM DATE: 02-24-20 SCALE: 1"= 20' ASC NO.: 2002.4771



(mailing address)
105 S Coleman Street
Prosper Texas



SURVEYOR'S CERTIFICATION: The undersigned does hereby certify to National Title (G.F.# 662000103), that this survey was this day made on the ground of the property legally described hereon and is correct and to the best of my knowledge, there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights of way that I have been advised of except as shown hereon.

FLOOD NOTE: It is my opinion that the property described hereon is not within the 100-year flood zone area according to the Federal Emergency Management Agency Flood Insurance Rate Map Community-Panel No. 480141 0235 J, present effective date of map, June 2, 2009, herein property situated within Zone "X".



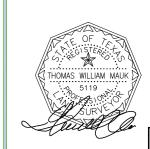


EXHIBIT "B"

PROSPER RE HOLDINGS LLC

Statement of Intent and Purpose

May 2, 2023

To Whom It May Concern,

This letter is to state our intent in regard to 105 S Coleman, Prosper, Texas 75078. Prosper RE Holdings LLC is the owner of the property and this partnership is managed by Michael Bryant and Curtis Klieger. Michael Bryant is the managing partner of Blumka Bryant CPAs LLC and Curtis Klieger is the managing partner of Stonewater Financial Services.

Our intent is to build a commercial building at 105 S Coleman that will house both of our firms. Additionally, we would like to offer rental space for tenants seeking either retail or office space. Our firms will occupy the second floor and the tenants will occupy the first floor. We want to work with the city to determine whether the rental space is best used for office or retail tenants. Being an entry point to Downtown Prosper, we want to build a structure that reflects the exciting development taking place already.

Thanks in advance, we are looking forward to meeting and working with everyone beautifying our home and making it a destination for future residents and businesses.

Sincerely,

Michael Bryant

407-982-0700

michael@blumkabryant.com

Exhibit "C"

Development Standards

This tract shall develop under the regulation of the Downtown Retail (DTR) District as outlined in the Town's Zoning Ordinance as it exists or may be amended with the following conditions:

1.0 Permitted Uses

- 1.1 The permitted land uses within this Planned Development District are as follows:
 - Administrative/Medical and Professional Office
 - Antique Shop and Used Furniture (First Floor Only)
 - Artisan's Workshop (First Floor Only)
 - Business Service (First Floor Only)
 - Insurance Office
 - Museum/Art Gallery (First Floor Only)
 - Retail Stores and Shops (First Floor Only)
 - Retail/Service Incidental Use (First Floor Only)

2.0 Landscaping

- 2.1 The landscaping requirements within this Planned Development District are as follows:
 - 5' Landscaping Buffer around the northern, eastern, southern, and western property lines.
 - The eastern landscape island on Tract 2 shall not be required and may be used for an additional parking space.

3.0 Architectural Standards

- 3.1 The architectural standards within this Planned Development District are as follows:
 - All construction shall have an approved façade plan before issuance of a building permit.
 - The primary building material shall be clay fired brick. Natural stones and other masonry materials are encouraged for architectural details and accents.
 - Awnings and canopies shall be architectural materials that complement the building such as metal flashing, wood trim, or fabric. Vinyl shall not be permitted.
 - Choice of color for the primary façade, various architectural elements, or details shall be compatible with the overall visual qualities existing within the original downtown portion of the town.

PARKING NOTE: 25% REDUCTION PARKING

TRACT 2 **0.04 ACRES**McGee FAMILY PARTNERS, LTD.

DOCUMENT NO.

20170727000993550

O.P.R.C.C.T.

I.R.F 10.23' N69°01'33"W OF PROP. COR.

COLEMAN STREET (60' R.O.W. PER PLAT)

		PARKING ANALYSIS		
USE	AREA (SQ.FT)	REQUIRED NUMBER OF SPACES	SPACES REQUIRED	ACCESSIBLE SPACE
BUSINESS OR PROFESSIONAL OFFICE (GENERAL)	7000	ONE SPACE PER 350 SQUARE FEET OF GROSS FLOOR AREA EXCEPT AS OTHERWISE SPECIFIED HEREIN.	20	1
TOTAL SPACES REQUIRED		21		
SPACES PROPOSED		15		

DMJAT INVESTMENT, LLC DOCUMENT NO. 20190301000218710 O.P.R.C.C.T.

_N90°00'00"E 100.00' IP ____ OHP ___ OHP ___ OHP ____ OHP ____

EXISTING FENCE TO BE DEMOLISHED

20' ALLEY R.O.W.

S 90° 00' 00" W 100.00'

N90°00'00"E 50,00'

PARKING SPACES

5 TWO STORY

PROPOSED BUILDING 7000 SQF

PROPOSED SITE PLAN

SCALE: 1" = 20'

N90°00'00"W 50.00'

5' REAR YARD

TRACT 1

LOT 11 & 12

BLOCK 11

BRYANT'S ADDITION

VOLUME 116,PAGE 162

M.R.C.C.T.

14000 Sq.Ft.

0' BUILDING LINE

\N90°00'00"W \ 100.00'

E 3rd STREET

(60' R.O.W. PER PLAT)

24' PROPOSED ∞ DRIVEWAY APPROACH ∞

LEGAL DESCRIPTION FOR TRACT 2: BEING A 0.040 ACRE TRACT OF LANDS SITUATED IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, AND BEING A PORTION OF LOT 1, BLOCK 11, OF BRYANT'S ADDITION TO PROSPER, AN ADDITION TO THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 116, PAGE 162, OF THE MAP RECORDS OF COLLIN COUNTY, TEXAS (M.R.C.C.T.), AND BEING THAT SAME TRACT OF LAND DESCRIBED BY DEED TO MCGEE FAMILY PARTNERS, LTD., AS RECORDED IN DOCUMENT NO. 20170727000993550, OF THE OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS,

LEGAL DESCRIPTION FOR TRACT 1:

LOT 4 LOT 5

N 90° 00' 00" E 67.67'

BLOCK 11&12 BRYANT'S #1 ADDITION INSTRUMENT NO. 2015-458 M.R.C.C.T.

(Basis of bearings per Plat: Inst. No. 2015-458)

N 90° 00' 00" E

─I.R.F

N 90° 00' 00" E

⁻I.R.F

N 90° 00' 00" E

N 90° 00' 00" E

N 90° 00' 00" E 50.00'

⊢I.R.S

I.R.F 3.37' S0°04'37"E OF PROP. COR.

> BEING LOT 11 AND 12, IN BLOCK 11, OF BRYANT'S ADDITION TO PROSPER AN ADDITION TO THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 116, PAGE 162, OF THE MAP RECORDS OF COLLIN COUNTY, TEXAS.

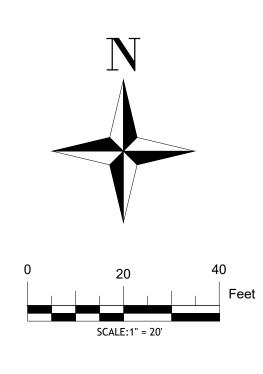
	LEGEND.
R.O.W.	RIGHT OF WAY
I.R.F	IRON ROD FOUND
I.R.S	IRON ROD SET
	PROPERTY LINE
B	PROPOSED HANDICAP
OHP	OVERHEAD UTILITY LINES
х	FENCE
	PROPOSED BUILDING
A · · · · · · · · · · · · · · · · · · ·	PROPOSED CONCRETE PAVING
	PROPOSED SIDEWALK
———FL——	FIRE LANE
	PROPOSED 25'X25' VISIBILITY TRIANGLE
+ + + + + + + + + + + + + + + + + + +	TREE ISLAND PROPOSED
	PROPOSED SHRUBS
	PROPOSED LANDSCAPE AREA
-00	PROPOSED 8' CEDAR FENCE

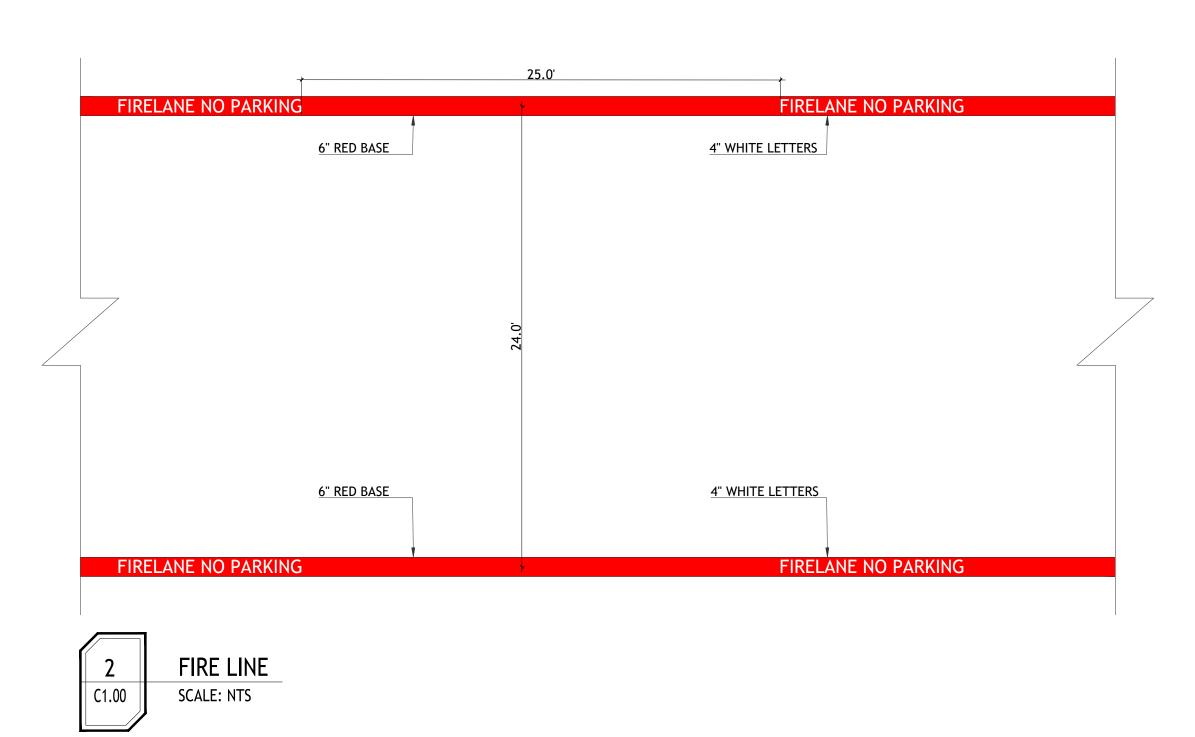
OWNER:

CURTIS KLIEGER

OWNER ADDRESS:

7021 ROYAL VIEW DR. MCKINNEY TX 75070







Page 266



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 105 South Coleman Street

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 2. Development of Downtown as Destination

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between Michael Bryant & Curtis Klieger and the Town of Prosper relative to 105 South Coleman Street.

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed rezoning request by a vote of 7-0.

A Development Agreement has been prepared accordingly. The Ordinance Adoption for this rezoning request is also on the January 9, 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 Michael Bryant & Curtis Klieger and the Town of Prosper relative to 105 South Coleman Street.

Proposed Motion:

I move to authorize/not authorize the Town Manager to execute a Development Agreement between Michael Bryant & Curtis Klieger and the Town of Prosper relative to 105 South Coleman Street.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Prosper RE Holdings LLC, a Texas limited liability company ("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 an office/retail building on an approximate 0.40-acre tract of land generally located on the northeast corner of S. Coleman Street and E. Third Street in the Town (the "Property"), and a legal description and depiction of the Property is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the foregoing Property was rezoned by the Town Council on or about November 14, 2023, when the Town Council approved a Planned Development consisting of office and retail uses for the Property, 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 the 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. <u>Development Standards</u>. For any structure built on the Property following the Effective Date, it shall comply with the following elevations and building materials: (1) all construction shall have an approved façade plan before the issuance of a building permit by the Town; (2) the primary building material shall be clay-fired brick, and natural stones and other masonry materials are encouraged for architectural details and accents; (3) awnings and canopies shall be architectural materials that complement the building, such as metal flashing, wood trim or fabric, and vinyl shall not be permitted; and (4) the choice of color for the primary façade, various architectural elements or details shall be compatible with the overall visual qualities existing within the original downtown portion of the Town, and as reflected in Exhibit B, attached hereto and incorporated by reference. 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, shall not be subject to the mediation requirement contained in Paragraph 16 and any obligations referenced in said Paragraphs 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.
- 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; (8) beauty shops; (9) nail shops/manicurist shops; (10) barbershops; and (11) business entities which primarily utilize outdoor storage or displays. Further, 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. 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.

- **4.** 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.
- **5.** <u>Applicability of Town Ordinances</u>. Developer shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.
- 6. Rough Proportionality. Developer hereby agrees that any land or property donated and/or dedicated to the Town pursuant to this Agreement, whether in fee simple or otherwise, including any easements (as may be reflected in any Final Plat), 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.
- been represented by legal counsel in the negotiation of this Agreement and been advised or each has had the opportunity to have legal counsel review this Agreement and advise them, regarding Developer's and the Town's rights under Texas and federal law. Developer and the Town hereby waive any requirement that the other retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions 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 and any exemptions from impact fees under current or future law; however, notwithstanding the foregoing and to the extent permitted by law, 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.

- 8. <u>Default</u>. 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.** <u>Venue</u>. 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.** <u>Notice</u>. 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

P.O. Box 307

Prosper, Texas 75078 Attention: Town Manager

If to Developer: Michael Bryant

2929 N. Central Expressway, Suite 270

Richardson, Texas 75080

- 11. <u>Prevailing Party</u>. 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.** <u>Savings/Severability</u>. 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.** <u>Binding Agreement</u>. 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. <u>Authority to Execute</u>. 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.** <u>Mediation</u>. 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. Except with respect to a sale or transfer to a related entity of Developer, 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 an 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. Except with respect to a sale or transfer to a related entity of Developer, 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 and/or the building has been constructed on the Property as provided in 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 such transfer. 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.** <u>Counterparts</u>. 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.** <u>Amendment</u>. 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.** <u>Miscellaneous Drafting Provisions</u>. 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.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

	TOWN:
	THE TOWN OF PROSPER, TEXAS
	By: Name: Mario Canizares Title: Town Manager
STATE OF TEXAS)	
COUNTY OF COLLIN)	
	wledged before me on the day of nizares, Town Manager of the Town of Prosper,
Texas, on benail of the Town of Prospe	i, Texas.
	Notary Public, State of Texas
	My Commission Expires:

DEVELOPER:

My Commission Expires: _____

EXHIBIT A

(Property Legal Description)

Legal Description for Tract 1:

BEING Lot 11 and 12, in Block 11, of Bryant's Addition to Prosper an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Volume 116, Page 162, of the Map Records of Collin County, Texas.

Legal Description for Tract 2:

BEING a 0.040 acre tract of lands situated in the Town of Prosper, Collin County, Texas, and being a portion of Lot 1, Block 11, of Bryant's Addition to Prosper, an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Volume 116, Page 162, of the Map Records of Collin County, Texas (M.R.C.C.T.), and being the same tract of land described by deed to the McGee Family Partners, Ltd., as recorded in Document No. 20170727000993550, of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING from a ½ inch iron rod found for the northeast corner of Lot 9R, Block 11 & 12 of Bryant's #1 Addition, an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Instrument No. 2015-458, M.R.C.C.T., same being in the south line of a 20 food wide alley right-of-way, same from which ½ inch iron rod found for the northeast corner of said Lot 9R bears North 90 degrees 00 minutes 00 seconds East, a distance of 67.67 feet;

THENCE North 00 degrees 04 minutes 37 seconds West, traversing over and across said 20 foot wide alley, a distance of 20.00 feet to a point for the common south corner of Lots 3 and 4 of said Block 11:

THENCE South 90 degrees 00 minutes 00 seconds West, with the north line of said 20 foot wide alley and with the south lines of said Lot 3 and of Lot 2 of said Block 11, a distance of 100.00 feet to a ½ inch capped iron rod stamped "ARTHUR SURVEYING COMPANY" set (I.R.S.) for the southeast corner and POINT OF BEGINNING of the herein described tract, same being the southeast corner of said Lot 1;

THENCE South 90 degrees 00 minutes 00 seconds West, with the north line of said 20 foot wide alley, a distance of 50.00 feet to an I.R.S. for corner, same being in the east line of S Coleman Street (a 60 foot wide right-of-way);

THENCE North 00 degrees 04 minutes 37 seconds West, with the east line of said S Coleman Street, a distance of 35.00 feet to an I.R.S. for corner;

THENCE North 90 degrees 00 minutes 00 seconds East, traversing over and across said Lot 1, a distance of 50.00 feet to an I.R.S. for corner, same being in the west line of said Lot 2;

THENCE South 00 degrees 04 minutes 37 seconds East, with the west line of said Lot 2, a distance of 35.00 feet to the POINT OF BEGINNING and containing a total of 0.040 acres of land, more or less, and being subject to any an all easements that may affect.

EXHIBIT B

(Building Materials/Elevations)

The primary building material shall be clay fired brick. Natural stones and other masonry materials are encouraged for architectural details and accents. Awnings and canopies shall be architectural materials that complement the building such as metal flashing, wood trim, or fabric. Vinyl shall not be permitted. Choice of color for the primary façade, various architectural elements, or details shall be compatible with the overall visual qualities existing within the original downtown portion of the town.



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 202 South Parvin Street

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 2. Development of Downtown as Destination

Agenda Item:

Consider and act upon an ordinance to rezone 0.5± acres from Single Family-15 (SF-15) to Planned Development-125 (PD-125), for Bryant's Addition, Block 22, Lots 7, 8, and 9, located on the northwest corner of South Parvin Street and East Second Street. (ZONE-23-0028)

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed rezoning request by a vote of 6-0.

An ordinance has been prepared accordingly. The Development Agreement between the Town of Prosper and Kevin & Jennifer Pittman, is also on the January 9, 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. Ordinance
- 2. Ordinance Exhibits

Town Staff Recommendation:

Town Staff recommends approval of an ordinance to rezone 0.5± acres from Single Family-15 (SF-15) to Planned Development-125 (PD-125), for Bryant's Addition, Block 22, Lots 7, 8, and 9, located on the northwest corner of South Parvin Street and East Second Street.

Proposed Motion:

I move to approve/deny an ordinance to rezone 0.5± acres from Single Family-15 (SF-15) to Planned Development-125 (PD-125), for Bryant's Addition, Block 22, Lots 7, 8, and 9, located on the northwest corner of South Parvin Street and East Second Street.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROPSPER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 0.50 ACRES, MORE OR LESS, SITUATED IN THE BRYANT'S ADDITION, BLOCK 22, LOTS 7, 8, AND 9, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, FROM SINGLE FAMILY-15 (SF-15) TO PLANNED DEVELOPMENT-125 (PD-125), 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-23-0028) from Kevin & Jennifer Pittman ("Applicants"), to rezone 0.50 acres of land, more or less, Bryant's Addition, Block 22, Lots 7, 8, and 9, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A", 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

<u>Findings Incorporated.</u> 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 0.50 acres of land, more or less, in the Bryant's Addition, Block 22, Lots 7, 8, and 9, Town of Prosper, Collin County, Texas, and all streets, roads, and alleyways contiguous and/or adjacent thereto are hereby zoned as Planned Development-125 and being more particularly described in Exhibit "A", 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 Intent and Purpose, attached hereto as Exhibit B; (2) the Development Standards, attached hereto as Exhibit C, 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

<u>Unlawful Use of Premises.</u> 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

<u>Penalty.</u> 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

<u>Severability.</u> 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

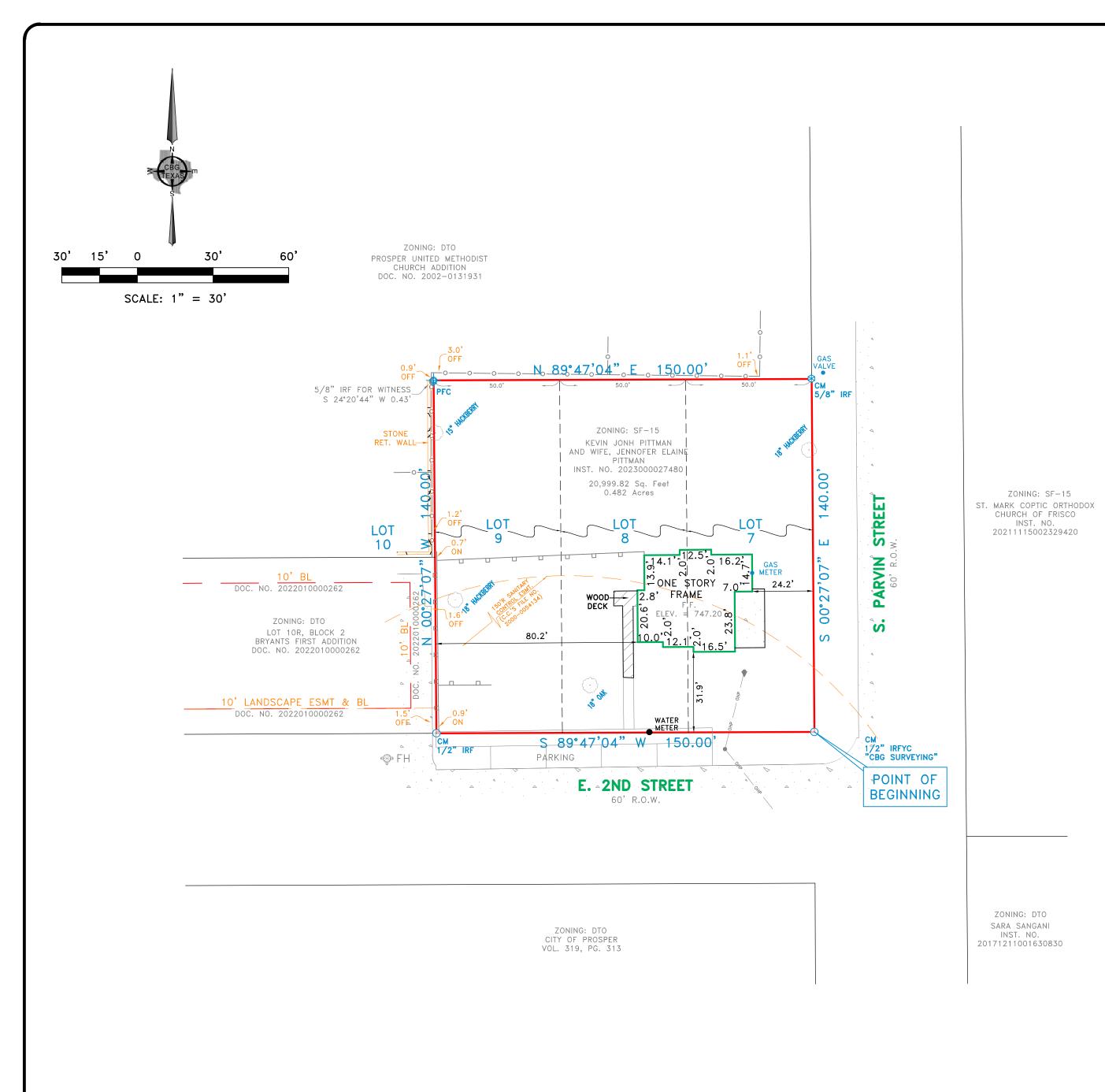
<u>Savings/Repealing Clause.</u> Prosper's Zoning Ordinance, as amended, shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal 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

<u>Effective Date.</u> 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 THIS 9TH DAY OF JANUARY 2024.

	David F. Bristol, Mayor
ATTEST:	
Michelle Lewis Sirianni, Town Secretary	
APPROVED AS TO FORM AND LEGALITY:	
Terrence S. Welch, Town Attorney	



BEARINGS, EASEMENTS AND BUILDING LINES ARE BY RECORDED PLAT UNLESS

202 South Parvin Street

Being a 0.482 acres tract of land situated in the Collin CSL Survey, Abstract Number 147, Collin County, Texas, same being Lots 7, 8, and 9, Block 22, of Bryants Addition, an Addition to the City of Prosper, Collin County, Texas, according to the Plat there of recorded in Volume 116, Page 162, same being a tract of land conveyed to Kevin John Pittman and wife, Jennifer Elaine Pittman, by deed recorded in Instrument Number 2023000027480, Official Public Records, Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found with yellow cap stamped "CBG Surveying" for corner, said corner being in the Intersection of the West right-of-way line of S. Parvin Street (a 60-foot right-of-way) and the North right-of-way line of E. 2nd Street (a 60-foot right-of-way);

THENCE South 89 degrees 47 minutes 04 seconds West, along the North right—of—way line of said E. 2nd Street, a distance of 150.00 feet to a 1/2—inch iron rod found for corner, said corner being along the North right—of—way line of said E. 2nd Street, same being the Southeast corner of Lot 10R, Block 2, Bryants First Addition, an Addition to the City of Prosper, Collin County, Texas, according to the Plat thereof recorded in Document Number 2022010000262, Official Public Records, Collin County, Texas;

THENCE North 00 degree 27 minutes 07 seconds West, along the East line of said Lot 10R, a distance of 140.00 feet to a point for corner, said corner being a Southeast "Ell" corner of Prosper United Methodist Church Addition, an Addition to the City of Prosper, Collin County, Texas, according to the Plat thereof recorded in Document Number 2002-0131931, Official Public Records, Collin County, Texas, from which a 5/8- inch iron rod found bears South 24 degrees 20 minutes 44 seconds West, a distance of 0.43 feet for witness;

THENCE North 89 degrees 47 minutes 04 seconds East, along a South line of said Prosper United Methodist Church Addition, a distance of 150.00 feet to a 5/8-inch iron rod found for corner, said corner being a Southeast corner of said Prosper United Methodist Church Addition, same being along the West right-of-way line of said S. Parvin Street;

THENCE South 00 degree 27 minutes 07 seconds East, along the West right—of—way line of said S. Parvin Street, a distance of 140.00 feet to the POINT OF BEGINNING and containing 20,999.82 square feet and or 0.482 acres of land.

SURVEYOR'S CERTIFICATE

The undersigned Registered Professional Land Surveyor hereby certifies to the Cilent, in connection with the transaction described in G.F.1005-376810-RTT that, (a) this survey and the property description set forth hereon were prepared from an actual on-the-ground survey; (b) such survey was conducted by the Surveyor, or under his direction; (c) all monuments shown hereon actually existed on the date of the survey, and the location, size and type of material thereof are correctly shown; Use of this survey by any other parties and/or for other purposes shall be at User's own risk and any loss resulting from other use shall not be the responsibility of the undersigned. The plat hereon is a correct and accurate representation of the property lines and dimensions are as indicated; location and type of buildings are as shown; and EXCEPT AS SHOWN, all improvements are located within the boundaries the distances indicated and there are no visible and apparent encroachments or protrusions on the ground.

Executed this 6th day of December, 2023

Registered Professional Land Surveyor

ACCEPTED BY:



NOTE: According to the F.I.R.M. in Map No. <u>48085C0235J</u>, this property does lie in Zone <u>X</u> and <u>DOES NOT</u> lie within the 100 year flood zone.

REVISIONS _/// /// ASPHALT PAVING LEGEND CM CONTROLLING MONUMENT CHAIN LINK FENCE WOOD FENCE DATE BY NOTES 1/2" IRON ROD FOUND PE - POOL EQUIPMENT 1" IRON PIPE FOUND AC - AIR CONDITIONING —— ∏ —— IRON FENCE FENCE POST CORNER 🍈 FIRE HYDRANT "X" FOUND / SET COVERED PORCH, DECK OR CARPORT 5/8" ROD FOUND OVERHEAD ELECTRIC SERVICE UNDERGROUND ELECTRIC OVERHEAD POWER LINE OVERHEAD ELECTRIC CONCRETE PAVING + POINT FOR CORNER GRAVEL/ROCK ROAD OR DRIVE

CBG F SURVEYING TEXAS LLC PROFESSIONAL LANG SURVEYORS W

1413 E. IH—30, Ste. 7
Garland, TX 75043
P 214.349.9485
F 214.349.2216
Firm No. 10168800
www.cbgtxllc.com

SCALE DATE JOB NO. G.F. NO. DRAWN

1" = 30' 10/11/2023 2301207-1000 5-376810-RTT JLA

ZONING EXHIBIT SURVEY

COLLIN CSL SURVEY, ABSTRACT NO.147

CITY OF PROSPER, COLLIN COUNTY, TEXAS

202 SOUTH PARVIN STREET

Letter of Intent

9/1/23

202 S. Parvin Prosper, TX 75078

Owners: Kevin & Jennifer Pittman

Current Zoning: Residential/Future DTO

Proposed Zoning: DTO (Downtown Office)

Description of project:

Owners purchased the historic Bounds/Webb home and intend to restore and repair it for Office use. Kevin Pittman will use the office as the primary location for Ameriprise Financial Planning Business. Keeping the aesthetic and historical components of the project is part of the focus. No square footage will be added or removed.

Property description:

Home was built circa 1912 by Dr. Robert Bounds.

Lot is adjacent to Coptic Christian Church property and Lake Point Assisted Living.

Lot is 21,000 sq ft or .48 acres. Owners are in the process of replating with the intent to sell North parcel.

We are requesting parallel on-street parking to include ADA space.

Business will only access and utilize the 1st floor consisting of 1326 sq ft. The second floor will be restricted to storage/attic only and not accessible. They would like to keep and rope off the historic staircase original to the home for aesthetics only.

Submitted by:

Kevin & Jennifer Pittman

Bob Jameson (Project Representative/General Contractor McKinley Creek Homes)

Exhibit "C"

Development Standards

This tract shall develop under the regulation of the Downtown Office (DTO) District as outlined in the Town's Zoning Ordinance as it exists or may be amended with the following conditions:

1.0 Permitted Uses

- 1.1 The permitted land uses within this Planned Development District are as follows:
 - Administrative/Medical and Professional Office
 - Business Service
 - Insurance Office

2.0 Landscaping

- 2.1 The landscaping requirements within this Planned Development District are as follows:
 - 5' Landscaping Buffer around the northern, eastern, southern, and western property lines.

3.0 Architectural Standards

- 3.1 The architectural standards within this Planned Development District are as follows:
 - All construction shall have an approved façade plan before issuance of a building permit.
 - Structures shall incorporate covered porches into the front façade, a multiplicity of roof forms, and high pitch roof lines. The recommended architectural styles are Folk Traditional, Craftsman, and Victorian.



ARON HAMILTON
BIDE HOME DESIGNS
OYSE CITY, TX / 472-533-0454
ARON@ABIDEHOMEDESIGNS.

SITE PLAN

PLANNING 25. PARVIN ST PROSPER, TX

ABIDE HOME DESIGNS

DATE:

10/2/2023

10/2/202 SCALE:

1/4"=1'

Page 288

SHEET:

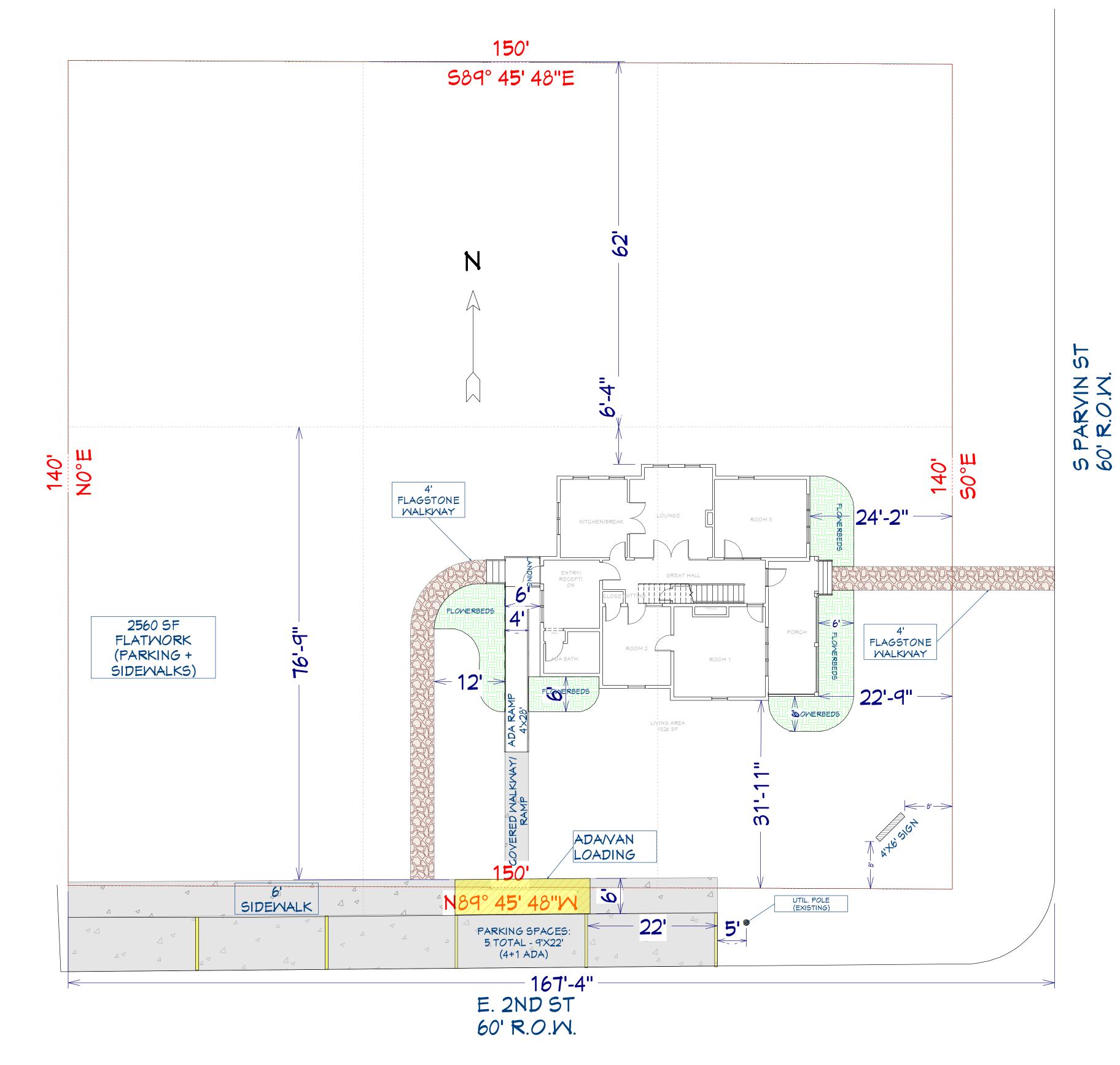
1"=10' SCALE

Lake Point Assisted Living & Metromorane

E 2nd St

E 2n

SUBJECT PROPERTY & VICINITY (SAT VIEW)



Layout Page Table

PROJECT OVERVIEW

SCHEDULES & STYLE

FRAMING PLAN - 1F

ELECTRICAL PLAN & FIRE

ELEVATIONS

SITE PLAN

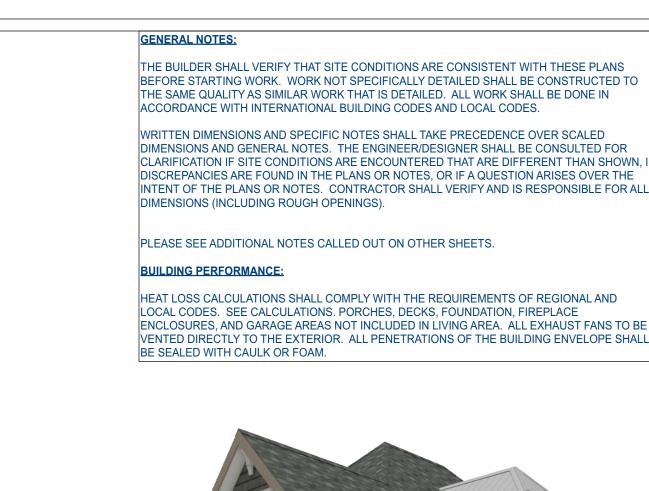
PLUMBING

ROOF PLAN

Number Title

1/4"=1

SHEET:







BACK-RIGHT

TOTAL 1F CONDITIONED AREA:	1326 SF
FRONT PORCH:	197 SF
BACK PORCH:	36 SF
TOTAL 1F UNDER ROOF:	1734 SF

2021 INTL BUILDING CODE (IBC)
2021 INTL FIRE CODE
2021 INTL ENERGY CONSERVATION CODE
2021 INTL PLUMBING CODE
2021 INTL MECHANICAL CODE
2021 NATIONAL ELECTRIC CODE

	BACK-LEFT	
APPLICABLE CODES:		
31111 3111 6 6 6 5 5	0004 18171 71111 71814	((() () () ()

FRONT-LEFT

BUILDING CODE: FIRE CODE: ENERGY CODE: PLUMBING CODE: MECHANICAL CODE: ELECTRIC CODE: ALL CODES WITH LOCAL AMENDMENTS

prints are made will be done at the owner's and / or | SPECS, LOCAL CODE/BUILDER REQUIREMENTS & Label Date Revised By Description REV 01 1/12/2021 AJH
REV 02 3/14/2023 AJH
REV 04 7/27/2023 AJH
REV 05 8/9/2023 AJH
REV 06 10/2/2023 AJH INITIAL PLAN DEVELOPMENT BID PLAN RELEASE VARIOUS UPDATES

UPDATED PARKING, BUILDING INFO.

guarantee against human error. The contractor of the job must check all dimensions and other detaprior to construction and be solely responsible REVISED PARKING/WALKWAYS

every effort has been made in the preparation of guarantee against human error. The contractor of the job must check all dimensions and other details

to comply with owner's and/ or builder's

-2D ELECTRONIC CAD FILE AVAILABLE (.DWG, .DXF) UPON REQUEST -PLEASE REQUEST EITHER HOMEOWNER OR VIA DESIGNER CONTACT INFO

specifications and any changes made on them after | TO REVIEW AND VERIFY ALL DIMENSIONS,

MECHANICAL SYSTEM CODE: SEC.2801 PLUMBING SYSTEM CODE: SEC.2901 (CONSULT LOCAL/CITY BUILDING REQUIREMENTS)

SHEET:

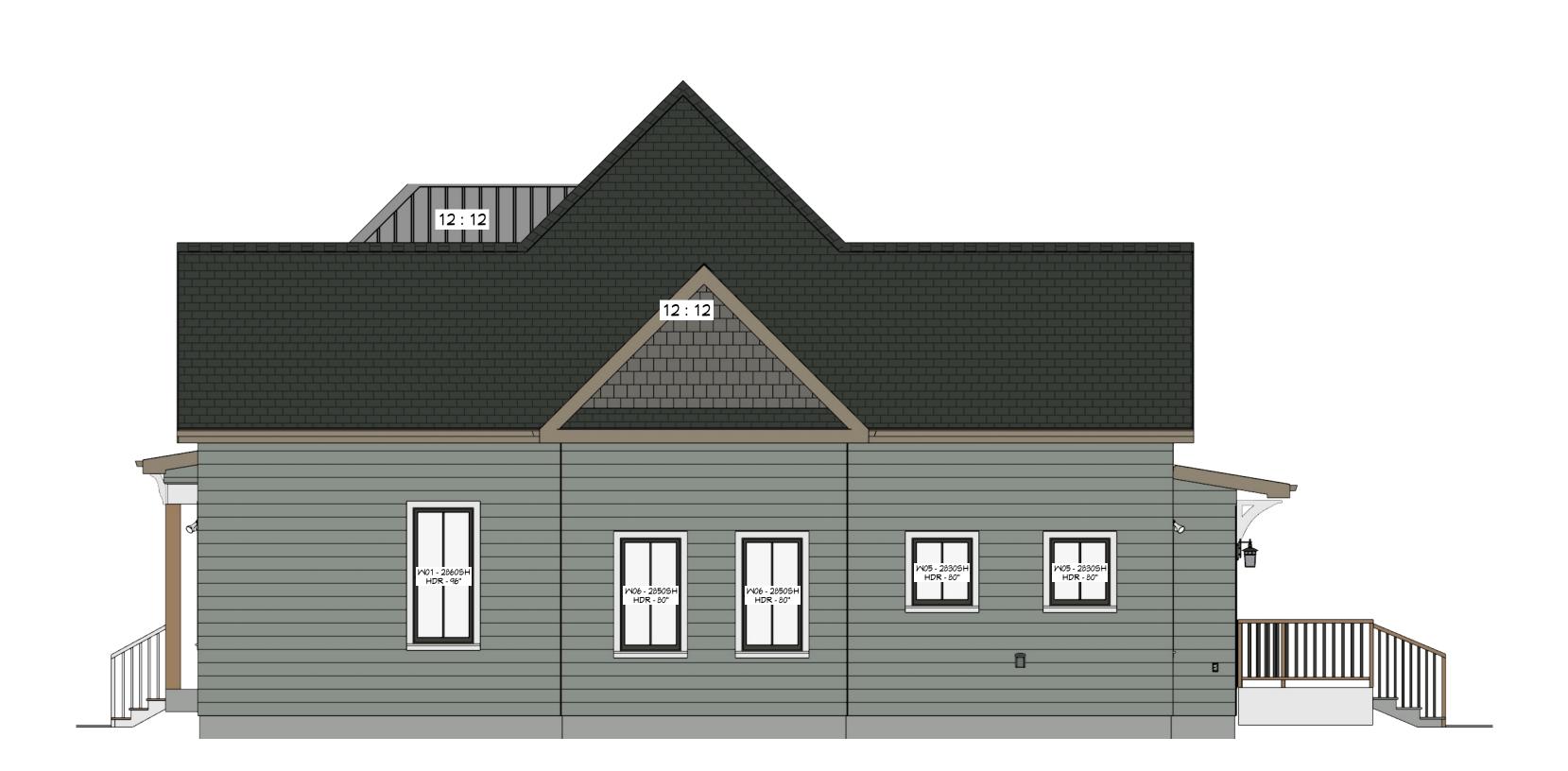
Page 290



Exterior Elevation Front



Exterior Elevation Right



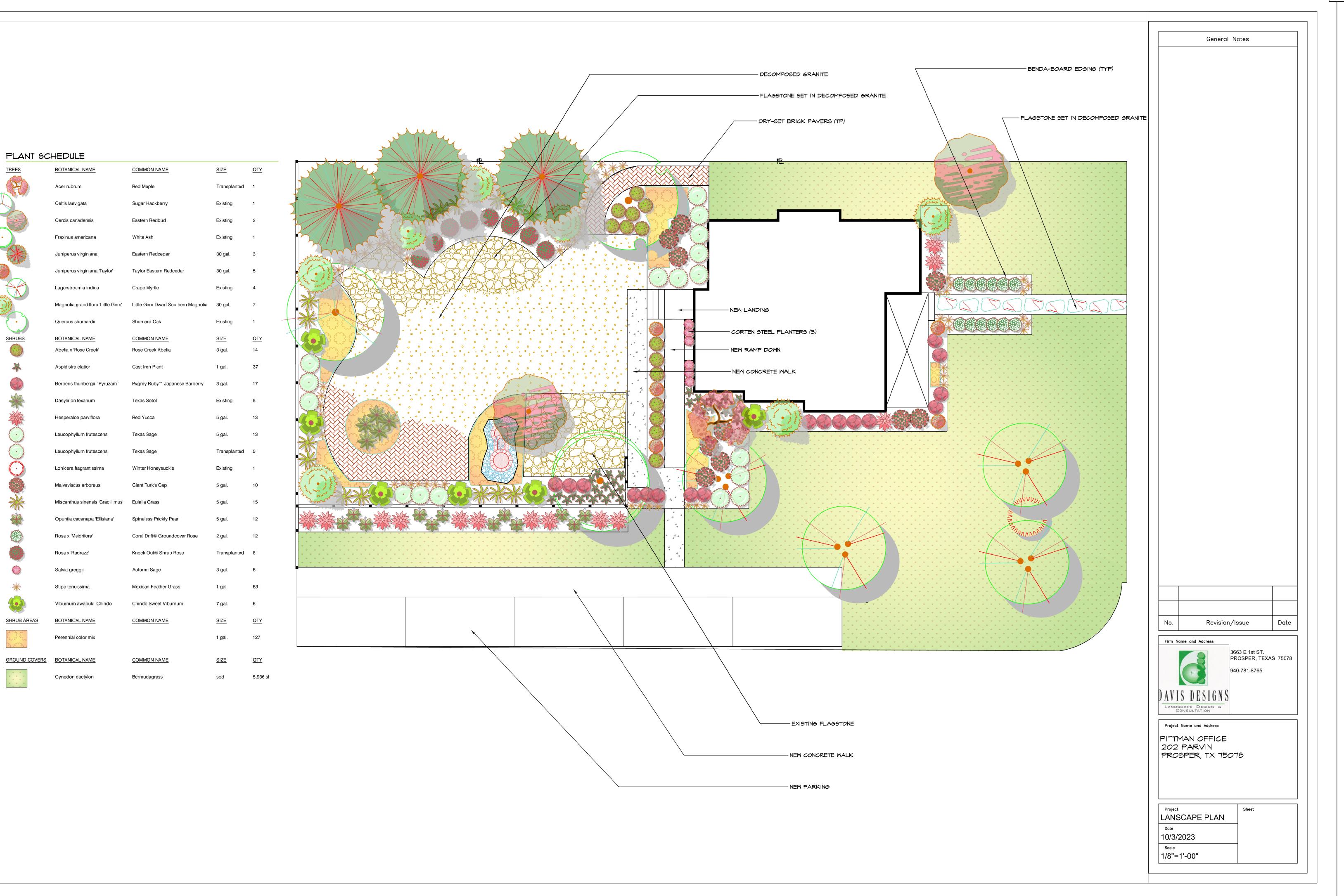
Exterior Elevation Back



Exterior Elevation Left

EXTERIOR MATERIALS:	
SOFFIT:	HARDI PLANK TRIM AND SOFFIT
SIDING:	HARDI5.25" LAP SIDING
ACCENT SIDING	HARDI SINGLE, STAGGERED
ROOF:	COMPOSITE SHINGLES (GRAY)
ROOF/AMNINGS:	CFS PANEL (GALVALUME)
PORCH POSTS:	8" MOOD, PAINTED
CORNER BOARD TRIM:	YES
	(SEE STYLE SHEET FOR ADDITIONAL INFO.)







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 202 South Parvin Street

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 2. Development of Downtown as Destination

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between Kevin & Jennifer Pittman and the Town of Prosper relative to 202 South Parvin Street.

Description of Agenda Item:

On November 14, 2023, the Town Council approved the proposed rezoning request by a vote of 6-0.

A Development Agreement has been prepared accordingly. The Ordinance Adoption for this rezoning request is also on the January 9, 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 Kevin & Jennifer Pittman and the Town of Prosper relative to 202 South Parvin Street.

Proposed Motion:

I move to authorize/not authorize the Town Manager to execute a Development Agreement between Kevin & Jennifer Pittman and the Town of Prosper relative to 202 South Parvin Street.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Kevin and Jennifer Pittman (collectively, "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 an office building on an approximate 0.50-acre tract of land generally located at 202 S. Parvin Street in the Town (the "Property"), and a legal description and depiction of the Property is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the foregoing Property was rezoned by the Town Council on or about November 14, 2023, when the Town Council approved a Planned Development consisting of office uses for the Property, 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 the 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, rebuilt or restored on the Property following the Effective Date, it shall comply with the following elevations and building materials: (1) all construction shall have an approved façade plan before the issuance of a building permit by the Town; and (2) the primary structure shall incorporate porches into the front façade; shall contain a multiplicity of roof forms and high pitch roof lines; with the recommended architectural styles of Traditional, Craftsman and Victorian, as reflected in Exhibit B, attached hereto and incorporated by reference. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed, reconstructed or restored 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, shall not be subject to the mediation requirement contained in Paragraph 16 and any obligations referenced in said Paragraphs 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. <u>Covenant Running with the Land</u>. 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.
- **4.** 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.
- 5. Rough Proportionality. Developer hereby agrees that any land or property donated and/or dedicated to the Town pursuant to this Agreement, whether in fee simple or otherwise, including any easements (as may be reflected in any Final Plat), 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.

- 6. Exactions/Infrastructure Costs. Both the Town and Developer have been represented by legal counsel in the negotiation of this Agreement and been advised or each has had the opportunity to have legal counsel review this Agreement and advise them, regarding Developer's and the Town's rights under Texas and federal law. Developer and the Town hereby waive any requirement that the other retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions 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 and any exemptions from impact fees under current or future law; however, notwithstanding the foregoing and to the extent permitted by law, 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.
- 7. 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.
- **8.** <u>Venue</u>. 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.
- **9.** <u>Notice</u>. 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

P.O. Box 307

Prosper, Texas 75078 Attention: Town Manager

If to Developer: Kevin and Jennifer Pittman

202 S. Parvin Street Prosper, Texas 75078

- **10.** 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).
- 11. <u>Entire Agreement.</u> 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.
- **12.** <u>Savings/Severability</u>. 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.
- **13.** <u>Binding Agreement</u>. 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.
- 14. <u>Authority to Execute</u>. 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.
- **15.** 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.

- **16.** <u>Mediation</u>. 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.
- 17. Notification of Sale or Transfer; Assignment of Agreement. Except with respect to a sale or transfer to a related entity of Developer, 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 an 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. Except with respect to a sale or transfer to a related entity of Developer, a copy of each assignment shall be provided to the Town within ten (10) business days Provided that the successor Developer assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement and/or the building has been constructed on the Property as provided in 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 such transfer. 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.
- **18. 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.
- 19. 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.
- **20.** <u>Consideration</u>. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

- **21.** <u>Counterparts</u>. 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.
- **22.** <u>Amendment</u>. 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.
- **23.** <u>Miscellaneous Drafting Provisions</u>. 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.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

	TOWN:
	THE TOWN OF PROSPER, TEXAS
	By: Name: Mario Canizares Title: Town Manager
STATE OF TEXAS)	
COUNTY OF COLLIN)	
	vledged before me on the day of nizares, Town Manager of the Town of Prosper,
Texas, on behalf of the Town of Prospe	r, Texas.
	Notary Public, State of Texas My Commission Expires:

	DEVELOPER:
	KEVIN PITTMAN
	By: Name: Kevin Pittman
STATE OF TEXAS) COUNTY OF COLLIN)	
, 2023, by Kevin Pi	wledged before me on the day of ttman, known to be the person whose name is and that he executed the same on behalf of and

Notary Public, State of Texas

My Commission Expires:

JENNIFER PITTMAN

			By: Name: J	ennifer Pittı	man			_
STATE OF T	EXAS)						
COUNTY OF	COLLIN)						
This subscribed to as the act of	the foregoin	, by Jennife	er Pittman, k	known to be	e the pers	son whose	name	is
			•	Public, Stat		ıs		

EXHIBIT A

(Property Legal Description)

Being a 0.482 acres tract of land situated in the Collin CSL Survey, Abstract Number 147, Collin County, Texas, same being Lots 7, 8, and 9, Block 22, of Bryant's Addition, an Addition to the Town of Prosper, Collin County, Texas, according to the Plat there of recorded in Volume 116, Page 162, same being a tract of land conveyed to Kevin John Pittman and wife, Jennifer Elaine Pittman, by deed recorded in Instrument Number 2023000027480, Official Public Records, Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-iron rod found with yellow cap stamped 'CBG Surveying' for corner, said corner being in the intersection of the West right-of-way line of S. Parvin Street (a 60-foot right-of-way) and the North right-of-way line of E. 2nd Street (a 60-foot right-of-way);

THENCE South 89 degrees 47 minutes 04 seconds West, along the North right-of-way line of said E. 2nd Street, a distance of 150.00 feet to a 1/2-inch iron rod found for corner, said corner being along the North right-of-way line of said E. 2nd Street, same being the Southeast corner of Lot 10R, Block 2, Bryant's First Addition, an Addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Document Number 2022010000262, Official Public Records, Collin County, Texas;

THENCE North 00 degrees 27 minutes 07 seconds West, along the East line of said Lot 10R, a distance of 140.00 feet to a point for corner, said corner being a Southeast "Eli" corner of Prosper United Methodist Church Addition, an Addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Document Number 2002-0131931, Official Public Records, Collin County, Texas, from which a 5/8-inch iron rod found bears South 24 degrees 20 minutes 44 seconds West, a distance of 0.43 feet for witness;

THENCE North 89 degrees 47 minutes 04 seconds East, along a South line of said Prosper United Methodist Church Addition, a distance of 150.00 feet to a 5/8-inch iron rod found for corner, said corner being a Southeast corner of said Prosper United Methodist Church Addition, same being along the West right-of-way line of said S. Parvin Street:

THENCE South 00 degrees 27 minutes 07 seconds East, along the West right-of-way line of said S. Parvin Street, a distance of 140.00 feet to the POINT OF BEGINNING and containing 20,999.82 square feet and or 0.482 acres of land.

EXHIBIT B

(Building Materials/Elevations)

Structures shall incorporate covered porches into the front façade, a multiplicity of roof forms, and high pitch roof lines. The recommended architectural styles are Folk Traditional, Craftsman, and Victorian.



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 – January 9, 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 December 19, 2023, and January 2, 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:

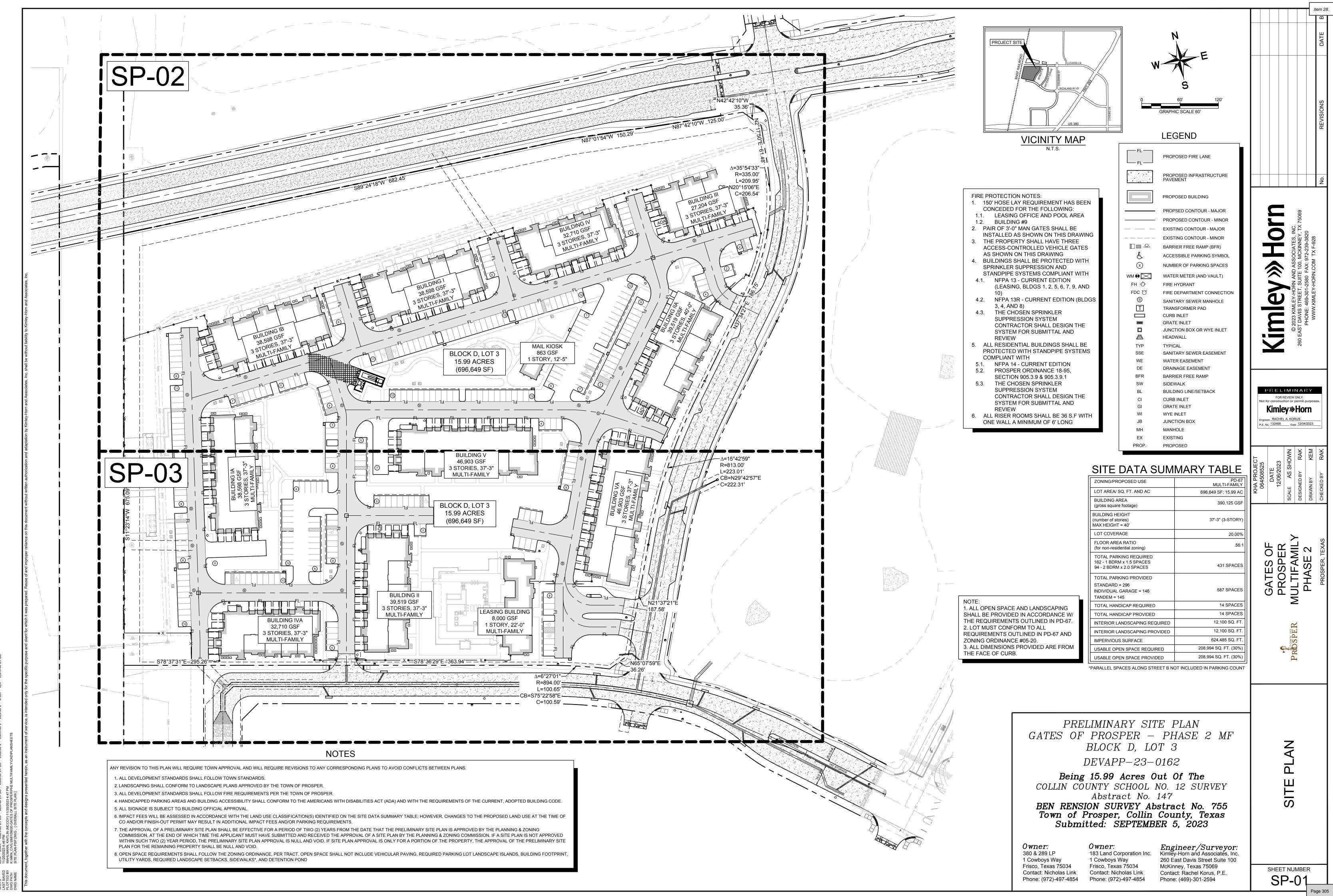
- 1. DEVAPP-23-0162 Preliminary Site Plan for a Preliminary Site Plan for Gates of Prosper, Phase 2, Block D, Lot 3 (Approved 7-0)
- 2. DEVAPP-23-0164 Site Plan for Gates of Prosper, Phase 3, Block B, Lot 2 (Approved 7-0)
- 3. DEVAPP-23-0184 Preliminary Site Plan for Windsong Ranch Office Addition, Block A, Lot 2 (Approved 7-0)
- 4. DEVAPP-23-0134 Site Plan for Westside Addition, Block A, Lot 10R (Approved 4-0)

Town Staff Recommendation:

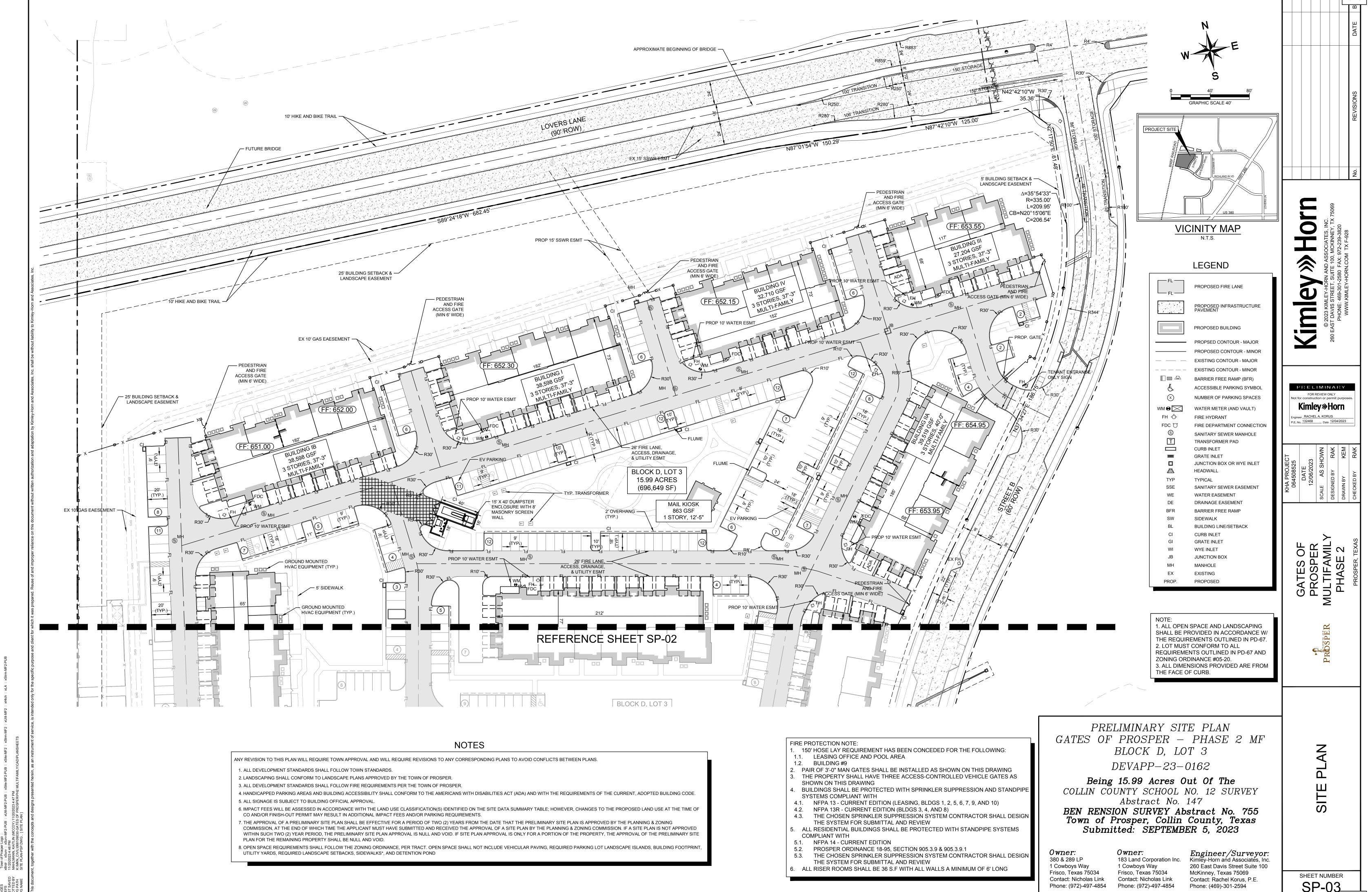
Town Staff recommends the Town Council take no action on this item.

Proposed Motion:

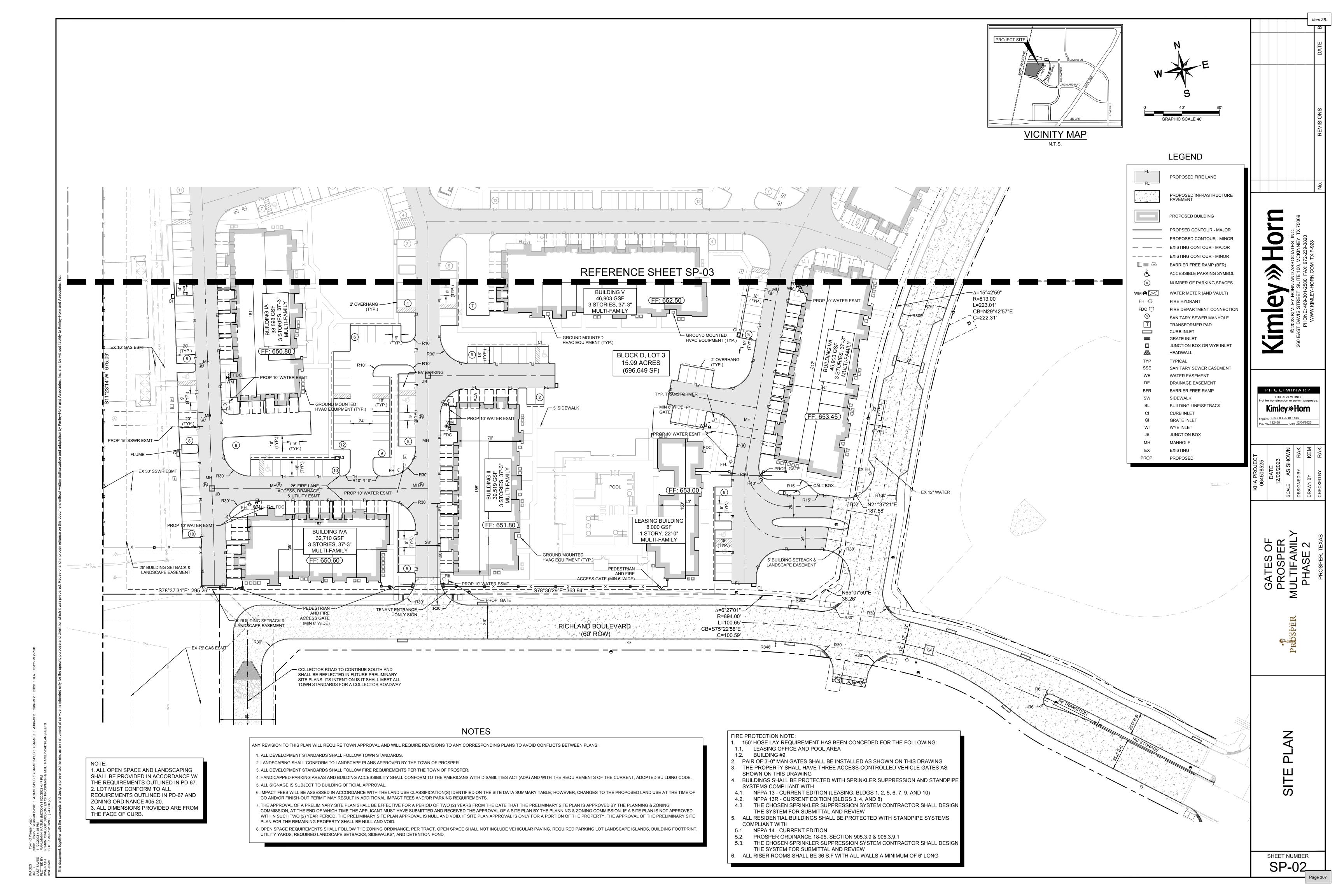
N/A

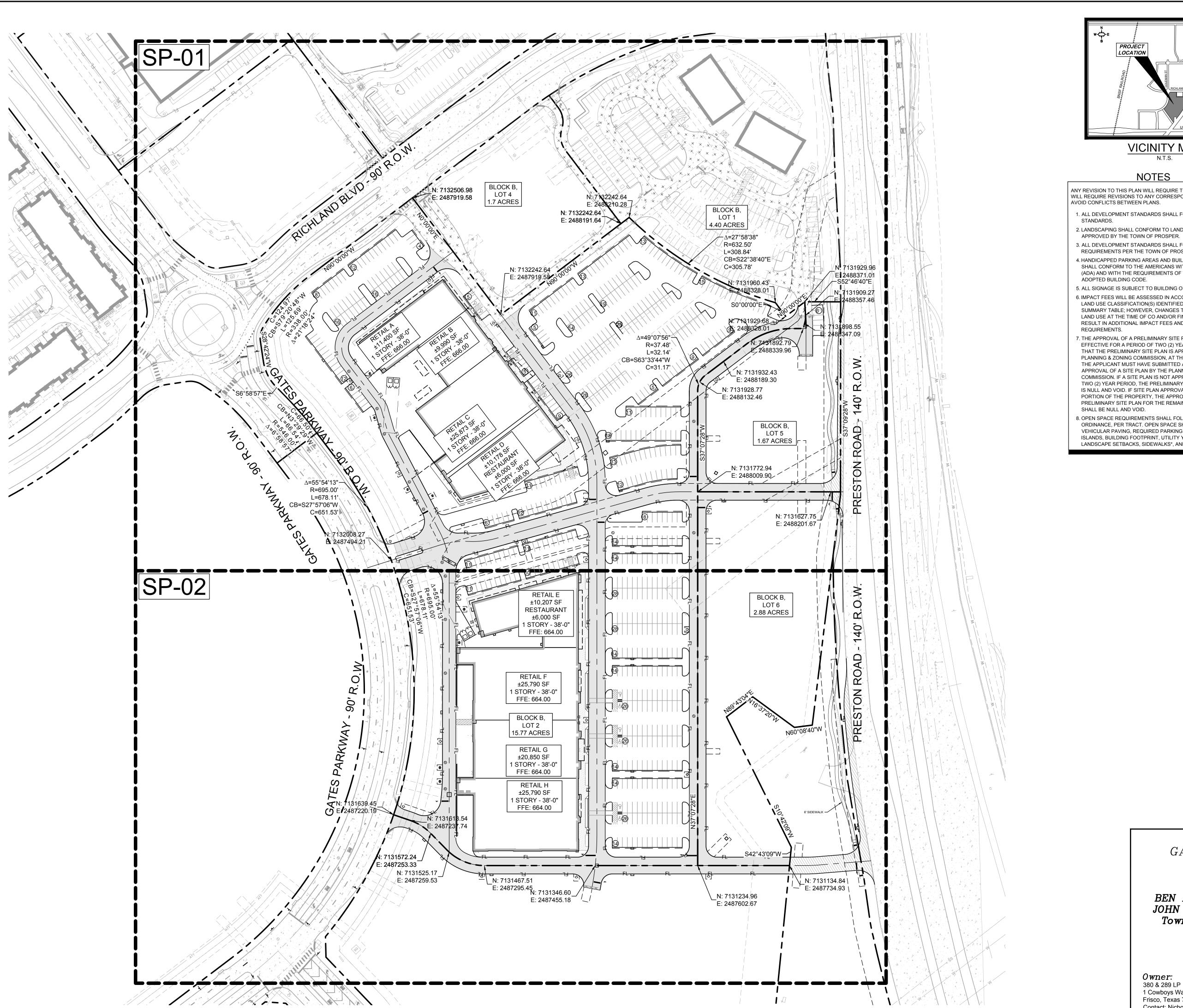


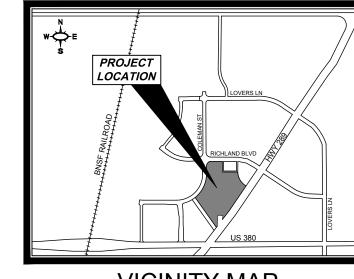
AAGES REFS



IMAGES XREFS LAST SAV









NOTES

ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE REVISIONS TO ANY CORRESPONDING PLANS TO AVOID CONFLICTS BETWEEN PLANS.

- 1. ALL DEVELOPMENT STANDARDS SHALL FOLLOW TOWN STANDARDS.
- 2. LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS
- 3. ALL DEVELOPMENT STANDARDS SHALL FOLLOW FIRE REQUIREMENTS PER THE TOWN OF PROSPER.
- 4. 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. 5. ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
- 6. 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.
- 7. 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 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.
- 8. 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



PROPOSED FIRE LANE

EXISTING PAVEMENT

LEGEND

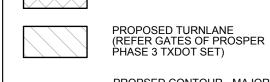
EXISTING FIRE LANE



PROPOSED BUILDING



PROPOSED SIDEWALK



SSE

PROPSED CONTOUR - MAJOR PROPOSED CONTOUR - MINOR EXISTING CONTOUR - MAJOR

EXISTING CONTOUR - MINOR BARRIER FREE RAMP (BFR) ACCESSIBLE PARKING SYMBOL NUMBER OF PARKING SPACES

WATER METER (AND VAULT) FIRE HYDRANT FIRE DEPARTMENT CONNECTION SANITARY SEWER MANHOLE

TRANSFORMER PAD **CURB INLET GRATE INLET** JUNCTION BOX OR WYE INLET HEADWALL

> SANITARY SEWER EASEMENT WATER EASEMENT DRAINAGE EASEMENT BARRIER FREE RAMP SIDEWALK

BUILDING LINE/SETBACK **CURB INLET** GRATE INLET WYE INLET JUNCTION BOX

MANHOLE **EXISTING** PROPOSED

TRENCH DRAIN

SITE DATA SUMMARY TABLE

OTTE DATA GOIN	MAKI IADEL
ZONING/PROPOSED USE	PD-67/PD RETAIL/RESTAURANT
LOT AREA/ SQ. FT. AND AC	686,920 SF; 15.77 AC
BUILDING AREA (gross square footage)	152,078 GSF
BUILDING HEIGHT (number of stories) MAX HEIGHT = 40'	38' 1 (STORY)
LOT COVERAGE	22.14%
FLOOR AREA RATIO (for non-residential zoning)	.22:1
TOTAL PARKING REQUIRED (1:250 FOR RETAIL) (1:100 FOR RESTAURANT)	681 SPACES
TOTAL PARKING PROVIDED	683 SURFACE SPACES
TOTAL HANDICAP REQUIRED	14 SPACES
TOTAL HANDICAP PROVIDED	14 SPACES
INTERIOR LANDSCAPING REQUIRED	10,425 SQ. FT.
INTERIOR LANDSCAPING PROVIDED	10,425 SQ. FT.
IMPERVIOUS SURFACE	560,917 SQ. FT.
USABLE OPEN SPACE REQUIRED	48,084 SQ. FT. (7%)
USABLE OPEN SPACE PROVIDED	65,602 SQ. FT. (9%)

*HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH TAS STANDARD

SITE PLAN GATES OF PROSPER, PHASE 3 BLOCK B, LOT 2

DEVAPP-23-0164 Being 15.77 Acres Out Of The BEN RENNISON SURVEY Abstract No. 755 JOHN YARNELL SURVEY Abstract No. 1038 Town of Prosper, Collin County, Texas Submitted: 09/05/2023

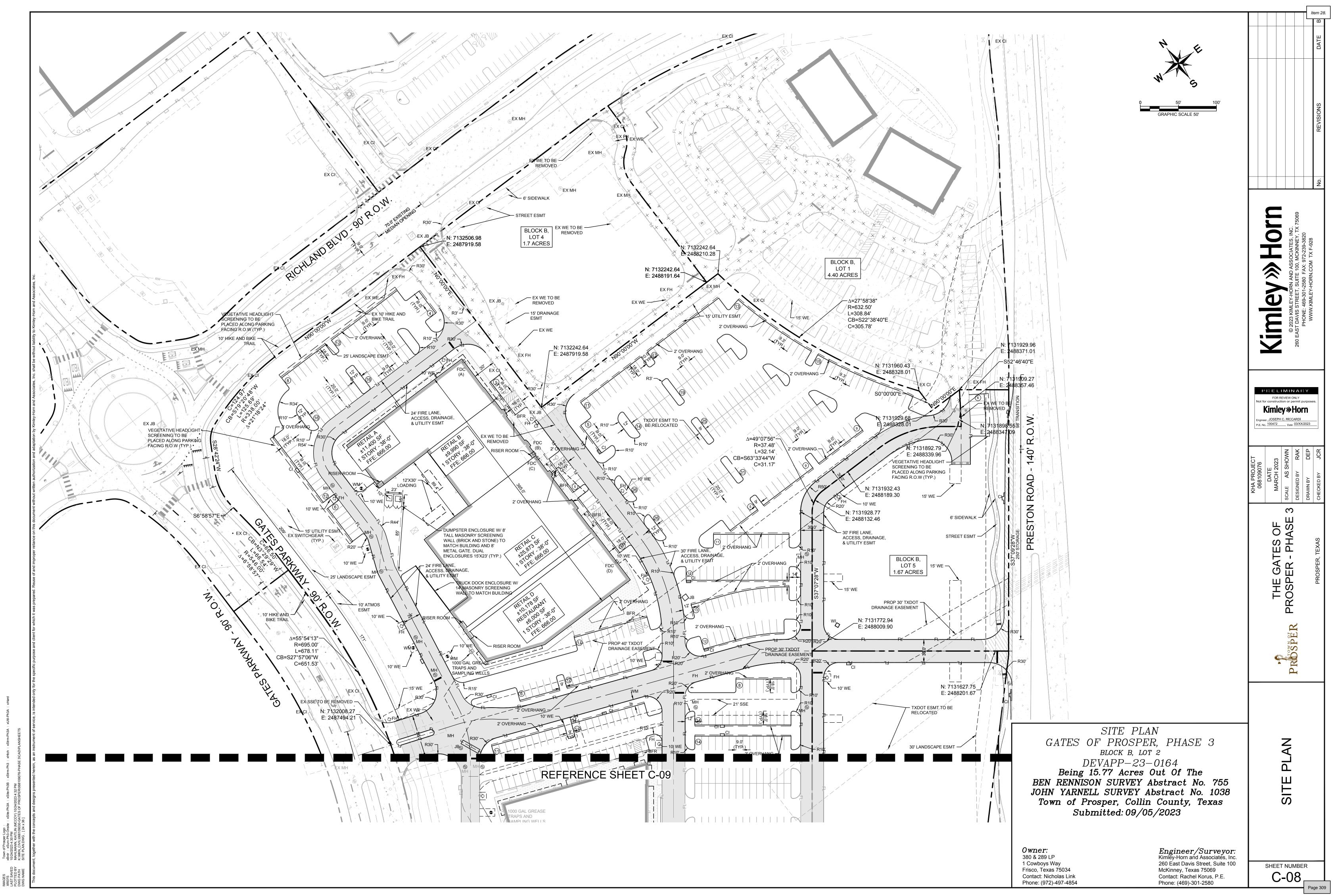
Owner:380 & 289 LP 1 Cowboys Way Frisco, Texas 75034 Contact: Nicholas Link Phone: (972)-497-4854

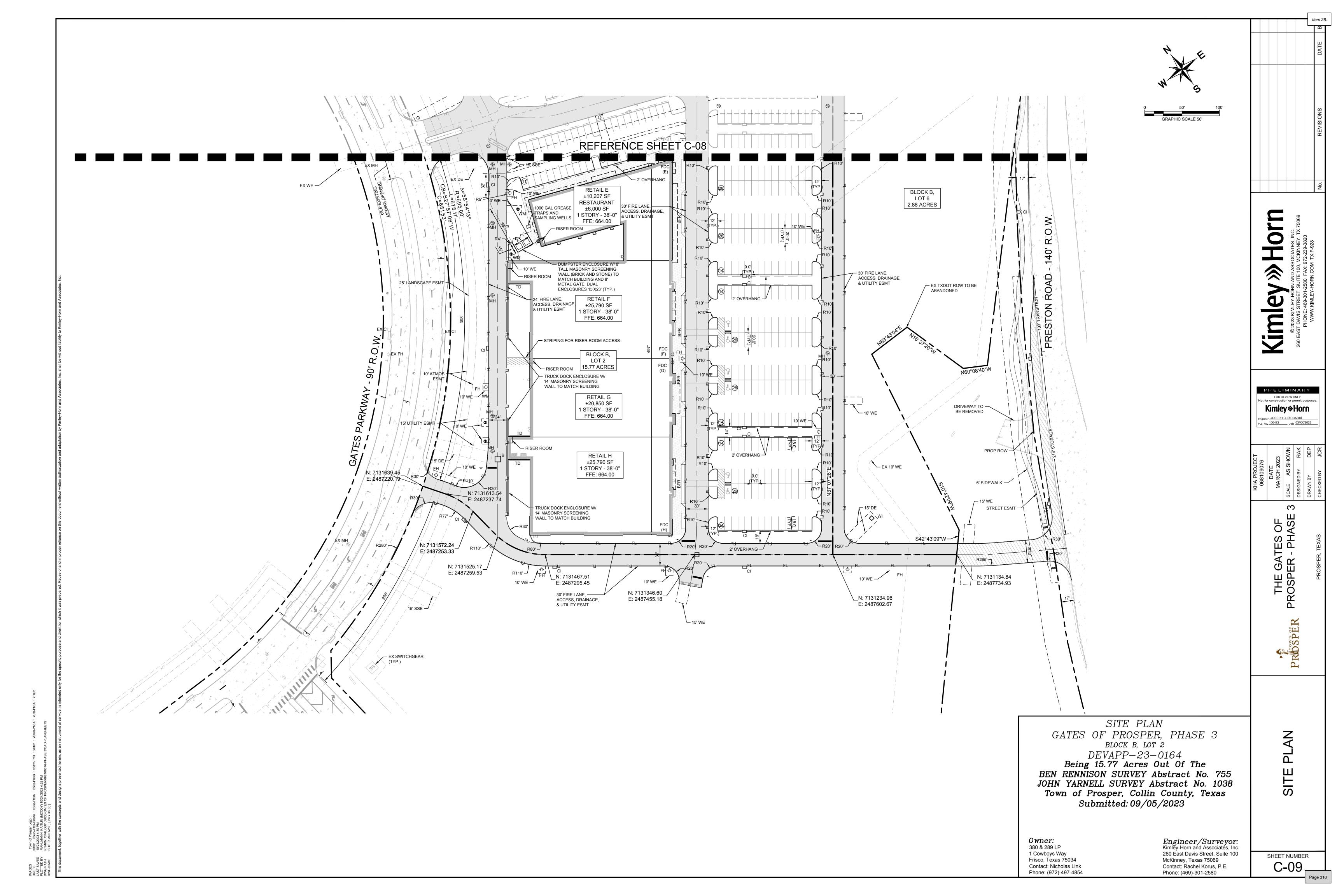
Engineer/Surveyor: Kimley-Horn and Associates, Inc. 260 East Davis Street, Suite 100 McKinney, Texas 75069 Contact: Rachel Korus, P.E. Phone: (469)-301-2580

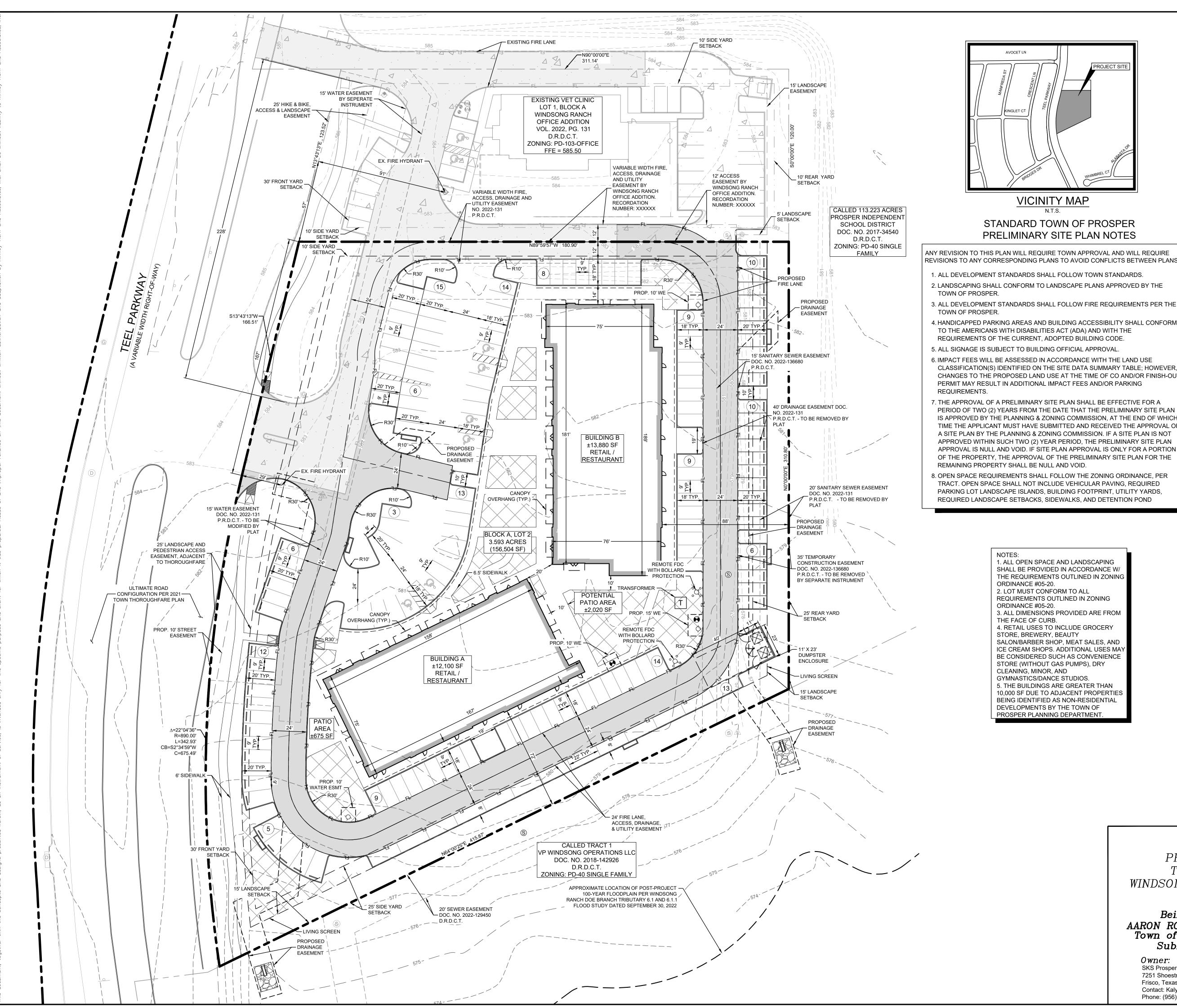
PRELIMINARY FOR REVIEW ONLY Not for construction or permit purp **Kimley Morn** ngineer JOSEPH C. RICCARDI P.E. No. 100472 Date 03/XX/2023

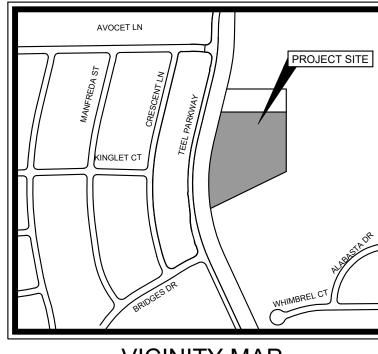
PROSPER

SHEET NUMBER C-07









STANDARD TOWN OF PROSPER

ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE

- 1. ALL DEVELOPMENT STANDARDS SHALL FOLLOW TOWN STANDARDS.
- 2. LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE
- 3. ALL DEVELOPMENT STANDARDS SHALL FOLLOW FIRE REQUIREMENTS PER THE
- 4. HANDICAPPED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM TO THE AMERICANS WITH DISABILITIES ACT (ADA) AND WITH THE
- 5. ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL
- 6. 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
- 7. 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 O 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 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.
- 8. 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



ZONING/PROPOSED USE	PD-103 (PD-C RESTAURANT / RETAI
LOT AREA/ SQ. FT. AND AC	156,504.12 SQ FT; 3.59 A
BUILDING AREA (gross square footage)	25,980 SQ F
BUILDING HEIGHT (number of stories) MAX HEIGHT = 40'	28 1 STOR
LOT COVERAGE	16.6%
FLOOR AREA RATIO (for non-residential zoning)	0.17:
TOTAL RETAIL SF	20,380 SF
TOTAL PARKING REQUIRED (RETAIL) (1:250, EXCLUDES OUTDOOR AREA)	82 SPACES
TOTAL PARKING PROVIDED (RETAIL)*	88 SPACES
TOTAL RESTAURANT SF	5,600 SI
TOTAL PARKING REQUIRED (RESTAURANT) (1:100 FOR RESTAURANTS IN MULTI-TENANT BUILDING)	56 SPACES
TOTAL PARKING PROVIDED (RESTAURANT)*	57 SPACES
TOTAL PATIO SF	2,695 SF
TOTAL PARKING REQUIRED (PATIO AREA) (1:200 FOR RESTAURANT PATIO AREA)	14 SPACES
TOTAL PARKING PROVIDED (PATIO AREA)	16 SPACES
TOTAL ADA SPACES REQUIRED	6 SPACES
TOTAL ADA SPACES PROVIDED	6 SPACES
INTERIOR LANDSCAPING REQUIRED	2,640 SQ. FT
INTERIOR LANDSCAPING PROVIDED	4,155 SQ. FT
IMPERVIOUS SURFACE	104,716 SQ. FT
USABLE OPEN SPACE REQUIRED	10,955 SQ. FT
USABLE OPEN SPACE PROVIDED	12,269 SQ. FT
USABLE OPEN SPACE	7.8%

DEVAPP-23-0184 PRELIMINARY SITE PLAN TEEL PARKWAY RETAIL WINDSONG RANCH OFFICE ADDITION BLOCK A, LOT 2

Being 3.593 Acres Out Of The AARON ROBERTS SURVEY Abstract No. 1115 Town of Prosper, Denton County, Texas
Submitted: DECEMBER 14, 2023

Owner:SKS Prosper Teel Parkway 7251 Shoestring Drive Frisco, Texas 75036 Contact: Kalyan Akkasani Phone: (956) 220-4194

Engineer/Surveyor: Kimley-Horn and Associates, Inc. 13455 Noel Road, Two Galleria Office Tower Dallas, Texas 75240 Contact: Jeffrey Dolian, P.E. Phone: (972) 770-1300

LEGEND PROPOSED FIRE LANE

> EXISTING FIRE LANE **EXISTING PAVEMENT**

OPEN SPACE

PROPOSED BUILDING PROPSED CONTOUR - MAJOR PROPOSED CONTOUR - MINOR

EXISTING CONTOUR - MAJOR EXISTING CONTOUR - MINOR BARRIER FREE RAMP (BFR) ACCESSIBLE PARKING SYMBOL \otimes NUMBER OF PARKING SPACES

WATER METER (AND VAULT) FH ↔ FIRE HYDRANT FDC 👸 FIRE DEPARTMENT CONNECTION SANITARY SEWER MANHOLE

TRANSFORMER PAD **CURB INLET GRATE INLET** GREASE TRAP

JUNCTION BOX OR WYE INLET HEADWALL TYPICAL SANITARY SEWER EASEMENT

WATER EASEMENT DRAINAGE EASEMENT BARRIER FREE RAMP SIDEWALK

BUILDING LINE/SETBACK **CURB INLET GRATE INLET**

WYE INLET JUNCTION BOX MANHOLE **EXISTING**

PRELIMINARY

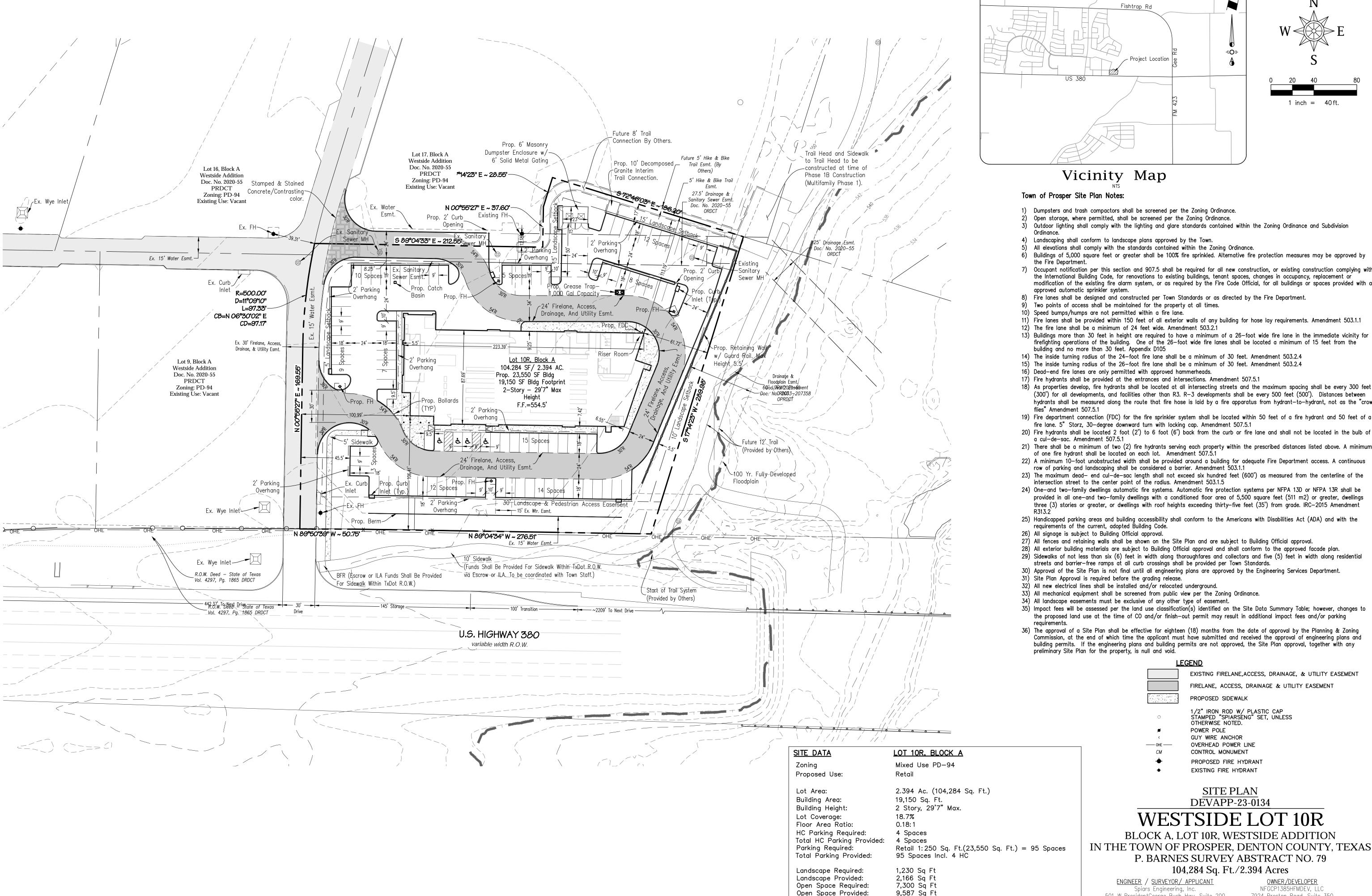
FOR REVIEW ONLY

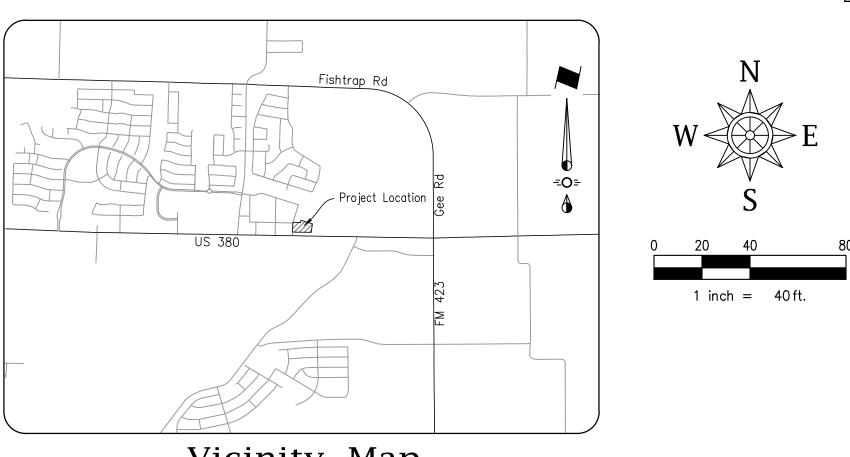
NOT FOR CONSTRUCTION PURPOSES

Kimley » Horn

P.E. No. <u>114926</u> Date <u>12/14/2023</u>

SHEET NUMBER PSP-1





Vicinity Map

Town of Prosper Site Plan Notes:

- Dumpsters and trash compactors shall be screened per the Zoning Ordinance.
- Open storage, where permitted, shall be screened per the Zoning Ordinance.
- Outdoor lighting shall comply with the lighting and glare standards contained within the Zoning Ordinance and Subdivision
- Landscaping shall conform to landscape plans approved by the Town.
- All elevations shall comply with the standards contained within the Zoning Ordinance.
- 6) Buildings of 5,000 square feet or greater shall be 100% fire sprinkled. Alternative fire protection measures may be approved by
- Occupant notification per this section and 907.5 shall be required for all new construction, or existing construction complying with the International Building Code, for renovations to existing buildings, tenant spaces, changes in occupancy, replacement or modification of the existing fire alarm system, or as required by the Fire Code Official, for all buildings or spaces provided with an
- 8) Fire lanes shall be designed and constructed per Town Standards or as directed by the Fire Department.
- 9) Two points of access shall be maintained for the property at all times.
- 10) Speed bumps/humps are not permitted within a fire lane.
- 11) Fire lanes shall be provided within 150 feet of all exterior walls of any building for hose lay requirements. Amendment 503.1.1
- 12) The fire lane shall be a minimum of 24 feet wide. Amendment 503.2.1 13) Buildings more than 30 feet in height are required to have a minimum of a 26-foot wide fire lane in the immediate vicinity for firefighting operations of the building. One of the 26-foot wide fire lanes shall be located a minimum of 15 feet from the
- 14) The inside turning radius of the 24-foot fire lane shall be a minimum of 30 feet. Amendment 503.2.4
- 15) The inside turning radius of the 26-foot fire lane shall be a minimum of 30 feet. Amendment 503.2.4
- 17) Fire hydrants shall be provided at the entrances and intersections. Amendment 507.5.1
- 18) As properties develop, fire hydrants shall be located at all intersecting streets and the maximum spacing shall be every 300 feet (300') for all developments, and facilities other than R3. R-3 developments shall be every 500 feet (500'). Distances between hydrants shall be measured along the route that fire hose is laid by a fire apparatus from hydrant—to—hydrant, not as the "crow
- 19) Fire department connection (FDC) for the fire sprinkler system shall be located within 50 feet of a fire hydrant and 50 feet of a fire lane. 5" Storz, 30—degree downward turn with locking cap. Amendment 507.5.1
- 20) Fire hydrants shall be located 2 foot (2') to 6 foot (6') back from the curb or fire lane and shall not be located in the bulb of a cul-de-sac. Amendment 507.5.1
- of one fire hydrant shall be located on each lot. Amendment 507.5.1
- 22) A minimum 10-foot unobstructed width shall be provided around a building for adequate Fire Department access. A continuous row of parking and landscaping shall be considered a barrier. Amendment 503.1.1
- 23) The maximum dead— end cul—de—sac length shall not exceed six hundred feet (600') as measured from the centerline of the
- intersection street to the center point of the radius. Amendment 503.1.5 24) One—and two—family dwellings automatic fire systems. Automatic fire protection systems per NFPA 13D or NFPA 13R shall be
- provided in all one—and two—family dwellings with a conditioned floor area of 5,500 square feet (511 m2) or greater, dwellings three (3) stories or greater, or dwellings with roof heights exceeding thirty—five feet (35') from grade. IRC—2015 Amendment
- 25) 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.

60,326 Sq. Ft.

Impervious Surface:

- 26) All signage is subject to Building Official approval.
- 27) All fences and retaining walls shall be shown on the Site Plan and are subject to Building Official approval. 28) All exterior building materials are subject to Building Official approval and shall conform to the approved facade plan.
- 29) Sidewalks of not less than six (6) feet in width along thoroughfares and collectors and five (5) feet in width along residential
- streets and barrier—free ramps at all curb crossings shall be provided per Town Standards. 30) Approval of the Site Plan is not final until all engineering plans are approved by the Engineering Services Department.
- 31) Site Plan Approval is required before the grading release.
- 32) All new electrical lines shall be installed and/or relocated underground.
- 33) All mechanical equipment shall be screened from public view per the Zoning Ordinance. 34) All landscape easements must be exclusive of any other type of easement.
- 35) Impact fees will be assessed per 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 36) The approval of a Site Plan shall be effective for eighteen (18) months from the date of approval by the Planning & Zoning
- Commission, at the end of which time the applicant must have submitted and received the approval of engineering plans and building permits. If the engineering plans and building permits are not approved, the Site Plan approval, together with any preliminary Site Plan for the property, is null and void.

LEGEND

EXISTING FIRELANE, ACCESS, DRAINAGE, & UTILITY EASEMENT FIRELANE, ACCESS, DRAINAGE & UTILITY EASEMENT PROPOSED SIDEWALK

> 1/2" IRON ROD W/ PLASTIC CAP STAMPED "SPIARSENG" SET, UNLESS OTHERWISE NOTED. POWER POLE

GUY WIRE ANCHOR OVERHEAD POWER LINE

CONTROL MONUMENT PROPOSED FIRE HYDRANT

EXISTING FIRE HYDRANT

SITE PLAN DEVAPP-23-0134

WESTSIDE LOT 10R

BLOCK A, LOT 10R, WESTSIDE ADDITION IN THE TOWN OF PROSPER, DENTON COUNTY, TEXAS

P. BARNES SURVEY ABSTRACT NO. 79 104,284 Sq. Ft./2.394 Acres

ENGINEER / SURVEYOR / APPLICANT Spiars Engineering, Inc. 501 W PresidentGeorge Bush Hwy, Suite 200

Richardson, TX 75080

Telephone: (972) 422-0077

TBPE No. F-2121 Contact: David Bond

OWNER/DEVELOPER NFGCP1385HFMDEV, LLC 7924 Preston Road, Suite 350 Plano, TX 75024 Email: dhruva.nagalla@harelifm.com Contact: Dhruva Nagalla

Sheet 1 of 1 Scale: 1"=40' July 3, 2023 SEI Job No. 23-109



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 for Rock Creek Church

Town Council Meeting – January 9, 2024

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

Agenda Item:

Conduct a Public Hearing and consider and act upon a request for a Planned Development for a House of Worship on 26.1± acres, on Prosper School Church Addition, Block A, Lot 2, located north of West First Street and west of South Legacy Drive. The property is zoned Agricultural. (ZONE-23-0030)

Description of Agenda Item:

The purpose of this request is to rezone the property from Agricultural to a Planned Development with a base zoning of Office with 50% lot coverage. The intent of the request is to construct a new worship building. This building, the existing structure, and all associated parking will result in 32% lot coverage. The current Agricultural District allows for a maximum lot coverage of 20%. The Office District allows for a maximum lot coverage of 30%. The increase in maximum lot coverage in the Planned Development will allow the house of worship to comply with the zoning regulations while having a base zoning compatible with the surrounding area.

	Agricultural	Office
Min. Lot Area (Ft.2)	87,120 (2 Acres)	7,000
Min. Lot Width (Ft.)	200	70
Min. Lot Depth (Ft.)	200	100
Min. Front Setback (Ft.)	40	30
Min. Side Setback (Ft.)	20, 25 (KL)	10 (NR), 25 (1R), 40 (2R)
Min. Rear Setback (Ft.)	20	10 (NR), 25 (1R), 40 (2R)
Max. Lot Coverage (%)	20	30

KL = Key Lot or Corner Lot

NR = Adjacent to Non-Residential

1R = 1-Story Adjacent to Residential

2R = 2-Story Adjacent to Residential

The zoning and land use of the surrounding properties are as follows:

Item 29.

Uses:

The list of allowed uses within this Planned Development are far less than what is permitted by the Office District. In the Office District, there are 32 uses permitted by right, 7 uses permitted with conditional standards, and 12 uses permitted with a Specific Use Permit. This Planned Development only allows for 3 uses permitted by right and 1 use permitted with a Specific Use Permit as shown below:

- By Right:
 - House of Worship
 - Rectory
 - School, Private or Parochial
- With a Specific Use Permit:
 - o School, Private or Parochial

Compatibility:

This zoning change would not be seen as out of character due to surrounding properties having similar zoning and uses that are compatible with the proposed use. The property to the east, a Planned Development with the Office District as the base zoning, demonstrates that the Office District is suitable for this area. Additionally, the intended use is compatible with the residential area to the south and the school to the west.

The zoning and land use of the surrounding properties are as follows:

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Agricultural	House of Worship	Retail & Neighborhood Services
North	ETJ	Residential	ETJ
East	Planned Development-113	Medical Office	Retail & Neighborhood Services
South	Planned Development-14	Residential	Medium Density Residential
West	Agricultural	Public School	Retail & Neighborhood Services

Future Land Use Plan:

The Future Land Use Plan recommends Retail & Neighborhood Services. The proposed zoning request conforms to the Future Land Use Plan.

Thoroughfare Plan:

This property has direct access to West First Street.

Parks Master Plan:

The Parks Master Plan does not indicate a park is needed on the subject property.

Major Creek:

This property is south of Button Branch.

Budget Impact:

Item 29.

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Notification was provided as required by the Zoning Ordinance and state law. Staff has not received any response to the proposed zoning request to date.

Attached Documents:

- 1. Aerial and Zoning Maps
- 2. Survey
- 3. Letter of Intent
- 4. Development Standards
- 5. Conceptual Plan
- 6. Development Schedule
- 7. Elevations

Town Staff Recommendation:

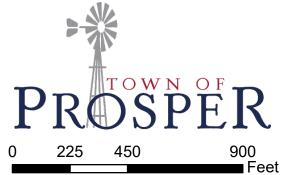
Town Staff recommends approval of the request for a Planned Development for a House of Worship on 26.1± acres, on Prosper School Church Addition, Block A, Lot 2, located north of West First Street and west of South Legacy Drive. Due to this item being on the Planning & Zoning Commission agenda for November 7, 2023, this staff report was completed prior to their recommendation.

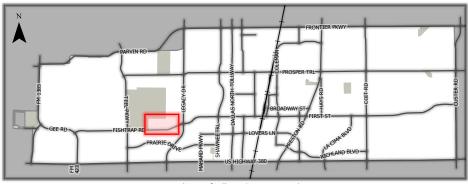
Proposed Motion:

I move to approve/deny the request for a Planned Development for a House of Worship on 26.1± acres, on Prosper School Church Addition, Block A, Lot 2, located north of West First Street and west of South Legacy Drive.

Page 3 of 3



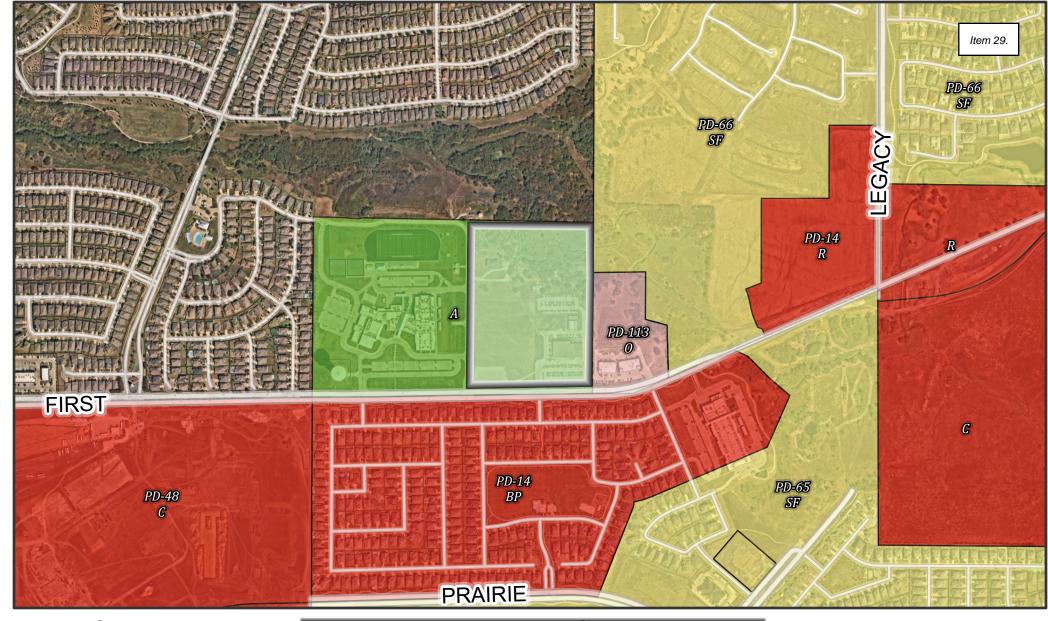


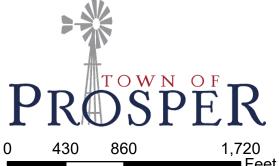


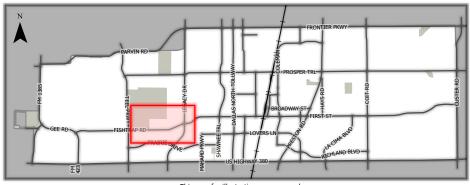
ZONE-23-0030

Rock Creek Church





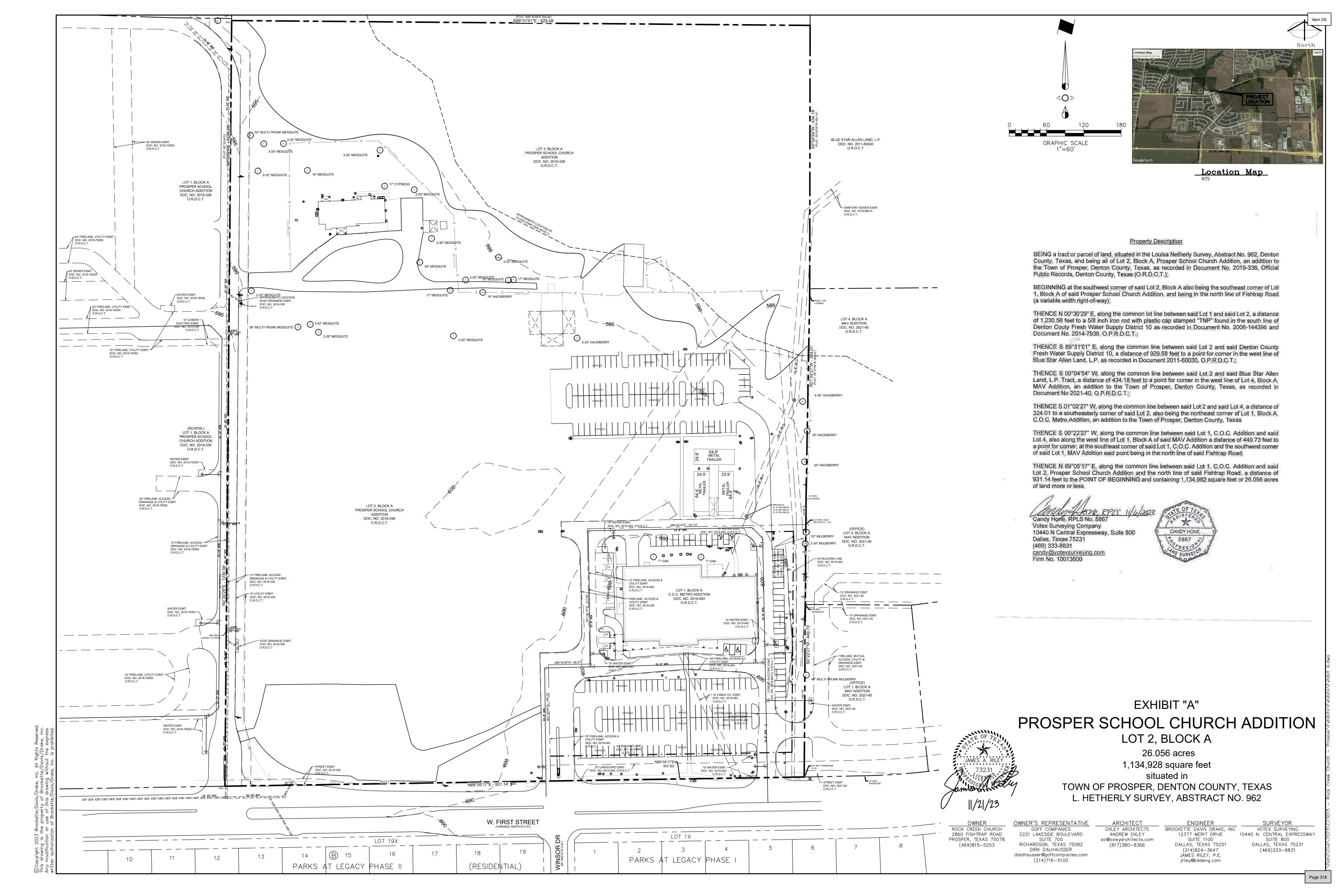




ZONE-23-0030

Rock Creek Church





ROCK CREEK CHURCH

2860 W First Street Prosper, Texas. 75078

November 21, 2023

Re: Letter of Intent

Town of Prosper 250 W First Street Prosper, Texas. 75078

To Whom It May Concern,

The Church of Celebration Metro, a.k.a. Rock Creek Church, owns 26 acres fronting W. First Street. Rock Creek Church uses its facility for religious worship with on-site parking and the wood framed structure towards the rear of the property solely as administrative offices.

The church conducts four worship services on the weekends. One on Saturday evening and three on Sunday mornings. During the week it serves as a place to meet for small group Bible study. The administration offices are open Monday through Friday during normal business hours.

Plans are underway to add a 1000-seat worship venue with additional parking. The current land parcels are zoned Agriculture and we are requesting a zoning change to a Planned Development using a base zoning of Office with the appropriate modifications.

If you have any questions regarding the Letter of Intent or the project you can contact Jim Riley with Brockette Davis Drake Inc. at (214) 535-4027.

Sincerely yours

Jerry Brawner

Executive Director of Operations

jerry@rockcreektx.church (469) 815-5253

Exhibit "C"

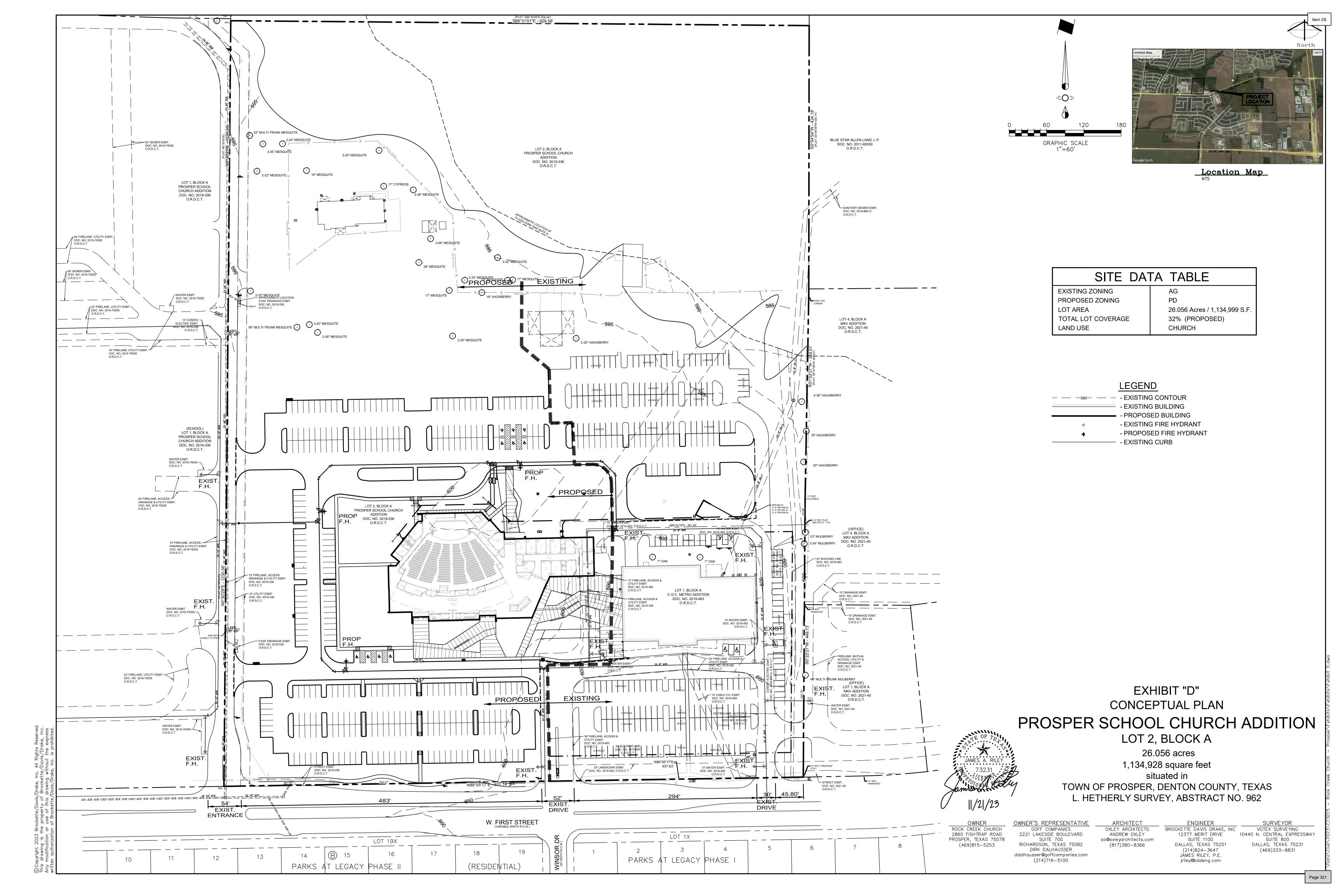
Development Standards

This tract shall develop under the regulation of the Office (O) District as outlined in the Town's Zoning Ordinance as it exists or may be amended with the following conditions:

- 1.0 Permitted Uses
 - 1.1 The permitted land uses within this Planned Development District are as follows:
 - Childcare Center S
 - House of Worship
 - Rectory
 - School, Private or Parochial

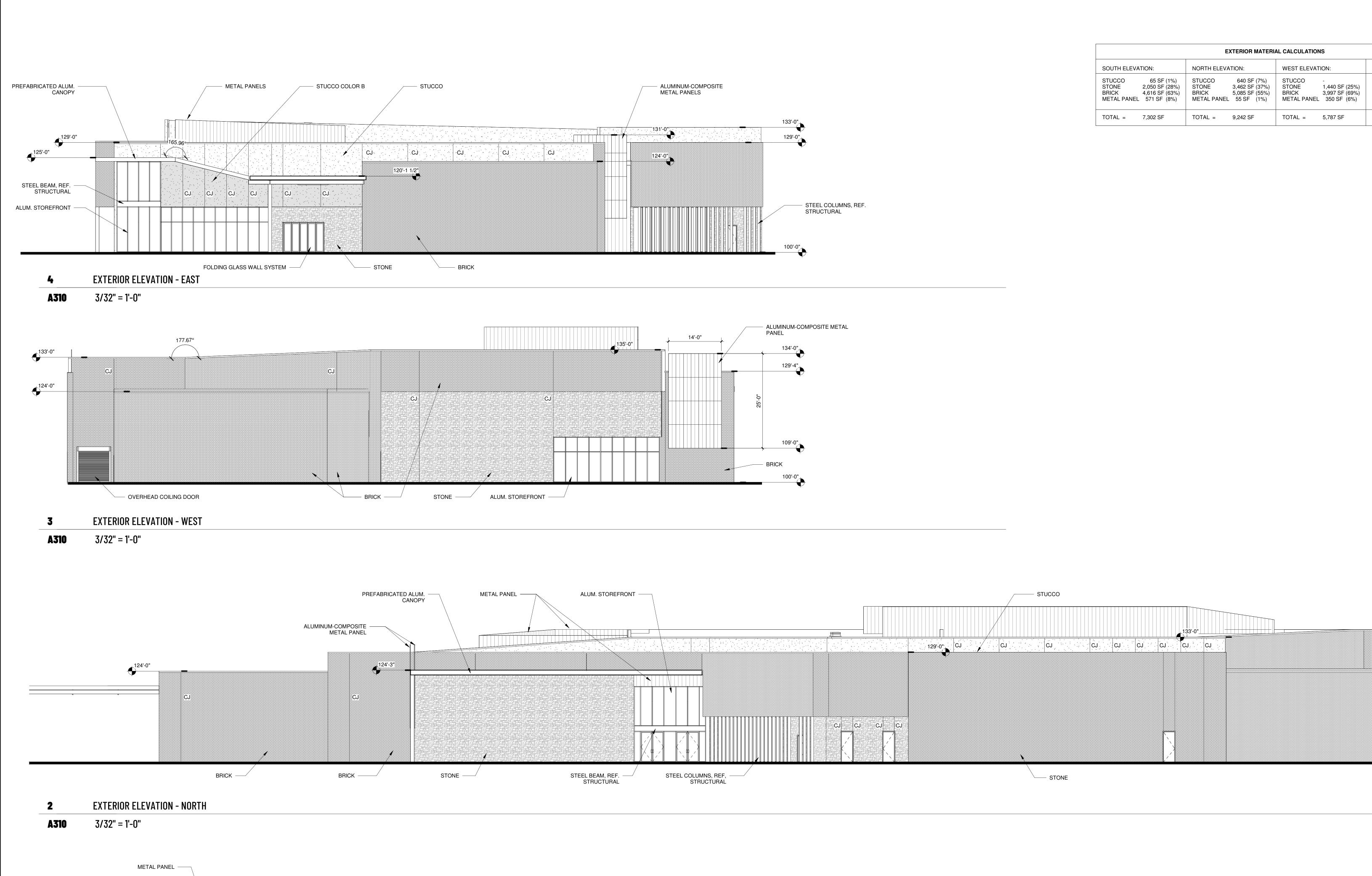
2.0 Lot Coverage

- 2.1 The lot coverage requirements within this Planned Development District are as follows:
 - Maximum of 50% lot coverage.



Z23-0030 EXHIBIT E DEVELOPMENT STANDARDS ROCK CREEK CHURCH LOT 2, BLOCK A, PROSPER SCHOOL ADDITION

Task	<u>Date</u>
Start Construction	4/17/24
Site Work	4/17/24 - 8/12/24
Building	8/12/24 - 12/16/24
Finish Out	12/16/24 - 6/16/25
Certificate of Occupancy	6/16/25



- METAL PANEL -

- ALUM. STOREFRONT

STEEL BEAM, REF. STRUCTURAL

PREFABRICATED ALUM.

ALUM. STOREFRONT

CANOPY

BRICK —

ALUMINUM -COMPOSITE ---

BRICK -

STONE —

A310

METAL PANEL

EXTERIOR ELEVATION - SOUTH

3/32" = 1'-0"

PREFINISHED METAL -

COPING

STONE —

STEEL BEAM, REF. STRUCTURAL ——

ALUM. STOREFRONT -

EAST ELEVATION:
 STUCCO
 65 SF (1%)
 STUCCO
 640 SF (7%)
 STUCCO
 STUCCO
 5 STUCCO
 1,253 SF (31%)

 STONE
 2,050 SF (28%)
 STONE
 3,462 SF (37%)
 STONE
 1,440 SF (25%)
 STONE
 390 SF (9%)

 BRICK
 4,616 SF (63%)
 BRICK
 5,085 SF (55%)
 BRICK
 3,997 SF (69%)
 BRICK
 2,230 SF (57%)

 METAL PANEL
 571 SF (8%)
 METAL PANEL
 350 SF (6%)
 METAL PANEL
 140 SF (3%)
 TOTAL = 4,013 SF

O X L E Y

PO BOX 1258 FORT WORTH, TX 76101 817.380.8366 oxleyarchitects.com



Revision Schedule			
Rev. #	Revision Description	Revision Date	

ZONE-23-0030

124'-0"

NOT TO BE USED FOR PERMITTING, OR CONSTRUCTION

ANDREW OXLEY

THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS SHALL BE DEEMED THE AUTHORS AND OWNERS OF THEIR RESPECTIVE INSTRUMENTS OF SERVICE, INCLUDING THE DRAWINGS AND SPECIFICATIONS, AND SHALL RETAIN ALL COMMON LAW, STATUTORY AND OTHER RESERVED RIGHTS, INCLUDING COPYRIGHTS. SUBMISSION OR DISTRIBUTION OF INSTRUMENTS OF SERVICE TO MEET OFFICIAL REGULATORY REQUIREMENTS OR FOR SIMILAR PURPOSES IN CONNECTION WITH THE PROJECT IS NOT TO BE CONSTRUED AS PUBLICATION IN DEROGATION OF THE RESERVED RIGHTS OF THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS. INSTRUMENTS OF SERVICE, INCLUDING DRAWINGS, SPECIFICATIONS ON DOCUMENTS IN ELECTRONIC FORM DEPENDENT AND THE ARCHITECT'S PLICADE FOR JUST ON THE PERSPECT TO THIS ELECTRONIC FORM, PREPARED BY OXLEY ARCHITECTS, PLLC ARE FOR USE SOLELY WITH RESPECT TO THIS PROJECT. THE INSTRUMENTS OF SERVICE SHALL NOT BE USED BY THE OWNER WITHOUT THE PRIOR WRITTEN APPROVAL OF OXLEY ARCHITECTS, PLLC. USE OF THE INSTRUMENTS OF SERVICE WITHOUT WRITTEN PERMISSION SHALL BE WITHOUT LIABILITY TO OXLEY ARCHITECTS, PLLC AND ITS CONSULTANTS.

ROCK CREEK CHURCH

2860 W. FIRST STREET PROSPER, TEXAS 75078

NOVEMBER 20, 2023

EXTERIOR ELEVATIONS



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: Specific Use Permit for Retail Stores and Shops, a Convenience Store

(without Gas Pumps), Dry Cleaning, Minor, and Gymnastics/Dance

Studio

Town Council Meeting – January 9, 2024

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

Agenda Item:

Conduct a public hearing to consider and act upon a request for a Specific Use Permit (SUP) to allow Retail Stores and Shops, a Convenience Store (without Gas Pumps), Dry Cleaning, Minor, and Gymnastics/Dance Studio uses on 3.6± acres on Windsong Ranch Office Addition, Block A, Lot 2, located south of Parvin Road and east of North Teel Parkway. The property is zoned Planned Development-103 (PD-103) Windsong Ranch Office. (ZONE-23-0023)

Description of Agenda Item:

The applicant has submitted a Specific Use Permit (SUP) request to allow for certain uses in two buildings on the subject property. As a companion item, the Preliminary Site Plan (DEVAPP-23-0184) is also on the Planning & Zoning Commission agenda for December 19, 2023.

The zoning and land use of the surrounding properties are as follows:

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Planned Development- 103 (Office)	Undeveloped	Retail & Neighborhood Services
North	Planned Development- 103 (Office)	Under construction (Veterinary Clinic)	Retail & Neighborhood Services
East	Planned Development-40 (Single Family)	Undeveloped	Retail & Neighborhood Services
	Zoning	Current Land Use	Future Land Use Plan
South	Planned Development-40 (Single Family)	Floodplain	Floodplain
West	Planned Development-40 (Single Family)	Residential (Developed)	High Density Residential

Proposed Uses:

In 2020, a Planned Development was approved for this property and the lot to the north that established a base zoning of Office and provided for the allowance of certain uses, as follows:

Uses permitted by right:

- Assisted Living Facility
- Restaurant
- Veterinarian Clinic and/or Kennel, Indoor

Uses permitted upon approval of a Specific Use Permit:

- Commercial Amusement, Indoor *
- Convenience Store without Gas Pumps
- Dry Cleaning, Minor
- Gymnastics/Dance Studio
- Retail Stores and Shops
- Restaurant with drive-through*

Prohibited uses:

Recycling Collection Point

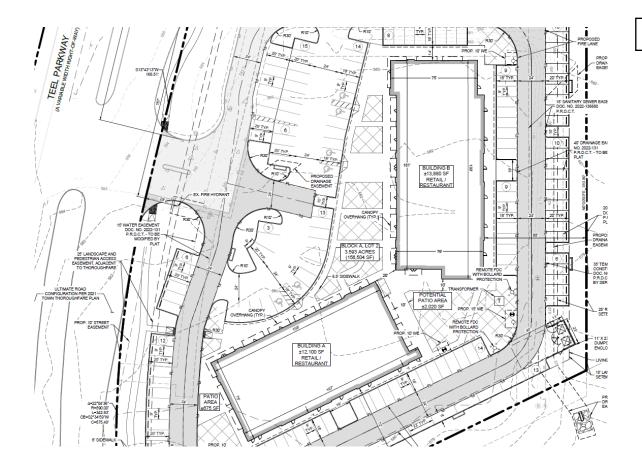
The applicant is proposing to develop two multi-tenant buildings on the property and requests approval of a Specific Use Permit to allow all but the Commercial Amusement, Indoor and Restaurant with drive-through uses. The applicant's Letter of Intent (see attachment) lists several of the possible retail stores and shops that could occupy building space.

Building Size and Location

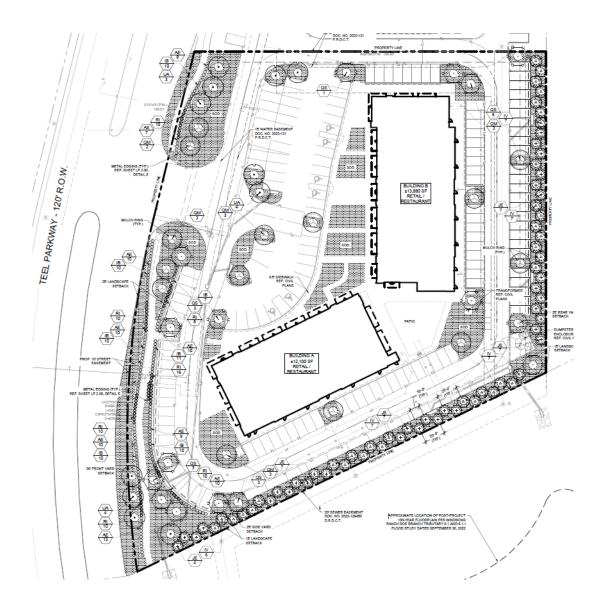
The two buildings are 12,100 square feet (Building A – southern building) and 13,880 square feet (Building B – northern building), for a total of 25,980 square feet. For parking calculation purposes, the developer has anticipated 20,380 square feet being allocated to retail uses and 5,600 square feet for restaurant use. There are two outdoor patios consisting of 2,695 square feet.

The Office zoning district standards restrict the sizes of buildings within 200 feet of residential uses or zoning to 10,000 square feet. The proposed buildings are greater than 10,000 square feet and are separated from the adjacent residential zoning to the east by 88 feet and to the south by 72 feet. Staff finds that the location of the buildings will not negatively impact the surrounding properties. The land to the west is currently undeveloped and owned by Prosper Independent School District. Property immediately to the south is a creek that is approximately 500 feet in width; a residential neighborhood is developed south of the creek.

^{*}These two uses are not being requested with this Specific Use Permit request.



Screening
Since the property is adjacent to residential zoning, a living screen is proposed along the east and south property lines. A living screen is recommended in this location to blend with the natural creek environment to the south and will be a suitable screen adjacent to any future school-related or residential development to the east. A living screen is subject to the approval of the Specific Use Permit.



Building Elevations

The proposed buildings will be compatible with the veterinary clinic being constructed to the north and the Development Agreement requirements in place for this property.

Building A - Southern Building





Building B - Northern Building



Item 30.

1. Is the use harmonious and compatible with its surrounding existing uses or proposed uses?

The proposed uses are compatible with the veterinary clinic being constructed to the north. The property will be screened from residential zoning to the east and south with a living screen. The proposal will provide services to nearby residential development.

2. Are the activities requested by the applicant normally associated with the requested use?

All of the proposed uses are compatible in nature with the surrounding developments and will serve the surrounding properties. These are typical uses in multi-tenant structures.

3. Is the nature of the use reasonable?

When the zoning was approved for this property, it was conceived that these uses may be appropriate in this location, but a Specific Use Permit was required to allow for the review of site layout, screening, and elevations.

4. Has any impact on the surrounding area been mitigated?

The applicant has designed a site with two buildings that will be architecturally compatible with the surrounding development and a living screen will be installed to buffer these buildings that are larger than 10,000 square feet from the adjacent residential zoning.

In conclusion, Staff believes the applicant has satisfied the criteria and recommends approval of the request.

<u>Future Land Use Plan</u> – The Future Land Use Plan recommends Retail and Neighborhood Services.

Thoroughfare Plan – This property currently has direct access to Teel Parkway.

<u>Parks Master Plan</u> – The Parks Master Plan does not indicate a park is needed on the subject property.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Notification was provided as required by the Zoning Ordinance and state law. The developer of Windsong responded to Staff that there are no concerns with the proposed uses.

Attached Documents:

- 1. Aerial and Zoning Maps
- 2. Survey
- 3. Letter of Intent
- 4. Site Plan
- 5. Landscape Plan
- 6. Façade Plan

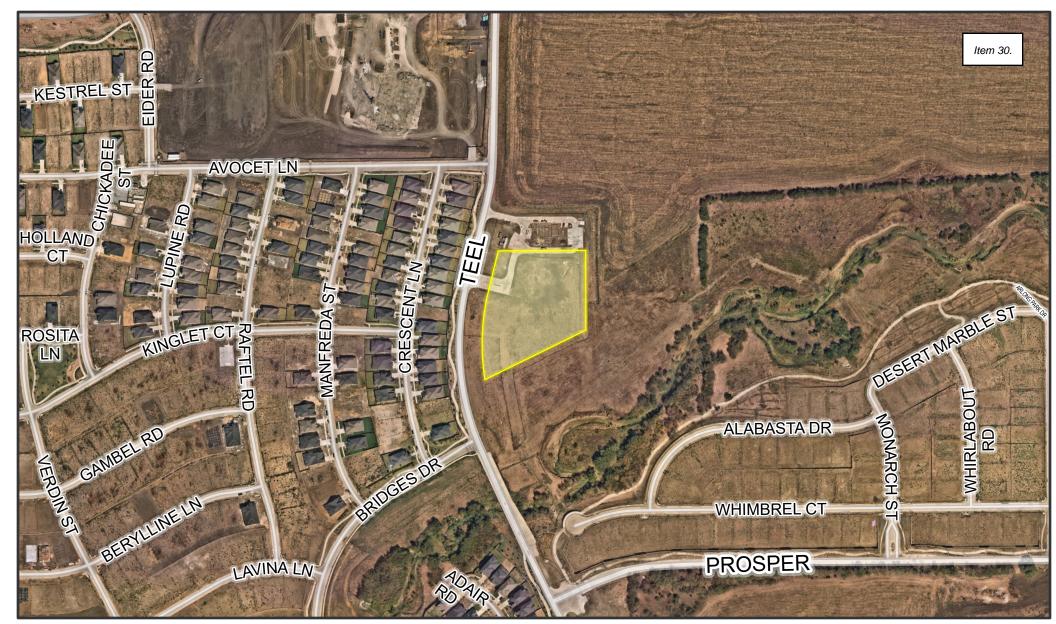
Item 30.

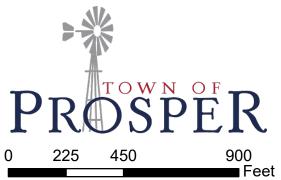
Town Staff Recommendation:

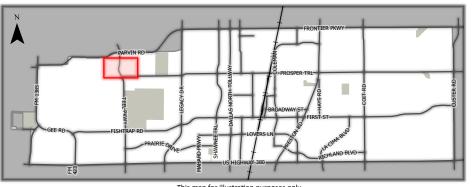
Town Staff recommends approval of a Specific Use Permit (SUP) request to allow Retail Stores and Shops, a Convenience Store (without Gas Pumps), Dry Cleaning, Minor, and Gymnastics/Dance Studio uses on the property with the building size and placement as shown on the Site Plan Exhibit and a living screen as shown on the Landscape Plan Exhibit. The Planning & Zoning Commission recommended approval of this item (7-0) at their meeting on December 19, 2023.

Proposed Motion:

I move to approve/deny the request for a Specific Use Permit (SUP) to allow Retail Stores and Shops, a Convenience Store (without Gas Pumps), Dry Cleaning, Minor, and Gymnastics/Dance Studio uses on 3.6± acres on Windsong Ranch Office Addition, Block A, Lot 2, located south of Parvin Road and east of North Teel Parkway, with the building size and placement as shown on the Site Plan Exhibit and a living screen as shown on the Landscape Plan Exhibit.





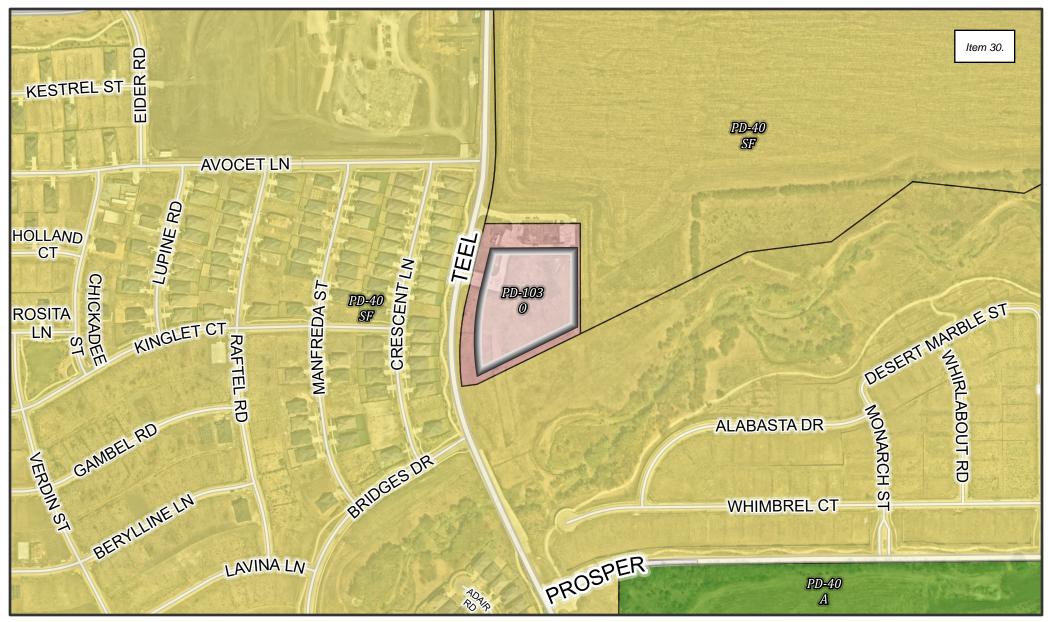


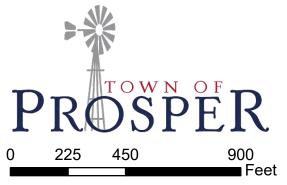
ZONE-23-0023

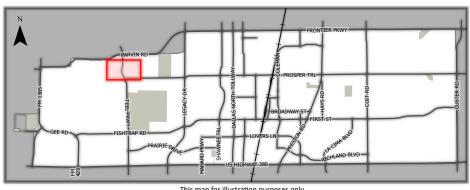
SUP Teel Pkwy Retail

Page 331

Specific Use Permit





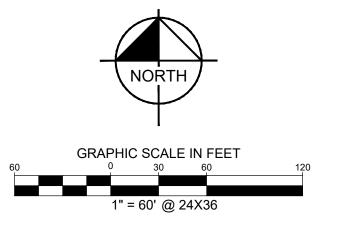


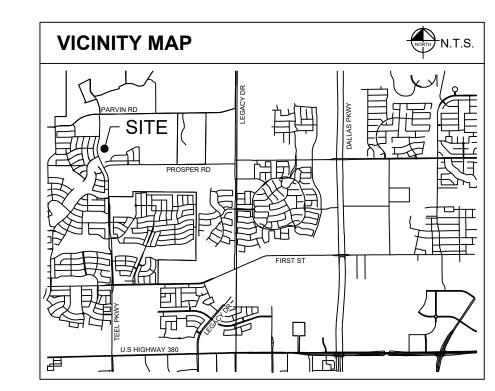
ZONE-23-0023

SUP Teel Pkwy Retail



Specific Use Permit





PROPERTY DESCRIPTION

BEING a tract of land situated in the Aaron Roberts Survey, Abstract No. 1115, City of Prosper, Denton County, Texas, and being all of Lot 2, Block A of the Windsong Ranch Office Addition, an addition to the City of Prosper, Denton County, Texas, according to the plat thereof recorded in Document No. 2022-131, Deed Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at a point in the east right-of-way line of Teel Parkway (a variable width right-of-way)at the southwest corner of said Lot 2, Block A, same being the southeast corner of a 60-foot Right-of-Way Dedication recorded in said Document No. 2022-131, and being in the north line of a called "Tract 1" described in the Special Warranty Deed to VP WINDSONG OPERATIONS LLC, recorded in Document No. 2018-142926, Deed Records, Denton County, Texas, and being at the beginning of a non-tangent curve to the right with a radius of 890.00 feet, a central angle of 22°10'32", and a chord bearing and distance of North 02°37'57" East, 342.32 feet;

THENCE with said east right-of-way line and the west line of said Lot 2, Block A, the following courses and distances:

In a northerly direction, with said non-tangent curve to the right, an arc distance of 344.46 feet to a point for corner;

North 13°43'13" East, a distance of 166.51 feet to northwest corner of said Lot 2, Block A, same being the southwest corner of Lot 1, Block A of the aforementioned Windsong Ranch Addition;

THENCE with the common line of said Lot 1 and 2, Block A, South 89°59'57" East, a distance of 340.43 feet to the southeast corner of said Lot 1, Block A, and the northeast corner of said Lot 2, Block A, and being in the west line of a called 113.223 acre tract of land described in the Special Warranty Deed to PROSPER INDEPENDENT SCHOOL DISTRICT, recorded in Document No. 2017-34540, Deed Records, Denton County, Texas;

THENCE with the west line of said 113.223 acre tract, South 00°00'00" East, a distance of 310.80 feet to the south corner of said 113.223 acre tract, same being in the north line of said "Tract 1", and being at the southeast corner of said Lot 2, Block A;

THENCE with the common line of said "Tract 1" and said Lot 2, Block A, South 64°00'25" West, a distance of 440.17 feet to the **POINT OF BEGINNING** and containing a computed area of 156,504 square feet or 3.5928 acres of land.

FLOOD STATEMENT:

According to Federal Emergency Management Agency's Flood Insurance Rate Map No. 48121C0290G and 48121C0430G, for DENTON County, Texas and incorporated areas, dated April 18, 2011, this property is located within Zone X (unshaded) defined as "Areas determined to be outside the 0.2% annual chance floodplain" and Zone A defined as "Special flood hazard areas (SFHAs) subject to inundation by the 1% annual chance flood (No Base Flood Elevations determined)". If this site is not within an identified special flood hazard area, this flood statement does not imply that the property and/or the structures thereon will be free from flooding or flood damage. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not create liability on the part of the surveyor.

NOTES:

Bearing system based on the State Plane Coordinate System of 1983, Texas North Central Zone (4202), North American Datum of 1983 (2011).

The grid coordinates shown are based upon the Texas State Plane Coordinate System, North Central Zone, North American Datum of 1983, U.S. Survey Feet (sFT), no scale and no projection.

This document was prepared under 22 TAC §138.95, 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.



LEGEND

P.R.D.C.T. PLAT RECORDS, DENTON COUNTY, TEXAS
D.R.D.C.T. DEED RECORDS, DENTON COUNTY, TEXAS O.R.D.C.T. OFFICIAL RECORDS, DENTON COUNTY, TEXAS DOC. NO. DOCUMENT NUMBER VOL. PG. VOLUME AND PAGE P.O.B. POINT OF BEGINNING ADF ALUMINUM DISK FOUND

LINE TYPE LEGEND

EASEMENT LINE PROPERTY LINE

EXHIBIT A ZONE-23-0023

WINDSONG RANCH OFFICE ADDITION BLOCK A, LOT 2

3.593 ACRES

AARON ROBERTS SURVEY, ABSTRACT NO. 1115 CITY OF PROSPER, DALLAS COUNTY, TEXAS

Tower, Suite 700, Dallas, Texas 75240 FIRM # 10115500 Fax No. (972) 239-3820 <u>Date</u> <u>Scale</u> 1" = 60' CDB Nov. 2023 064620300 1 OF 2

OWNER: SKS PROSPER TEEL PARKWAY 7251 SHOESTRING DRIVE FRISCO, TEXAS 75036 CONTACT KALYAN AKKASANI PH. (956) 220-4194

SURVEYOR: CRAIG D. BARTOSH REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6459 13455 NOEL ROAD TWO GALLERIA OFFICE TOWER SUITE 700 DALLAS, TEXAS 75240 PH. (972) 770-1300

craig.bartosh@kimley-horn.com

Copyright © 2023 mley-Horn and Associates, Inc All rights reserved

AVOCET LANE (A 60' RIGHT-OF-WAY)

LOT 20

FIRE, ACCESS, DRAINAGE,

LOT 2, BLOCK A

WINDSONG RANCH OFFICE ADDITION

VOL. 2022, PG. 131

D.R.D.C.T.

PLANNED DEVELOPMENT - OFFICE

PROPOSED ZONING: PD103-O

PLANNED DEVELOPMENT - OFFICE WITH A SPECIFIC USE PERMIT FOR ADDITIONAL USES

SKS PROSPER TEELPKWY

RETAIL HOLDINGS, LCC

DOC. NO. 2023-43637

D.R.D.C.T.

3.593 ACRES

156,504 SQ. FT.

15' WATER EASEMENT - DOC. NO. 2022-131

FEMA ZONE "X" UNSHADED

N:7141572.50 \

E:2469055.92

BRIDGES DRIVE

(A 60' RIGHT-OF-WAY)

EXISTING ZONING: PD 103-O DOC. NO. 2022-131

LOT 1, BLOCK A

D.R.D.C.T.

WINDSONG RANCH TLK REALTY HOLDINGS

VOL. 2022, PG. 131 DOC. NO. 2022.132859

D.R.D.C.T.

N:7142076.14

E:2469451.51

FLOODPLAIN

CALLED 113.223 ACRES

PROSPER INDEPENDENT SCHOOL DISTRICT

DOC. NO. 2017-34540

D.R.D.C.T.

ZONING: SINGLE FAMILY

OFFICE ADDITION LIMITED COMPANY

ZONING: PD 103-O

PLANNED DEVELOPMENT - OFFICE

ACCESS & UTILITY ESMT

DOC. NO. 2022-131

15' SANITARY SEWER EASEMENT

DOC. NO. 2022-136680 -

VARIABLE WIDTH FIRE,

35' TEMPORARY CONSTRUCTION EASEMENT DOC. NO. 2022-136680

20' SEWER EASEMENT

CALLED TRACT 1 VP WINDSONG OPERATIONS LLC DOC. NO. 2018-142926

D.R.D.C.T.

ZONING: PD 40

— DOC. NO. 2022-129450

D.R.D.C.T.

ACCESS & UTILITY

EASEMENT

P.R.D.C.T.

P.R.D.C.T.

EASEMENT

P.R.D.C.T.

20' SANITARY SEWER

DOC. NO. 2022-131

P.R.D.C.T.

UTILITY EASEMENT DOC. NO. 2022-98420

O.R.D.C.T.

WATER

DOC. NO.

EASEMENT

2022-98421

O.R.D.C.T./

LOT 19

LOT 18

LOT 15

LOT 13

LOT 12

LOT 11

LOT

LOT

LOT

LOT

LOT

LOT



October 9, 2023

Town of Prosper Planning 250 W First Street Prosper TX 75078

RE: Letter of Intent - Specific Use Permit

To Whom it May Concern,

Please accept this correspondence as the formal letter of intent to develop the above-referenced site. The site is located at 1300 N Teel Parkway, at the northeast corner of Bridges Drive and Teel Parkway. The lot is currently zoned under PD-103 Office District. Our client wishes to develop a mixed-use site on the +/-3.59-acre lot. The retail uses that our client would like to be permitted to develop are listed below:

- Small Grocery Store (15,000 SF or less)
- Brewery/Pub
- Beauty Salon/Barber Shop
- Meat Sales (cold storage and meat selling, not live animal butchering)
- Ice Cream Shop
- Convenience Store without Gas Pumps
- · Dry Cleaning, Minor
- Gymnastics/Dance Studio

A proposed concept plan, owner's acknowledgement form, and this letter of intent are included with this request.

Thank you for your consideration of this request. Please contact me at 945-218-5083 or Abbi.luebbert@kimley-horn.com should you have any questions.

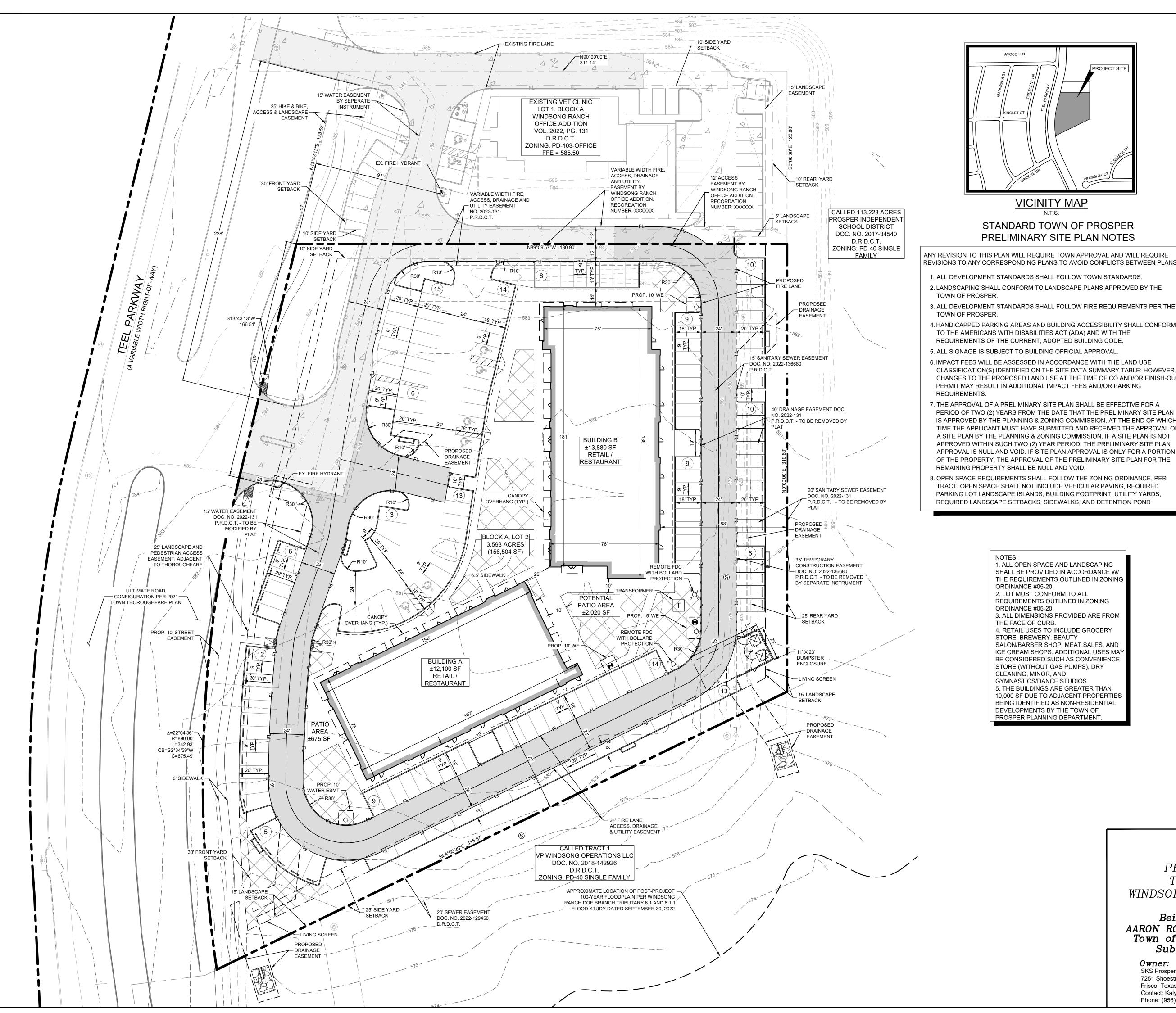
Sincerely,

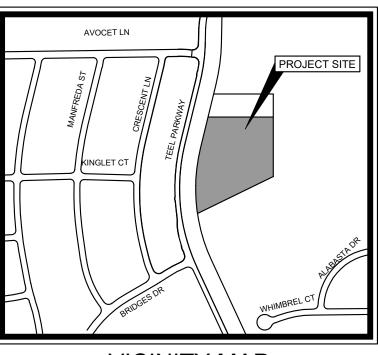
Abbi Luebbert, P.E. (TX)

Project Manager

Kimley-Horn and Associates, Inc

Abigail Lubbert





STANDARD TOWN OF PROSPER

ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE

- 1. ALL DEVELOPMENT STANDARDS SHALL FOLLOW TOWN STANDARDS.
- 2. LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE
- 3. ALL DEVELOPMENT STANDARDS SHALL FOLLOW FIRE REQUIREMENTS PER THE
- 4. HANDICAPPED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM
- 6. 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
- 7. 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 O 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 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.
- 8. 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

BLOCK A, LOT 2

ZONING/PROPOSED USE	PD-103 (PD-O) RESTAURANT / RETAIL	
LOT AREA/ SQ. FT. AND AC	156,504.12 SQ FT; 3.59 AC	
BUILDING AREA (gross square footage)	25,980 SQ FT	
BUILDING HEIGHT (number of stories) MAX HEIGHT = 40'	28 1 STORY	
LOT COVERAGE	16.6%	
FLOOR AREA RATIO (for non-residential zoning)	0.17:	
TOTAL RETAIL SF	20,380 SF	
TOTAL PARKING REQUIRED (RETAIL) (1:250, EXCLUDES OUTDOOR AREA)	82 SPACES	
TOTAL PARKING PROVIDED (RETAIL)*	88 SPACES	
TOTAL RESTAURANT SF	5,600 SF	
TOTAL PARKING REQUIRED (RESTAURANT) (1:100 FOR RESTAURANTS IN MULTI-TENANT BUILDING)	56 SPACES	
TOTAL PARKING PROVIDED (RESTAURANT)*	57 SPACES	
TOTAL PATIO SF	2,695 SF	
TOTAL PARKING REQUIRED (PATIO AREA) (1:200 FOR RESTAURANT PATIO AREA)	14 SPACES	
TOTAL PARKING PROVIDED (PATIO AREA)	16 SPACES	
TOTAL ADA SPACES REQUIRED	6 SPACES	
TOTAL ADA SPACES PROVIDED	6 SPACES	
INTERIOR LANDSCAPING REQUIRED	2,640 SQ. FT.	
INTERIOR LANDSCAPING PROVIDED	4,155 SQ. FT.	
IMPERVIOUS SURFACE	104,716 SQ. FT.	
USABLE OPEN SPACE REQUIRED	10,955 SQ. FT.	
USABLE OPEN SPACE PROVIDED	12,269 SQ. FT.	
USABLE OPEN SPACE	7.8%	

*ADA PARKING IS PROVIDED IN ACCORDANCE WITH TAS STANDARDS AND IS INCLUDED IN TOTAL PARKING COUNT EXHIBIT B

ZONE-23-0023 PRELIMINARY SITE PLAN TEEL PARKWAY RETAIL

WINDSONG RANCH OFFICE ADDITION BLOCK A, LOT 2

Being 3.593 Acres Out Of The AARON ROBERTS SURVEY Abstract No. 1115 Town of Prosper, Denton County, Texas
Submitted: DECEMBER 14, 2023

 Owner : SKS Prosper Teel Parkway 7251 Shoestring Drive Frisco, Texas 75036 Contact: Kalyan Akkasani Phone: (956) 220-4194

Engineer/Surveyor: Kimley-Horn and Associates, Inc. 13455 Noel Road, Two Galleria Office Tower Dallas, Texas 75240 Contact: Jeffrey Dolian, P.E. Phone: (972) 770-1300

LEGEND PROPOSED FIRE LANE

> EXISTING FIRE LANE EXISTING PAVEMENT

OPEN SPACE

PROPOSED BUILDING PROPSED CONTOUR - MAJOR PROPOSED CONTOUR - MINOR **EXISTING CONTOUR - MAJOR EXISTING CONTOUR - MINOR** BARRIER FREE RAMP (BFR)

ACCESSIBLE PARKING SYMBOL NUMBER OF PARKING SPACES WATER METER (AND VAULT) FH ↔ FIRE HYDRANT

FDC 👸 FIRE DEPARTMENT CONNECTION SANITARY SEWER MANHOLE TRANSFORMER PAD **CURB INLET**

> **GRATE INLET** GREASE TRAP JUNCTION BOX OR WYE INLET HEADWALL TYPICAL

SANITARY SEWER EASEMENT WATER EASEMENT DRAINAGE EASEMENT BARRIER FREE RAMP

SIDEWALK BUILDING LINE/SETBACK **CURB INLET GRATE INLET**

WYE INLET JUNCTION BOX MANHOLE **EXISTING**

PROPOSED

PRELIMINARY

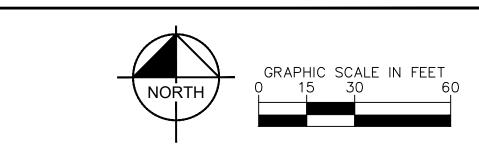
FOR REVIEW ONLY

NOT FOR CONSTRUCTION PURPOSES

Kimley » Horn

P.E. No. 114926 Date 12/14/2023

SHEET NUMBER PSP-1



3 / 16" X 6", BLACK (CONTRACTOR TO INSTALL

NO EXISTING TREES ON SITE

ALL LANDSCAPE BEDS ADJACENT TO SOD.)

3" DEPTH



TOWN OF PROSPER LANDSCAPE GENERAL NOTES

Standard language and/or notations, as follows:

VET CLINIC

-VARIABLE WIDTH FIRE,

SOD

SOD

- 20' SEWER EASEMENT

DOC. NO. 2022-129450

BUILDING B ±13,880 SF

RETAIL /

RESTAURANT

APPROXIMATE LOCATION OF POST-PROJECT —

RANCH DOE BRANCH TRIBUTARY 6.1 AND 6.1.1

FLOOD STUDY DATED SEPTEMBER 30, 2022

100-YEAR FLOODPLAIN PER WINDSONG

MULCH RING -

- 25' REAR YARD

- DUMPSTER AND

15' LANDSCAPE

ENCLOSURE REF. CIVIL PLANS

= P.R.D.C.T.

15' WATER EASEMENT DOC. NO. 2022-131

6.5' SIDEWALK -

BUILDING A

±12,100 SF

RETAIL /

RESTAURANT

P.R.D.C.T.

SOD

15' LANDSCAPE

S13°43'13"W

METAL EDGING (TYP.) -

MULCH RING —

PROP. 10' STREET -

REF. SHEET LP 2.00, DETAIL É

EASEMENT

METAL EDGING (TYP.) -

CB=S2°34'5

30' FRONT YARD

SETBACK

DETAIL E

REF. SHEET LP 2.00,

20'

ACCESS & UTILITY ESMT DOC. NO. 2022-131

> Plant material shall be measured and sized according to the latest edition of the American Standard for Nursery Stock (ANSI Z60.1) All plant substitutions are subject to Town approval and must be specified on the

STEEL EDGE

SHREDDED HARDWOOD MULCH

approved landscape plan. Ground covers used in lieu of turf grass must provide complete coverage within one (1) year of planting and maintain adequate coverage as approved by the

Trees must be planted four (4) feet or greater from curbs, sidewalks, utility lines, screening walls, and all structures. Single-trunk trees shall have a single, straight leader, and all trees shall be full, with balanced canopy. Major damage to trunk(s), or branches, will be cause for denial.

All root flares shall be set at three (3) to four (4) inches above surrounding grad The tree pit shall be backfilled with native topsoil free of rock and other debris Burlap, twine, and wire baskets shall be severed and removed from the top of the

• A 3-4" layer of mulch shall be provided around the base of the planted tree. The mulch shall be pulled back 1-2" from the trunk of the tree. No person(s) or entity may use improper or malicious maintenance or pruning techniques including, but not limited to,: topping or other non symmetrical trimming of trees, damage from a backhoe, or use of fire or poison Follow the American Standard for Nursery Stock (ANSI Z60.1) guidelines on pruning and

Topsoil shall be a minimum of eight (8) inches in depth in planting areas. Soil shall be free of stones, roots, and clods and any other foreign material that is not beneficial for plant growth. All plant beds shall be top-dressed with a minimum of three (3) inches of mulch.

Trees overhanging walks and parking shall have a minimum clear branch height of seven (7) feet. Trees overhanging public street pavement drive aisles and fire lanes shall have a minimum clear branch height of fourteen (14) feet. A visibility triangle must be provided at all intersections, where shrubs are not to exceed thirty (30) inches in height, and trees shall have a minimum clear trunk

height of nine (9) feet. Trees planted on a slope shall have the tree well at the average grade of the All areas of less than three (3) feet in width shall be grass, groundcover, or some type of Decorative river rock, pavers, or concrete.

The owner, tenant, and/or their agents, if any, shall be jointly and severally responsible for the maintenance, establishment, and permanence of plant material. All landscaping shall be maintained in a neat and orderly at all times including, but not limited to, mowing, edging, pruning, fertilizing, watering, de-weeding, and trash removal. Plant material that is damaged, destroyed, or removed shall be replaced with

Plants meeting minimum specifications per landscape plan. All turf/ground cover areas are to be established prior to receipt of Certificate of Occupancy, unless otherwise approved by the Town. An automatic irrigation system shall be provided to irrigate all landscape areas

Into streets, sidewalks, or alleys. No planting areas shall exceed 3:1 slope (3 ft Horizontal to 1 ft Vertical).

 Earthen berms shall not include construction debris. • All walkways shall meet ADA and TAS requirements.

Landscape installation must comply with approved landscape plans, and as-built

plans submitted to Parks and Recreation, prior to final acceptance by the Town and/or obtaining a Certificate of Occupancy. Final inspection and approval of screening walls, irrigation, and landscape is subject to all public utilities, including but not limited to manholes, valves, water meters, cleanouts, and other appurtenances being accessible, adjusted to grade

and to the Town of Prosper Public Works Department standards. IMPORTANT: MINIMUM STANDARDS FOR PLANTS, AS SET FORTH IN THE ZONING ORDINANCE AND APPROVED LANDSCAPE PLANS ARE TAKEN SERIOUSLY BY THE TOWN AND PARKS AND RECREATION. INSTALLING INFERIOR PLANTS WITHOUT WRITTEN APPROVAL FROM A PARKS REPRESENTATIVE MAY RESULT IN REJECTION OF SOME OR ALL PLANTS, THEREBY DELAYING RECEIPT OF A CERTIFICATE OF OCCUPANCY. ARCHITECTS AND LANDSCAPE CONTRACTORS ARE STRONGLY ENCOURAGED TO NOTIFY THE PARKS DEPARTMENT TO

DISCUSS POSSIBLE DEFICIENCIES PRIOR TO INSTALLATION. Call Parks and Recreation at (972) 569-1160 at least forty-eight (48) hours prior to the following inspections: Proposed trail alignment

Berm construction & grading

Escrow release Final inspection

Know what's **below**. **Call** before you dig.

Town of Prosper, Texas - Landscape Data Table		
Zoning/Proposed Use : PD-103, Restaurant/Retail		
Site Area : 3.59 AC (156,504.12 SF)		
	REQUIRED	<u>PROVIDED</u>
Section 2 - Landscaping		
2.6 C. Non-residential landscaped area requirements		
1. Perimeter requirements		
Landscaped area consisting of living trees, turf, or other living ground cover and being at least 25 ft. in width shall be provided adjacent to and outside of the right-of-way on propertied located adjacent to a major or minor thoroughfare Teel Parkway: Major Thoroughfare	Yes	Yes
One large tree (3" caliper min.) per 30 LF of roadway frontage shall be planted within the required landscape area. Trees may be planted in groups. Teel Parkway: $458 \text{LF} / 30 \text{LF} = 16 \text{trees}$	16 trees (3" caliper min.)	16 trees (3" caliper min.)
A min. of 15 shrubs (5 gallon min.) shall be planted for each 30 feet of LF.		
Teel Parkway : $458 \text{ LF} / 30 \text{ LF} = 15.27 \text{ LF}$ 15.27 LF * 15 = 229 shrubs	229 shrubs (5 gallon min.)	229 shrubs (5 gallon min.)
Parking abutting the landscape area shall be screened from the adjacent roadway (shrubs or berms)	Yes	Yes
Where a non-residential development is adjacent to the property line of residential zoned parcels or areas shown as residential on the future land use plan, one large tree, 3" in caliper min. will be planted on 30' centers in a 15' landscape area.	Yes	66 Evergreen Trees
2. Interior parking requirements		
15 SF of landscaping for each parking space shall be provided within the paved boundaries of the parking lot area	Yes	Yes
Landscaped islands shall be located at the terminus of all parking rows, and shall contain at least one large tree (3" caliper min.) with no more than 15 parking spaces		

permitted in a continuous row without being interrupted by a landscaped island. Where

When a boundary of a multifamily, institutional, or non-residential use sides or backs

to a property that is zoned or designated on the future land use plan for residential (non-

multifamily) uses, or when any institutional or non-residential use sides or backs to a

MF District, a solid screening wall or fence of not less than six feet nor more than eight

there is a min. 8' wide landscape median between two row of head-in parking,

Landscaped islands shall be a min. of 160 SF, not less than 9' wide

At least 1 large tree (3" caliper min.), within 150' of every parking space

feet in height shall be erected on the property line separating these uses

landscaped islands are required every 20 spaces.

5 A. Screening Fences and Walls

EXHIBIT C ZONE-23-0023 LANDSCAPE PLAN TEEL PARKWAY RETAIL WINDSONG RANCH OFFICE ADDITION BLOCK A, LOT 2
Being 3.593 Acres Out Of The

AARON ROBERTS SURVEY Abstract No. 1115
Town of Prosper, Denton County, Texas
Submitted: DECEMBER 5, 2023

Yes

Yes

Yes

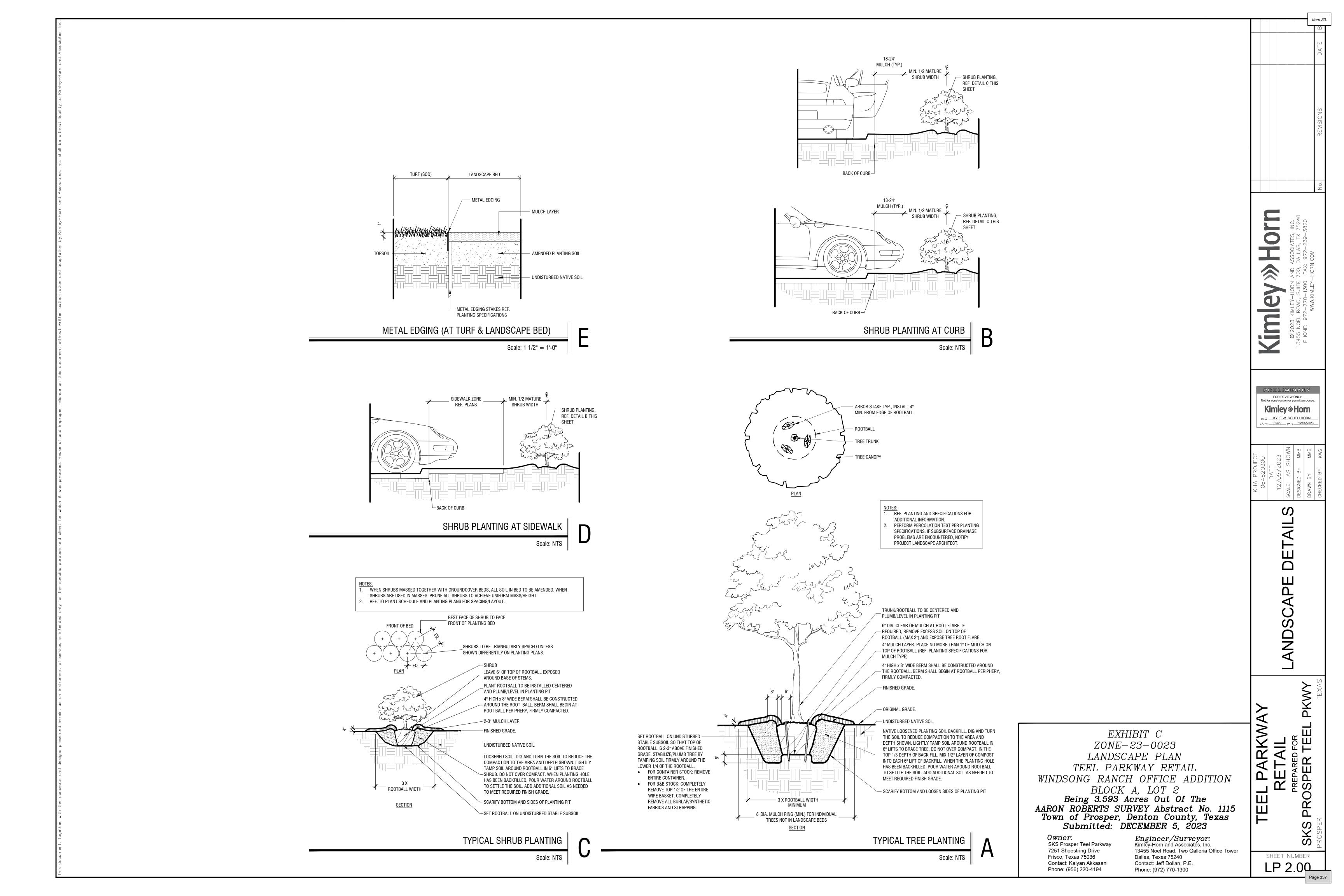
Yes

Owner: SKS Prosper Teel Parkway 7251 Shoestring Drive Frisco, Texas 75036 Contact: Kalyan Akkasani Phone: (956) 220-4194

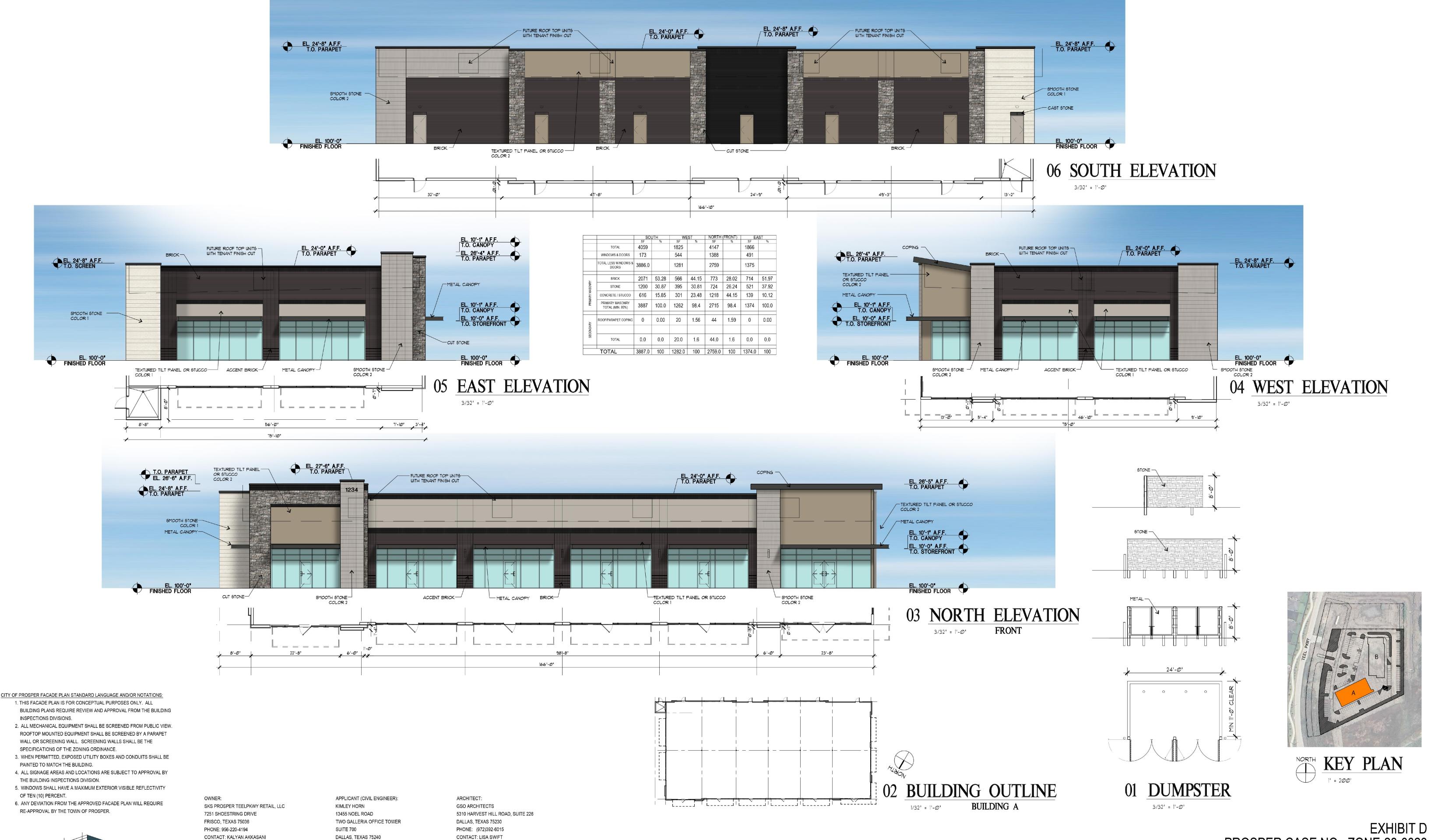
Engineer/Surveyor: Kimley-Horn and Associates, Inc. 13455 Noel Road, Two Galleria Office Tower Dallas, Texas 75240 Contact: Jeff Dolian, P.E. Phone: (972) 770-1300

PRELIMINARY FOR REVIEW ONLY Not for construction or permit purposes Kimley»Horn R.L.A. KYLE W. SCHELLHORN L.A. No. 3545 DATE 12/05/2023

SHEET NUMBER







DALLAS, TX 972.385.9651 www.GSOarchitects.com

COPYRIGHT © 2023 GSO ARCHITECTS, INC. THESE DRAWINGS, OR PARTS THEREOF, MAY NOT BE REPRODUCED IN ANY FORM, BY ANY METHOD, FOR ANY PURPOSE, WITHOUT PRIOR WRITTEN CONSENT FROM

DALLAS, TEXAS 75240 PHONE: (945) 218-5083

KALYAN@EPIMONI.CO

CONTACT: ABBI LUEBBERT, P.E.

ABBI.LUEBBERT@KIMLEY-HORN.COM

CONTACT: LISA SWIFT

LSWIFT@GSOARCHITECTS.COM

PROSPER CASE NO.: ZONE-23-0023 PRELIMINARY FACADE PLAN TEEL PARKWAY RETAIL - BUILDING A WINDSONG RANCH COMMERCIAL ADDITION BLOCK A, LOT 2

ISSUE DATE: 10/09/2023

3.593 ACRES

GSO PROJECT NO: 23-065





CITY OF PROSPER FACADE PLAN STANDARD LANGUAGE AND/OR NOTATIONS: 1. THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL

- BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTIONS DIVISIONS.
- ROOFTOP MOUNTED EQUIPMENT SHALL BE SCREENED BY A PARAPET WALL OR SCREENING WALL. SCREENING WALLS SHALL BE THE
- 3. WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE
- PAINTED TO MATCH THE BUILDING. 4. ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BY
- 5. WINDOWS SHALL HAVE A MAXIMUM EXTERIOR VISIBLE REFLECTIVITY
- OF TEN (10) PERCENT.
- 6. ANY DEVIATION FROM THE APPROVED FACADE PLAN WILL REQUIRE RE-APPROVAL BY THE TOWN OF PROSPER.



COPYRIGHT C 2023 GSO ARCHITECTS, INC. THESE DRAWINGS, OR PARTS THEREOF, MAY NOT BE REPRODUCED IN ANY FORM, BY ANY METHOD, FOR ANY PURPOSE, WITHOUT PRIOR WRITTEN CONSENT FROM GSO ARCHITECTS, INC.

SKS PROSPER TEELPKWY RETAIL, LLC 7251 SHOESTRING DRIVE FRISCO, TEXAS 75036 PHONE: 956-220-4194 CONTACT: KALYAN AKKASANI

KALYAN@EPIMONI.CO

13455 NOEL ROAD TWO GALLERIA OFFICE TOWER SUITE 700 DALLAS, TEXAS 75240 PHONE: (945) 218-5083 CONTACT: ABBI LUEBBERT, P.E. ABBI.LUEBBERT@KIMLEY-HORN.COM

KIMLEY HORN

ARCHITECT: **GSO ARCHITECTS** 5310 HARVEST HILL ROAD, SUITE 226 DALLAS, TEXAS 75230 PHONE: (972)392-6015 CONTACT: LISA SWIFT LSWIFT@GSOARCHITECTS.COM

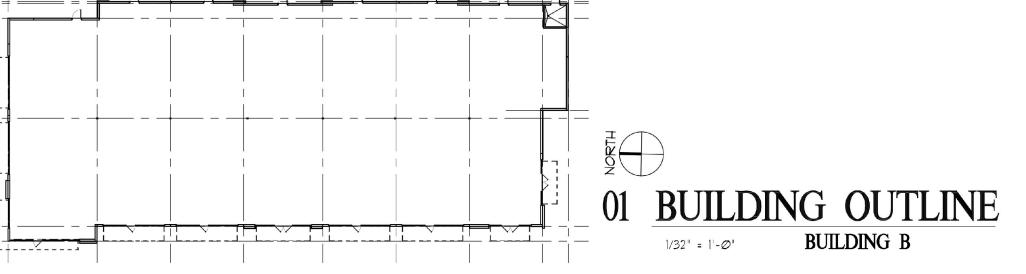


EXHIBIT D PROSPER CASE NO.: ZONE-23-0023

PRELIMINARY FACADE PLAN TEEL PARKWAY RETAIL - BUILDING B

WINDSONG RANCH COMMERCIAL ADDITION BLOCK A, LOT 2

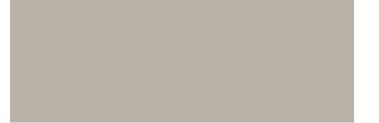
3.593 ACRES

ISSUE DATE: 10/09/2023

GSO PROJECT NO: 23-065



MANUFACTURED STONE: PROVIA 'NATURAL CUT' FERNWOOD



TEXTURED TILT PANEL OR STUCCO COLOR 1



TEXTURED TILT PANEL OR STUCCO COLOR 2



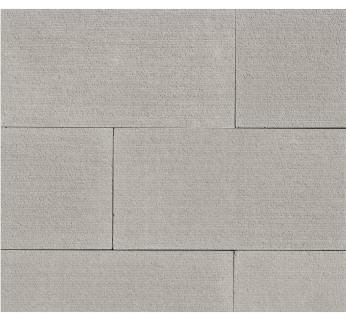
CAST STONE CUSTOM COLOR MATCH ACCENT TRIM/BRICK



METAL TRIM CANOPY / COPING



STONE COLOR 1: SMOOTH STONE: ELDORADO STONE MARQUEE24 DOVETAIL



STONE COLOR 2: SMOOTH STONE: **ELDORADO STONE ZEN24 NICKEL**



ACCENT BRICK: **ROBEN - BLACK NUANCED SMOOTH**



FIELD BRICK: **ROBEN - MANCHESTER**



EXHIBIT D PROSPER CASE NO.: ZONE-23-0023 PRELIMINARY FACADE SAMPLE BOARD

TEEL PARKWAY RETAIL WINDSONG RANCH COMMERCIAL ADDITION BLOCK A, LOT 2



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: Zoning Ordinance Amendment – Location of Gas Pumps

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Conduct a public hearing to consider and act upon amending Chapter 3, Section 1.4 – Conditional Development Standards of the Town of Prosper Zoning Ordinance to modify requirements related to gas pumps. (ZONE-23-0039)

Description of Agenda Item:

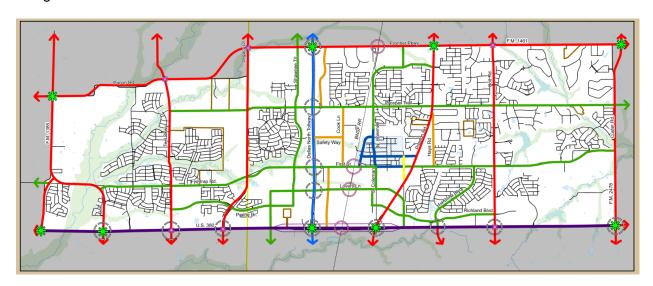
The Zoning Ordinance places conditions on the location of gas pumps. The pumps and associated canopies are required to be within 200 feet of an intersection of major thoroughfares, per the Town's Thoroughfare Plan. Only two fueling stations are permitted at the intersection.

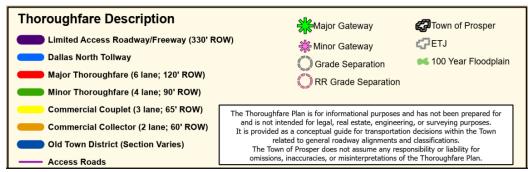
Grocery stores often provide gas pumps as part of their operations. As shown below, Walmart, Kroger, HEB, and Costco have pumps that are more than 200 feet from the nearest major intersection. This was permitted as part of the property's Planned Development standards.

- Costco 690 feet from the intersection of US 380 and a major thoroughfare (FM 1385).
- HEB 310 feet from the intersection of the Dallas North Tollway and a major thoroughfare (Frontier Parkway).
- Kroger 600 feet from the intersection of a major thoroughfare (Preston Road) and minor thoroughfare (Prosper Trail)
- Walmart 525 feet from the intersection of a major thoroughfare (Preston Road) and minor thoroughfare (Richland Boulevard)

Staff proposes an amendment to the standards for gas pumps and convenience stores with gas pumps that would allow the pumps and associated canopy to be further than 200 feet from an intersection of major thoroughfares provided that the pumps are associated with a grocery store that is a minimum 50,000 square feet or a Big Box. (A Big Box means a retail building over 80,000 square feet where the primary tenant occupies at least 80 percent of the building.)

The gas pumps can be on the same lot or a separate lot from the associated grocery store or Bigl Box. There is no modification to the maximum number of fueling stations at an intersection. Additionally, the separation requirement of 200 feet is still applicable between buildings, gasoline pump islands, vacuums, outdoor speakers, gasoline or fuel storage tanks, air and water dispensers, and other structures in conjunction with any automotive use and property zoned or designated on the Future Land Use Plan for residential uses.





Comprehensive Plan:

Staff finds that the proposed modification is compliant with the following guiding principle and goals of the Comprehensive Plan:

Guiding Principle: Quality Development - Maintain the community's small-town feel by ensuring quality development occurs in a cohesive manner, compatible with neighboring developments.

Goal 4: Require high-quality and visually attractive characteristics in both residential and nonresidential developments.

Allowing the flexibility for the fueling station to be further from the intersection when associated with a 50,000 square foot grocery store or Big Box allows greater flexibility in design of the nonresidential development.

Gas pumps and a convenience store with gas pumps that are not associated with a 50,000 square foot grocery store or Big Box are still required to maintain a maximum distance of 200-feet from the major thoroughfare intersection.

Goal 5: Develop quality, open roadways that enhance compatibility with adjacent development and provide safe and convenient traffic movements.

Item 31.

The volume of traffic will increase at a major intersection with the construction of a large grocery store and its associated fueling station. Shifting the gas pumps away from a major intersection can reduce the traffic movements at the intersection.

Staff finds that the proposed amendments uphold the Town's Comprehensive Plan.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Notification was provided as required by the Zoning Ordinance and State law. Staff has not received any response to the proposed zoning text amendment to date.

Attached Documents:

- 1. A red lined version of the current Zoning Ordinance sections that are proposed to be amended with additions shown in blue and <u>underlined</u>, and the deleted sections shown in red with strike through.
- 2. A final version of the proposed text amendments.

Town Staff Recommendation:

Town Staff recommends approval of the amendment to Chapter 3, Section 1.4 – Conditional Development Standards of the Town of Prosper Zoning Ordinance to modify requirements related to gas pumps. Due to this item being on the Planning & Zoning Commission agenda for January 2, 2024, this staff report was completed prior to their recommendation.

Proposed Motion:

I move to approve/deny the ordinance amending Chapter 3, Section 1.4 – Conditional Development Standards of the Town of Prosper Zoning Ordinance to modify requirements related to gas pumps.

Attachment No. 1

A red lined version of the current Zoning Ordinance sections that are proposed to be amended with additions shown in blue and underlined, and the deleted sections shown in red with strike through.

Chapter 3 PERMITTED USES AND DEFINITIONS SECTION 1. USE OF LAND AND BUILDINGS

1.4 CONDITIONAL DEVELOPMENT STANDARDS

- 3. **Gas Pumps.** Gas pumps shall be subject to the following development standards:
 - a) Gas Pumps are permitted only within 200 feet of the right-of-way lines of intersecting major thoroughfares. When Gas Pumps are associated with a minimum 50,000 square foot grocery store or Big Box, the gas pumps may be a distance greater than 200 feet from the right-of-way lines of intersecting major thoroughfares;
 - b) Gas Pumps are permitted at a maximum of two corners at an intersection of two major thoroughfares;
 - c) Canopies shall have pitched roofs;
 - d) Canopy support columns shall be entirely masonry encased;
 - e) A raised landscape planter of the same material as the masonry columns shall be provided at both ends of all pump islands. Raised landscape planters shall be between 18 inches and 24 inches tall and a minimum of four feet wide and four feet long;
 - f) Raised planters shall be landscaped with a combination of shrubs and ground cover as approved by the Director of Planning, or his/her Designee.
 - g) Landscape island(s) totaling a length equal to 50 percent of the canopy perimeter and a minimum of six feetwide feet wide shall be provided for screening and traffic flow purposes. These areas shall have a minimum of one ornamental tree per 12 linear feet or portion thereof and one five-gallon shrub per one linear foot arranged as approved by the Director of Planning, or his/her Designee.
 - h) Use shall be removed if closed for more than six months; and
 - i) The canopy band face shall be of a color consistent with the main structure or an accent color and may not be backlit.

- 17. **Convenience Store With Gas Pumps.** Convenience Stores with Gas Pumps shall be subject to the following development standards:
 - a) Permitted in the designated districts only within 200 feet of the right-of-way lines of intersecting major thoroughfares. When the Convenience Store with Gas Pumps is associated with a minimum 50,000 square foot grocery store or Big Box, the gas pumps may be a distance greater than 200 feet from the right-of-way lines of intersecting major thoroughfares;

- b) Gas Pumps are permitted at a maximum of two corners at an intersection of two major thoroughfares;
- c) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 shall apply.
- d) Canopies shall have pitched roofs;
- e) Canopy support columns shall be entirely masonry encased;
- f) The canopy band face shall be a color consistent with the main structure or an accent color and may not be backlit; and
- g) Use shall be removed if closed for more than six months.

Attachment No. 2

A final version of the proposed text amendments.

Chapter 3 PERMITTED USES AND DEFINITIONS SECTION 1. USE OF LAND AND BUILDINGS

1.4 CONDITIONAL DEVELOPMENT STANDARDS

- 3. **Gas Pumps.** Gas pumps shall be subject to the following development standards:
 - a) Gas Pumps are permitted only within 200 feet of the right-of-way lines of intersecting major thoroughfares. When Gas Pumps are associated with a minimum 50,000 square foot grocery store or Big Box, the gas pumps may be a distance greater than 200 feet from the right-of-way lines of intersecting major thoroughfares;
 - b) Gas Pumps are permitted at a maximum of two corners at an intersection of two major thoroughfares;
 - c) Canopies shall have pitched roofs;
 - d) Canopy support columns shall be entirely masonry encased;
 - e) A raised landscape planter of the same material as the masonry columns shall be provided at both ends of all pump islands. Raised landscape planters shall be between 18 inches and 24 inches tall and a minimum of four feet wide and four feet long;
 - f) Raised planters shall be landscaped with a combination of shrubs and ground cover as approved by the Director of Planning, or his/her Designee.
 - g) Landscape island(s) totaling a length equal to 50 percent of the canopy perimeter and a minimum of six feet wide shall be provided for screening and traffic flow purposes. These areas shall have a minimum of one ornamental tree per 12 linear feet or portion thereof and one five-gallon shrub per one linear foot arranged as approved by the Director of Planning, or his/her Designee.
 - h) Use shall be removed if closed for more than six months; and
 - i) The canopy band face shall be of a color consistent with the main structure or an accent color and may not be backlit.

- 17. **Convenience Store With Gas Pumps.** Convenience Stores with Gas Pumps shall be subject to the following development standards:
 - a) Permitted in the designated districts only within 200 feet of the right-of-way lines of intersecting major thoroughfares. When the Convenience Store with Gas Pumps is associated with a minimum 50,000 square foot grocery store or Big Box, the gas pumps may be a distance greater than 200 feet from the right-of-way lines of intersecting major thoroughfares;
 - b) Gas Pumps are permitted at a maximum of two corners at an intersection of two major thoroughfares;

- c) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 shall apply.
- d) Canopies shall have pitched roofs;
- e) Canopy support columns shall be entirely masonry encased;
- f) The canopy band face shall be a color consistent with the main structure or an accent color and may not be backlit; and
- g) Use shall be removed if closed for more than six months.



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: Zoning Ordinance Amendment – Multifamily

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Conduct a public hearing to consider and act upon amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024)

History:

This item was tabled at the November 14, 2023, and December 12, 2023, Town Council meetings.

Description of Agenda Item:

The regulations for Multifamily development are addressed within the Town's Zoning Ordinance. The purpose of this amendment is to modify the regulations and standards for Multifamily development to align with the Comprehensive Plans' guiding principle of Quality Development, which is to maintain the community's small-town feel by ensuring quality development occurs in a cohesive manner, compatible with neighboring developments.

A summary of the modifications is as follows:

- 1. Limits Multifamily developments to the areas designated for this use in the Comprehensive Plan and as identified on the Future Land Use Plan.
- 2. Requires that Multifamily development can only be approved within a Planned Development.
- 3. Establishes a minimum density of 40 units per acre.
- 4. Removes setbacks and lot area requirements, as these can be determined on a case-by-case basis within the Planned Development standards.
- 5. Requires compliance with the Dallas North Tollway Design Guidelines.
- 6. Increases the maximum height allowance from three stories and 50 feet to eight stories and 110 feet.

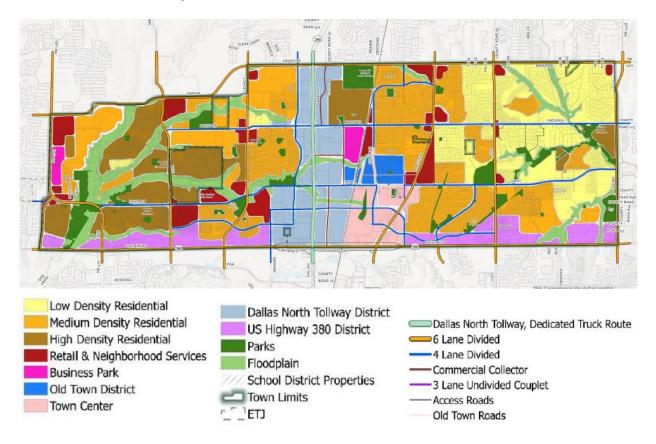
- 7. Establishes a building configuration for Multifamily structures, requiring a wrap-around configuration with a central garage surrounded by the residential units.
- 8. Creates a mixed-use opportunity by allowing the first floor of the building to be used for residential or retail uses. A minimum fourteen feet ceiling height for the first floor will accommodate retail uses.
- 9. Limits the height of the interior garage so that it will not exceed the height of the exterior building, and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.
- 10. Modifies parking stall dimensions for structured parking garages from 18 feet by 8.5 feet to 20 feet by 9 feet.
- 11. Modifies Multifamily parking standards to reflect the updated parking garage requirement from individual unit parking garages.
- 12. Removes Multifamily design and development standards. These criteria will be addressed in Planned Development standards.

Comprehensive Plan:

The Comprehensive Plan identifies Multifamily in the following Districts, which are identified on the Future Land Use Plan:

- High Density Residential Apartments are to be a conditional primary use.
- Dallas North Tollway District Apartments are to be a conditional primary use.
- Town Center District Apartments are to be secondary in nature to a primary use.
- Old Town District Apartments are to be a conditional primary use.

Future Land Use Plan Map:



Page 2 of 6

In the Town Center District and Old Town District, there is zoning for Multifamily and construction underway on apartments developments. High Density Residential is recommended for development of higher density single family, townhomes, duplexes and senior housing, in addition to apartments. The Dallas North Tollway District is identified for apartments as a primary use with conditional standards. As such, Staff recommends that all future Multifamily zoning be limited to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan, and within Planned Developments. This recommendation is in conformance with the following goals from the Comprehensive Plan.

Goal 1. Provide a variety of desirable land uses that diversify the tax base and enable all types of people to live, work, shop, eat, and relax in Prosper.

Objective 1.11: Utilize the Dallas North Tollway (DNT) District to accommodate all new multi-family developments in a mixed-use setting with structured garage parking.

Goal 3. Protect the quality and integrity of Prosper's neighborhoods.

Objective 3.1: Encourage the development of quality housing throughout Prosper that meets the needs of a diversity of housing needs, taking into consideration, among other things, data relating to age and income, for the full life cycle of citizens to include, but not limited to:

- Promote housing types and affordability for families with children, single parents with children, young adults just leaving home, young professionals, emptynesters, retirees, and the elderly.
- Promote an adequate supply of workforce housing throughout Prosper for those who work in the service industry in Prosper.
- Promote neighborhood desirability, value, and reinvestment.

The following section is from the Comprehensive Plan and describes the Dallas North Tollway District. Staff responses are included to indicate how the proposed amendments to the Zoning Ordinance fulfill the directives and vision for this District.

Dallas North Tollway District

The Dallas North Tollway District will consist of the most intense land uses within Prosper. A diverse mixture of office, retail, and residential will likely develop along the corridor. Mid-rise office (up to 12 stories) may be permitted throughout the corridor. Office buildings should be designed for a "campus feel"—they should be oriented towards common public space with significant landscaping and should be linked by a pedestrian network. A common architectural theme should also be established for a consistent visual appearance. Mixed-use development should be encouraged and should contain a mixture of office, retail and residential uses. Mixed-use lofts/apartments would be the most appropriate residential use within this District. Structured parking should be encouraged in more intense areas to limit the presence and visibility of large parking lots. Structured parking should be oriented to minimize visibility from the Tollway. The Town may explore an overlay zoning district to better accommodate the preferred development outcomes in the Dallas North Tollway District.

Multi-family development must be well-planned and accounted for within Town limits. With more multi-family development requests, locations and standards for such development must be carefully considered to meet the Town's expectations.

Proposed Amendments:

- Limit Multifamily developments to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan.
- Multifamily development can only be approved within a Planned Development.

While North Texas multi-family development has historically been associated with sprawling, garden-style apartments from the 20th century, multi-family developments have greatly improved since the start of the 21st century. For instance, many multi-family developers are not constructing garden-style apartment complexes, but modern, higher density, multi-family developments that are attractive to young professionals and empty nesters.

Proposed Amendments:

- Multifamily structures will have a wrap-around configuration with a central garage surrounded by the residential units.
- The height of the garage shall not exceed the height of the exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.
- Modification of parking stall dimensions for structured parking garages from 18 feet by 8.5 feet to 20 feet by 9 feet.
- Modification of Multifamily parking standards to reflect the updated parking garage requirement from individual unit parking garages.

These developments are typically of a high-quality appearance and provide luxury amenities like dog parks and pet cleaning stations, saltwater pools, structured or covered parking, saunas, and innovative clubhouses.

Proposed Amendments:

- Multifamily development can only be approved within a Planned Development, and amenity standards can be determined with the zoning criteria for the development.
- Compliance with the Dallas North Tollway Design Guidelines.

Additionally, some multi-family developments incorporate other uses on the ground floor like office spaces, retail shops, and restaurants to create a vibrant, inclusive, and cohesive development.

Proposed Amendment:

 The first floor of the building may be used for residential or retail uses. A minimum fourteen feet ceiling height for the first floor will accommodate retail uses.

In Prosper's instance, multi-family development should occur at strategic locations and have strict development standards and offer a high level of amenities to residents. This will create attractive multi-family developments that serve a critical housing need for a rapidly growing community like Prosper.

Any new multi-family development product should:

- 1) Meet the Town's vision of providing housing excellence,
- 2) Provide quality-of-life amenities to foster the development and the Town as a desirable and unique community,
- 3) Be compatible with neighboring developments,
- 4) Be at a high density (more than 40 dwelling units per acre), and
- 5) Be located in the DNT District.

The community prefers to see modern apartments with some retail services located in the DNT District. The Town should consider increasing density requirements to at least a minimum of 40 dwelling units per acre to achieve such an apartment style.

Proposed Amendments:

- Establishes a minimum density of 40 units per acre. The density can be increased in the Planned Development standards.
- Removes setbacks and lot area requirements, as these can be determined on a case-bycase basis within the Planned Development standards.
- Increases the maximum height allowance from three stories and 50 feet to eight stories and 110 feet.

Amenities, structured parking, range of unit densities, types, and size, integration into the street and trails network, public art and industry leading building designs and materials should guide the Town's preferences for multi-family development.

Proposed Amendment:

 Removes Multifamily design and development standards. These criteria will be addressed in Planned Development standards.

In Prosper's instance, multi-family may be preferable near intersections in the Dallas North Tollway District. Additionally, multi-family development may be suitable in other locations behind commercial nodes where a transition from commercial to single-family residential development may be necessary.

Proposed Amendments:

- Limit Multifamily developments to areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan.
- Multifamily development can only be approved within a Planned Development.

Staff finds that the proposed amendments uphold the Town's Comprehensive Plan.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Notification was provided as required by the Zoning Ordinance and state law. Staff has not received any response to the proposed zoning request to date.

Attached Documents:

- 1. Redlined Text Amendments
- 2. Proposed Text Amendments

Town Staff Recommendation:

Town Staff recommends the Town Council approve amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. The Planning & Zoning Commission unanimously recommended approval at their November 7, 2023, meeting.

Page 5 of 6

Proposed Motion:

I move to approve/deny amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024)

Attachment No. 1

A red lined version of the current Zoning Ordinance sections that are proposed to be amended with additions shown in blue and underlined, and the deleted sections shown in red with strike through.

CHAPTER 2 ZONING DISTRICTS

SECTION 13. MULTIFAMILY DISTRICT

13.1 General purpose and description.

Multifamily Districts shall be limited to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan, and must be in a Planned Development District. The Multifamily District will provide for development of high density attached residential dwelling units, not to exceed 15 units per acre built at a minimum 40 units per acre. The standards in this district are intended to promote stable, quality multiple occupancy residential development at high densities. The principal permitted land uses will include apartment complexes and townhomes. Other uses, such as religious and educational facilities, parks, and open spaces will be provided for to maintain a balanced, orderly, convenient, and attractive residential area. This zoning district should be located adjacent to a major thoroughfare and is appropriate in areas designated as high density residential on the Future Land Use Plan. Limited amounts of this district may also be appropriate in areas designated as Tollway Corridor or U.S. 380 Adjacency Corridor on the Future Land Use Plan. Development shall comply with the Dallas North Tollway Design Guidelines, as it exists or may be amended.

13.2 REGULATIONS.

- A. Maximum Minimum Permitted Density: 45 40 units per acre.
- B. Size of Yards: The size of Front, Side, and Rear Yards shall be determined at the time of development.
 - 1. **Minimum Front Yard** 50 feet for one or two story structures.
 - One hundred fifty feet for three story structures.
 - Minimum Side Yard 50 feet for one or two story structures adjacent to property that
 is either zoned or designated on the Future Land Use Plan for single family or two family
 uses.
 - One hundred fifty feet for three story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for single family or two family uses.
 - Thirty feet for one or two story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for multifamily or nonresidential uses.
 - One hundred feet for one or two story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for multifamily or nonresidential uses.
 - Multiple structures constructed on the same lot shall maintain a minimum separation of 30 feet.

- Minimum Rear Yard Same as Minimum Side Yard requirements above.
- C. Size of Lots: The size of lots shall be determined at the time of development.

 - 1. Minimum Lot Area One acre. 2. Minimum Lot Width 100 feet.
 - 3. Minimum Lot Depth 150 feet.
- D. Minimum Dwelling Area:
 - 1. One or two bedroom 850 square feet.
 - 2. Additional bedrooms 150 square feet per additional bedroom.
- E. **Maximum Height**: Three Eight stories, no greater than 50 110 feet.
- F. Lot Coverage: 45 percent.
- G. Minimum Usable Open Space: 30 percent.
- H. Building Configuration: Multifamily structures shall have a wrap-around configuration that consists of central garage surrounded by the residential units on the exterior of the building.
- First Floor: The ceiling height of the first floor shall be a minimum fourteen feet (14') in height. The first floor of the building may be used for residential or retail uses that are specified in the Planned Development ordinance.
- J. Garage Height: The height of the garage shall not exceed the height of the exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.

13.3 Permitted uses.

Permitted uses shall be in accordance with the "Schedule of Uses" as outlined in Section 1.3 of Chapter 3.

CHAPTER 4 DEVELOPMENT REQUIREMENTS

* *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* *

4.3 Non-residential and multifamily parking provisions.

* * *

E. Each head-in parking space shall be a minimum of nine feet wide and 20 feet long, exclusive of driveways and maneuvering aisles, and shall be of usable shape and condition (see Chapter 5, Section 2.3, Illustrations A-G). Where it is possible for a vehicle to overhang the front of a parking space above a paved, stoned, mulched, or grassed area other than a sidewalk, street right-of-way, or adjacent property, the depth of the standard space may be reduced to 18 feet. No parking space shall overhang required landscape areas. Parallel parking spaces must be a minimum of eight feet wide and 22 feet long. Parking spaces within non-residential and multifamily structured parking garages shall be a minimum of eight and one-half nine feet wide and 48 20 feet long.

* * *

U. Multifamily parking shall be in a structured garage that is wrapped by the residential units, as described in Chapter 2, Section 13.2.H. Any surface parking associated with a Multifamily development for leasing area, guest parking, retail uses, etc. Multifamily parking is only allowed 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. Buildings with enclosed garages, when adjacent to a public street, must face garage doors internally to the development. Garage doors may not face a public street. No detached garages may be located between residential buildings and a public street. Enclosed garage parking spaces shall be a minimum of ten by 20 feet.

SECTION 8. NON-RESIDENTIAL & MULTIFAMILY DESIGN AND DEVELOPMENT

* *

8.1 Applicability.

The regulations provided in Sections 8.2—8.6 shall apply to all office, retail, restaurant, service, automobile, and commercial uses. The regulations provided in sections Section 8.7—8.10 8.3 shall apply to all industrial, wholesale, and institutional uses. Where the regulations of this section conflict with other sections of this ordinance, the regulations of this section shall apply.

The intent of these provisions is to promote high-quality architecture that relates to the street, scale of development, and surrounding land uses by utilizing three properties of good design: massing, use of materials, and attention to detail.

* * *

8.4 Multifamily development standards.

- A. All exterior facades for a main building or structure, excluding glass windows and doors, in the MF District shall be constructed of 100 percent masonry as defined in Chapter 3, Section 2. The use of stucco and EIFS are only permitted as secondary or accent materials.
 - 1. The Town Council, after recommendation by the Planning and Zoning Commission, may grant an exception to the foregoing exterior façade and design requirements, based upon consideration of the criteria listed in subpart 2, below.
 - 2. In considering an exception to the exterior façade requirements, the Planning and Zoning Commission and Town Council may consider whether a proposed alternate material:
 - a. Is a unique architectural expression;
 - b. Includes unique building styles and materials;
 - c. Is consistent with high quality development;
 - d. Is or would be visually harmonious with existing or proposed nearby buildings;
 - e. Has obvious merit based upon the quality and durability of the materials; and
 - f. Represents an exterior building material that is in keeping with the intent of this chapter to balance the abovementioned objectives.
 - 3. Any exterior façade exception shall be considered in conjunction with a preliminary site plan or site plan application.
- B. The Town Council may approve materials which are equivalent to, or exceed, the standards set forth in herein.
- C. Structure Separation. Multifamily structures on the same parcel shall have the following minimum distance between structures:
 - 1. From main structure to main structure with walls that have openings for doors or windows on facades facing each other.
 - a. Face to Face: 50 feet
 - b. Face to End: 30 feet
 - c. Corner to Face or End: 30 feet
 - d. End to End: 30 feet

- 2. From main structure to main structure with walls that do not have openings, the minimum distance between structures is 20 feet for one- and two-story buildings and 30 feet for three-story buildings.
- 3. From main structure to accessory buildings or pools, the minimum distance between structures is 20 feet.
- 4. From main structure to free standing garage building, the minimum distance between structures is 30 feet.
- D. All multifamily buildings shall be designed to incorporate a form of architectural articulation every 30 feet, both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:
 - Canopies, awnings, or porticos;
 - Recesses/projections;
 - Arcades:
 - Arches:
 - Architectural details (such as tile work and moldings) integrated into the building facade;
 - Articulated ground floor levels or base;
 - Articulated cornice line;
 - Integrated planters or wing walls that incorporate landscape and sitting areas;
 - Offsets, reveals or projecting rib used to express architectural or structural bays;
 - Accent materials (minimum 15 percent of exterior facade);
 - Varied roof heights;
 - Or other architectural features approved by the Director of Development Services or his/her designee.
- E. All buildings shall be designed to incorporate a form of window articulation. Acceptable articulation may include the following:
 - Detailed/patterned mullions
 - Glass depth from wall minimum eight inches
 - Projected awnings/sunshades
 - Water table in lieu of floor to ceiling glass

- Articulated lintel (i.e. soldier course in brick or material change EIFS or cast stone with minimum one-half inch projection)
- Articulated sill (i.e. soldier course in brick or material change EIFS or cast stone with minimum one-half inch projection)
- Cast stone surrounds on entire window







F. All buildings constructed primarily of brick shall incorporate a form of brick patterning (excluding typical traditional brick patterning, i.e. Running Bond). Acceptable patterning may include those represented below, or similar subject to approval by the Director of Development Services:







G. All multifamily buildings shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a three in 12 inch minimum slope. Wood shingles are prohibited.

Attachment No. 2

A final version of the proposed text amendments.

CHAPTER 2 ZONING DISTRICTS

SECTION 13. MULTIFAMILY DISTRICT

13.1 General purpose and description.

Multifamily Districts shall be limited to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan, and must be in a Planned Development District. The Multifamily District will provide for development of high density attached residential dwelling units, built at a minimum 40 units per acre. The standards in this district are intended to promote stable, quality multiple occupancy residential development at high densities. The principal permitted land uses will include apartment complexes Development shall comply with the Dallas North Tollway Design Guidelines, as it exists or may be amended.

13.2 REGULATIONS.

- C. **Minimum Permitted Density**: 40 units per acre.
- D. **Size of Yards**: The size of Front, Side, and Rear Yards shall be determined at the time of development.
- C. **Size of Lots**: The size of lots shall be determined at the time of development.
- D. Minimum Dwelling Area:
 - 1. One or two bedroom 850 square feet.
 - 2. Additional bedrooms 150 square feet per additional bedroom.
- E. **Maximum Height**: Eight stories, no greater than 110 feet.
- F. Lot Coverage: 45 percent.
- G. Minimum Usable Open Space: 30 percent.
- H. **Building Configuration:** Multifamily structures shall have a wrap-around configuration that consists of central garage surrounded by the residential units on the exterior of the building.
- I. **First Floor:** The ceiling height of the first floor shall be a minimum fourteen feet (14') in height. The first floor of the building may be used for residential use or retail uses that are specified in the Planned Development ordinance.
- J. **Garage Height:** The height of the garage shall not exceed the height of the exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.

13.3 Permitted uses.

Permitted uses shall be in accordance with the "Schedule of Uses" as outlined in Section 1.3 of Chapter 3.

CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.3 Non-residential and multifamily parking provisions.

* * *

E. Each head-in parking space shall be a minimum of nine feet wide and 20 feet long, exclusive of driveways and maneuvering aisles, and shall be of usable shape and condition (see Chapter 5, Section 2.3, Illustrations A-G). Where it is possible for a vehicle to overhang the front of a parking space above a paved, stoned, mulched, or grassed area other than a sidewalk, street right-of-way, or adjacent property, the depth of the standard space may be reduced to 18 feet. No parking space shall overhang required landscape areas. Parallel parking spaces must be a minimum of eight feet wide and 22 feet long. Parking spaces within non-residential and multifamily structured parking garages shall be a minimum of nine feet wide and 20 feet long.

* * *

U. Multifamily parking shall be in a structured garage that is wrapped by the residential units, as described in Chapter 2, Section 13.2.H. Any surface parking associated with a Multifamily development for leasing area, guest parking, retail uses, etc. is only allowed 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.

SECTION 8. NON-RESIDENTIAL & MULTIFAMILY DESIGN AND DEVELOPMENT

* *

8.1 Applicability.

The regulations provided in Section 8.2 shall apply to all office, retail, restaurant, service, automobile, and commercial uses. The regulations provided in Section 8.3 shall apply to all industrial, wholesale, and institutional uses. Where the regulations of this section conflict with other sections of this ordinance, the regulations of this section shall apply.

The intent of these provisions is to promote high-quality architecture that relates to the street, scale of development, and surrounding land uses by utilizing three properties of good design: massing, use of materials, and attention to detail.

OFFICE, RETAIL, RESTAURANT, SERVICE, AUTOMOBILE, AND COMMERCIAL DEVELOPMENT STANDARDS

8.2 Exterior appearance of buildings and structures.

* *

INDUSTRIAL, WHOLESALE, AND INSTITUTIONAL DEVELOPMENT STANDARDS

8.3 Exterior appearance of buildings and structures.

* * *



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: PSA for Parks, Recreation, and Open Space Master Plan Update

Town Council Meeting - January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving a Professional Services Agreement between Dunaway Associates, L.P. and the Town of Prosper, Texas, for the preparation of a Parks, Recreation & Open Space Master Plan, and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

The current Parks, Recreation, and Open Space Master Plan was developed and adopted in 2015. It is customary for municipalities to update their Parks Master Plan every 5 years. This professional services proposal is to update the plan. This will be a year-long process involving an inventory, needs assessment, population and recreation program analysis, a benchmarking study, an action plan with priority rankings, and a final updated master plan.

The Parks, Recreation, and Open Space Master Plan will serve as a guide to help the Town prioritize future capital improvement projects and bond projects. The preliminary schedule for the project shows the estimated completion of the Master Plan in December 2024.

Budget Impact:

This project was estimated at \$140,000 in the FY 2023-2024 budget. The total cost of services is \$129,340. Funding for this contract is available in account 100-5410-60-01-PK.

Legal Obligations and Review:

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

Attached Documents:

- 1. Professional Services Proposal
- 2. Preliminary Schedule
- 3. Professional Services Agreement

Town Staff Recommendation:

Item 33.

Town Staff recommends approving a Professional Services Agreement between Dunaway Associates, L.P. and the Town of Prosper, Texas, for the preparation of a Parks, Recreation & Open Space Master Plan, and authorizing the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve a Professional Services Agreement between Dunaway Associates, L.P. and the Town of Prosper, Texas, for the preparation of a Parks, Recreation & Open Space Master Plan, and authorizing the Town Manager to execute documents for the same

PROFESSIONAL SERVICES PROPOSAL FOR PARKS, RECREATION & OPEN SPACE MASTER PLAN Prosper, Texas

November 29, 2023

I. PROJECT DESCRIPTION

Dunaway Associates, L.P. ("Dunaway") will perform professional planning and landscape architectural services for the Town of Prosper ("Town") for the preparation of a Parks, Recreation & Open Space Master Plan ("Master Plan"). The Scope of Services will be performed in two (2) phases with Phase I including the Inventory and Needs Assessment, and Phase II the Parks, Recreation & Open Space Master Plan. As additional expertise to the team, Dunaway will retain the services of National Service Research ("NSR") and PROS Consulting ("PROS").

Dunaway has prepared the following Scope of Services based upon an initial discussion with Town staff on October 26, 2023, and a Scope of Work outline as prepared by Dunaway on October 27, 2023. It is assumed that the Town will assist in coordination with the Parks and Recreation Board to interact with the Dunaway team at key milestones of the project.

II. SCOPE OF SERVICES

A. PHASE I – INVENTORY AND NEEDS ASSESSMENT

- 1. Data Collection & Base Map Preparation
 - a. The Town will provide Dunaway the latest digital data for the current mapping of the Town. This will include GIS data, digital aerial photographs, zoning maps, land use maps, thoroughfare maps, utility maps, and other mapping of the Town. The digital information will be provided by the Town in a file format that has been coordinated with Dunaway.
 - b. Based upon the information provided by the Town, Dunaway will prepare a digital base map that will illustrate information such as park sites, school sites, streets, major destinations, Town facilities, drainage corridors, trails, vegetation, etc.

Deliverables:

Base map in PDF Format

2. Inventory & Supply Analysis

- a. Dunaway team members will attend one (1) kick-off meeting with Town staff and the Advisory Committee to discuss the project goals & objectives, planning process & milestones, overall project schedule, and diversity of parks/recreation providers in Prosper.
- b. The Town will provide Dunaway with a complete listing of the current inventory for the park system. The Town will provide the following information to Dunaway:
 - Public parks, recreational facilities, and open space areas owned by the Town by individual site, quantities, and staff noted condition assessment (if available) of existing amenities/assets at each site.
 - 2) Facility inventory and use agreements with the local schools, by individual site and existing amenities for athletics and recreational facilities.
 - 3) Land that is targeted or proposed for dedication of parks and/or open space.
 - 4) Parks, land, facilities, and programs offered by other service providers within the community (i.e., private, public, or not-for-profit organizations)
 - 5) Existing youth and adult sports associations including number of teams, participation levels, facilities used, and projected annual growth of each association.
 - 6) Existing youth and adult recreation programs offered by the Town and/or other providers, and the projected growth of each program.
- c. Dunaway team members and Town representatives will perform a systemwide tour to review the existing parks and recreation facilities. The park sites will be documented photographically for existing conditions and amenities.

Deliverables:

- Notes from kick-off meeting
- Inventory Spreadsheet of parks with acreage and amenities/quantities at each park site in PDF & Excel format

3. Population Analysis

a. The Town will provide Dunaway with the most recent population & demographic data including age segments, ethnicity, growth trends, family income, education, etc. b. Dunaway will prepare GIS maps/exhibits that depict key characteristics of Prosper.

Deliverables:

Population Analysis in PDF Format

4. Standards Analysis

- a. Dunaway will evaluate the Town's current classifications for park acreage and park facilities based on the previous Master Plan.
- b. Dunaway will provide recommendations for park acreage standards and park facility standards as appropriate for Prosper.
- c. Dunaway will prepare a geographic distribution (service gap) analysis map.

Deliverables:

Park acreage standards & Park facility standards in PDF format

5. Benchmarking

- a. Dunaway and PROS will coordinate with Town staff to select four to five (4-5) cities in the DFW region with similar characteristics such as Prosper.
- b. Dunaway and PROS will compare park system data for park types, acreage, facilities, programs, and other resources.

Deliverables:

Benchmarking summary in PDF format

Recreation Program Analysis

- a. PROS will conduct a recreation program analysis based on current programs offered (i.e., age segment distribution, lifecycle analysis, core programs, similar providers/duplication, market position, marketing methods, etc.)
- b. PROS will provide recommendations for program enhancements that result in successful & innovative recreation program offerings (including future needs/programs for indoor recreation).

Deliverables:

Recreation Program Analysis in PDF Format

7. Demand Analysis & Needs Assessment

- a. Dunaway and NSR will attend one (1) strategy meeting with Town staff to outline the public involvement methodology to be undertaken. The group will outline the community engagement process and define milestone dates and events.
- b. Dunaway, NSR, and PROS, will conduct two (2) Focus Groups to receive input on the interests and desires for parks and recreational facilities. The Town will be responsible for advertising the Focus Groups and arranging the meeting location.
- c. Based upon the input received during the Focus Groups, NSR will design a concise citizen survey document to assist in documenting citizen demand for park and recreation resources (including possible future recreation facility and future community parks).
- d. After final approval, NSR will program and provide the citizen survey online link to the Town for posting on their website. The Town will advertise the survey on various social media sites, through email notifications to citizens, emails to HOA's, notices in water bills, park and recreation mailers, etc. prior to and throughout the data collection phase. The online survey link will be programmed so only one survey per IP address can be completed.
- e. NSR will design and print a postcard mailer to 4,000 households in the Town. The postcard will have the online survey link printed on the postcard so citizens can take the survey. A full list of addresses will be provided by the Town to NSR in an excel format. NSR will select 4,000 households at random throughout all geographic regions for mail-out of the postcard.
- f. NSR will prepare an analysis of the survey data along with a Final Report containing an executive summary and the detailed results.
- g. Dunaway and NSR will attend one (1) meeting with Town staff and the Advisory Committee to present the survey results.

Deliverables:

- Needs assessment final report in PDF format.
- Key data breakdown in Excel format
- Powerpoint presentation in PDF Format

B. PHASE II - PARKS, RECREATION & OPEN SPACE MASTER PLAN

8. Priority Rankings

- a. Dunaway will prepare a priority criteria system, with Town-approved weighted values, to be used in ranking priorities.
- b. Dunaway will complete the priority ranking matrix based upon citizen survey, Dunaway recommendations, and other sources of input.
- c. Dunaway will submit the priority ranking matrix to Town staff for review and consensus.

Deliverables:

Priority ranking matrix in PDF format

9. Action Plan

- a. Based upon the priority ranking results, Dunaway will prepare a preliminary Park Action Plan for park related improvements and renovations & improvements to recreational facilities. The Action Plan will address a 5-to-10-year period.
- b. Dunaway will prepare a digital exhibit/map depicting the proposed locations for the preliminary Action Plan recommendations.
- c. Dunaway will participate in one (1) virtual meeting with Town Staff to discuss the preliminary Action Plan.
- d. Dunaway will attend one (1) meeting with the Advisory Committee to present the Action Plan.

Deliverables:

- Preliminary Action Plan in PDF format
- Action Plan exhibit/map in PDF format

10. Implementation Plan

- a. Dunaway will prepare an Implementation Plan that outlines CIP for the designated priorities within the Action Plan.
- b. Dunaway and PROS will prepare a list of funding recommendations for the Action Plan, including an estimated timeline for implementation.

Deliverables:

Implementation Plan with funding recommendations in PDF format

11. Preliminary Master Plan

- a. Dunaway will prepare a Preliminary Master Plan report in narrative format outlining the entire process, findings and recommendations.
- b. Dunaway will prepare Preliminary Master Plan exhibits/maps for the various sections within the report.
- c. Dunaway will submit one (1) unbound hardcopy and one (1) digital format of the Preliminary Master Plan report to the Town for review and comments. Town staff will be responsible for printing & distributing copies of the Preliminary Master Plan for review by others.
- d. Dunaway will attend one (1) meeting with Town staff to present the Preliminary Master Plan.

Deliverables:

- One (1) unbound hardcopy of the Preliminary Master Plan report
- One (1) digital format of the Preliminary Master Plan Report (PDF)

12. Final Master Plan

- a. Based upon comments from Town staff, Dunaway will prepare the final narrative and color exhibits/maps for the Final Master Plan.
- b. Dunaway will submit one (1) unbound hardcopy, five (5) bound copies, and one
 (1) PDF of the Master Plan document. The Town will be responsible for printing & binding multiple copies of the Master Plan document.
- c. Dunaway will assist Town staff in attending one (1) presentation of the Master Plan to the Park Board for recommendation for adoption.
- d. Dunaway will assist Town staff in attending one (1) presentation of the Master Plan to the Town Council for adoption.

Deliverables:

- One (1) unbound hardcopy of the Final Park Master Plan report
- five (5) bound copies of the Final Master Plan Report
- One (1) PDF file of the Final Master Plan Report

III. COMPENSATION

A. PHASE I – INVENTORY AND NEEDS ASSESSMENT

PHA	PHASE I SUBTOTAL – BASIC SERVICES \$73,910						
7. [Demand Analysis & Needs Assessment	\$24,800					
6. F	Recreation Program Analysis	\$ 7,800					
5. E	Benchmarking	\$ 8,950					
4. \$	Standards Analysis	\$ 6,100					
3. F	Population Analysis	\$ 6,550					
2. I	nventory & Supply Analysis	\$13,750					
1. [Data Collection & Base Map Preparation	\$ 5,960					

B. PHASE II - PARKS, RECREATION & OPEN SPACE MASTER PLAN

TOTAL FEE (Phase I and Phase II)*	\$129,340
PHASE II SUBTOTAL – BASIC SERVICES	\$55,430
12. Final Master Plan	\$13,200
11. Preliminary Master Plan	\$16,420
10. Implementation Plan	\$ 7,580
9. Action Plan	\$10,350
8. Priority Rankings	\$ 7,880

^{*} Customary in-house expenses incurred by Dunaway related to performing this Scope of Services are included in the lump sum fee listed above (e.g., in-house copies, mileage, tolls, computer plotting, photography, meals, etc.). Special request expenses for out-of-house services are not included in the lump sum fee listed above and will be billed as a reimbursable expense. These may include, but are not limited to: couriers/deliveries, repro services, multiple print copies, binding, dry mounting, etc.

IV. ADDITIONAL SERVICES

Any additional items not included in this proposed Scope of Services, which are requested by the Town, will be covered as Additional Services as authorized by the Town. Additional services may include, but are not limited to the following: additional focus group meetings; videotaping any meetings; special presentation graphics; additional printing of Master Plan books/documents; additional printing of color maps or exhibits for the Master Plan, etc.

V. ASSUMPTIONS

- A. The Town will provide, as expeditiously as possible, all existing data and base information currently in its possession and as necessary to complete the scope of services described herein. This includes the electronic files from other past or ongoing planning studies. This scope of services does not include any detailed site reviews to obtain park inventory information or condition assessment evaluations. All information provided by the Town is assumed to be accurate and complete, unless otherwise indicated by the Town. Any information required to complete this scope of services that cannot be readily provided by the Town will remain the responsibility of the Town.
- B. This scope of services does not include any topographic surveys or boundary surveys.
- C. This scope of services does not include any hydraulic or hydrology engineering modeling or design services for any creeks, streams, etc.
- D. This scope of services does not include any traffic studies or transportation engineering/planning studies.
- E. This scope of services does not include any coordination with other agencies such as the Texas Parks & Wildlife Department, NCTCOG, FEMA, USACE, TCEQ, etc.
- F. Dunaway will attend the meetings as described within this scope of services. Additional community meetings, focus groups, etc. as requested by the Town will be considered as additional services as authorized by the Town.
- G. This scope of services does not include design or production of any marketing materials to be utilized by the City for such items as press releases, brochures, flyers, posters, 3D animations, videos, etc.

- H. This scope of services does not include any grant writing or grant application submittals to such agencies as the Texas Parks & Wildlife Department.
- I. This scope of services does not include any final design or construction documents for specific parks and/or recreational facilities within the park system.



Parks, Recreation & Open Space Master Plan Prosper, Texas

Preliminary Schedule - December 18, 2023

Scope/Task Item

A. PHASE I - INVENTORY & NEEDS ASSESSMENT

1. Data Collection & Base Map Preparation Jan.-Feb. 2024

2. Inventory & Supply Analysis Feb. 2024

3. Population Analysis March 2024

4. Standards Analysis April 2024

5. Benchmarking April-May 2024

6. Recreation Program Analysis May 2024

7. Demand Analysis & Needs Assessment Feb.-June 2024

B. PHASE II - PARKS, RECREATION & OPEN SPACE MASTER PLAN

8. Priority Rankings July 2024

9. Action Plan August 2024

10. Implementation Plan Sept. 2024

11. Preliminary Master Plan Oct.-Nov. 2024

12. Final Master Plan Dec. 2024

P010666.001

PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, DUNAWAY ASSOCIATES, LLC FOR THE PROSPER PARKS, RECREATION & OPEN SPACE MASTER PLAN PROJECT P010666.001

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the **Town of Prosper, Texas**, a municipal corporation, duly authorized to act by the Town Council of said Town, hereinafter called "Town," and Dunaway Associates, LLC, a company authorized to do business in Texas, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional engineering services to Town. Town and Consultant when mentioned collectively shall be referred to as the "Parties."

WITNESSETH:

WHEREAS, Town desires to obtain professional engineering services in connection with the Prosper Parks, Recreation & Open Space Master Plan, Project P010666.001, hereinafter called "Project";

For the mutual promises and benefits herein described, Town and Consultant agree as follows:

- 1. **Term of Agreement.** This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.
- 2. **Services to be Performed by Consultant.** The Parties agree that Consultant shall perform such services as are set forth and described in **Exhibit A Scope of Services** and incorporated herein as if written word for word. All services provided by Consultant hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of their profession. In case of conflict in the language of Exhibit A and this Agreement, this Agreement shall govern and control. Deviations from the Scope of Services or other provisions of this Agreement may only be made by written agreement signed by all Parties to this Agreement.
- 3. **Prompt Performance by Consultant**. Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay as is necessary to cause Consultant's services hereunder to be timely and properly performed. Notwithstanding the foregoing, Consultant agrees to use diligent efforts to perform the services described herein and further defined in any specific task orders, in a manner consistent with these task orders; however, the Town understands and agrees that Consultant is retained to perform a professional service and such services must be bound, first and foremost, by the principles of sound professional judgment and reasonable diligence.
- 4. **Compensation of Consultant.** Town agrees to pay to Consultant for satisfactory completion of all services included in this Agreement a total fee of **One Hundred Twenty Nine Thousand Three Hundred and Forty Dollars \$129,340** for the Project as set forth and described in **Exhibit B Compensation Schedule** and incorporated herein as if written word for word. Lump sum fees shall be billed monthly based on the percentage of completion. Hourly not to exceed fees shall be billed monthly based on hours of work that have been completed. Direct Costs for expenses such as mileage, copies, scans, sub- consultants, and similar costs are included in fees and shall be billed as completed.

Consultant agrees to submit statements to Town for professional services no more than once per month.

These statements will be based upon Consultant's actual services performed and reimbursable expenses incurred, if any, and Town shall endeavor to make prompt payments. Each statement submitted by Consultant to Town shall be reasonably itemized to show the amount of work performed during that period. If Town fails to pay Consultant within sixty (60) calendar days of the receipt of Consultant's invoice, Consultant may, after giving ten (10) days written notice to Town, suspend professional services until paid.

Nothing contained in this Agreement shall require Town to pay for any work that is unsatisfactory as reasonably determined by Town or which is not submitted in compliance with the terms of this Agreement.

The Scope of Services shall be strictly limited. Town shall not be required to pay any amount in excess of the original proposed amount unless Town shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

- 5. **Town's Obligations.** Town agrees that it will (i) designate a specific person as Town's representative, (ii) provide Consultant with any previous studies, reports, data, budget constraints, special Town requirements, or other pertinent information known to Town, when necessitated by a project, (iii) when needed, assist Consultant in obtaining access to properties necessary for performance of Consultant's work for Town, (iv) make prompt payments in response to Consultant's statements and (v) respond in a timely fashion to requests from Consultant. Consultant is entitled to rely upon and use, without independent verification and without liability, all information and services provided by Town or Town's representatives.
- 6. **Ownership and Reuse of Documents**. Upon completion of Consultant's services and receipt of payment in full therefore, Consultant agrees to provide Town with copies of all materials and documents prepared or assembled by Consultant under this Agreement and that Town may use them without Consultant's permission for any purpose relating to the Project. Any reuse of the documents not relating to the Project shall be at Town's risk. Consultant may retain in its files copies of all reports, drawings, specifications and all other pertinent information for the work it performs for Town.
- 7. **Town Objection to Personnel**. If at any time after entering into this Agreement, Town has any reasonable objection to any of Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom Town has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.
- 8. **Insurance**. Consultant shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement applicable insurance policies as described in **Exhibit C Insurance Requirements** and incorporated herein as if written word for word. Consultant shall submit to Town proof of such insurance prior to commencing any work for Town.
- 9. Indemnification. CONSULTANT DOES HEREBY COVENANT AND AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES FROM AND AGAINST LIABILITY, CLAIMS, SUITS, DEMANDS AND/OR CAUSES OF ACTION, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION), WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PROPERTY OR PERSONS BUT ONLY TO THE EXTENT OCCASIONED BY THE NEGLIGENT ACT, ERROR OR OMISSION OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT.

IN THE EVENT THAT TOWN AND CONSULTANT ARE CONCURRENTLY NEGLIGENT, THE PARTIES AGREE THAT ALL LIABILITY SHALL BE CALCULATED ON A COMPARATIVE BASIS OF FAULT AND RESPONSIBILITY AND THAT NEITHER PARTY SHALL BE REQUIRED TO DEFEND OR INDEMNIFY THE OTHER PARTY FOR THAT PARTY'S NEGLIGENT OR INTENTIONAL ACTS, ERRORS OR OMISSIONS.

10. **Notices**. Any notices to be given hereunder by either Party to the other may be affected either by personal delivery, in writing, or by registered or certified mail to the following addresses:

Dunaway Associates, LLC
Philip Neeley, Associate
550 Bailey Ave, Ste 400
Fort Worth, Texas 76107
pneeley@dunaway.com

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

- 11. **Termination**. The obligation to provide further services under this Agreement may be terminated by either Party in writing upon thirty (30) calendar days notice. In the event of termination by Town, Consultant shall be entitled to payment for services rendered through receipt of the termination notice.
- 12. **Sole Parties and Entire Agreement**. This Agreement shall not create any rights or benefits to anyone except Town and Consultant, and contains the entire agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.
- 13. **Assignment and Delegation**. Neither Town nor Consultant may assign its rights or delegate its duties without the written consent of the other Party. This Agreement is binding on Town and Consultant to the extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Town officer, employee or agent.
- 14. **Texas Law to Apply; Successors; Construction**. This Agreement shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the Parties hereto and their representatives, successors and assigns. Should any provisions in this Agreement later be held invalid, illegal or unenforceable, they shall be deemed void, and this Agreement shall be construed as if such provision had never been contained herein.
- 15. **Conflict of Interest.** Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated in **Exhibit D Conflict of Interest Affidavit** and incorporated herein as if written word for word, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit included in the exhibit. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E - Conflict of Interest Questionnaire** and incorporated herein as if written word for word.

- 16. **Venue**. The Parties herein agree that this Agreement shall be enforceable in Prosper, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Collin County, Texas.
- 17. **Mediation**. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit

such disagreement to non-binding mediation.

- 18. **Prevailing Party**. In the event a Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).
- 19. "Anti-Israel Boycott" Provision. In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the company verifies by its signature to this Agreement that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
- 20. **IRAN, SUDAN AND FOREIGN TERRORIST ORGANIZATIONS.** If § 2252.153 of the Texas Government Code is applicable to this Contract, by signing below Contractor does hereby represent, verify and warrant that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under § 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a "foreign terrorist organization" as defined in § 2252.151 of the Texas Government Code.
- 21. **PROHIBITION ON CONTRACTS WITH CERTAIN COMPANIES PROVISION.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Contractor is not on a list maintained by the State Comptroller's Office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- 22. **Signatories**. Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Consultant to same.

II	N WITNE	SS WI	HEF	REOF, t	he Pa	rties, h	navin	g read a	and ur	ndersto	ood :	this	Agreeme	nt, h	ave 6	executed :	such	in
duplicate	copies,	each	of	which	shall	have	full	dignity	and	force	as	an	original,	on	the		day	of
				_, 20														

DUNAWAY ASSOCIATES, LLC

TOWN OF PROSPER, TEXAS

	Ву:	
Signature		Signature
Philip Neeley		Mario Canizares
Printed Name		Printed Name
		Town Manager
Title		Title
= .		
Date		Date

EXHIBIT A SCOPE OF SERVICES

PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, DUNAWAY ASSOCIATES, LLC FOR THE PROSPER PARKS, RECREATION & OPEN SPACE MASTER PLAN PROJECT P010666.001

I. PROJECT DESCRIPTION

Dunaway will perform Professional Planning and Landscape Architectural Services for the preparation of a Parks Recreation & Open Space Master Plan.

II. TASK SUMMARY

Task 1 – Data Collection & Base Map Preparation	Task Details – Prepare Digital Base Map
Task 2 – Inventory & Supply Analysis	Task Details – Complete Listing of Current Inventory
Task 3 – Population Analysis	Task Details – Population & Demographic Data
Task 4 – Standard Analysis	Task Details – Provide Classifications for Park
Task 5 – Benchmarking	Task Details – Compare Park System Data
Task 6 – Demand Analysis and Needs Assessment	Task Details – Community Engagement & Citizen Survey
Task 7 – Recreation Program Analysis	Task Details – Program Analysis based on current programs
Task 8 – Priority Rankings	Task Details – Prepare Priority Ranking Matrix
Task 9 – Action Plan	Task Details – Prepare Preliminary Park Action Plan
Task 10 – Implementation Plan	Task Details – Prepare Implementation Plan
Task 11 – Preliminary Master Plan	Task Details – Preliminary Master Plan Document
Task 12 – Final Master Plan	Task Details – Final Master Plan Document

III. DELIVERABLES

Task 1 – Data Collection & Base Map Prep. Base Map in PDF Format Notes from kick-off meeting Task 2 – Inventory & Supply Analysis Inventory Spreadsheet of Parks Task 3 – Population Analysis Population Analysis PDF Format Park acreage standards & Parks standards in Task 4 – Standard Analysis PDF Format Task 5 - Benchmarking Benchmarking summary in PDF Format Recreation Program Analysis in PDF Format Task 6 – Recreation Program Analysis Needs assessment final report in PDF Format Task 7 – Demand Analysis & Needs Assessment Key data breakdown in Excel Format PowerPoint presentation in PDF Format Task 8 – Priority Rankings Priority Ranking matrix in PDF Format Task 9 – Action Plan Preliminary Action Plan in PDF Format Action Plan exhibit/map in DF Format Implementation Plan with funding recommendations in Task 10 – Implementation Plan PDF Format One (1) unbound Preliminary Master Plan Report Task 11 – Preliminary Master Plan One (1) digital Preliminary Master Plan Report (PDF) Task 12 – Final Master Plan One (1) unbound Final Master Plan Report Five (5) bound copies of the Final Master Plan Report One (1) PDF file of the Final Master Plan Report

EXHIBIT B COMPENSATION SCHEDULE

PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, DUNAWAY ASSOCIATES, LLC FOR THE PROSPER PARKS, RECREATION & OPEN SPACE MASTER PLAN PROJECT P010666.001

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed		
Task 1 – Data Collection & Base Map Preparation	Jan-Feb 2024	\$5,960
Task 2 – Inventory & Supply Analysis	Feb 2024	\$13,750
Task 3 – Population Analysis	March 2024	\$6,550
Task 4 – Standard Analysis	April 2024	\$6,100
Task 5 – Benchmarking	April-May 2024	\$8,950
Task 6 – Recreation Program Analysis	May 2024	\$7,800
Task 7 – Demand Analysis & Needs Assessment	Feb-June 2024	\$24,800
Task 8 – Priority Rankings	July 2024	\$7,880
Task 9 – Action Plan	August 2024	\$10,350
Task 10 - Implementation Plan	Sept 2024	\$7,580
Task 11 – Preliminary Master Plan	Oct-Nov 2024	\$16,420
Task 12 – Final Master Plan	Dec 2024	\$13,200
Total Compensation		\$129,340

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Amount
Task 1 – Data Collection & Base Map Preparation	\$5,960
Task 2 – Inventory & Supply Analysis	\$13,750
Task 3 – Population Analysis	\$6,550
Task 4 – Standard Analysis	\$6,100
Task 5 – Benchmarking	\$8,950
Task 6 – Recreation Program Analysis	\$7,800
Task 7 – Demand Analysis & Needs Assessment	\$24,800
Task 8 – Priority Rankings	\$7,880
Task 9 – Action Plan	\$10,350
Task 10 - Implementation Plan	\$7,580
Task 11 – Preliminary Master Plan	\$16,420
Task 12 – Final Master Plan	\$13,200
Total Basic Services:	\$129,340

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

Direct Expenses	Amount
Out of House Services as Incurred	\$TBD
Total Direct Expenses:	\$TBD

EXHIBIT C INSURANCE REQUIREMENTS

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

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

B. MINIMUM LIMITS OF INSURANCE

Service Provider shall maintain throughout contract limits not less than:

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

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

- 1. General Liability and Automobile Liability Coverages
 - a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the provider, products and completed operations of the provider, premises owned, occupied or used by the provider. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
 - b. The provider's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the provider's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
 - d. The provider's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the insured's limits of liability.
- 2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the provider for the Town.

All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

4. Professional Liability and / or Errors and Omissions:

"Claims made" policy is acceptable coverage, which must be maintained during the course of the project, and up to two (2) years after completion and acceptance of the project by the Town.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A-VI**, or better.

F. VERIFICATION OF COVERAGE

Service Provider shall provide the Town with certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

Certificate holder to be listed as follows:

Town of Prosper P.O. Box 307 Prosper, TX 75078

EXHIBIT D CONFLICT OF INTEREST AFFIDAVIT

PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, DUNAWAY ASSOCIATES, LLC FOR THE PROSPER PARKS, RECREATION & OPEN SPACE MASTER PLAN PROJECT P010666.001

THE STATE	OF TEXAS	§	2		
COUNTY O	F	_ §	§		
l,		, a member of the	e Consultant team, r	nake this affidavit and here	by on oath state the following:
	erson or persons rela on the Project (Check		the following interes	t in a business entity that w	vould be affected by the work
	Ownership of 10% of	or more of the vo	ting shares of the bu	usiness entity.	
	Ownership of \$25,0	00.00 or more of	the fair market value	e of the business entity.	
	Funds received from	n the business er	ntity exceed 10% of	my income for the previous	year.
	Real property is invo	olved, and I have a	an equitable or legal	ownership with a fair marke	et value of at least \$25,000.00.
	A relative of mine had of the public body o			s entity or property that wou	uld be affected by my decision
	Other:				
	None of the Above.				
consanguin					f mine, in the first degree by r of the public body which took
Signed this		day of		, 20	
				Signature of	f Official / Title
	E, the undersigned are ed that the facts here			d f his / her knowledge or bel	and ief.
Sworn to an	d subscribed before r	ne on this	day of		<u> -</u> -
				Notary Public in and for	the State of Texas
				My Commission expires	:

EXHIBIT E CONFLICT OF INTEREST QUESTIONNAIRE

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filled with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.
has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.
than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.
A wonder committee on afficiency of the wonder transfer transfer to the ATC COS. I and Conserve to Costs. An
A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.
1 Name of vendor who has a business relationship with local governmental entity.
Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)
Name of local government officer about whom the information is being disclosed.
Name of Officer
Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government office Complete subparts A and B for each employment or business relationship described. Attach additional pages to this For CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income other than investment income, from the vendor? Yes No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? Yes No Describe each employment or business relationship that the vendor paged in Section 1 maintains with a compaction of the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received from the local government of the officer AND the taxable income is not received
Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation o other business entity with respect to which the local government officer serves as an officer or director, or holds at ownership interest of one percent or more.
Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).
Signature of vendor doing business with the governmental entity Form provided by Texas Ethics Commission www.ethics.state.bx.us Revised 11/30/2



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: Bid Award Teel Parkway (US 380 - First Street)

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 1. Acceleration of Infrastructure

Agenda Item:

Consider and act upon awarding CSP No. 2024-09-B to McMahon Contracting LP, related to construction services for the Teel Parkway (US 380 – First Street) project; and authorizing the Town Manager to execute a construction agreement for same.

Description of Agenda Item:

On December 7, 2023, at 3:00 PM, eight (8) Competitive Sealed Proposals were received for the Teel Parkway (US 380 - First Street) project. The project consists of all the work needed to construct the two northbound lanes of the ultimate six-lane concrete divided roadway from the existing intersection improvements at US 380 to the existing intersection improvements south of First Street. These improvements include roadway paving, drainage, standard median landscape design and irrigation, pavement markings and signage, traffic control, and erosion control. The project was advertised using the Competitive Sealed Proposal Construction alternative procurement method to allow the Town to award the projects to the contractor that offers the best value proposal based on the following criteria, which includes recently revised standard percentages based on direction from the Town Council:

- Qualifications and Experience (10%)
 - Outline contractor and subcontractor experience with similar projects.
 - Outline qualifications of key personnel assigned to this project.
 - Provide references.
- Project Timeline (25%)
- Cost Proposal (65%)

The verified proposal totals ranged between \$5,367,467.25 and \$6,222,085.33. The Engineer's Estimate was \$5,658,138.00. The proposal's final completion times ranged from 120 calendar days to 390 calendar days. McMahon Contracting LP, was the firm that ranked the highest after consideration of Costs, Time, and Qualifications with a cost of \$5,399,999.00, and a project timeline of 120 calendar days.

The contractor that provided the proposal with the lowest cost had a project timeline of 290 days, more than twice the time of the proposal from McMahon Contracting LLP. McMahon Contracting LP, is currently constructing the Gee Road (First - Windsong Retail) and the First Street (Teel - Gee Road) project for the Town. Staff checked the references provided and received positive feedback.

Budget Impact:

The cost for the construction of the project is \$5,399,999.00, with the PISD participating \$2,101,966.95 and the Town contributing \$3,298,032.05. The total construction budget for the project is \$5,608,664.79 in Account No. 750-6610-10-00-2153-ST.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the standard construction agreement as to form and legality.

Attachments:

- 1. Location Map
- 2. Bid Tabulation Summary
- 3. Construction Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council award CSP No. 2024-09-B to McMahon Contracting LP, related to construction services for the Teel Parkway (US 380 – First Street) project; and authorizing the Town Manager to execute a construction agreement for same.

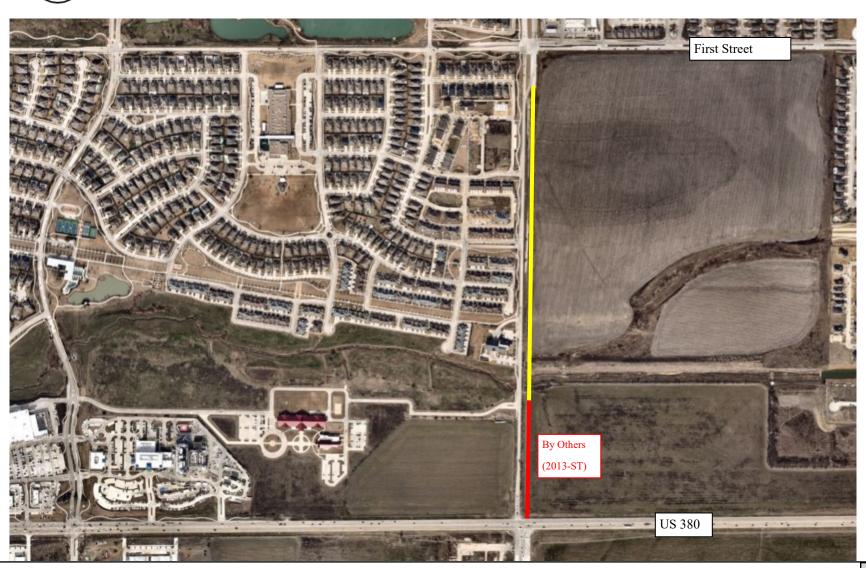
Proposed Motion:

I move to award CSP No. CSP No. 2024-09-B to McMahon Contracting LP, related to construction services for the Teel Parkway (US 380 – First Street) project; and authorize the Town Manager to execute a construction agreement for same.

LOCATION MAP

Teel Parkway

US 380 to First Street





TOWN OF PROSPER PROPOSAL TABULATION SUMMARY

Solicitation Number CSP No. 2024-09-B

Teel Parkway (US380 to First) Two Northbound Lanes 2153-ST

Solicitation Title

Close Date 12/7/2023 @ 2:00PM

Responding Supplier	City	State	Response Submitted	Response Total	Total Days
Zachry Construction Corporation	Grand Prairie	TX	12/7/2023 01:45:20 PM (CT)	\$5,367,467.25	290
McMahon Contracting LP	Grand Prairie	TX	12/7/2023 12:37:00 PM (CT)	\$5,399,999.00	120
Tiseo Paving Co.	Mesquite	TX	12/7/2023 01:43:20 PM (CT)	\$5,520,673.15	390
Mario Sinacola & Sons Excavating, Inc.	Frisco	TX	12/7/2023 01:29:58 PM (CT)	\$5,592,791.17	267
Urban Infraconstruction LLC	FORT WORTH	TX	12/7/2023 01:10:19 PM (CT)	\$5,681,145.75	365
DDM Construction Corporation	Addison	TX	12/7/2023 01:01:59 PM (CT)	\$5,731,548.65	245
Texas Sterling Construction Co.	Euless	TX	12/7/2023 01:34:04 PM (CT)	\$6,058,480.40	282
Pavecon Public Works, LP	Grand Prairie	TX	12/7/2023 01:29:14 PM (CT)	\$6,222,085.33	330

**All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.

Certified by:	Jay Carter, NIGP-CPP, CPPB, C.P.M.	Certified on:	December 7, 2023
	Purchasing Manager		
	Town of Prosper, Texas		

CONSTRUCTION AGREEMENT

THE STATE OF TEXAS)	
)	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN)	

This Construction Agreement (the "Agreement") is made by and between **McMahon Contracting**, **LP**, a company authorized to do business in Texas, (the "Contractor") and the **Town of Prosper**, **Texas**, a municipal corporation (the "Owner"). For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

CSP NO. 2024-09-B Teel Parkway (US-380 to First (Formally Fishtrap)) Two Northbound Lanes

in the Town of Prosper, Texas, and all extra work in connection therewith, under the terms as stated in the terms of this Contract, including all Contract Documents incorporated herein; and at his, her or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Specifications as prepared by Town of Prosper or its consultant hereinafter called Engineer, who has been identified by the endorsement of the Contractor's written proposal, the General Conditions of this Contract, the Special Conditions of this Contract, the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

A. Contract Documents and Order of Precedence

The Contract Documents shall consist of the following documents:

- 1. this Construction Agreement;
- 2. properly authorized change orders;
- the Special Conditions of this Contract;
- 4. the General Conditions of this Contract;
- 5. the Technical Specifications & Construction Drawings of this Contract;
- 6. the OWNER's Standard Construction Details;
- 7. the OWNER's Standard Construction Specifications:
- 8. the OWNER's written notice to proceed to the CONTRACTOR;
- 9. the Contractor's Cost Proposal:
- 10. any listed and numbered addenda;
- 11. the Performance, Payment, and Maintenance Bonds; and,
- 12. any other proposal materials distributed by the Owner that relate to the Project.

These Contract Documents are incorporated by reference into this Construction Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be

resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project.

B. Total of Payments Due Contractor

For performance of the Work in accordance with the Contract Documents, the Owner shall pay the Contractor in current funds an amount not to exceed **Five million three-hundred ninety-nine thousand nine-hundred ninety-nine dollars and 00 cents (\$5,399,999.00).** This amount is subject to adjustment by change order in accordance with the Contract Documents.

C. Dates to Start and Complete Work

Contractor shall begin work within ten (10) calendar days after receiving a written Notice to Proceed or written Work Order from the Owner. All Work required under the Contract Documents shall be substantially completed within **90** calendar days after the date of the Notice to Proceed for the base proposal. Within **30** additional calendar days after Substantial Completion, all outstanding issues shall be addressed and ready for final payment.

Under this Construction Agreement, all references to "day" are to be considered "calendar days" unless noted otherwise.

D. CONTRACTOR'S INDEMNITY TO THE OWNER AND OTHERS

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN OF PROSPER (OWNER) TOGETHER WITH ITS MAYOR AND TOWN COUNCIL AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT TOWN OF PROSPER (OWNER) FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS TOWN OF PROSPER (OWNER) TOGETHER WITH ITS MAYOR AND TOWN COUNCIL AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, FROM AND

AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES FOR INJURY OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGES TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT. SUCH INDEMNITY SHALL APPLY WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE TOWN OF PROSPER (OWNER), ITS MAYOR AND TOWN COUNCIL, OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT TOWN OF PROSPER (OWNER) FROM THE CONSEQUENCES OF TOWN OF PROSPER'S (OWNER'S) OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Owner shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Owner. Contractor shall retain approved counsel for the Owner within seven (7) business days after receiving written notice from the Owner that it is invoking its right to indemnification under this Construction Agreement. If Contractor does not retain counsel for the Owner within the required time, then the Owner shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses.

The Owner retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Owner elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Owner for such costs.

(Please note that this "broad-form" indemnification clause is not prohibited by Chapter 151 of the Texas Insurance Code as it falls within one of the exclusions contained in Section 151.105 of the Texas Insurance Code.)

E. Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's proposal. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration. Certificates holder shall be listed as follows, with the project/contract number referenced:

Town of Prosper Attn: Purchasing Manager P.O. Box 307 Prosper, Texas 75078

re: CSP No. 2024-09-B **Teel Parkway (US-380 to First (Formally Fishtrap)) Two Northbound Lanes**

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- a. ISO Form Number GL 00 01 (or similar form) covering Comprehensive General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
- b. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
- c. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

2. Minimum Limits of Insurance

Contractor shall maintain throughout contract limits not less than:

- a. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - 1) Premises / Operations
 - 2) Broad Form Contractual Liability
 - 3) Products and Completed Operations
 - 4) Personal Injury

- 5) Broad Form Property Damage
- 6) Explosion Collapse and Underground (XCU) Coverage.
- b. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
- Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced
 if approved by the Town. Automobile liability shall apply to all owned, hired and nonowned autos.
- d. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.
- e. \$1,000,000 Umbrella Liability Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.
- 3. Deductible and Self-Insured Retentions

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

4. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

- a. General Liability and Automobile Liability Coverage
 - The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
 - 2) The contractor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

- 3) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- 4) The contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limits of liability.

b. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the contractor for the Town.

c. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

Acceptability of Insurers

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A- VI, or better.

6. Verification of Coverage

Contractor shall provide the Town with certificates of insurance indicating coverage's required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

F. Performance, Payment and Maintenance Bonds

The Contractor shall procure and pay for a Performance Bond applicable to the work in the amount of one hundred fifteen percent (115%) of the total proposed price, and a Payment Bond applicable to the work in the amount of one hundred percent (100%) of the total proposed price. The Contractor shall also procure and pay for a Maintenance Bond applicable to the work in the amount of one hundred percent (100%) of the total proposed price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in this Construction Agreement. The performance, payment and maintenance bonds shall be issued in the form attached to this Construction Agreement as Exhibits A, B and C. Other performance, payment and

maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment and maintenance bonds upon Town request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars (\$100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

G. Progress Payments and Retainage

As it completes portions of the Work, the Contractor may request progress payments from the Owner. Progress payments shall be made by the Owner based on the Owner's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Owner satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Owner:

- 1. copies of documents reasonably necessary to aid the Owner in preparing an estimate of the value of Work properly completed;
- full or partial releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Owner releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
- 3. an updated and current schedule clearly detailing the project's critical path elements; and
- 4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Owner determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Owner determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Owner the overpayment amount specified by the Owner within thirty (30) calendar days after it receives written demand from the Owner.

The fact that the Owner makes a progress payment shall not be deemed to be an admission by the Owner concerning the quantity, quality or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Owner shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set at five percent (5%). Retainage shall be withheld and may be paid to:

- 1. ensure proper completion of the Work. The Owner may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
- ensure timely completion of the Work. The Owner may use retained funds to pay liquidated damages; and
- 3. provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Owner in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

H. Withholding Payments to Contractor

The Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Owner may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

I. Acceptance of the Work

When the Work is completed, the Contractor shall request that the Owner perform a final inspection. The Owner shall inspect the Work. If the Owner determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Owner determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Owner's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on

"substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Owner's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Owner may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

J. Acceptance of Erosion Control Measures

When the erosion control measures have been completed, the Contractor shall request that the Owner perform a final inspection. The Owner shall inspect the Work. If the Owner determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Owner determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

K. Final Payment

After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

- 1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
- 2. correct prior progress payments; and
- 3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens from the Contractor and its subcontractors, or other evidence satisfactory to the Owner to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Owner may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Owner original copies of all documents that the Owner determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Owner has satisfied its obligation to administer the Construction Agreement in accordance with applicable law. The following documents shall, at a minimum, be required to be submitted prior to final payment being due: redline as-built construction plans; consent of surety to final payment; public infrastructure inventory; affidavit of value for public infrastructure; and, final change order(s). "Redline as-built construction plans" shall include, but are not limited to markups for change orders, field revisions, and quantity overruns as applicable. The list of documents contained in this provision is not an exhaustive and exclusive list for every project performed pursuant to these Contract Documents

and Contractor shall provide such other and further documents as may be requested and required by the Owner to close out a particular project.

Subject to the requirements of the Contract Documents, the Owner shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

L. Contractor's Warranty

For a two-year period after the date specified in a written notice of acceptance of Work, Contractor shall provide and pay for all labor and materials that the Owner determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Owner may make a warranty inspection of the Work. The Owner shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Owner shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Owner may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the Owner determines that a hazard exists because of defective materials and workmanship, then the Owner may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the Owner to alleviate the hazard shall be paid by the Contractor, the performance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Owner may make as many warranty inspections as it deems appropriate.

M. Compliance with Laws

The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the

Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

N. "Anti-Israel Boycott" Provision

In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the company verifies by its signature to this Contract that the company does not boycott Israel and will not boycott Israel during the term of this Contract.

O. Other Items

The Contractor shall sign the Construction Agreement, and deliver signed performance, payment and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the Owner makes available to the Contractor copies of the Contract Documents for signature. Six (6) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided, however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Owner delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure:

- 1. that Contractor timely delivers to the Owner all bonds and insurance documents; and
- 2. that the Owner retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST OWNER, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE OWNER BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE

11

OWNER DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Collin County, Texas.

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.

Although the Construction Agreement has been drafted by the Owner, should any portion of the Construction Agreement be disputed, the Owner and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Owner and Contractor and shall insure to their benefit and as well as that of their respective successors and assigns.

If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.

[Signatures continued on following page.]

CONTRACTOR

TOWN OF PROSPER, TEXAS

By:	By: Mario Canizares
Title:	Title: Town Manager
Date:	Date:
	Address: 250 W. First St. P.O. Box 307 Prosper, Texas 75078
Phone:Email:	
	ATTEST:
	MICHELLE LEWIS SIRIANNI Town Secretary

PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF COLLIN)
KNOW ALL MEN BY THESE PRESENTS: That whose address is hereinafter called
Principal, and, a corporation organized and existing under the laws of the State of, and fully licensed to transact business in
the State of Texas, as Surety, are held and firmly bound unto the TOWN OF PROSPER, a home-rule municipa
corporation organized and existing under the laws of the State of Texas, hereinafter called "Beneficiary", in the pena sum of Five million three-hundred ninety-nine thousand nine-hundred ninety-nine dollars and 00 cents (\$5,399,999.00) plus fifteen percent (15%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. The penal sum of this Bond shall automatically be increased by the amount of any Change Order of Supplemental Agreement, which increases the Contract price, but in no event shall a Change Order or Supplementa Agreement, which reduces the Contract price, decrease the penal sum of this Bond.
THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the Town of Prosper, the Beneficiary, dated on or about the day of, A.D. 2024, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:
CSP NO. 2024-09-B Teel Parkway (US-380 to First (Formally Fishtrap)) Two Northbound Lanes

in the Town of Prosper, Texas, as more particularly described and designated in the above-referenced contract such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the Plans, Specifications and Contract Documents during the original term thereof and any extension thereof which may be granted by the Beneficiary, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and final acceptance of the Work by Owner; and, if the Principal shall fully indemnify and save harmless the Beneficiary from and against all costs and damages which Beneficiary may suffer by reason of failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action were filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Plans, Specifications and Drawings, etc., accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

		REOF, this instrument ay of		es, each one of w	hich shall be deemed an		
ATTEST:			PRINCIPAL	:			
			Company N	ame			
By: Signature			By: Signatu	re			
Typed/Printed Name			Typed/Printe	Typed/Printed Name			
Title			Title	Title			
Address			Address				
City	State	Zip	City	State	Zip		
Phone		Fax	Phone		Fax		

[Signatures continued on following page.]

ATTEST:			SURETY:		
By: Signature			By: Signatur	re.	
Printed Name			Printed Nam		
Title			Title		
Address			Address		
City	State	Zip	City	State	Zip
Phone		Fax	Phone		Fax
The Resident	t Agent of the S		Phone or Dallas County, Texa	s, for delivery of	
process is:	-		·	·	
	NAME: STREET A CITY, STA	DDRESS: TE, ZIP:			

NOTE: Date on **Page 1** of Performance Bond must be **same date as Contract**. Date on **Page 2** of Performance Bond must be **after date of Contract**. If Resident Agent is not a corporation, give a person's name.

PAYMENT BOND

CTATE OF TEVAC

SIAIE		AS)							
COUNTY	OF CO	DLLIN)	,							
KNOW	ALL	MEN	ВҮ	THESE	PRESENTS:	That			whose , here	addres einafter	
Principal,								, a co	orporation	organize	ed and
							, and	fully licens	ed to trans	act busir	ness in
		-	,	•	and firmly bour				•		
•	•			•	r the laws of th					-	
					y furnish materi			•	•	•	
					of Five million the		•				•
					hundred percei						
	•			•	, for the paymen			•			
					uccessors, jointl	•	•	•		•	
			•		ed by the amour	•	•		•		
					vent shall a Cha	inge Order	or Suppleme	ental Agree	ement, wni	cn reduc	es the
Contract	price, d	ecrease	tne p	enai sum o	f this Bond.						
THE ORI	IGATI	ON TO	ΡΔΥ S	ΔMF is co	nditioned as foll	ows: Wher	eas the Prin	cinal enter	ed into a c	ertain Co	ontract
					ed on or about th			•			
		•			hereof, to furn		•				
					construction of		, • •				.,
				•							

CSP NO. 2024-09-B Teel Parkway (US-380 to First (Formally Fishtrap)) Two Northbound Lanes

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in the above-referenced Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action were filed on this Bond, exclusive venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may

be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

		s instrument is execu , 202	ed in two copies, each one of which shall be deemed an or 1.	riginal,
ATTEST:			PRINCIPAL:	
			Company Name	
By:			Ву:	
Signat	ure		Signature	
Typed/Prin	ted Name		Typed/Printed Name	
Title			Title	
Address			Address	
City	State	Zip	City State Zip	
Phone		Fax	Phone Fax	

[Signatures continued on following page.]

ATTEST:			SURETY:		
By:	···		By: Signatu	Iro.	
Printed Nam	ne		Printed Nar	me	
Title			Title		
Address			Address		
City	State	Zip	City	State	Zip
Phone		Fax	Phone		Fax
The Resider process is:	nt Agent of the S	urety in Collin County	or Dallas County, Texa	as, for delivery of	notice and service of
	SIREELA	DDRESS:			

NOTE: Date on **Page 1** of Performance Bond must be **same date as Contract**. Date on **Page 2** of Performance Bond must be **after date of Contract**. If Resident Agent is not a corporation, give a person's name.

MAINTENANCE BOND

STATE OF TEXAS)			
COUNTY OF COLLIN)			
KNOW ALL MEN B	Y THESE PRESENTS: Th	nat		whose address
is		, hereinafter	referred to a	s "Principal," and
	, a corporate	, ,		
	sed to transact business in			
"Surety" (whether one or more				
corporation, hereinafter referre	· · · · · · · · · · · · · · · · · · ·			,
nine-hundred ninety-nine dolla	• • • • • • • • • • • • • • • • • • • •	, \	. , ,	1 /:
lawful money of the United Sta				
and truly to be made, we bind o	ourselves, our successors, h	neirs, executors, adn	ninistrators and suc	ccessors and assigns,
jointly and severally; and firmly	by these presents, the con	dition of this obligat	ion is such that:	
	entered into a certain writte			
	, 2024, to furnish all			products, materials,
equipment, labor, supervision,	and other accessories nece	essary for the constr	ruction of:	
	CSP NO.	2024-09-B		
Teel Parkway	(US-380 to First (Form		o Northhound I	anes

ay (US-380 to First (Formally Fishtrap)) Two Northbound Lanes

in the Town of Prosper, Texas, as more particularly described and designated in the above-referenced contract, such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word:

WHEREAS, in said Contract, the Principal binds itself to use first class materials and workmanship and of such kind and quality that for a period of two (2) years from the completion and final acceptance of the improvements by Owner the said improvements shall require no repairs, the necessity for which shall be occasioned by defects in workmanship or materials and during the period of two (2) years following the date of final acceptance of the Work by Owner, Principal binds itself to repair or reconstruct said improvements in whole or in part at any time within said period of time from the date of such notice as the Town Manager or his designee shall determine to be necessary for the preservation of the public health, safety or welfare. If Principal does not repair or reconstruct the improvements within the time period designated, Owner shall be entitled to have said repairs made and charge Principal and/or Surety the cost of same under the terms of this Maintenance Bond.

NOW, THEREFORE, if Principal will maintain and keep in good repair the Work herein contracted to be done and performed for a period of two (2) years from the date of final acceptance and do and perform all necessary work and repair any defective condition (it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal) then this obligation shall be void; otherwise it shall remain in full force and effect and Owner shall have and recover from Principal and its Surety damages in the premises as provided in the Plans and Specifications and Contract.

PROVIDED, however, that Principal hereby holds harmless and indemnifies Owner from and against any claim or liability for personal injury or property damage caused by and occurring during the performance of said maintenance and repair operation.

PROVIDED, further, that if any legal action be filed on this Bond, exclusive venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in either Collin or Dallas Counties to whom all requisite notice may be delivered and on whom service of process may be had in matters arising out of this suretyship.

	SS WHEREOF, thi		ed in two copies, each one of which shal	I be deemed an original,		
ATTEST:			PRINCIPAL:			
			Company Name			
Ву:			Ву:			
Signature			Signature			
Typed/Printed Name			Typed/Printed Name			
Title			Title			
Address			Address			
City	State	Zip	City State	Zip		
Phone		Fay	Phone			

[Signatures continued on following page.]

ATTEST:			SURETY:		
By:Signatu	ıre		By: Signat	ure	
Printed Na	me		Printed Na	ame	
Title			Title		
Address			Address		
City	State	Zip	City	State	Zip
Phone		Fax	Phone		Fax



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: Right-of-Way Ordinance Update

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance repealing existing Article 13.08, "Right-of-Way Management," of Chapter 13 "Utilities," of the Town's Code of Ordinances and replacing it with a new Article 13.08, "Right-of-Way Management".

Description of Agenda Item:

The current Right-of-Way (ROW) Management requirements were adopted in 2007. Due to the rapid growth in the Town of Prosper, franchise utility companies are expediting installations and expanding their infrastructure in existing neighborhoods with utilities like high-speed fiber. With expedited installations and expansions in existing neighborhoods, coupled with limited state regulations, the current ROW Management requirements needed to be reviewed and changes made to better manage the ROW permitting and ROW inspection processes.

In preparation for updating the ROW Management requirements, the Town ROW staff reached out to the neighboring cities (Frisco, McKinney, Little Elm, and Celina) last year and reviewed their ordinances to get a better understanding of what other cities are requiring compared to the Town's requirements. Town ROW staff also participated in a "ride-along" with the Frisco ROW staff to witness their ROW inspection operations. In addition, Town ROW staff attended the first CoServ hosted "Franchise Roundtable" with all franchise utilities and local municipalities, to share current policies, technology and procedures. Lastly, Town ROW staff evaluated prior complaints from residents with the intent to incorporate a "we can do better" attitude into the process.

Upon performing a thorough review of the current ROW Management requirements, compared to "real world" practices and requirements from the neighboring cities, the following updates are recommended to provide the Town ROW staff with the tools to better manage the contractors installing the franchise utilities, and improve the protection of both private and infrastructure.

- Requirements for Franchise Contractors to attend Town Utility Coordination Meetings
- New language for "online" applications
- New requirements for better communication with residents; door hangers, vehicle and equipment identification signs, telephone numbers and contacts after hours

 Implementation of best management practices such as smaller permit authorization in large communities versus one large permit for the entire community

Item 35.

- Requirement of storm water pollution prevention near creeks, channels and streams
- Verification and review of Traffic Control Plans required
- Implementation of "Daily Work Location" forms
- Compliance measures for "above ground temporary lines"
- More stringent requirements for tree trimming within ROWs
- Implementation of "potholing" large water mains
- More stringent rules for non-destructive methods such as boring
- Implementation of "Notice of Violation" forms
- Additions and explanations of "Penalties"
- Permit expiration after 30 days with renewal applications required
- More descriptive language and timelines for clean-up and restoration policies
- Requirements for "as-built" drawings after work is completed

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. Ordinance
- 2. Redline Changes to Article 13.08

Town Staff Recommendation:

Town staff recommends that the Town Council approve an ordinance repealing existing Article 13.08, "Right-of-Way Management," of Chapter 13 "Utilities," of the Town's Code of Ordinances and replacing it with a new Article 13.08, "Right-of-Way Management".

Proposed Motion:

I move to approve an ordinance repealing existing Article 13.08, "Right-of-Way Management," of Chapter 13 "Utilities," of the Town's Code of Ordinances and replacing it with a new Article 13.08, "Right-of-Way Management".

Page 2 of 2

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING ARTICLE 13.08, "RIGHT-OF-WAY MANAGEMENT," OF CHAPTER 13, "UTILITIES," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, AND REPLACING IT WITH A NEW ARTICLE 13.08, "RIGHT-OF-WAY MANAGEMENT"; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas (the "Town"), is charged with maintaining control of and access to the public right-of-way in order to protect the health, safety and welfare of its citizens and the public; and

WHEREAS, the Town has found that work performed by right-of-way users in the public right-of-way can significantly interfere with public use of the right-of-way and existing utility facilities, and negatively affect public safety, public resources, air quality, level of service on streets and sidewalks, community aesthetics, parking and business; and

WHEREAS, pursuant to the Town's home-rule powers, the Town Council has found that it is necessary to amend certain regulations governing the installation, operation, maintenance, repair, modification and replacement of facilities in the public right-of-way in order to protect the health, safety and welfare of the Town's citizens and the public by minimizing and reducing impacts to public safety within the public right-of-way and to minimize and reduce impacts to the Town, its citizens and visitors

WHEREAS, the Town has determined that these amendments will be in the best interests of the public; and

WHEREAS, pursuant to Chapters 51 and 54 of the Texas Local Government Code, the Town is authorized to adopt any such ordinances necessary to preserve and protect its wastewater resources.

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, existing Article 13.08, "Right-of-Way Management," of Chapter 13, "Utilities," of the Code of Ordinances of the Town of Prosper, Texas, is hereby repealed and replaced with a new Article 13.08, "Right-of-Way Management, to read as follows:

"ARTICLE 13.08. RIGHT-OF-WAY MANAGEMENT

DIVISION 1. GENERALLY

Sec.13.08.001 Administration.

The Town Manager shall appoint a right-of-way (ROW) Manager, who is the principal town official responsible for the administration of the ROW, ROW permits, the regulation of same and ordinances related thereto. The ROW Manager may delegate any or all of the duties hereunder. The ROW Manager shall have the duties, responsibilities and authority as specified for the ROW Manager stated herein.

Sec. 13.08.002 Definitions.

The following definitions apply in this article. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee means the fee charged by the town to recover its costs incurred for ROW management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying ROW permit applications; inspecting job sites and restoration improvements; determining the adequacy of the ROW restoration; revoking ROW permits, and other costs the town may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certificated telecommunications provider or CTP means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the state public utility commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code Ch. 283 or "the act."

Collector Street means any roadway or street classified on the town thoroughfare plan, as it exists or may be amended, as a collector.

Compaction means consolidating backfill material in a trench to prevent future settlement.

Comprehensive plan means the town comprehensive plan, as it exists or may be amended.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the ROW. The definition includes, but

is not limited to, providing primary service, restoration, or maintenance of existing facilities within the ROW.

Contractor means any public or private person, subcontractor or organization, other than the town.

Day means business day unless otherwise specified.

Department means the Town Department of Engineering Services or a successor department that is responsible for management of the ROW and roadway infrastructure.

Emergency operations means those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the ROW and does not include landscaping activity unless the activity removes or disturbs the paved portion of the ROW.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, manholes, hand holes and wires located under, on, or above the surface of the ground within the ROW, and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the Mayor and the Town Council of the town.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday means days in which town offices are closed in observance of a holiday.

Local Street means roadway or street not classified on the town comprehensive plan, as it exists or may be amended, as a highway toll-way, major thoroughfare, minor thoroughfare or collector.

Main line means lines other than service connections used to convey the ROW user's product.

Major project means any project, which includes 500 or more linear feet of excavation or any excavation under pavement. Network node means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

Network provider means a wireless service provider, or a person that does not provide wireless services and that is not an electric utility but builds or installs, on behalf of a wireless service provider, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

Pavement means streets containing Portland cement, asphalt, brick or other rigid or semirigid material that covers the surface of a street and their underlying sub-grade and base.

Permit means permit issued under this article authorizing excavation in the ROW.

Permittee means person or ROW user to whom a permit is issued to excavate a ROW.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the town.

Public inconvenience penalty means penalty assessed to the ROW user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means public utility commission of the state.

Registration means the annual application process of the ROW user to use any portion of the ROW.

Registration certificate means the document provided by the town, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the ROW usable.

Repair area means area around excavation where the pavement and sub-grade is impacted by an excavation.

Restoration means the process by which an excavated ROW and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way (ROW) means the surface of, and the space above and below, any street, road, highway, freeway, toll-way, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the town or over which the town exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the town, but shall specifically exclude private property.

Right-of-way (ROW) Inspector means person assigned by the ROW Manager to oversee inspections of work conducted within the town's ROW.

Right-of-way (ROW) Manager means the ROW Manager of the town, or his/her designee.

Right-of-way (ROW) user means person, its successors and assigns, that uses the ROW for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the ROW, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection means the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the ROW that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface-mounted markers means any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Temporary Lines means facilities that are installed temporarily above ground (or can be below) and not in their ultimate location. This can be as a result of an existing main line being hit or damaged by other construction, and a temporary solution to re-establish the connection is made until a more permanent fix is complete. Temporary lines can also be individual connections to individual residence (typically above ground) until a permanent connection is placed underground.

Thoroughfare means any roadway or street classified on the town comprehensive plan, as it exists or may be amended, as a highway, toll-way, major thoroughfare or minor thoroughfare.

TMUTCD means the state manual on uniform traffic-control devices, as it exists or may be amended.

Town. The town and the town's officers and employees.

Town project means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the town, or its designee, in the public ROW, on any town utilities, on any town facilities, in pursuant of its governmental functions or for the benefit of the public.

Town utilities means any water, sewer or drainage line owned and operated by the town, the North Texas Municipal Water District (NTMWD), the Upper Trinity Regional Water District (UTRWD), or any other utility district providing water or sewer service to the town.

Traffic-control representative means the designated representative of the ROW user who is responsible for work zone safety and compliance with TMUTCD. The ROW user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

Transport facility means each transmission path physically within a public ROW, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Trench means excavation deeper than 24 inches. This shall include linear trenches, holes, pits, etc.

Underground Facility Damage Protection Safety Act means the V.T.C.A. Utility Code § 251.001 et seg., as it exists or may be amended.

Utility means any privately or publicly owned entity which uses ROW to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, traffic management, streetlights, fiber communications, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the ROW. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility locate in order to further identify the site.

Wireless service means any service using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless services to the public.

Sec. 13.08.003 Penalty.

This is not a traffic ordinance authorized under the Texas Motor Vehicle Statutes, and is not governed by the penal provision thereunder. Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the town from filing suit to enjoin the violation. The town retains all legal rights and remedies available to it pursuant to local, state and federal law.

- (a) A person commits an offense if they:
 - (1) Perform, authorize, or supervise construction without a valid permit issued under this article;
 - (2) Fail to comply with restrictions or requirements of a permit issued under this article;
 - (3) Fail to comply with a lawful order or regulation of the ROW Manager issued pursuant to this article; or
 - (4) Violate other provisions of this article.
- (b) A person commits an offense if, in connection with the performance of construction in the public ROW: they
 - Damage the public ROW beyond what is incidental or necessary to the performance of the construction;
 - (2) Damage public or private facilities within the public ROW;
 - (3) Fail to immediately clear debris associated with construction from a public ROW after construction is complete; or
 - (4) Fail to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the ROW Manager.

- (c) The ROW Inspector will provide the contractor with a Notice of Violation Form that identifies the violation(s) and corrective measures to be taken by a certain date as specified by the ROW Manager. The contractor is required to acknowledge receipt on the Notice of Violation Form.
- (d) A culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or authorized or directed. An offense under this article is punishable by a fine of \$1.00 to \$2,000.00.
- (e) Prior to initiation of civil litigation, the public service provider, or any other person, who has violated a provision of this article, shall be given the opportunity to correct the violation within a time frame specified by the ROW Manager. The subsection does not prohibit the ROW Manager of the town from taking enforcement action as to past or present violations of this article, notwithstanding their correction.
- (f) If a permitee is in violation of this article, no additional permits will be granted to the public service provider and/or permitee until the offense has been corrected and any direct or indirect costs incurred by the town have been reimbursed.

Sec. 13.08.004 Existing franchise.

If any provision of this article conflicts with an existing franchise agreement, the franchise agreement shall prevail until the expiration thereof.

Sec. 13.08.005 Bridge weight limit violation.

It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load-bearing wheels travel on the bridge.

Sec. 13.08.006 Utility coordination committee.

Each utility shall name a utility coordinator who shall participate in the utility coordination committee. All ROW users with open permits shall send one representative to the utility coordination committee meetings at the time and location established by the town. In the event that a ROW user's representative does not attend two or more meetings within a 12-month period, the ROW user's permits will be placed on hold until the representative resolves all conflicts discussed in the unattended meetings and attends the next scheduled meeting.

Sec. 13.08.007 Field utility coordination.

- (a) The ROW user shall notify the Department at each of the following times during a project; and failure to do so constitutes a violation of this article.
 - Forty-eight hours before the start of construction; either through email and/or text ROW Inspector must be informed;
 - (2) Daily Work Location Form;
 - (3) Potholing; when water main 16 inches or greater is exposed and visible to ROW Inspector;
 - (4) When traffic control is required; ROW Inspector must be notified prior to starting work in the designated area;
 - (5) Upon completion of the initial backfill; and

- (6) Upon completion of the project, an email or text must be sent to the ROW Inspector as documentation that the job has been completed.
- (7) When an existing utility is damaged (water main, water service, sewer main, sewer service, gas, electric, cable, irrigation) the ROW Inspector must be notified immediately. In instances where a private water service, sewer service, or irrigation is damaged, the ROW user must immediately hire a licensed plumber to make a permanent repair.
- (b) The ROW user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.
- (c) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of non-washable markers is prohibited.
- (d) Compliance with the Texas Utilities Code, as amended, is required at all times.
- (e) All barricades, plates, cones, traffic directional equipment and all other traffic-control devices owned, leased or used by the ROW user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or ROW user or subcontractor, as applicable, at all times such equipment is used on or near the ROW. An exception to the marking requirement may be made in the sole discretion of the ROW Manager in the event the traffic-control equipment is not owned by the permittee or ROW user.
- (f) Locate to the extent of the ROW. The public service provider has the exclusive responsibility to locate the extent of the public ROW. Acceptance of the plans and issuance of a permit does not constitute liability of the town's part of any facilities placed on private property. If facilities/utilities are placed on private property, it is the public service provider's responsibility to contact the property owner and acquire easements.
- (g) The town reserves the right under this article to take the following actions:
 - (1) Divide larger neighborhood permits into smaller more manageable permits, allowing bores on no more than 2 streets concurrently. Failure to do so may result in shutdown of work or temporary hold of permit until the issue has been resolved.
 - (2) Require ROW user to backfill any open holes (at any time during the scope of work) at the request of the ROW Inspector. Failure to do so may result in shutdown of work or temporary hold of permit until the issue has been resolved.

Sec. 13.08.008 Maps and records of registrants.

- (a) Within 30 days of passage of this article, each ROW user shall provide the town an accurate map of their service area. The map shall be in electronic format overlaid over the North Central Texas Council of Government base digital map. In dual coverage areas, the town may request additional information to enable identification of ROW users.
- (b) Each ROW user must maintain accurate maps and records of its facilities. The town's road network may be provided in digital format upon request. The ROW user is encouraged to maintain their system maps geo-referenced to the town's street network, which is on the North Central Texas Council of Government base digital map. The map should include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The ROW user will provide the town with digital information within 90 days of a request for maps from the town for any user with less than 50 miles of utilities within the town. All other ROW users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the town on an annual basis by January 1.

- (c) If the maps and records submitted in response to any request by or requirement of the town include information expressly designated by the ROW user as a trade secret or other confidential information protected from disclosure by state law, the town and its agents, employees, or other representatives may not disclose that information to the public without the consent of the ROW user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a ROW user to designate all matters in its maps and records as confidential or as trade secrets.
- (d) Within 60 days of completion of each new permitted section of a person's facilities, the person shall supply the town with a completed set of "as-built" drawings for the segment in a format used in ordinary course of the persons business and as reasonably prescribed by the town, and allowed by law.

Sec. 13.08.009 Notice.

Notice for purposes of this article shall be made to the town via electronic message (email), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the department or United States mail return receipt required.

Sec. 13.08.010 Registration.

- (a) Nothing in this section relieves a ROW user and/or utility from obtaining a permit under this article to perform work in the ROW.
- (b) In order to protect the public health, safety, and welfare, a utility maintaining or operating existing facilities in the ROW must register with the ROW Manager in accordance with the following requirements:
 - (1) The registration must be on a form furnished by the ROW Manager and made in the name of the ROW user that owns the facilities.
 - (2) Registration expires the date the certificate of insurance provided to the town by the ROW user the registration occurs. If the utility fails to renew registration by that date, the town will send by certified mail a notice of noncompliance to the address listed on the registration. If the utility fails to renew registration within 30 calendar days after the date of sending the notification, the facilities of the utility will be deemed to have been legally abandoned.
 - (3) If information provided as part of the registration changes, the utility must inform the ROW Manager, in writing, not more than 30 days after the date the change occurs.
 - (4) The utility shall also include the following registration:
 - (A) The name of the utility using the ROW, including any business name, assumed name, or trade name the utility operates under or has operated under in the town within the past five years.
 - (B) If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.
 - (C) The ordinance number of any franchise or license issued by the town that authorizes the utility to use the ROW.

- (D) The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.
- (E) The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility.
- (F) The name, address and telephone number of any contractor or subcontractor, who will be working in the ROW on behalf of the utility. This list may be amended as needed by the utility; however, no work shall be performed in the ROW by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.
- (G) The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, 7 days a week.
- (H) Proof of existing insurance that complies with division 4 of this article.
- (5) Upon completion of registration, the town will provide the ROW user a registration certificate valid until the end of the calendar year during which the registration was completed. The ROW user may make as many photocopies of the registration certificate as necessary. The ROW user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(F) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

Sec. 13.08.011 Traffic handling training.

The ROW user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic-control representative. The representative is responsible for compliance with the TMUTCD and the traffic-control plan (if required) at all work zone sites. The traffic-control representative shall ensure employees on the job site have adequate training. In instances where traffic control is required, ROW user must contact ROW Inspector to verify traffic control before work commences. All vehicles must be parked in the direction of travel on one side of the street.

Sec. 13.08.012 Reporting obligations.

All ROW users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the town, state, or federal government, or railroad or pipeline company, including a description of the ROW user's intended use of the ROW, information sufficient to determine whether the ROW user is subject to franchising or licensing by the town, and information to determine whether the ROW user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the ROW user has applied for and received any permit or other approvals required by the FCC. ROW user shall provide all such other information as may be reasonably required by the town to complete the registration statement.

Sec. 13.08.013 Surface-mounted markers.

Where surface-mounted markers are needed, curb-mounted medallions shall be used whenever possible.

Sec. 13.08.014 Relocation of facilities for public improvements.

- (a) In the exercise of governmental functions, the town has first priority over all uses of the ROW. The town reserves the right to, among other things, install curbs, gutters, inlets, aprons, traffic signs or poles, with or without attached flashing lights, traffic signals and other traffic management devices, light poles, guard rails, sidewalks, conduits, fiber, construct, maintain and alter town projects, including but not limited to laying water, sewer, drainage, and other pipelines or cables and conduits, and doing underground and overhead work, and attachments, restructuring, or changes in street facilities in, across, along, over, or under a public street, alley or ROW occupied by an agency or ROW user, and to change the curb, sidewalks, or the grade of streets and any improvements reasonably associated therewith.
- (b) The ROW user must relocate its facilities, at its own expense and in accordance with section 13.08.066, prior to the start of construction of a town project or any work described in subsection (a) above. Failure to comply with this provision shall subject the ROW user to the enforcement provisions contained herein.
- (c) A permit will be required when making facility adjustments in preparation for town projects.
- (d) Franchise utilities shall acknowledge in writing when they are not in conflict with ongoing town projects upon request by the town.

Sec. 13.08.015 Permit required.

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunneling, excavate or close lanes on any ROW, locate street, or town easement, without first having made application and obtained a permit therefor except for as allowed by section 13.08.016. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any ROW for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the ROW Manager a permit in compliance with this article.

- (a) Before issuing a permit, the ROW Manager shall have been provided an online application, on a form furnished by the ROW Manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with town specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If ROW user cannot show distinctive line weights, the plans shall clearly label the above information using text. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.
- (b) At the time the permit is issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in Division 3 of this article.
- (c) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the ROW Manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.

- (d) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with facilities installed in any ROW to relocate the facilities, at no cost to the town, subject to state law, if applicable, in the event that relocation is required by the town to accommodate a proper governmental use of the ROW.
- (e) Combinations of permits shall be permitted at the sole discretion of the ROW Manager. Fees shall be assessed based on the excavations permitted.
- (f) Subdivision monuments, historical markers, and any other signs or structures with foundations in the ROW, excluding billboards, are subject to this article.
- (g) If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public ROW. An extension to a permit may be granted by the ROW Manager only before the permit expires.
- (h) Storm water pollution prevention plan. The permittee shall submit with the permit application two sets of storm water pollution prevention plan in cases where stream crossings are open cut. The permittee shall contain all sediment within the work area using erosion control measures and erosion limiting construction techniques as specified in other town ordinances, including but not limited to any storm water management ordinance contained in state and federal laws.

Sec. 13.08.016 Exceptions to require permit.

- (a) The ROW Manager reserves the right in his/her discretion to require a ROW permit on service connections. Unless otherwise required by the ROW Manager, service connections do not require a permit if all of the following conditions are met:
 - (1) The service connection excavation shall not exceed 4 feet inside the ROW to property line;
 - (2) All excavation shall be in accordance with service connection drawings;
 - (3) The address for the service connection is on the town-provided form, which is submitted to the ROW Manager via hard copy or email. Work shall not begin until the electronic form is transmitted to the ROW Manager;
 - (4) The excavation required is less than 18 inches in depth;
 - (5) The excavation is no wider than 2 inches or is hand dug; and
 - (6) The service connection does not require boring.
- (b) Irrigation system installation does not require a permit if all of the following conditions are met:
 - (1) The work is performed with an existing valid permit issued by the town for the installation of irrigation.
 - (2) The excavation shall not exceed 12 inches in depth and no wider than one inch.
 - (3) The address for the service connection is on the town-provided form, which is submitted to the ROW Manager via email and is approved. All requests which are not approved within 48 hours are denied.
 - (4) Line locates from the town are requested.

Sec. 13.08.017 Permit application.

- (a) Application for a ROW permit shall be submitted online in accordance with the procedures and requirements stated herein and on the town's website. The online application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology of construction, and proposed start and completion dates. When the work includes excavation, which will exceed 5 feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.
- (b) A permit shall only be valid for the area of the ROW specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new ROW permit.
- (c) Applicants may apply jointly for permits to excavate the ROW at the same time and place. Applicants who apply jointly for a ROW permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The town will recognize only one point of contact.
- (d) Permits will be issued or denied within 5 business days of town receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The town may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new ROW permit or a permit extension for additional time. This supplementary application must be submitted to the town prior to the permit end date. Applicants are required to attend a pre-construction meeting for major projects identified by the ROW Manager.
- (e) An expedited permit may be requested, and shall be issued or denied within 2 days of application upon a showing of good cause, as solely determined by the ROW Manager.
- (f) If the owner fails to act upon any permit within 30 calendar days of issuance, the permit shall become invalid, and the owner will be required to obtain a new permit. No permits shall be transferable.

Sec. 13.08.018 Issuance of permit.

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the ROW Manager, it shall be his/her duty to issue the permit, when the provisions of this article have been complied with.

(a) Upon receiving a completed online application for a permit and a plan prepared in accordance with the town specifications, the ROW Manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Except only in emergency excavations, at least one working day prior to the start of work, the applicant shall notify the ROW Manager the date that the work will commence when traffic-control devices are necessary on a thoroughfare.

- (b) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- (c) Each permit shall state a time period for completion of all the work to be done hereunder. The ROW Manager may in his/her sole discretion, grant extensions of time.
- (d) No person in violation of any requirement of this article shall be issued a permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation(s) is/are corrected or a plan for correction is approved by the ROW Manager. The ROW Manager is authorized to grant exceptions upon showing of good cause. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the town at law or equity.
- (e) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the ROW user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

Sec. 13.08.019 Posting of signs.

The ROW user and contractor (if used) shall be identified by 3 feet by 3 feet information signs on all work requiring a permit. The signs shall state the name and phone number of the ROW user and contractor (if used). The signs shall be placed in the ROW on a breakaway pole base on each approach to the location where construction is occurring from the time of the beginning of work in the ROW and shall continue to be posted at the location during the entire time the work is occurring. Informational signs shall be posted on the public ROW 100 feet before the construction location commences and 100 feet thereafter, unless other posting arrangements are approved or required by the director.

Sec. 13.08.020 Excavation to be under supervision of the ROW Manager.

- (a) Any ROW user engaged in making or backfilling any excavation in any ROW shall, at all times, while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide the same, when requested by any authorized town employee. At all times while the work is in progress, the ROW user shall also maintain, at the job location, a sign, barricade or other device bearing the ROW user's name and a phone number in which the ROW user can be reached.
- (b) The ROW user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, streetlights, or other property at, near or encountered in its work. The ROW user shall determine the boundary of the ROW.
- (c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of ROW and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the town pursuant to the policy and regulatory powers of the town necessary to provide for public convenience. The ROW user shall not trespass upon private property. The ROW user shall determine the boundary between ROW and private property and place stakes/markers indicating this boundary to remain in place for the duration of the work.
- (d) The town reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body

of the town, in, across, along, over or under any ROW or public place occupied by a ROW user and to change any curb or sidewalk or the grade of any street and to maintain all of the town's facilities. In allowing such work to be performed by others, the town shall not be liable to a ROW user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW user by such third party.

- (e) All transmission and distribution structures, lines, equipment and facilities erected by a ROW user within the town shall be so located as to cause minimum interference with the proper use of the ROW, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the ROW.
- (f) If the town requires a ROW user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the town, to use, or to use with greater convenience, any ROW or public place, the ROW user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a ROW user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a ROW user's facilities; provided, however, that the town shall never be liable for such reimbursement.
- (g) During excavations or boring performed within 10 feet of water main 16 inches or greater in size, potholing of that line must take place. Potholing will require the ROW user to expose the line so that it is visible and can be inspected by the ROW Inspector. Potholing will be required every 150 feet along the water main.

Sec. 13.08.021 Registration certificate required.

It is unlawful for any person, its agents, servants or employees to perform construction in the ROW without first having made either application and obtained a permit therefor or have in possession a valid registration certificate. A registration certificate may only be used for construction activities not requiring a permit in accordance with section 13.08.016. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided that no excavation is required in the ROW.

Sec. 13.08.022 Hours of operation for nonemergency work.

- (a) Excavation and boring allowed. Excavation and boring shall be conducted between the hours of 7:00 a.m. to 3:00 p.m. on Monday thru Friday, except on holidays. No excavation or boring shall be performed on holidays. Excavation and boring will cease at noon the day before a holiday, or a holiday weekend.
- (b) All other work requiring an inspection shall be done between the hours of 7:00 a.m. to 3:00 p.m. on Monday thru Friday, except on holidays. No work shall be performed on holidays. Excavation and boring will cease at noon the day before a holiday, or a holiday weekend. A ROW user may work on Saturday subject to the approval of the ROW Manager. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed and is nonrefundable.

Sec. 13.08.023 Denial, Suspension, or holding of permit.

A permit may be denied or suspended, or held for any of the following reasons:

- (a) Failure to provide proof of a surety bond or liability insurance acceptable to the town or notice of termination of the same.
- (b) Failure to secure a contractor's license or other required license.
- (c) Failure to perform in accordance with the requirements of this article.
- (d) The excavation would be in a street and not otherwise permitted by this article.
- (e) The proposed warning or other traffic-control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the ROW Manager.
- (f) The proposed activity would violate any town article or state or federal law, rule, regulation or statute.
- (g) The permit application contains false or misleading information.
- (h) The activity would cause a public health or safety hazard.
- (i) The ROW user is not authorized within the town.
- (i) The ROW user is in violation of this article relative to work in progress.
- (k) The ROW user has not compensated the town, or is not legally obligated to compensate the town by contract, by agreement or by law, for using the public property; or the ROW user has failed to timely make required payments.
- (I) A representative of a franchise utility fails to attend two or more utility coordination meetings within a 12-month period.
- (m) The ROW user fails to comply with the construction timelines of the town's projects.

- (n) Outstanding invoices or bills will result in denial.
- (o) Failure to bury temp lines will result in holding of permits.

Sec. 13.08.024 Appeal.

A ROW user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- (a) If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the ROW Manager within 5 business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The ROW Manager shall provide a written decision within 5 business days. Failure to render a decision within 5 business days shall constitute a denial.
- (b) If a further denial is given, the appellant may thereafter file a written notice of appeal to the Director of Engineering Services within 5 business days of receipt of the ROW Manager's written decision. The Director of Engineering Services shall provide a written decision within 5 business days of receipt of an appeal in accordance with this section. Failure to render a decision within 5 business days shall constitute a denial.
- (c) If a further denial is given, the appellant may thereafter file a written notice of appeal to the office of the Town Manager within 5 business days of receipt of the Director of Engineering Services written decision. The Town Manager shall provide a written decision within 5 business days of receipt of an appeal in accordance with this section. Failure to render a decision within 5 business days shall constitute a denial.

Secs. 13.08.025—13.08.050 Reserved.

DIVISION 2. TECHNICAL SPECIFICATIONS

Sec. 13.08.051 Lawful use of ROW.

- (a) The use of the ROW in any manner which violates federal, state, or local laws, or town codes, article and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the town.
- (b) Permittee shall dispose of all material removed from the ROW and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches and not obstruct a driver's view.

(c) If a permittee excavates any contaminated, regulated or hazardous materials in the ROW, permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the town, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the ROW, and within eight hours provide the aforementioned information to the town in writing. Permittee must consult with and receive written authorization from the town before undertaking any of the steps/actions set forth in this subsection.

Sec. 13.08.052 Compliance with safety regulations.

The permittee and ROW user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

Sec. 13.08.053 Conformance with the thoroughfare plan.

A ROW user should consult the town's thoroughfare plan (TP) prior to the acquisition of any interest in real property in the town for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, ROW, thoroughfare, highway, or any proposed street, ROW, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All ROW users are charged at all times with constructive notice of the TP subsequent to the effective date of this article. The town shall, at a minimum, have no liability for the value of or loss by a ROW user of any improvements constructed in the area shown on the TP, except as provided herein. Typical locations of town facilities are depicted in Figure 1, attached to this Ordinance.

Sec. 13.08.054 Tree trimming and graffiti abatement.

Permission is granted to a ROW user, subject to the requirements of the town's tree preservation ordinance, as exists or may be amended from time to time, to trim trees upon and overhanging the ROW, so as to prevent the branches of such trees from coming in contact with a ROW user's facilities. A ROW permit is required. Appropriate traffic control is also required, and all ground surfaces must be restored and cleaned from equipment usage. When so directed by the town, the tree trimming shall be done under the supervision and direction of the town. The town shall report damage or vandalism to the ROW user's facilities as soon as practicable after the town discovers or learns of such event. The ROW user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed 7 days after the ROW user discovers or learns of any misuse, destruction, damage or vandalism to its facilities. Should the owner, its contractor or agent fail to remove such trimmings within 24 hours, the town may remove the trimmings or have them removed, and upon receipt of a bill from the town, the owner shall promptly reimburse the town for all costs incurred within 30 calendar days.

Sec. 13.08.055 Employee communication.

The ROW user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently. The contractor shall maintain at all times on the job site a responsible person authorized to receive and relay instructions from the town.

- a) The ROW user shall submit the "Daily Work Location Form" by 9:00 am each day the user will be working.
- b) The ROW inspector will promptly fill out and return the "Notice of Violation Form" after a violation has occurred.

Sec. 13.08.056 Routing and spatial assignment.

The town reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the ROW. The town reserves the right to reserve space for future utilities.

Sec. 13.08.057 Commencement and completion.

After obtaining the permit and prior to commencing the work, the permittee shall notify the ROW Manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the ROW Manager. No work shall commence until erosion control measures (e.g. silt fence) and required traffic control devices are in place as required by the ROW permit conditions. If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public ROW. An extension to a permit may be granted by the ROW Manager only before the permit expires, for an additional 30 days.

Sec. 13.08.058 Notification of affected property owners.

Except in the case of an emergency, whenever excavation is required in the ROW adjacent to an occupied property, the ROW user shall notify the property owner a minimum of 24 hours and a maximum of 72 hours in advance of the activity through use of a door hanger, which shall include the following information:

- (a) Door Hangers
 - (1) Permit number;
 - (2) Contractor's name and the ROW user, including a contact name and phone number by which more information regarding the project could be obtained 24 hours a day, 7 days a week and:
 - (3) The anticipated duration of the construction work.
- (b) Vehicle and Equipment Identification:
 - (1) This information must be displayed on each vehicle on site and on both sides of the vehicle in a manner that is legible from a property owner's porch. This shall include equipment such as bore rigs, excavators, and vac-machines.
- (c) If ROW user MUST be on private property at any time during the scope of the work, the ROW user is required to first get permission from the property owner

Sec. 13.08.059 Safe conduct of work.

Every permittee and ROW user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or ROW where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and non-hazardous manner. Cones must be placed around all trucks, reels, vac-machines, or any other equipment that are allowed by the ROW Inspector to be parked in the street.

Sec. 13.08.060 Revocation or suspension of permit.

The town reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other town ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (a) The violation of any provision of the permit.
- (b) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the town or its citizens.
- (c) Any material misrepresentation of any fact in the permit application.
- (d) The failure to meet insurance, surety bond or indemnification requirements.
- (e) The failure to complete the work as specified in the permit.
- (f) The failure to correct a condition indicated on an order issued pursuant to this article.
- (g) Repeated traffic-control violation.
- (h) Failure to protect facilities or repair facilities damaged in the ROW.
- (i) Violation of any part of this article.
- (i) Recognition by the ROW Manager that a permit was issued in error.
- (k) Failing to comply with an order of the ROW Manager on the permit and any other valid permit held by the ROW user.
- (I) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the ROW Manager.
- (m) If the ROW Manager determines that the permittee has committed a breach of any law or condition of the ROW permit, the ROW Manager shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The ROW Manager may, in his/her discretion, revoke the permit, provide specifications to cure the breach, or both. Within 5 days of receiving notification of the breach, permittee shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.
- (n) A representative of a franchise utility fails to attend two or more utility coordination committee meetings within a 12-month period.

Sec. 13.08.061 Work not in accordance with permit declared unlawful.

(a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other

utility or appliance in or under the surface of any street, alley, sidewalk, ROW or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the ROW Manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the ROW Manager may, in his/her sole discretion, grant a written waiver to take the circumstances into account.

(b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the ROW Manager has approved alternative requirements.

Sec. 13.08.062 Work done without a permit.

No cut, excavation, grading or disturbing of the ROW, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. For an emergency job, the ROW user must submit a permit within 2 business days after the work is completed and clearly label the subject area of the permit as an emergency. No person or ROW user shall, at any time, open or encumber more of the ROW than shall be reasonably necessary to complete a project in the most expeditious manner.

Sec. 13.08.063 Cease work.

At any time, the ROW Manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The ROW Manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or well-being of the public.

Sec. 13.08.064 Requirements.

The ROW Manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within 10 days after issuance of written notice, the permittee shall present proof to the ROW Manager that the violation has been corrected. If such proof has not been presented within the required time, the ROW Manager may revoke the permit.

Sec. 13.08.065 Location and relocation of facilities.

Subject to applicable federal, state, and local laws, the ROW user shall, upon the request of the town, which shall be in writing, locate and/or relocate its facilities situated within any ROW, at no expense to the town, where reasonable and necessary to accommodate any town project. The written request provided by the town shall state the date by with the relocation by the ROW user shall be completed and a reasonable amount of time shall be provided by the town. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the town will reimburse applicant for its proportionate share from funds provided to the town in such reimbursements.

Sec. 13.08.066 Relocation facilities for the town.

In the event the town finds it necessary to move a ROW user's facilities to protect the ROW, any town utilities and/or street, the town shall notify the local representative of the ROW user. ROW user shall promptly move or facilitate the relocation of the subject facilities at ROW user's sole expense.

Sec. 13.08.067 Abandoned facilities.

- (a) A ROW user owning abandoned facilities in the ROW shall:
 - (1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The ROW Manager may allow some or all facilities to remain if the ROW Manager determines same is in the best interest of the public to do so; or
 - (2) Provide information satisfactory to the town that the ROW user's obligations for its facilities in the ROW have been lawfully assumed by another authorized ROW user.
- (b) The facilities of the ROW user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the town receives written confirmation and reasonable evidence, as solely determined by town, that the ROW user intends to use the facilities. The town may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the ROW user at the ROW user's sole expense.

Sec. 13.08.068 Underground service requirements.

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by an existing franchise agreement between the ROW user and the town or a PUCT tariff. (This does not prohibit replacing existing poles for maintenance purposes.)

Sec. 13.08.069 Location of poles and conduits.

All poles in the ROW shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with vehicular and pedestrian travel. All poles in the ROW shall be located within 3 feet of the ROW. Poles with bases greater than 36 inches in diameter shall not be placed within the ROW. Poles shall not be placed within the center median of the street. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a ROW user in the construction and maintenance of its system in the town shall be subject to the reasonable and proper control, direction and approval of the town. The specifications in this article modify the provisions of the American National Standards Institute. Incorporated, the National Electrical Safety Code and such other codes and standards that are generally accepted by the industry to the extent of any conflict. Typical placement of poles and anchor guys along curvilinear streets are shown in Figure 2, attached to this Ordinance. Placement of poles and anchor guys along curvilinear streets shall comply with town ordinances and regulations.

Sec. 13.08.070 Size and location of aboveground facilities.

The maximum dimensions for utility structures above the ground in the ROW adjacent to streets are 7 feet long (parallel to the road), 2 feet wide (perpendicular to the road) and 6 feet in height. For structures 3 feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the ROW adjacent to streets, unless otherwise approved in writing by the ROW Manager. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening.

Sec. 13.08.071 Height of overhead line.

The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code as it exists or may be amended.

Sec. 13.08.072 Attachments to poles.

- (a) Nothing shall obligate or restrict a ROW user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the town.
- (b) A ROW user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
- (c) Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation.
- (d) Equipment, other than antennas, must be in an underground vault. Vaults must be flush to the ground.
- (e) If the existing pole already has more than two existing riser/drops, the pole must be replaced with a metal pipe and all wires and cables must be run in a conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required. When installation will result in two or fewer riser/drops on the pole, the wires and cables may be installed as a riser/drop in the conduit painted an approved color.

Sec. 13.08.073 Temporary rearrangement of aerial wires.

The ROW user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The ROW user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the town. The ROW user may invoice the requesting parties for the cost of this work, where applicable.

Sec. 13.08.074 Street closures.

- (a) All lane closures on any thoroughfare or collectors shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the ROW Manager. The ROW Manager may require a traffic-control plan. Arrow boards and message boards may be required for lane closures on thoroughfares and collectors.
- (b) Except in an emergency, no thoroughfare or collector street shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.
- (c) All lane closures require twenty-four hours notification of the police and fire departments prior to closing. Such notification will be made by the ROW Manager.

Sec. 13.08.075 Site maintenance during construction and prior to full restoration.

(a) Erosion control and stormwater management. The ROW user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with town, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion

- areas until reasonable vegetation is established, barricade fencing around open holes, high erosion areas will require wire-backed silt fencing, and the removal of slurry used when running boring equipment. Upon request of ROW Manager, the ROW user may be required to furnish documentation submitted or received from the federal or state government.
- (b) *Dust control.* The ROW user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.
- (c) Traffic-control safety. In the event of noncompliance with the TMUTCD, the ROW user shall be notified of the violation. In the event of continued noncompliance, the ROW Manager may revoke the permit, in addition to any other remedies available to the town. At any time the ROW Manager determines the work threatens public safety, he/she may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.
- (d) Responsibility for signs, barricades and warning devices. The ROW user working in any ROW is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.
 - (1) Only those individuals who are qualified by means of adequate training in safe trafficcontrol practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic-control devices in a construction area.
 - (2) The ROW user must either (A) subcontract the barricading to a firm specializing in traffic control; or (B) submit the qualifications and name(s) of employees to the ROW Manager for approval prior to the work commencing. The ROW user must also submit a traffic-control plan for review and approval by a town traffic engineer when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.
 - (3) All barricades, plates, and other traffic-control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic-control representative.
 - (4) All barricades, plates and other traffic-control equipment must display accurate and sufficient information including without limitation, the name of the ROW user.
 - (5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the ROW Manager may place the necessary devices as required, and the ROW user shall reimburse the town for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.
 - (6) All traffic-control devices must be removed immediately upon completion of work.
 - (7) Streets shall be restored to existing conditions or better within 21 calendar days from the date that a portion of the street is closed and/or opened to traffic by using a steel roadway plate unless the ROW Manager grants approval to extend the time period and affected property.
- (e) Duty to barricade. At all times during construction activity, the contractor and/or ROW user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the

prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

Sec. 13.08.076 Inspection.

The permittee shall make the worksite accessible to the town, and others as authorized by law, for inspection at all reasonable times during performance of the work. All boring by a public service provider along or across a public ROW which contains an existing storm sewer or sanitary sewer must be checked with a camera upon completion of boring activity. The camera recording must sufficiently record storm sewer or sanitary sewer, and activity. The camera recording of the existing storm sewer or sanitary sewer must be completed on the same day the public service provider completes the boring activity. A copy of the camera recording must be delivered to the ROW Inspector within 24 hours of completion of the boring activity. In instances where excavation has taken place the ROW user must notify the ROW Inspector prior to backfill.

Sec. 13.08.077 Materials testing.

The department may require testing of materials used in construction in or near the ROW to determine conformance with town construction specifications, including, but not limited to, compaction tests on backfill materials, sub-grade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the Department. The ROW user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

Sec. 13.08.078 Duties of persons making excavations or creating obstructions.

Any person who shall cause to be made any excavation or obstruction in any street or ROW shall not allow the same to remain there beyond a 21 calender days or another time period required by the ROW Manager for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or ROW so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or ROW in as good condition as before the excavation.

Sec. 13.08.079 Emergency excavations.

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or ROW by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the ROW Manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

Sec. 13.08.080 Excavation in streets.

Except in case of an emergency, there shall be no excavation in any street without the prior written approval of the ROW Manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence provided to the ROW Manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be

performed by a contractor with experience in street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the ROW Manager. All streets and alleys shall be repaired from panel to panel unless otherwise approved in writing by the ROW manager. All town pavement repairs shall comply with the town's design standards.

(a) Responsibility of excavated area maintenance. A permittee or ROW user shall maintain its repairs in the ROW for two years from the completion date of any repair. The town reserves the right to require a maintenance bond on any work that is deemed substantial.

Sec. 13.08.081 ROW restoration requirements.

- (a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the ROW must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the ROW Manager may, in his/her sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.
- (b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the town, and damaged, disturbed, or removed by a ROW user shall be fully repaired promptly by the ROW user, at its sole expense, to the reasonable satisfaction of the ROW Manager.
- (c) After any excavation, the ROW user shall, at its expense, restore the ROW, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall endure without failure for two years from the completion date of any repair.
- (d) In the event the ROW user fails to restore the ROW in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the town may, at its option, serve written notice upon the ROW user that, unless within 5 days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the ROW by the ROW user, the town may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the ROW user, and ROW user, and its surety, shall be liable to the town for any and all cost incurred by the town by reason of such prosecution and completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the town.
- (e) If any excavation cannot be backfilled immediately, the ROW user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
- (f) In all ROW restoration, the ROW user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the ROW user shall, in the event of any failure of the restoration, and upon notification from the ROW Manager, reimburse the town for pavement restoration costs as provided for in this article. Additionally, the ROW user, in the event of such failure, shall within 48 hours of notice from the town, repair the subject trench envelope.
- (g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the town, the ROW user retains repair responsibility at all times during

the guarantee period for the trench envelope. In locations where two or more ROW users have made repairs in the exact same location, the last ROW user to excavate shall be responsible for the two-year guarantee in that location, unless the ROW Manager determines, in his/her sole discretion, that a failure was most likely a result of work performed by another ROW user. That ROW user shall be responsible for the two-year maintenance period.

- (h) All street excavations shall be perpendicular excavations, unless otherwise approved by the ROW Manager. Excavations in streets, which are not perpendicular excavations require: (1) block-to-block and curb-to-curb pavement reconstruction; or (2) other method of repair approved by the ROW Manager. All repairs shall be equal to or better than those which existed prior to the commencement of any work.
- (i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same work day before sunset. Any variance from this requirement must be granted in writing from the ROW Manager prior to work beginning.
- (j) Temporary Lines: Upon failure of an owner to perform restoration from the result of installing a temporary line, and 5 days after written notice has been given to the owner by the town, and in the event restoration has not been initiated during such five-day period, the town may repair such portion of the public ROW as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the town, the owner will reimburse the town for the costs so incurred within 30 calendar days from the date of the town invoice.

Sec. 13.08.082 Restoration of pavement.

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, ROW or other public place shall be performed by the permittee.

- (a) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the ROW Manager.
- (b) All excavations shall comply with the town construction standards, as amended, and requirements of this article. Unless otherwise required by town standards, as amended, or if unusual conditions are encountered, the ROW Manager may require new standards for compaction, backfill and pavement restoration.
- (c) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the ROW user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the ROW Manager.
- (d) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

Sec. 13.08.083 Permanent pavement repairs.

The ROW user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW user shall make the final repairs within 7 days on thoroughfares and collector streets and within 21 days on residential, local and alley streets after the ROW Manager makes final inspection. Backfill failures shall remain the responsibility of the ROW user.

Sec. 13.08.084 Substandard repair of pavement of ROW.

In case the pavement or the surface of the street, alley, or ROW in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the ROW user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the town of the cost to restore the street and/or ROW.

Sec. 13.08.085 Failure to complete work within specified time.

In the event any work governed by this article is not completed by the ROW user within the time required or in accordance with the specifications required herein or by the ROW Manager, the ROW Manager may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The ROW user shall reimburse the town for the costs of securing the site.

Sec. 13.08.086 Removal and reconstruction where work is defective.

All construction work in the streets, ROW, sidewalks and public places of the town is declared to be subject to the exclusive control of the town, and whenever, in the sole opinion of the ROW Manager, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the ROW Manager, then upon written demand or notice from the ROW Manager, such ROW user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the ROW Manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or ROW user shall fail or refuse to do so within a reasonable time to be specified by the ROW Manager, then, if required by the ROW Manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the town, in such a manner as in the opinion of the ROW Manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the ROW Manager, and the contractor or ROW user shall reimburse town for any and all cost incurred by the town performing the work described in this subsection.

Sec. 13.08.087 Cleanup of ROW.

In every case, and at all times, the work of removing from the ROW all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the ROW user. The ROW user shall maintain the area on and around the excavation and related to the work in a clean, safe, and orderly fashion at all times during the conduct of the excavation and shall clean the same area upon completion of the work. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. All Traffic Control devices must be removed at the completion of each work day and then reestablished the next working day. The ROW user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the ROW Manager, sufficient reason therefor having been given to his/her satisfaction, grants a written extension of time.

Sec. 13.08.088 Completion of Work

When the work under permit hereunder is completed, the permittee shall notify the town in accordance with the requirements placed on the permit. The town will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.

Sec. 13.08.089 Effect of article on persons engaged in construction.

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of town article and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

Secs. 13.08.090—13.08.130. Reserved.

DIVISION 3. FEES, ENFORCEMENT AND PENALTIES

Sec. 13.08.131 Fees.

The fees in this section shall apply to all ROW users, unless governed by an existing agreement, such as a franchise agreement with the town.

- (a) Permit application fee. There is a permit application fee of \$25.00. Permits shall be issued or denied within 5 days from the town's receipt of the application. There is an expedited application fee of \$250.00 for permits, which shall be issued or denied within 2 days. An applicant shall pay the fees when a permit is issued. The fees are charged for administration and input of permit data. An expedited permit may be requested upon a showing of good cause, including but not limited to, a pending order for service that cannot be met by means of existing facilities of the ROW user.
- (b) Saturday inspection fee. The Saturday inspection fee shall be \$150.00 per Saturday.
- (c) Permit expiration fee. A fee of \$30.00 will be charged for any permit that has not been extended before its expiration date and for any permit wherein work has not been completed by the expiration date provided for in the permit.
- (d) Electronic maps submittal fee. A fee of \$40.00 per hour will be charged for each hour of labor necessitated by information submitted to the town in hard copy format in lieu of submittals to the town in electronic format. There is a minimum of two hours.
- (e) Registration fee. There is a fee of \$100.00 per ROW user per year for processing registration information fee, which will be collected by town upon registration.

Sec. 13.08.132 Public inconvenience penalty.

Public inconvenience penalties are assessed and calculated from the date of expiration of the permit until date of completion of work or repair or of final backfill if turned over to the Department for repair. This penalty shall not exceed and is capped by statutory limits. Public inconvenience penalties are charged per day as follows:

	Type of	Unit of Cost	Penalty			
	Facility	(Per Day)	31-75 days	79-90 days	90-100 days	>100 days
(1)	Sidewalk	Per square ft.	\$0.0026	\$0.0052	\$0.0078	\$0.0104
(2)	Driveway	Per each	\$39.00	\$78.00	\$117.00	\$156.00
(3)	Metered	*In addition to traffic lane fee				
	traffic lane					

Secs. 13.08.133—13.08.160 Reserved.

DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY

Sec. 13.08.161 Liability of ROW user.

To the extent allowed by law, the ROW user shall be liable to the town for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the ROW user shall fully indemnify, hold harmless and defend the town, its council members, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the town, its council members, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The town shall promptly notify a permittee, or ROW user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the town and alleging negligent or wrongful conduct by the permittee or ROW user in connection with an excavation.

Sec. 13.08.162 Insurance.

- (a) ROW users shall furnish an original completed certificate of insurance to the Department which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the town. The town shall have no duty to perform under this article until such certificate has been delivered to the Department. The certificate holder must be the Town of Prosper.
- (b) The town reserves the right to review the insurance requirements of this section to modify insurance coverage and limits when deemed necessary and prudent by the town based upon changes in statutory law, court decisions, or circumstances surrounding this article, but in no instance will the town allow modification whereupon the town may incur increased risk.
- (c) Subject to the ROW user's right to maintain reasonable deductibles in such amounts as are approved by the town, ROW users shall obtain and maintain in full force and effect for the duration of the permit, and any extension thereof, and/or duration of time it maintains facilities in the public ROW, at the ROW user's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state and rated A- or better by A.M. Best Company and/or otherwise acceptable to the town, in the following types and amounts:

	Туре	Amount		
(1)	Worker's compensation	Statutory		
	Employer's liability	\$500,000/\$500,000/\$500,000		
(2)	Commercial general (public) liability insurance to include coverage for the	Bodily injury and property damage of \$2,000,000 per occurrence		
	following: (A) Premises/operations	\$5,000,000 general aggregate or its		
	(B) Independent contractors	equivalent in umbrella or excess liability coverage		
	(C) Products/completed operations			
	(D) Contractual liability			
	(E) Personal injury			
	(F) Explosion, collapse, underground			

	(G) Broad form property damage, to include fire legal liability	
(3)*	Business automobile liability	Combined single limit for bodily injury and
	(A) Owned/leased vehicle	property damage of \$1,000,000 per
	(B) Nonowned vehicles	occurrence or its equivalent
	(C) Hired vehicles	

(4)*	Professional liability (claims made from)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services			
(5)*	Contractor's pollution liability coverage	\$1,000,000 written on a claims made form with a two-year extended reporting period			
(6)*	Pollution liability motor carrier and trucker coverage endorsing the upset, overturn and remediation of a load in transport	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence written or an occurrence form			
* If applicable.					

- (d) The town shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the town, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the town, the ROW user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (e) ROW users shall ensure that all insurance contracts and certificate(s) of insurance contain the following required provisions:
 - (1) Name the town and its council members, officers, employees, volunteers, agents and representatives as additional insured with respect to the operations and activities of, or on behalf of, the named insured performing in the ROW under provision of this article, with the exception of the professional liability, workers' compensation and liability policy;
 - (2) ROW user's insurance shall be deemed primary with respect to any insurance or selfinsurance carried by the town;
 - (3) Provide for an endorsement that the "other insurance" clause shall not apply to the town where the town is an additional insured shown on the policy; and
 - (4) Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the town.
- (f) ROW user shall notify the town in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or 10 days' notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the town at the following address:

ROW Manager Department of Engineering Services 250 W. First Street P.O. Box 307 Prosper, TX 75078

- (g) Nothing herein contained shall be construed as limiting in any way the extent to which the ROW user may be held responsible for payments of damages to persons (including death) or property resulting from the ROW user's, or its subcontractors', performance of the work performed in the public ROW.
- (h) The town-owned utilities shall not be required to provide the insurance specified herein.
- (i) With respect to the ROW user's obligation to comply with the requirements for commercial general (public) liability insurance coverage to include pollution coverage, the town may allow the ROW user to self-insure upon annual production of evidence that is satisfactory to the town. With respect to the ROW user's obligation to comply with the requirements for automobile liability insurance and for workers' compensation insurance, a ROW user may self-insure, provided the ROW user tenders satisfactory evidence of self-insurance as contemplated by the State Motor Vehicle Financial Responsibility Law, V.T.C.A. Transportation Code § 601.124, and the Texas Workers' Compensation Act, V.T.C.A. Labor Code § 407.001 et seq., as amended.

Sec. 13.08.163 Performance/assurance bond and maintenance bond.

- (a) Before a permit shall be issued, the applicant shall execute and deliver to the town, to be kept on file with the town, a good and sufficient bond of performance or assurance, in the sum of \$10,000.00 to be approved by the town and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the town, its council members, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the town. With respect to the ROW user's obligation to comply with the requirements for a performance/assurance bond, the town may, in the town's sole discretion, allow the ROW user to self-insure such obligation upon production of evidence that is satisfactory to the town.
- (b) Before a permit shall be issued, the applicant shall execute and deliver to the town, to be kept on file with the town, a good and sufficient maintenance bond, in a sum equal to the estimated costs of reconstruction of town facilities related to the work the permit was for, including but not limited to costs of returning streets, sidewalks, ROW and other public property to its original condition as it existed prior to the work performed by the permittee and to insure maintenance required by section 13.08.082, be approved by the town and in favor of the town that indemnifies the town against any repairs that may become necessary to any part of the work performed in connection with the permit arising from defective workmanship or materials used therein for a period of two years from the date of the time period provided for completion of the work in the permit, or as such time may have been extended by the ROW Manager, whichever is later.

Sec. 13.08.164 Optional continuing bond and deposit.

In lieu of a bond of performance or assurance required for each permit issued under the performance/assurance bond section of this article, the applicant may maintain a one-time bond of performance or assurance with the ROW Manager in the sum of \$100,000.00 for the purposes specified in section 13.08.163, and shall have on file, with the town, an approved bond of performance or assurance in like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than \$100,000.00; provided, further, that section 13.08.163 shall not apply to applications for permits to make cuts, openings or excavations in any street, plaza or other public place paved under contract with the town, unless the contract of maintenance and the maintenance bond therefor all have expired. The bond shall be maintained until the applicant is no longer working in or on the ROWs.

Sec. 13.08.165 Liability of contractor and sureties for maintenance and repair work.

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the ROW user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the town retains the right and option to terminate the ROW user's guaranty, upon written notice to the ROW user. In such event, the ROW user shall reimburse the town for its direct costs associated with the repair of the failure of the restoration work.

Sec. 13.08.166 When additional security required.

In the event the ROW Manager reasonably believes the contractor's or ROW user's solvency is threatened, the ROW Manager may, at any time, make written demand on a contractor and/or ROW user for bonds, and the contractor and/or ROW user shall immediately furnish such additional bond or bonds to the town.

Sec. 13.08.167 Bonds generally.

All bonds required under this article shall be executed by a surety company holding a license to do business in the state which is solvent and reputable.

Sec. 13.08.168 Decision of ROW Manager binding on contractor, ROW user and sureties.

If any question arises as to when any work was actually begun or other specific dates, the decision of the ROW Manager shall be conclusive on the contractor, ROW user, and the sureties on all such bonds.

Secs. 13.08.169—13.08.190 Reserved.

DIVISION 5. VARIANCES AND EXEMPTIONS

Sec. 13.08.191 Procedure.

A permittee or ROW user may request a variance from any of the requirements of this article by filing a written request with the ROW Manager stating the requirement and the basis for the

variance. The ROW Manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

- (a) Any request for a variance from any ROW restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- (b) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefor.
- (c) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
- (d) The department shall grant or deny an application for a variance and/or exemption within 10 days of receipt of the application for variance and/or exemption.
- (e) Denial of the variance may be appealed in accordance with section 13.08.024 of this article.

Secs. 13.08.192—13.08.220 Reserved.

DIVISION 6. CERTIFIED TELECOMMUNICATIONS PROVIDERS

Sec. 13.08.221 Authority required/nonexclusive use.

The CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use a public ROW. The CTP's right to use and occupy the public ROW shall not be exclusive and the town shall have the right to exercise its police powers and manage its public ROW, based on the act and all other state or federal laws.

Sec. 13.08.222 Additional authority required.

The CTP, and any of its affiliates, are not authorized to provide cable television service as a cable operator or to operate an open video system in the town, but must first obtain a separate franchise agreement from the town for that purpose, under such terms and conditions as may be required by law. This section does not preclude the CTP from providing its services to cable television companies. Unless a cable television operator shows proof of appropriate town authorization, nothing herein shall authorize the CTP to license, sublicense, lease, sublease or by any instrument authorize any cable television operator the right to use or utilize the transmission media or facilities of the CTP.

Sec. 13.08.223 Transfer and notice.

A CTP shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the CTP uses the ROW.

Sec. 13.08.224 Exemption from fees.

CTPs are exempted from the following fees provided for in this article:

- (a) Permit application fee, including expedited application fee and permit expiration fee;
- (b) Additional permit fee;
- (c) Saturday inspection fee; and
- (d) Registration fee.

Sec. 13.08.225 Waiver bonds.

Unless determined otherwise by the ROW Manager, a CTP will be exempt from the bonding requirements of this article, including sections 13.08.163 and 13.08.164, however, in the event that the ROW Manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the ROW Manager may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the ROW Manager requires a bond of a CTP and it has not been necessary for the town to seek performance under the bond, then a bond will no longer be required pursuant to this section.

Sec. 13.08.226 CTP indemnity.

A CTP shall indemnify the town as specified by V.T.C.A. Local Government Code § 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A. Local Government Code § 283.057, as amended.

Secs. 13.08.227—13.08.250 Reserved.

DIVISION 7. NETWORK PROVIDERS

Sec. 13.08.251 Network provider's authority required/nonexclusive use.

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public ROW. The network provider's right to use and occupy the public ROW shall not be exclusive, and the town shall have the right to exercise its police powers and manage its public ROW, based on the V.T.C.A. Local Government Code ch. 284, as amended, and all other state or federal laws.

Sec. 13.08.252 Transfer and notice.

A network provider shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the network uses the ROW.

Sec. 13.08.253 Network provider indemnity.

A network provider shall indemnify the town as specified by the Texas Local Government Code, as may be amended.

Sec. 13.08.254 Compliance with design manual.

A network provider shall comply with the town's design manual, as amended, for the installation of network nodes and node support poles, as amended by the ROW Manager.

Sec. 13.08.255 Fees.

The following fees shall apply to a network provider's use of the town's ROW, as follows:

- (a) Small cell application fee. \$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole.
- (b) Small cell user fee. \$250.00 annually for each network node; \$20.00 per year for town pole attachment.
- (c) Transport facility monthly user fee. \$28.00 multiplied by the number of the network provider's network nodes located in the public ROW for which the installed transport facilities provide backhaul, until the time the network provider's payment to the town exceeds its monthly aggregate per month compensation to the town."

SECTION 3

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 repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4

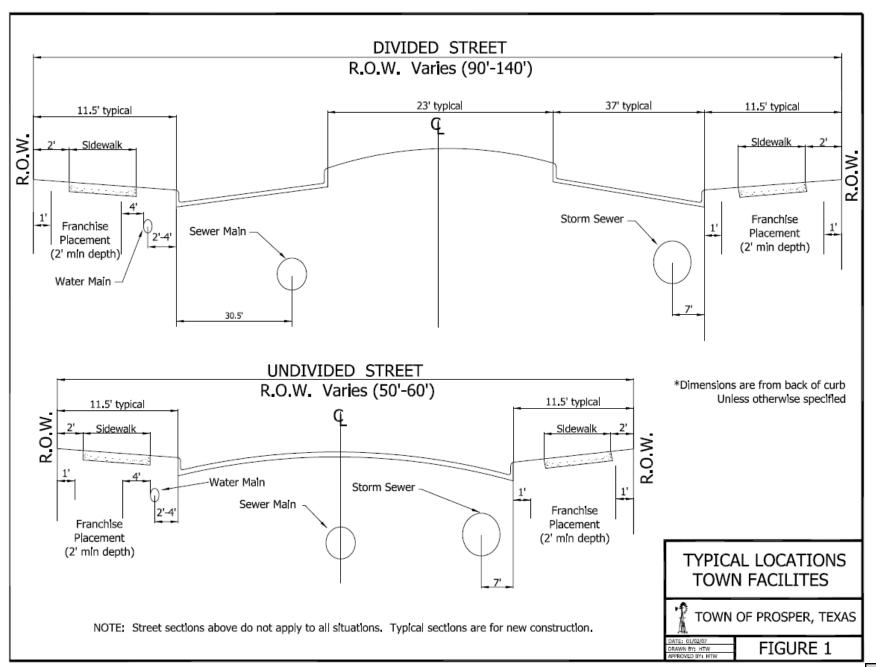
If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Prosper hereby declares that it 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.

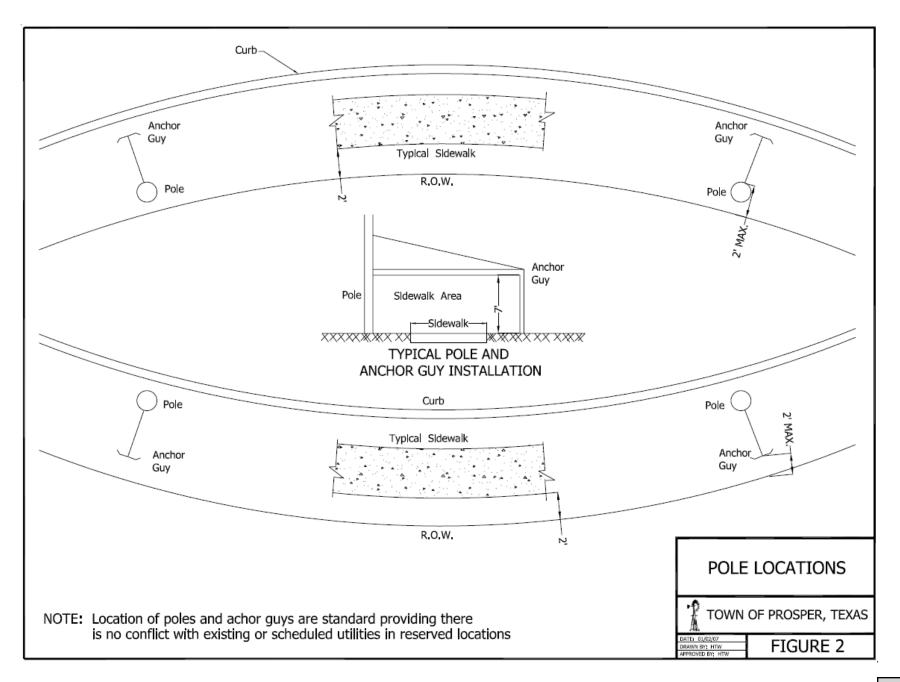
SECTION 5

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 and the Home Rule Charter of the Town of Prosper, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 9TH DAY OF JANUARY, 2024.

	APPROVED:	
	David F. Bristol, Mayor	
ATTEST:		
Michelle Lewis Sirianni, Town Secretary		
APPROVED AS TO FORM AND LEGALITY:		
Terrence S. Welch, Town Attorney		





REDLINES: CODE OF ORDINANCES CHAPTER 13 - UTILITIES ARTICLE 13.08, RIGHT-OF-WAY MANAGEMENT

ARTICLE 13.08. RIGHT-OF-WAY MANAGEMENT

DIVISION 1. GENERALLY

Sec. 13.08.001 Administration.

The Town Manager shall appoint a right-of-way (ROW) Manager, who is the principal town official responsible for the administration of the ROW, ROW permits, the regulation of same and ordinances related thereto. The ROW Manager may delegate any or all of the duties hereunder. The ROW Manager shall have the duties, responsibilities and authority as specified for the ROW Manager stated herein.

Sec. 13.08.002 Definitions.

The following definitions apply in this article. The terms, phrases, words, abbreviations and their derivations shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future; words in plural number include the singular number, and words in the singular include the plural. The word "shall" is mandatory and not merely permissive.

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities, or from any other facilities that are in use or that still carry service.

Administration fee means the fee charged by the town to recover its costs incurred for ROW management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying ROW permit applications; inspecting job sites and restoration improvements; determining the adequacy of the ROW restoration; revoking ROW permits, and other costs the town may incur in implementing the provisions of this article.

Applicant means an owner or authorized agent of an owner, who submits an application for a permit under the provisions of this article.

Area of influence means area around a utility excavation where the pavement and sub-grade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill:

- (1) The placement of new dirt, fill, or other material to refill an excavation; or
- (2) The return of excavated dirt, fill or other material to an excavation.

Certificated telecommunications provider or CTP means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the state public utility commission or "PUC" to offer local exchange telephone service or a person who provides voice service as defined by V.T.C.A., Local Government Code Ch. 283 or "the act."

Collector Street means any roadway or street classified on the town thoroughfare plan, as it exists or may be amended, as a collector.

Compaction means consolidating backfill material in a trench to prevent future settlement.

Comprehensive plan means the town comprehensive plan, as it exists or may be amended.

Construction means boring, the breaking of pavement, or the installation, modification, upgrade, maintenance, removal, or similar activities, within the ROW. The definition includes, but is not limited to, providing primary service, restoration, or maintenance of existing facilities within the ROW.

Contractor means any public or private person, subcontractor or organization, other than the town.

Day means business day unless otherwise specified.

Department means the Town Department of Public Works or a successor department that is responsible for management of the ROW and roadway infrastructure.

Emergency operations means those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address or prevent an immediate service interruption. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means any activity that removes or otherwise disturbs soil, pavement, driveways, curbs, or sidewalks in the ROW and does not include landscaping activity unless the activity removes or disturbs the paved portion of the ROW.

Facilities means the equipment, and property, including but not limited to, lines, poles, mains, pipes, conduits, ducts, cables, valves, man holes, hand holes and wires located under, on, or above the surface of the ground within the ROW, and related facilities and equipment used or useful for the provision of utility services.

FCC means the Federal Communications Commission.

Governing body means the Mayor and the Town Council of the town.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the state or of any other state of the United States and any agency or instrumentality of the state or of any other state of the United States.

Holiday means days in which town offices are closed in observance of a holiday.

Local Street means roadway or street not classified on the town comprehensive plan, as it exists or may be amended, as a highway toll-way, major thoroughfare, minor thoroughfare or collector.

Main line means lines other than service connections used to convey the ROW user's product.

Major project means any project, which includes 300500 or more linear feet of excavation or any excavation under pavement.

Network node means equipment at a fixed location that enables wireless communications between user equipment and a communication network.

Network provider means a wireless service provider, or a person that does not provide wireless services and that is not an electric utility but builds or installs, on behalf of a wireless service provider, network nodes or node support poles or any other structure that supports or is capable of supporting a network node.

Pavement means streets containing Portland cement, asphalt, brick or other rigid or semirigid material that covers the surface of a street and their underlying sub-grade and base.

Permit means permit issued under this article authorizing excavation in the ROW.

Permittee means person or ROW user to whom a permit is issued to excavate a ROW.

Perpendicular excavations means any trench with a centerline that when projected toward the centerline of the street, the two lines intersect at an angle of 90 degrees.

Person means any person, company, partnership, contractor, subcontractor, agency or other public or private entity, excepting the town.

Public inconvenience penalty means penalty assessed to the ROW user who denies the public the use of public property for a time period greater than allowed by this article.

PUCT means public utility commission of the state.

Registration means the annual application process of the ROW user to use any portion of the ROW.

Registration certificate means the document provided by the town, annually, upon approval of the application for registration.

Repair means the temporary or permanent construction work necessary to make the ROW useable.

Repair area means area around excavation where the pavement and sub-grade is impacted by an excavation.

Restoration means the process by which an excavated ROW and surrounding area, including, but not limited to, pavement and foundation structures, ground cover, landscaping, and monuments are returned to the same condition, or better than that which existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way or public right-of-way (ROW) means the surface of, and the space above and below, any street, road, highway, freeway, toll-way, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, fire lane or other easement now or hereafter held by the town or over which the town exercises any rights of management or control and shall include, but not be limited to, all easements now held, or hereafter held, by the town, but shall specifically exclude private property.

<u>Right-of-way (ROW) Inspector</u> means person assigned by the ROW Manager to oversee inspections of work conducted within the town's ROW.

Right-of-way (ROW) Manager means the ROW Manager of the town, or his/her designee.

Right-of-way (ROW) user means person, its successors and assigns, that uses the ROW for purposes of work, excavation, provision of services, or installing, constructing, maintaining, or repairing facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the ROW, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Service connection means the line that serves no more than two individual customers or two meter banks.

Street means the paved portion of the ROW that has been constructed, reconstructed, or resurfaced with concrete or asphalt or some other surface.

Surface-mounted markers means any sign, post or other marker, which rises above the surface of the ground to show the location of an underground utility.

Temporary Lines means facilities that are installed temporarily above ground (or can be below) and not in its ultimate location. This can be as a result of an existing main line being hit or damaged by other construction, and a temporary solution to re-establish the connection is made until a more permanent fix is complete. Temporary lines can also be individual connections to individual residence (typically above ground) until a permanent connection is placed underground.

Thoroughfare means any roadway or street classified on the town comprehensive plan, as it exists or may be amended, as a highway, toll-way, major thoroughfare or minor thoroughfare.

TMUTCD means the state manual on uniform traffic-control devices, as it exists or may be amended.

Town. The town and the town's officers and employees.

Town project means the construction, location, maintenance, relocation, alteration, improvement, repair, removal or other work performed by the town, or its designee, in the public ROW, on any town utilities, on any town facilities, in pursuant of its governmental functions or for the benefit of the public.

Town utilities means any water, sewer or drainage line owned and operated by the town, the North Texas Municipal Water District (NTMWD), the Upper Trinity Regional Water District (UTRWD), or any other utility district providing water or sewer service to the town.

Traffic-control representative means the designated representative of the ROW user who is responsible for work zone safety and compliance with TMUTCD. The ROW user shall ensure such person has adequate training, knowledge and authority to perform the responsibilities listed above.

Transport facility means each transmission path physically within a public ROW, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

Trench means excavation deeper than 24 inches. This shall include linear trenches, holes, pits and etc.

Underground Facility Damage Protection Safety Act means the V.T.C.A. Utility Code § 251.001 et seq., as it exists or may be amended.

Utility means any privately or publicly owned entity which uses ROW to furnish the public any general public service, including, without limitation, sanitary sewer, gas, electricity, water, traffic management, street lights, fiber communications, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the ROW. Poles are regulated herein only as specifically set forth in this article.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility locate in order to further identify the site.

Wireless service means any service using licensed or unlicensed wireless spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided to the public using a network node.

Wireless service provider means a person that provides wireless services to the public.

Sec. 13.08.003 Penalty.

This is not a traffic ordinance authorized under the Texas Motor Vehicle Statutes, and is not governed by the penal provision hereunder. Any person, firm, corporation or business entity violating this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of \$500.00, unless the violation relates to fire safety or public health and sanitation, including dumping and refuse, in which the fine shall not exceed the sum of \$2,000.00. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the town from filing suit to enjoin the violation. The town retains all legal rights and remedies available to it pursuant to local, state and federal law.

(a) A person commits an offense if they:

- (1) <u>Perform, authorize, or supervise construction without a valid permit issued under this article;</u>
- (2) Fail to comply with restrictions or requirements of a permit issued under this article;
- (3) Fails to comply with a lawful order or regulation of the ROW Manager issued pursuant to this article; or

- (4) Violates other provisions of this article.
- (b) A person commits an offense if, in connection with the performance of construction in the public ROW: they
 - (1) <u>Damage the public ROW beyond what is incidental or necessary to the performance of the construction;</u>
 - (2) Damage public or private facilities within the public ROW;
 - (3) Fails to immediately clear debris associated with construction from a public ROW after construction is complete; or
 - (4) Fails to stabilize any disturbed area from erosion within 14 days after construction is completed, unless an alternative timeframe is approved by the ROW Manager.
- (c) The ROW Inspector will provide the contractor with a Notice of Violation Form that identifies the violation(s) and corrective measures to be taken by a certain date as specified by the ROW Manager. The contractor is required to acknowledge receipt on the Notice of Violation Form.
- (ed) A culpable mental state is not required to prove an offense under this article. A person who violates a provision of this article is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued, or authorized or directed. An offense under this article is punishable by a fine of \$1.00 to \$2,000.
- (de) Prior to initiation of civil litigation, the public service provider, or any other person, who has violated a provision of this article, shall be given the opportunity to correct the violation within a time frame specified by the ROW Manager. The subsection does not prohibit the ROW Manager of the town from taking enforcement action as to past or present violations of this article, notwithstanding their correction.
- (ef) If a permitee is in violation of this article, no additional permits will be granted to the public service provider and/or permitee until the offense has been corrected and any direct or indirect costs incurred by the town have been reimbursed.

Sec. 13.08.004 Existing franchise.

If any provision of this article conflicts with an existing franchise agreement, the franchise agreement shall prevail until the expiration thereof.

Sec. 13.08.005 Bridge weight limit violation.

It shall be unlawful for the operator of any vehicle to drive, haul, push or tow, wholly or partially, any load upon a posted weight limited bridge, which collectively exceeds the officially designated and posted maximum bridge weight, whether or not all load-bearing wheels travel on the bridge.

Sec. 13.08.006 Utility coordination committee.

Each utility shall name a utility coordinator who shall participate in the utility coordination committee. All ROW users with open permits shall send one representative to the utility coordination committee meetings at the time and location established by the town. In the event that a ROW user's representative does not attend two or more meetings within a 12-month period, the ROW user's permits will be placed on hold until the representative resolves all conflicts discussed in the unattended meetings and attends the next scheduled meeting.

Sec. 13.08.007 Field utility coordination.

- (a) The ROW user shall notify the Department at each of the following times during a project; and failure to do so constitutes a violation of this article.
 - (1) Forty-eight hours before the start of construction; either through email and/or text ROW Inspector must be informed;
 - (2) Daily Work Location Form;
 - (3) Potholing; when water main 16 inches or greater is exposed and visible to ROW inspector;
 - (4) When traffic control is required; ROW Inspector must be notified prior to starting work in the designated area;
 - (5) Upon completion of the initial backfill; and
 - (6) Upon completion of the project, an email or text must be sent to the ROW Inspector as documentation that the job has been completed.
 - (7) When an existing utility is damaged (water main, water service, sewer main, sewer service, gas, electric, cable, irrigation) the ROW Inspector must be notified immediately. In instances where a private water service, sewer service, or irrigation is damaged, the ROW user must immediately hire a licensed plumber to make a permanent repair.
- (b) The ROW user shall make a request for a utility locate in compliance with the Underground Facility Damage Prevention and Safety Act.
- (c) The use of markers, stakes, poles, barricades or other devices shall be used in such a way to avoid damage to adjoining property. The use of non-washable markers is prohibited.
- (d) Compliance with the Texas Utilities Code, as amended, is required at all times.
- (e) All barricades, plates, cones, traffic directional equipment and all other traffic-control devices owned, leased or used by the ROW user and used on or near any excavation shall be clearly and visibly marked with the name of the permittee and/or ROW user or subcontractor, as applicable, at all times such equipment is used on or near the ROW. An exception to the marking requirement may be made in the sole discretion of the ROW Manager in the event the traffic-control equipment is not owned by the permittee or ROW user.
- (f) Locate to the extent of the ROW. The public service provider has the exclusive responsibility to locate the extent of the public ROW. Acceptance of the plans and issuance of a permit does not constitute liability of the town's part of any facilities placed on private property. If facilities/utilities are placed on private property, it is the public service provider's responsibility to contact the property owner and acquire easements.
- (g) The town reserves the right under this article to take the following actions:
 - (1) Divide larger neighborhood permits into smaller more manageable permits, allowing bores on no more than 2 streets concurrently. Failure to do so may result in shutdown of work or temporary hold of permit until the issue has been resolved.
 - (2) Require ROW user to backfill any open holes (at any time during the scope of work) at the request of the ROW Inspector. Failure to do so may result in shutdown of work or temporary hold of permit until the issue has been resolved.

Sec. 13.08.008 Maps and records of registrants.

- (a) Within 30 days of passage of this article, each ROW user shall provide the town an accurate map of their service area. The map shall be in electronic format overlaid over the North Central Texas Council of Government base digital map. In dual coverage areas, the town may request additional information to enable identification of ROW users.
- (b) Each ROW user must maintain accurate maps and records of its facilities. The town's road network may be provided in digital format upon request. The ROW user is encouraged to maintain their system maps georeferenced to the town's street network, which is on the North Central Texas Council of Government base digital map. The map should include true bearings and distances to the nearest established street lines and official monuments, which shall be accurately described on the map. The ROW user will provide the town with digital information within 90 days of a request for maps from the town for any user with less than 50 miles of utilities within the town. All other ROW users shall provide the digital information within one year of the request. Thereafter, the data is to be provided to the town on an annual basis by January 1.
- (c) If the maps and records submitted in response to any request by or requirement of the town include information expressly designated by the ROW user as a trade secret or other confidential information protected from disclosure by state law, the town and its agents, employees, or other representatives may not disclose that information to the public without the consent of the ROW user, unless otherwise compelled by an opinion of the attorney general pursuant to the Texas Public Information Act, as amended, or by a court having jurisdiction of the matter pursuant to applicable law. This subsection may not be construed to authorize a ROW user to designate all matters in its maps and records as confidential or as trade secrets.
- (d) Within 60 days of completion of each new permitted section of a person's facilities, the person shall supply the town with a completed set of "as-built" drawings for the segment in a format used in ordinary course of the persons business and as reasonably prescribed by the town, and allowed by law.

Sec. 13.08.009 Notice.

Notice for purposes of this article shall be made to the town via electronic message (email), overnight courier (generally used carrier with tracing available) or hand delivery with signed receipt, facsimile to the Department or United States mail return receipt required.

Sec. 13.08.010 Registration.

- (a) Nothing in this section relieves a ROW user and/or utility from obtaining a permit under this article to perform work in the ROW.
- (b) In order to protect the public health, safety, and welfare, a utility maintaining or operating existing facilities in the ROW must register with the ROW Manager in accordance with the following requirements:
 - (1) The registration must be on a form furnished by the ROW Manager and made in the name of the ROW user that owns the facilities.
 - (2) Registration expires December 31the date the certificate of the year insurance provided to the town by the ROW user the registration occurs. If the utility fails to renew registration by that date, the town will send by certified mail a notice of noncompliance to the address listed on the registration. If the utility fails to renew registration within 30 calendar days after the date of sending the notification, the facilities of the utility will be deemed to have been legally abandoned.
 - (3) If information provided as part of the registration changes, the utility must inform the ROW Manager, in writing, not more than 30 days after the date the change occurs.

- (4) The utility shall also include the following registration:
 - (A) The name of the utility using the ROW, including any business name, assumed name, or trade name the utility operates under or has operated under in the town within the past five years.
 - (B) If the utility is a CTP, the certificate number issued by the Texas Public Utility Commission.
 - (C) The ordinance number of any franchise or license issued by the town that authorizes the utility to use the ROW.
 - (D) The names, addresses and telephone numbers of at least two persons who will be general, day-to-day contacts for the utility. At least one of the addresses must be within the Dallas/Fort Worth metropolitan area.
 - (E) The name and mailing address of the officer or agent designated as the person authorized to receive service of process on behalf of the utility.
 - (F) The name, address and telephone number of any contractor or subcontractor, who will be working in the ROW on behalf of the utility. This list may be amended as needed by the utility; however no work shall be performed in the ROW by a contractor or subcontractor that is not on the list, regardless of whether a permit is required.
 - (G) The names and telephone numbers of at least two persons serving as emergency contacts who can be reached by telephone 24 hours a day, 7 days a week.
 - (H) Proof of existing insurance that complies with division 4 of this article.
- (5) Upon completion of registration, the town will provide the ROW user a registration certificate valid until the end of the calendar year during which the registration was completed. The ROW user may make as many photocopies of the registration certificate as necessary. The ROW user is responsible for ensuring that all contractors, listed in accordance with subsection (b)(4)(F) above have a copy of the registration certificate on site when work is being conducted under the provisions of the registration certificate.

Sec. 13.08.011 Traffic handling training.

The ROW user is responsible for work zone safety including, but not limited to, traffic control through the designated traffic-control representative. The representative is responsible for compliance with the TMUTCD and the traffic-control plan (if required) at all work zone sites. The traffic-control representative shall ensure employees on the job site have adequate training. In instances where traffic control is required, ROW user must contact ROW Inspector to verify traffic control before work commences. All vehicles must be parked in the direction of travel on one side of the street.

Sec. 13.08.012 Reporting obligations.

All ROW users shall, upon request, provide proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any governmental entity, including, but not limited to, the town, state, or federal government, or railroad or pipeline company, including a description of the ROW user's intended use of the ROW, information sufficient to determine whether the ROW user is subject to franchising or licensing by the town, and information to determine whether the ROW user has applied for and received any certificate of authority required by the PUCT. The information provided shall be sufficient enough to determine whether the ROW user has applied for and received any permit or other approvals required by the FCC. ROW user shall provide all such other information as may be reasonably required by the town to complete the registration statement.

Sec. 13.08.013 Surface-mounted markers.

Where surface-mounted markers are needed, curb-mounted medallions shall be used whenever possible.

Sec. 13.08.014 Relocation of facilities for public improvements.

- (a) In the exercise of governmental functions, the town has first priority over all uses of the ROW. The town reserves the right to, among other things, install curbs, gutters, inlets, aprons, traffic signs or poles, with or without attached flashing lights, traffic signals and other traffic management devices, light poles, guard rails, sidewalks, conduits, fiber, construct, maintain and alter town projects, including but not limited to laying water, sewer, drainage, and other pipelines or cables and conduits, and doing underground and overhead work, and attachments, restructuring, or changes in street facilities in, across, along, over, or under a public street, alley or ROW occupied by an agency or ROW user, and to change the curb, sidewalks, or the grade of streets and any improvements reasonably associated therewith.
- (b) The ROW user must relocate its facilities, at its own expense and in accordance with section 13.08.066, prior to the start of construction of a town project or any work described in subsection (a) above. Failure to comply with this provision shall subject the ROW user to the enforcement provisions contained herein.
- (c) A permit will be required when making facility adjustments in preparation for town projects.
- (d) Franchise utilities shall acknowledge in writing when they are not in conflict with ongoing town projects upon request by the town.

Sec. 13.08.015 Permit required.

It is unlawful for any person, its agents, servants or employees to dig, plow, blast, make cuts, openings, bore, tunneling, excavate or close lanes on a thoroughfareany ROW, locate street, or collector town easement, without first having made application and obtained a permit therefor except for as allowed by section 13.08.016. It is unlawful for any person, its agents, servants or employees to make or cause to be made any excavation in or under the surface of any ROW for the installation, repair or removal of any facilities, or for any other purpose without first obtaining from the ROW Manager a permit in compliance with this article.

- (4a) Before issuing a permit, the ROW Manager shall have been provided a writtenan online application, on a form furnished by the ROW Manager, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with town specifications. Plans shall be drawn at a reasonable scale that legibly and accurately show all existing improvements and proposed work. All proposed work must be shown in heavy or bold type lines and fonts. If proposed work is in phases or part of another overall drawing, show all existing and future work in lighter or faded out lines and fonts. If ROW user cannot show distinctive line weights, the plans shall clearly label the above information using text. When required by the Texas Engineering Practice Act, as amended, the plans must be sealed by a professional engineer licensed to practice in the state.
- (2b) At the time the permit issued, the applicant shall pay a nonrefundable permit application fee in an amount as provided for in Division 3 of this article.
- (3c) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the ROW Manager, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article.

- (4d) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and/or private utilities with facilities installed in any ROW to relocate the facilities, at no cost to the town, subject to state law, if applicable, in the event that relocation is required by the town to accommodate a proper governmental use of the ROW.
- (5e) Combinations of permits shall be permitted at the sole discretion of the ROW Manager. Fees shall be assessed based on the excavations permitted.
- (6f) Subdivision monuments, historical markers, and any other signs or structures with foundations in the ROW, excluding billboards, are subject to this article.
- (g) If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public ROW. An extension to a permit may be granted by the ROW Manager only before the permit expires.
- (h) Storm water pollution prevention plan. The permitte shall submit with the permit application two sets of storm water pollution prevention plan in cases where stream crossings are open cut. The permittee shall contain all sediment within the work area using erosion control measures and erosion limiting construction techniques as specified in other town ordinances, including but not limited to any storm water management ordinance contained in state and federal laws.

Sec. 13.08.016 Exceptions to require permit.

- (a) The ROW Manager reserves the right in his/her discretion to require a ROW permit on service connections. Unless otherwise required by the ROW Manager, service connections do not require a permit if all of the following conditions are met:
 - (1) The service connection excavation shall not exceed 4 feet inside the ROW to property line;
 - (2) All excavation shall be in accordance with service connection drawings;
 - (3) The address for the service connection is on the town-provided form, which is submitted to the ROW Manager via hard copy or email. Work shall not begin until the electronic form is transmitted to the ROW Manager;
 - (4) The excavation required is less than 2418 inches in depth;
 - (5) The excavation is no wider than 2 inches or is hand dug; and
 - (6) The service connection does not require boring.
- (b) Irrigation system installation does not require a permit if all of the following conditions are met:
 - (1) The work is performed with an existing valid permit issued by the town for the installation of irrigation.
 - (2) The excavation shall not exceed 12 inches in depth and no wider than one inch.
 - (3) The address for the service connection is on the town-provided form, which is submitted to the ROW Manager via email and is approved. All requests, which are not approved within 48 hours, are denied.
 - (4) Line locates from the town are requested.

Sec. 13.08.017 Permit application.

(a) Application for a permit shall be addressed to the ROW Manager and made on a form furnished for that purpose, stating the extent, dimensions, character and purpose of the cut or excavation to be made, the location, by street and number if possible, where the work is to be done, and the time in which it is to be completed. The ROW permit shall be submitted online in accordance with the procedures and requirements stated herein and on the town's website. The online application form shall be accompanied by maps of the existing facilities in the area, to the extent available, and the location of the proposed facilities, methodology

- of construction, and proposed start and completion dates. When the work includes excavation, which will exceed 5 feet in depth, a trench safety design sealed by a licensed professional engineer shall also accompany the application, unless otherwise provided by law.
- (b) A permit shall only be valid for the area of the ROW specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area is greater than that which is specified in the permit must apply for and receive a new ROW permit.
- (c) Applicants may apply jointly for permits to excavate the ROW at the same time and place. Applicants who apply jointly for a ROW permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay. The town will recognize only one point of contact.
- (d) Permits will be issued or denied within 5 business days of town receiving a complete application. Permits shall be valid for the dates specified in the permit. The applicant may request but is not guaranteed the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The town may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date and, except as provided herein, no permittee may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new ROW permit or a permit extension for additional time. This supplementary application must be submitted to the town prior to the permit end date. Applicants are encouraged required to request attend a pre-submission construction meeting for largemajor projects identified by the ROW Manager.
- (e) An expedited permit may be requested, and shall be issued or denied within 2 days of application upon a showing of good cause, as solely determined by the ROW Manager.
- (f) If the owner fails to act upon any permit within 30 calendar days of issuance, the permit shall become invalid, and the owner will be required to obtain a new permit. No permits shall be transferable.

Sec. 13.08.018 Issuance of permit.

Every person making application for a permit in accordance with the provisions of this article, and having complied with such provisions, shall be entitled thereto, and, upon filing such application with the ROW Manager, it shall be his/her duty to issue the permit, when the provisions of this article have been complied with.

- (1a) Upon receiving a writtencompleted online application for a permit and a plan prepared in accordance with the town specifications, the ROW Manager's designee shall set forth all requirements, approve or disapprove the application, sign and return it to applicant. Except only in emergency excavations, at least one working day prior to the start of work, the applicant shall notify the ROW Manager the date that the work will commence when traffic-control devices are necessary on a thoroughfare.
- (2b) No permit shall be transferable. A permit shall be void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- (3c) Each permit shall state a time period for completion of all the work to be done hereunder. The ROW Manager may in his/her sole discretion, grant extensions of time.
- (4d) No person in violation of any requirement of this article shall be issued an excavationa permit, nor shall any contractor or agent apply for or be issued a permit on the person's behalf, until the outstanding violation(s) is/are corrected or a plan for correction is approved by the ROW Manager. The ROW Manager is authorized to grant exceptions upon showing of good cause. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the town at law or equity.
- (5e) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the ROW user shall procure a new permit, paying the applicable fee, prior to proceeding with any such work.

Sec. 13.08.019 Posting of signs.

The ROW user and contractor (if used) shall be identified by 3 feet by 3 feet information signs on all work requiring a permit. The signs shall state the name and phone number of the ROW user and contractor (if used). The signs shall be placed in the ROW on a breakaway pole base on each approach to the location where construction is occurring from the time of the beginning of work in the ROW and shall continue to be posted at the location during the entire time the work is occurring. Informational signs shall be posted on the public ROW 100 feet before the construction location commences and 100 feet thereafter, unless other posting arrangements are approved or required by the ROW Manager.

Sec. 13.08.020 Excavation to be under supervision of the ROW Manager.

- (a) Any ROW user engaged in making or backfilling any excavation in any ROW shall, at all times, while such work is in progress, keep at the job location the permit, or a copy thereof, and shall provide the same, when requested by any authorized town employee. At all times while the work is in progress, the ROW user shall also maintain, at the job location, a sign, barricade or other device bearing the ROW user's name and a phone number in which the ROW user can be reached.
- (b) The ROW user shall protect from damage, utility conduits, sewer conduits, water conduits, lawns, shrubbery, trees, fences, structures, irrigation, sidewalks, streets, signs, street lights, or other property at, near or encountered in its work. The ROW user shall determine the boundary of the ROW.
- (c) All excavations and other construction in the streets shall be conducted so as to interfere as little as practicable with the use of ROW and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the town pursuant to the policy and regulatory powers of the town necessary to provide for public convenience. The ROW user shall not trespass upon private property. The ROW user shall determine the boundary between ROW and private property and place stakes/markers indicating this boundary to remain in place for the duration of the work.
- (d) The town reserves the right to among others, lay, and allow to be laid, electricity, sewer, gas, water and other pipe lines or cables and facilities, as well as drainage pipes, and channels and streets, and to perform, and allow to be performed, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the town, in, across, along, over or under any ROW or public place occupied by a ROW user and to change any curb or sidewalk or the grade of any street and to maintain all of the town's facilities. In allowing such work to be performed by others, the town shall not be liable to a ROW user for any damage caused by those persons or entities. Nothing herein shall relieve any third party from responsibility for damages caused to a ROW user by such third party.
- (e) All transmission and distribution structures, lines, equipment and facilities erected by a ROW user within the town shall be so located as to cause minimum interference with the proper use of the ROW, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets. No pole may be placed in an area prohibited by another section of this article or which interferes with the public's unimpeded use of the ROW.
- (f) If the town requires a ROW user to adapt or conform its facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the town, to use, or to use with greater convenience, any ROW or public place, the ROW user shall not be required to make any such changes until such other corporation or person shall have undertaken, with solvent bond, to reimburse a ROW user for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of a ROW user's facilities; provided, however, that the town shall never be liable for such reimbursement.

Created: 2023-05-18 11:24:19 [EST]

(g) During excavations or boring performed within 10 feet of water main 16 inches or greater in size, potholing of that line must take place. Potholing will require the ROW user to expose the line so that it is visible and can be inspected by the ROW Inspector. Potholing will be required every 150 feet along the water main.

Sec. 13.08.021 Registration certificate required.

It is unlawful for any person, its agents, servants or employees to perform construction in the ROW without first having made either application and obtained a permit therefor or have in possession a valid registration certificate. A registration certificate may only be used for construction activities not requiring a permit in accordance with section 13.08.016. These activities include tree trimming, general maintenance, line work and providing a service connection from the property line to a customer provided that no excavation is required in the ROW.

Sec. 13.08.022 Hours of operation for nonemergency work.

- (a) Excavation and boring allowed. Excavation and boring shall be conducted between the hours of 7:00 a.m. to 43:00 p.m. on Monday thru Friday, except on holidays. No excavation or boring shall be performed on holidays. Excavation and boring will cease at noon the day before a holiday, or a holiday weekend.
- (b) All other work requiring an inspection shall be done between the hours of 7:00 a.m. to 43:00 p.m. on Monday thru Friday, except on holidays. No work shall be performed on holidays. Excavation and boring will cease at noon the day before a holiday, or a holiday weekend. A ROW user may work on Saturday subject to the approval of the ROW Manager. The Saturday inspection fee must be paid prior to noon on Thursday prior to the Saturday in which the work is to be performed and is nonrefundable.

Sec. 13.08.023 Denial, Suspension, or holding of permit.

A permit may be denied or suspended, or held for any of the following reasons:

- (1a) Failure to provide proof of a surety bond or liability insurance acceptable to the town or notice of termination of the same.
- (2b) Failure to secure a contractor's license or other required license.
- $(\frac{3c}{2})$ Failure to perform in accordance with the requirements of this article.
- (4d) The excavation would be in a street and not otherwise permitted by this article.
- (5e) The proposed warning or other traffic-control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the ROW Manager.
- (6) The proposed activity would violate any town article or state or federal law, rule, regulation or statute.
- (7g) The permit application contains false or misleading information.
- (8h) The activity would cause a public health or safety hazard.
- (9i) The ROW user is not authorized within the town.
- (10) The ROW user is in violation of this article relative to work in progress.
- (11k) The ROW user has not compensated the town, or is not legally obligated to compensate the town by contract, by agreement or by law, for using the public property; or the ROW user has failed to timely make required payments.
- (I) A representative of a franchise utility fails to attend two or more utility coordination meetings within a 12-month period.
- (m) The ROW user fails to comply with the construction timelines of the town's projects.

- (m) Outstanding invoices or bills will result in denial.
- (o) Failure to bury temp lines will result in holding of permits.

Sec. 13.08.024 Appeal.

A ROW user that: (1) has been denied registration; (2) has been denied a permit; (3) has had a permit revoked; or (4) believes that fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request as follows:

- (1a) If an applicant desires to appeal a decision, the applicant may file a written notice of appeal with the ROW Manager within 5 business days of the date the decision was rendered. The notice must state the alternatives available and routes explored, hardship encountered, cost comparison of other alternatives and a statement of any other significant factors. The ROW Manager shall provide a written decision within 5 business days. Failure to render a decision within 5 business days shall constitute a denial.
- (2b) If a further denial is given, the appellant may thereafter file a written notice of appeal to the Director of Engineering Services within 5 business days of receipt of the ROW Manager's written decision. The Director of Engineering Services shall provide a written decision within 5 business days of receipt of an appeal in accordance with this section. Failure to render a decision within 5 business days shall constitute a denial.
- (3c) If a further denial is given, the appellant may thereafter file a written notice of appeal to the office of the Town Manager within 5 business days of receipt of the Director of Engineering Services written decision. The Town Manager shall provide a written decision within 5 business days of receipt of an appeal in accordance with this section. Failure to render a decision within 5 business days shall constitute a denial.

Secs. 13.08.025—13.08.050 Reserved.

DIVISION 2. TECHNICAL SPECIFICATIONS

Sec. 13.08.051 Lawful use of ROW.

- (a) The use of the ROW in any manner which violates federal, state, or local laws, or town codes, article and regulations, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, is prohibited. All permittees shall provide satisfactory evidence of compliance with the foregoing upon request of the town.
- (b) Permittee shall dispose of all material removed from the ROW and any waste created by permittee in compliance with all state, federal and local laws and requirements. Temporary storage of material may be placed in a pile no higher than 30 inches and not obstruct a driver's view.
- (c) If a permittee excavates any contaminated, regulated or hazardous materials in the ROW, permittee shall be responsible for environmental assessment, excavation, testing, transportation and disposal of that material in accordance with applicable law. The permittee shall promptly notify the town, orally, of the condition within two hours of discovery of any contaminated, regulated or hazardous materials in the ROW, and within eight hours provide the aforementioned information to the town in writing. Permittee must consult with and receive written authorization from the town before undertaking any of the steps/actions set forth in this subsection.

Sec. 13.08.052 Compliance with safety regulations.

The permittee and ROW user shall comply with all applicable federal, state and local safety regulations and requirements, including, by example and not limitation, the occupational safety and health standards for the construction industry.

Sec. 13.08.053 Conformance with the thoroughfare plan.

A ROW user should consult the town's thoroughfare plan (TP) prior to the acquisition of any interest in real property in the town for the installation or relocation of service lines or other equipment or facilities along or adjacent to any street, ROW, thoroughfare, highway, or any proposed street, ROW, highway or thoroughfare to attempt to minimize any future conflict regarding the location of such facilities. All ROW users are charged at all times with constructive notice of the TP subsequent to the effective date of this article. The town shall, at a minimum, have no liability for the value of or loss by a ROW user of any improvements constructed in the area shown on the TP, except as provided herein. Typical locations of town facilities are depicted in Figure 1, attached to this Ordinance.

Sec. 13.08.054 Tree trimming and graffiti abatement.

Permission is granted to a ROW user, subject to the requirements of the town's tree preservation ordinance, as exists or may be amended from time to time, to trim trees upon and overhanging the ROW, so as to prevent the branches of such trees from coming in contact with a ROW user's facilities. A ROW permit is required.

Appropriate traffic control is also required, and all ground surfaces must be restored and cleaned from equipment usage. When so directed by the town, the tree trimming shall be done under the supervision and direction of the town. The town shall report damage or vandalism to the ROW user's facilities as soon as practicable after the town discovers or learns of such event. The ROW user shall make the necessary repairs or restoration, including, but not limited to, cleaning of graffiti, as soon as practicable but not to exceed 7 days after the ROW user discovers or learns of any misuse, destruction, damage or vandalism to its facilities. Should the owner, its contractor or agent fail to remove such trimmings within 24 hours, the town may remove the trimmings or have them removed, and upon receipt of a bill from the town, the owner shall promptly reimburse the town for all costs incurred within 30 calendar days.

Sec. 13.08.055 Employee communication.

The ROW user shall ensure that there is at least one employee on the job site, during any type of work activity, who can read, write and speak English fluently. The contractor shall maintain at all times on the job site a responsible person authorized to receive and relay instructions from the town.

- a) The ROW user shall submit the "Daily Work Location Form" by 9:00 am each day the user will be working.
- b) The ROW inspector will promptly fill out and return the "Notice of Violation Form" after a violation has occurred.

Sec. 13.08.056 Routing and spatial assignment.

The town reserves the right, in the permit or otherwise, to restrict or determine the route (pathway) and/or spatial location, whether horizontal, vertical or depth, of any facility and/or structure or improvement in the ROW. The town reserves the right to reserve space for future utilities.

Sec. 13.08.057 Commencement and completion.

After obtaining the permit and prior to commencing the work, the permittee shall notify the ROW Manager, and shall commence and complete all work within the time specified in the permit, unless an extension of time is granted by the ROW Manager. No work shall commence until erosion control measures (e.g. silt fence) and advance warning signs, markers, cones and barricades are in place.silt fence) and required traffic control devices are in place as required by the ROW permit conditions. If no construction has commenced under a permit within 30 calendar days after issuance of the permit, the permit becomes null and void, and a new permit is required before construction may be performed in the public ROW. An extension to a permit may be granted by the ROW Manager only before the permit expires, for an additional 30 days.

Sec. 13.08.058 Notification of affected property owners.

Except in the case of an emergency, whenever excavation is required in the ROW adjacent to an occupied property, the ROW user shall notify the property owner <u>a minimum of 24 hours and a maximum of 72 hours in advance</u> of the activity through use of a door hanger, which shall include the following information:

(a) Door Hangers

- (1) Permit number;
- (2) Identity of the contractor Contractor's name and the ROW user, including a contact name and phone number by which more information regarding the project could be obtained 24 hours a day emergency phone number; 7 days a week and;
- (3) The anticipated duration of the construction work.
- (b) Vehicle and Equipment Identification:
 - (1) This information must be displayed on each vehicle on site and on both sides of the vehicle in a manner that is legible from a property owner's porch. This shall include equipment such as bore rigs, excavators, and vac-machines.
- (c) If ROW user MUST be on private property at any time during the scope of the work, the ROW user is required to first get permission from the property owner.

Sec. 13.08.059 Safe conduct of work.

Every permittee and ROW user shall prosecute its work diligently and in a good, safe, and workmanlike manner, and shall safeguard and protect the public, using the street or ROW where the work is being performed, from accidents or damage by placing barriers, lights and other sufficient safeguards around all cuts, openings and excavation. All material, implements and tools stored upon the premises and used in connection with the excavation shall be stored in a safe and non-hazardous manner. Cones must be placed around all trucks, reels, vacmachines, or any other equipment that are allowed by the ROW Inspector to be parked in the street.

Sec. 13.08.060 Revocation or suspension of permit.

The town reserves its right, as provided herein, to revoke or suspend any permit, without refund of the permit fee, in the event of a breach by the permittee of the terms and/or conditions of the permit, this article and/or any other town ordinance. A breach of the terms of the permit shall include, but not be limited to any of the following:

- (1a) The violation of any provision of the permit.
- (2b) An evasion or attempt to evade any provision of the permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the town or its citizens.
- (3c) Any material misrepresentation of any fact in the permit application.

- (4d) The failure to meet insurance, surety bond or indemnification requirements.
- (5e) The failure to complete the work as specified in the permit.
- (6) The failure to correct a condition indicated on an order issued pursuant to this article.
- (7g) Repeated traffic-control violation.
- (8h) Failure to protect facilities or repair facilities damaged in the ROW.
- (9i) Violation of any part of this article.
- (10) Recognition by the ROW Manager that a permit was issued in error.
- (11k) Failing to comply with an order of the ROW Manager on the permit and any other valid permit held by the ROW user.
- (12) Any safety violation or other action that threatens the health, welfare and/or safety of the public as solely determined by the ROW Manager.
- (13m) If the ROW Manager determines that the permittee has committed a breach of any law or condition of the ROW permit, the ROW Manager shall make a written demand upon the permittee to remedy such violation. Continued violation may be cause for revocation of the permit or legal action, or both. The ROW Manager may, in his/her discretion, revoke the permit, provide specifications to cure the breach, or both. Within 5 days of receiving notification of the breach, permittee shall contact the ROW Manager with a plan, acceptable to the ROW Manager, for correction of the breach. Permittee's failure to do so or permittee's failure to timely implement the approved plan shall be cause for revocation of the permit.
- (n) A representative of a franchise utility fails to attend two or more utility coordination committee meetings within a 12-month period.

Sec. 13.08.061 Work not in accordance with permit declared unlawful.

- (a) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, ROW or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the ROW Manager, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the ROW Manager may, in his/her sole discretion, grant a written waiver to take the circumstances into account.
- (b) Failure to comply with requirements set forth in this article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the ROW Manager has approved alternative requirements.

Sec. 13.08.062 Work done without a permit.

No cut, excavation, grading or disturbing of the ROW, in any way, shall be made, other than excavations necessary for emergency work, without first securing a permit. For an emergency job, the ROW user must submit a permit within 2 business days after the work is completed and clearly label the subject area of the permit as an emergency. No person or ROW user shall, at any time, open or encumber more of the ROW than shall be reasonably necessary to complete a project in the most expeditious manner.

Sec. 13.08.063 Cease work.

At any time, the ROW Manager may order the immediate cessation of any work that poses a threat to the health, safety or well-being of the public. The ROW Manager may revoke the permit of any permittee in any instance where there is a threat to the health, safety or well-being of the public.

Page 17 of 33 Page 472

Sec. 13.08.064 Requirements.

The ROW Manager may issue a written notice to the permittee indicating work that does not conform to the terms of the permit, applicable standards, conditions, codes or other applicable regulation. Within 10 days after issuance of written notice, the permittee shall present proof to the ROW Manager that the violation has been corrected. If such proof has not been presented within the required time, the ROW Manager may revoke the permit.

Sec. 13.08.065 Location and relocation of facilities.

Subject to applicable federal, state, and local laws, the ROW user shall, upon the request of the town, which shall be in writing, locate and/or relocate its facilities situated within any ROW, at no expense to the town, where reasonable and necessary to accommodate any town project. The written request provided by the town shall state the date by with the relocation by the ROW user shall be completed and a reasonable amount of time shall be provided by the town. When relocation is necessitated by federal government requirements, which includes reimbursements of costs, the town will reimburse applicant for its proportionate share from funds provided to the town in such reimbursements.

Sec. 13.08.066 Relocation facilities for the town.

In the event the town finds it necessary to move a ROW user's facilities to protect the ROW, any town utilities and/or street, the town shall notify the local representative of the ROW user. ROW user shall promptly move or facilitate the relocation of the subject facilities at ROW user's sole expense.

Sec. 13.08.067 Abandoned facilities.

- (a) A ROW user owning abandoned facilities in the ROW shall:
 - (1) Remove its facilities and repair, at its sole expense, any damage caused by the removal. The ROW Manager may allow some or all facilities to remain if the ROW Manager determines same is in the best interest of the public to do so; or
 - (2) Provide information satisfactory to the town that the ROW user's obligations for its facilities in the ROW have been lawfully assumed by another authorized ROW user.
- (b) The facilities of the ROW user who fails to comply with this section, and those facilities which remain unused for two years, shall be deemed to be abandoned unless, within the aforesaid two-year period, the town receives written confirmation and reasonable evidence, as solely determined by town, that the ROW user intends to use the facilities. The town may exercise any remedies and/or rights it has at law or in equity, including, but not limited to, taking possession of the abandoned facilities or requiring the removal of the facilities by the ROW user at the ROW users sole expense.

Sec. 13.08.068 Underground service requirements.

Placement of new utility support structures (poles) shall be prohibited for electrical distribution lines with 60,000 volts and less and all communication utilities, unless otherwise allowed by an existing franchise agreement between the ROW user and the town or a PUCT tariff. (This does not prohibit replacing existing poles for maintenance purposes.)

Sec. 13.08.069 Location of poles and conduits.

All poles in the ROW shall be of sound material and straight, and shall not interfere with the flow of water in any gutter or drain, and shall be placed so as not to unduly interfere with vehicular and pedestrian travel. All poles in the ROW shall be located within 3 feet of the ROW. Poles with bases greater than 36 inches in diameter shall not be placed within the ROW. Poles shall not be placed within the center median of the street. The location and route of all conduits, fiber, cables, utilities and facilities placed and constructed by a ROW user in the construction and maintenance of its system in the town shall be subject to the reasonable and proper control, direction and approval of the town. The specifications in this article modify the provisions of the American National Standards Institute. Incorporated, the National Electrical Safety Code and such other codes and standards that are generally accepted by the industry to the extent of any conflict. Typical placement of poles and anchor guys along curvilinear streets are shown in Figure 2, attached to this Ordinance. Replacement of existing poles does not require a permit. Placement of poles and anchor guys along curvilinear streets shall comply with town ordinances and regulations.

Sec. 13.08.070 Size and location of aboveground facilities.

The maximum dimensions for utility structures above the ground in the ROW adjacent to streets are 7 feet long (parallel to the road), 2 feet wide (perpendicular to the road) and 6 feet in height. For structures 3 feet or less in height, the width may be 44 inches. This does not include poles. The height of utility structures shall be measured from the lowest grade at any point 18 inches or less from the side of the structure that faces the street to the highest point of the structure. Utility structures exceeding those dimensions shall not be located in the ROW adjacent to streets, unless otherwise approved in writing by the ROW Manager. All aboveground facilities shall be located outside of the corner visibility triangle at all intersections, future intersections and all driveways. No aboveground facilities may be placed in a parkway that is across from a median opening.

Sec. 13.08.071 Height of overhead line.

The user shall ensure all overhead lines are constructed and maintained so that the minimum clearances are in compliance with the National Electrical Code as it exists or may be amended.

Sec. 13.08.072 Attachments to poles.

- (a) Nothing shall obligate or restrict a ROW user from exercising its rights to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies authorized to operate within the town.
- (b) A ROW user shall utilize existing pole space, conduit, and other facilities whenever reasonably and/or economically possible.
- (c) Antennas must be mounted to the top of the pole, or flush to the pole near the top, in a screen that is coated or painted an approved color to match the pole to camouflage the installation.
- (d) Equipment, other than antennas, must be in an underground vault. Vaults must be flush to the ground.
- (e) If the existing pole already has more than two existing riser/drops, the pole must be replaced with a metal pipe and all wires and cables must be run in a conduit inside the pole. The existing drops will also be relocated inside the new pole and underground entry into the pole through the foundation is required.

 When installation will result in two or fewer riser/drops on the pole, the wires and cables may be installed as a riser/drop in the conduit painted an approved color.

Sec. 13.08.073 Temporary rearrangement of aerial wires.

The ROW user shall rearrange its transmission media temporarily as necessary to permit the moving of houses or other bulky structures. The requesting parties shall pay the reasonable and necessary expense of such temporary rearrangements. The ROW user shall in a reasonable time frame and reasonable cost, remove its transmission media in connection with the demolition of unsafe structures, including emergency or ordered demolitions at no cost to the town. The ROW user may invoice the requesting parties for the cost of this work, where applicable.

Sec. 13.08.074 Street closures.

- (a) All lane closures on any thoroughfare or collectors shall comply with TMUTCD, and shall include a lane closure exhibit to be submitted with the permit to the ROW Manager. The ROW Manager may require a traffic-control plan. Arrow boards and message boards may be required for lane closures on thoroughfares and collectors.
- (b) Except in an emergency, no thoroughfare or collector street shall be closed on weekdays during the hours of 6:30 a.m. to 9:00 a.m. and 3:30 p.m. to 7:00 p.m. Every day of the week, all roadways shall be open to traffic by sunset on the same day as the construction.
- (c) All lane closures require twenty-four-hour's notification of the police and fire departments prior to closing. Such notification will be made by the ROW Manager.

Sec. 13.08.075 Site maintenance during construction and prior to full restoration.

- (a) Erosion control and stormwater management. The ROW user shall be responsible for stormwater management, erosion control and excavation safety measures that comply with town, state and federal guidelines. Requirements shall include, but not be limited to, construction fencing around any excavation that will be left overnight, silt fencing in erosion areas until reasonable vegetation is established, barricade fencing around open holes, high erosion areas will require wire-backed silt fencing, and the removal of slurry used when running boring equipment. Upon request of ROW Manager, the ROW user may be required to furnish documentation submitted or received from the federal or state government.
- (b) Dust control. The ROW user shall ensure that the work is conducted and site maintained to minimize blowing dust. At any time dust leaves the job site so that it is a nuisance, the work will stop until measures can be taken to eliminate the dust.
- (c) Traffic-control safety. In the event of noncompliance with the TMUTCD, the ROW user shall be notified of the violation. In the event of continued noncompliance, the ROW Manager may revoke the permit, in addition to any other remedies available to the town. At any time the ROW Manager determines the work threatens public safety, he/she may take immediate action as necessary including but not limited to, stopping all work, or have a third party make the repairs at the expense of the applicant.
- (d) Responsibility for signs, barricades and warning devices. The ROW user working in any ROW is responsible for the safe movement of traffic, both pedestrian and vehicular, through the construction area. The ROW user shall meet all requirements for barricading and traffic control as specified in the TMUTCD.
 - (1) Only those individuals who are qualified by means of adequate training in safe traffic-control practices and have a basic understanding of the principles established by applicable standards and regulations, including without limitation, those in TMUTCD, may place and maintain the traffic-control devices in a construction area.

- (2) The ROW user must either (A) subcontract the barricading to a firm specializing in traffic control; or (B) submit the qualifications and name(s) of employees to the ROW Manager for approval prior to the work commencing. The ROW user must also submit a traffic-control plan for review and approval by a town traffic engineer when required by this article. All signs and barricades must conform to the requirements of the TMUTCD.
- (3) All barricades, plates, and other traffic-control equipment must conform to TMUTCD specifications and must be inspected and maintained by the traffic-control representative.
- (4) All barricades, plates and other traffic-control equipment must display accurate and sufficient information including without limitation, the name of the ROW user.
- (5) Noncompliance with the TMUTCD shall be cited in writing. In the event of noncompliance after citation, the ROW Manager may place the necessary devices as required, and the ROW user shall reimburse the town for all such expenses as well as \$500.00 for noncompliance. Failure to comply with this provision may result in denial of application for future permits.
- (6) All traffic-control devices must be removed immediately upon completion of work.
- (7) Streets shall be restored to existing conditions or better within 21 calendar days from the date that a portion of the street is closed and/or opened to traffic by using a steel roadway plate unless the ROW Manager grants approval to extend the time period and affected property.
- (e) Duty to barricade. At all times during construction activity, the contractor and/or ROW user, as applicable, shall place and maintain all necessary and proper barriers and other safeguards, including without limitation, watchmen certified in accordance with the safety training described in this article, if necessary, upon and around the work and for the prevention of accidents, and after daylight hours, shall place, maintain and keep suitable sufficient lights, in accordance with the TMUTCD.

Sec. 13.08.076 Inspection.

The permittee shall make the worksite accessible to the town, and others as authorized by law, for inspection at all reasonable times during performance of the work. All boring by a public service provider along or across a public ROW which contains an existing storm sewer or sanitary sewer must be checked with a camera upon completion of boring activity. The camera recording must sufficiently record storm sewer or sanitary sewer, and activity. The camera recording of the existing storm sewer or sanitary sewer must be completed on the same day the public service provider completes the boring activity. A copy of the camera recording must be delivered to the ROW Inspector within 24 hours of completion of the boring activity. In instances where excavation has taken place the ROW user must notify the ROW Inspector prior to backfill.

Sec. 13.08.077 Materials testing.

The department may require testing of materials used in construction in or near the ROW to determine conformance with town construction specifications, including, but not limited to, compaction tests on backfill materials, sub-grade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the Department. The ROW user shall, at his expense, hire a testing laboratory with current accreditation by the American Association for Laboratory Accreditation, American Association of State Highway and Transportation Officials (AASHTO) or another nationally recognized accreditation agency that verifies compliance with ASTM E 329 and that demonstrates the laboratory's capabilities to perform applicable ASTM or AASHTO test procedures, as may be required.

Sec. 13.08.078 Duties of persons making excavations or creating obstructions.

Any person who shall cause to be made any excavation or obstruction in any street or ROW shall not allow the same to remain there beyond a time reasonably sufficient 21 calender days or another time period required by

Page 21 of 33 Page 476

the ROW Manager for the completion of the work and/or removal of the obstruction, and shall repair the subject portion of such street and/or ROW so as to restore the same to its condition previous to the making of such excavation or obstruction. It shall be the duty of such excavators to protect the area while such condition exists and promptly to repair the same so as to leave the street or ROW in as good condition as before the excavation.

Sec. 13.08.079 Emergency excavations.

Nothing in this article shall be construed to prevent any person maintaining any pipe, conduit or duct in or under any street, or ROW by virtue of any law, article or permit, from making such excavation as may be necessary for compliance with law or for the preservation of life or property when the necessity arises, provided that the person making the excavation shall notify the ROW Manager within 24 hours. Except as specifically provided otherwise in this article for excavations authorized by this section, permittee shall be subject to all fees and requirements of this article.

Sec. 13.08.080 Excavation in streets.

Except in case of an emergency, there shall be no excavation in any street without the prior written approval of the ROW Manager. Any request for a permit to excavate a street shall include a description of the proposed work and proposed restoration of the area, as well as a statement of clear and convincing evidence provided to the ROW Manager as to why alternate procedures cannot or should not be used in lieu of excavating a street. All pavement cuts and repairs shall be performed by a contractor with experience in street repair work. Any damage to pavement outside the removal area shall also be repaired subject to approval of the ROW Manager. All streets and alleys shall be repaired from panel to panel unless otherwise approved in writing by the ROW Manager. All town pavement repairs shall comply with the town's design standards.

- (1) Excavation in Portland Cement Concrete (PCC) pavement surface. If the existing pavement is PCC, the concrete shall be cut first with a saw to a depth of the full the thickness of the concrete, and the full width of the trench, which shall also cut the reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in Figure 3, attached to Ordinance 07 009.
- (2) Excavation in hot mix asphalt concrete (HMAC) pavement surface. If the existing pavement is HMAC, the HMAC shall be cut first with a saw to a depth of the full thickness of the concrete, and the full width of the trench, which shall also cut the reinforcing steel. A second cut shall be 12 inches parallel to the first cut to full thickness of the concrete and excavated to undisturbed soil. Further criteria is set forth in Figure 4, attached to Ordinance 07-009.
- (3) Jacking and boring. Refer to specifications shown in Figure 5, attached to Ordinance 07-009.
- (4a) Responsibility of excavated area maintenance. A permittee or ROW user shall maintain its repairs in the ROW for two years from the completion date of any repair. The town reserves the right to require a maintenance bond on any work that is deemed substantial.

Sec. 13.08.081 Backfill of excavated area.

- (a) Open trenches may be temporarily backfilled for the convenience of the permittee or the public safety.

 Traffic bearing plates can be used temporarily as shown in Figure 6, attached to Ordinance 07-009, for pavement areas. At least one hour prior to beginning permanent backfill operations, the permittee shall notify the ROW Manager of the time the backfill will begin.
- (b) All excess water and mud shall be removed from the trench prior to backfilling. Any backfill placed during a rainy period or at other times, where excess water cannot be prevented from entering the trench, will be considered temporary and shall be removed as soon as weather permits. All disturbed base material or any base that has been undermined shall be removed and discarded. Compaction of all backfill shall be 95 percent of maximum density with a moisture content of 0 percent to +4 percent of optimum moisture

Page 22 of 33

content as determined by ASTM D698 under or near paved surfaces, future paved surfaces or otherwise as determined by ROW Manager. Outside of pavement surfaces, compaction of all backfill shall be ninety (90) percent of maximum density with a moisture content of -2 percent to +4 percent of optimum moisture content as determined by ASTM D698.

Sec. 13.08.081 ROW restoration requirements.

- (a) The work to be done pursuant to the permit and any repair and/or subsequent restoration of the ROW must be completed within the dates specified in the permit. In the event of circumstances beyond the control of the permittee or when work is prohibited by unseasonable or unreasonable conditions, the ROW Manager may, in his/ her sole discretion, extend the dates on receipt of a substantiated supplementary application for a permit extension.
- (b) All earth, materials, sidewalk, pavement, utilities, conduits, crossing, irrigation, landscaping, monuments, manhole covers, valve covers, meter box lids or improvements of any kind, which are owned or possessed by the town, and damaged, disturbed, or removed by a ROW user shall be fully repaired promptly by the ROW user, at its sole expense, to the reasonable satisfaction of the ROW Manager.
- (c) After any excavation, the ROW user shall, at its expense, restore the ROW, trench envelope, pavement structure and the surrounding area, to the same or better condition than it was prior to the excavation. The restoration shall be made in accordance with specifications set forth herein, and the repair shall endure without failure for two years from the completion date of any repair.
- (d) In the event the ROW user fails to restore the ROW in the manner and to the condition required herein, or fails to satisfactorily and/or timely complete all restoration, the town may, at its option, serve written notice upon the ROW user that, unless within 5 days after serving of such notice a satisfactory arrangement can be made for the proper restoration of the ROW by the ROW user, the town may take over the work and prosecute same to completion, by contract or otherwise, at the sole expense of the ROW user, and ROW user, and its surety, shall be liable to the town for any and all cost incurred by the town by reason of such prosecution and completion including, without limitation, the applicable public inconvenience penalty. Nothing contained herein shall limit any other remedies available to the town.
- (e) If any excavation cannot be backfilled immediately, the ROW user shall securely and adequately cover the excavation and maintain proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.
- (f) In all ROW restoration, the ROW user guarantees its work and shall maintain it two years from the date of completion of any restoration. During the period following completion, the ROW user shall, in the event of any failure of the restoration, and upon notification from the ROW Manager, reimburse the town for pavement restoration costs as provided for in this article. Additionally, the ROW user, in the event of such failure, shall within 48 hours of notice from the town, repair the subject trench envelope.
- (g) The two-year guarantee period shall be applicable to, among others, failure of the pavement surface as well as failure of the trench envelope. Notwithstanding remediation of the pavement structure by the town, the ROW user retains repair responsibility at all times during the guarantee period for the trench envelope. In locations where two or more ROW users have made repairs in the exact same location, the last ROW user to excavate shall be responsible for the two-year guarantee in that location, unless the ROW Manager determines, in his/her sole discretion, that a failure was most likely a result of work performed by another ROW user. That ROW user shall be responsible for the two-year maintenance period.
- (h) All street excavations shall be perpendicular excavations, unless otherwise approved by the ROW Manager. Excavations in streets, which are not perpendicular excavations require: (1) block-to-block and curb-to-curb pavement reconstruction; or (2) other method of repair approved by the ROW Manager. All repairs shall be equal or better than that which existed prior to the commencement of any work.

- (i) No trench shall be opened for the purpose of laying pipes, conduits or ducts for a distance greater than can be backfilled on the same work day before sunset. Any variance from this requirement must be granted in writing from the ROW Manager prior to work beginning.
- (j) Temporary Lines: Upon failure of an owner to perform restoration from the result of installing a temporary line, and 5 days after written notice has been given to the owner by the town, and in the event restoration has not been initiated during such five-day period, the town may repair such portion of the public ROW as may have been disturbed by the owner, its contractors or agents. Upon receipt of an invoice from the town, the owner will reimburse the town for the costs so incurred within 30 calendar days from the date of the town invoice.

Sec. 13.08.082 Restoration of pavement.

Unless otherwise specified in the permit, restoration of the pavement of any street, alley, ROW or other public place shall be performed by the permittee.

- (4a) No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts more than 200 feet in advance of the pipe, conduit or ducts being placed in the trench, other than with the prior written consent of the ROW Manager.
- (2b) All excavations shall comply with the town construction standards, as amended, and requirements of this article. Unless otherwise required by town standards, as amended, or if unusual conditions are encountered, the ROW Manager may require new standards for compaction, backfill and pavement restoration.
- (3c) Any excavated pavement, debris and/or other rubble shall be removed, together with any surplus material, within one working day from the time such material is placed upon the street. After backfilling is completed, and prior to repaving the cut, the ROW user shall remove all loose paving material and trim the edges of the excavation at the street surface to the satisfaction of the ROW Manager.
- (4d) Whenever any caving occurs in the sidewalks of any excavation, the pavements above such caving shall be cut away, trench backfilled, compacted and sidewalk pavement restored. In no case shall any side or lateral tamping fill any void under a pavement.

Sec. 13.08.083 Permanent pavement repairs.

The ROW user will maintain the excavated area until permanent pavement restoration of the excavated area is complete. The ROW user shall make the final repairs within 7 days on thoroughfares and collector streets and within <u>4521</u> days on residential, local and alley streets after the ROW Manager makes final inspection. Backfill failures shall remain the responsibility of the ROW user.

Sec. 13.08.084 Substandard repair of pavement of ROW.

In case the pavement or the surface of the street, alley, or ROW in, over or near any excavation should become depressed, cracked or broken at any time or fails in any way at any time after the excavation has been made and during the two-year warranty, the ROW user shall comply with any applicable obligations of this article, including, without limitation, reimbursement to the town of the cost to restore the street and/or ROW.

Sec. 13.08.085 Failure to complete work within specified time.

In the event any work governed by this article is not completed by the ROW user within the time required or in accordance with the specifications required herein or by the ROW Manager, the ROW Manager may cause such work to be performed as is necessary to secure the work area to a safe and passable condition. The ROW user shall reimburse the town for the costs of securing the site.

Sec. 13.08.086 Removal and reconstruction where work is defective.

All construction work in the streets, ROW, sidewalks and public places of the town is declared to be subject to the exclusive control of the town, and whenever, in the sole opinion of the ROW Manager, any such work shall not have been duly completed within a reasonable time or shall have been executed in a defective manner, whether because of bad workmanship or materials or because not true to the lines or grades or specification therefor given to him by the ROW Manager, then upon written demand or notice from the ROW Manager, such ROW user or contractor shall promptly remedy, complete and/or remove and reconstruct such incomplete or defective work all as the ROW Manager may require, and these provisions shall also apply to all repair and maintenance work. If the contractor or ROW user shall fail or refuse to do so within a reasonable time to be specified by the ROW Manager, then, if required by the ROW Manager, such work shall be completed or corrected or removed and wholly or partially reconstructed by the town, in such a manner as in the opinion of the ROW Manager may be necessary to make such work as good as originally required, and such work may be done by contract or otherwise, under the direction of the ROW Manager, and the contractor or ROW user shall reimburse town for any and all cost incurred by the town performing the work described in this subsection.

Sec. 13.08.087 Cleanup of ROW.

In every case, and at all times, the work of removing from the ROW all obstructions, surplus materials, debris and waste matter of every description caused by and/or accumulated from the excavation shall be the sole responsibility of the ROW user. The ROW user shall maintain the area on and around the excavation and related to the work in a clean, safe, and orderly fashion at all times during the conduct of the excavation and shall clean the same area upon completion of the work. Streets shall be cleaned by use of a regenerative air or vacuum street sweeper. All Traffic Control devices must be removed at the completion of each work day and then re-established the next working day. The ROW user shall clean the surrounding area, as outlined above, within one day upon completion and approval of all trench work and pavement restoration unless the ROW Manager, sufficient reason therefor having been given to his/her satisfaction, grants a written extension of time.

Sec. 13.08.088 ReportingCompletion of Work.

When the work under permit hereunder is completed, the permittee shall notify the town in accordance with the requirements placed on the permit. The town will schedule a final walk-through with the contractor to develop a final punch list of items to be remedied.

Sec. 13.08.089 Effect of article on persons engaged in construction.

Any permit issued prior to the adoption of this article will remain subject to the terms and conditions of town article and requirements in effect at the time of issuance of the permit and is not affected by this article, except that, upon expiration or conclusion of the permit, a new or renewal permit must be obtained in accordance with this article.

Secs. 13.08.090—13.08.130. Reserved.

DIVISION 3. FEES, ENFORCEMENT AND PENALTIES

Sec. 13.08.131 Fees.

The fees in this section shall apply to all ROW users, unless governed by an existing agreement, such as a franchise agreement with the town.

- (1a) Permit application fee. There is a permit application fee of \$25.00. Permits shall be issued or denied within 5 days from town's receipt of the application. There is an expedited application fee of \$250.00 for permits, which shall be issued or denied within 2 days. An applicant shall pay the fees when a permit is issued. The fees are charged for administration and input of permit data. An expedited permit may be requested upon a showing of good cause, including but not limited to, a pending order for service that cannot be met by means of existing facilities of the ROW user.
- (2b) Saturday inspection fee. The Saturday inspection fee shall be \$150.00 per Saturday.
- (3c) Permit expiration fee. A fee of \$30.00 will be charged for any permit that has not been extended before its expiration date and for any permit wherein work has not been completed by the expiration date provided for in the permit.
- (4<u>d</u>) Electronic maps submittal fee. A fee of \$40.00 per hour will be charged for each hour of labor necessitated by information submitted to the town in hard copy format in lieu of submittals to the town in electronic format. There is a minimum of two hours.
- (5e) Registration fee. There is a fee of \$100.00 per ROW user per year for processing registration information fee, which will be collected by town upon registration.

Sec. 13.08.132 Public inconvenience penalty.

Public inconvenience penalties are assessed and calculated from the date of expiration of the permit until date of completion of work or repair or of final backfill if turned over to the Department for repair. This penalty shall not exceed and is capped by statutory limits. Public inconvenience penalties are charged per day as follows:

	Type of	Unit of Cost	Penalty			
	Facility	(Per Day)	31-75 days	79-90 days	90-100 days	>100 days
(1)	Sidewalk	Per square ft.	\$0.0026	\$0.0052	\$0.0078	\$0.0104
(2)	Driveway	Per each	\$39.00	\$78.00	\$117.00	\$156.00
(3)	Metered traffic lane	*In addition to traffic lane fee				

Sec. 13.08.133 Clean up costs.

The ROW user shall maintain the area on and around the excavation and related work in a clean, safe and orderly fashion at all times during conduct of the excavation and shall clean the same area upon completion of work.

Secs. 13.08.133—13.08.160 Reserved.

DIVISION 4. INDEMNIFICATION, INSURANCE, BONDING AND LIABILITY

Sec. 13.08.161 Liability of ROW user.

To the extent allowed by law, the ROW user shall be liable to the town for any damage or loss occasioned by any act and/or omission occurring in connection with its excavation, and subject to state law, the ROW user shall fully indemnify, hold harmless and defend the town, its council members, officers, employees, agents, representatives and volunteers from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the town, its council members, officers, employees, agents, representatives and volunteers may be subjected for injury of any type, death or property damage arising from or connected with any such act and/or omission. The town shall promptly notify a permittee, or ROW user, at the address set forth in the permit, or last known address, of any claim, suit or demand served upon the town and alleging negligent or wrongful conduct by the permittee or ROW user in connection with an excavation.

Sec. 13.08.162 Insurance.

- (a) ROW users shall furnish an original completed certificate of insurance to the Department which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the town. The town shall have no duty to perform under this article until such certificate has been delivered to the Department. The certificate holder must be the Town of Prosper.
- (b) The town reserves the right to review the insurance requirements of this section to modify insurance coverage and limits when deemed necessary and prudent by the town based upon changes in statutory law, court decisions, or circumstances surrounding this article, but in no instance will the town allow modification whereupon the town may incur increased risk.
- (c) Subject to the ROW user's right to maintain reasonable deductibles in such amounts as are approved by the town, ROW users shall obtain and maintain in full force and effect for the duration of the permit, and any extension thereof, and/or duration of time it maintains facilities in the public ROW, at the ROW user's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state and rated A- or better by A.M. Best Company and/or otherwise acceptable to the town, in the following types and amounts:

	Туре	Amount	
(1)	Worker's compensation	Statutory	
	Employer's liability	\$500,000/\$500,000/\$500,000	
(2)	Commercial general (public) liability insurance to include coverage for the following:	Bodily injury and property damage of \$2,000,000 per occurrence	
	(A) Premises/operations		
	(B) Independent contractors	\$5,000,000 general aggregate or its equivalent in umbrella or excess liability coverage	
	(C) Products/completed operations		
	(D) Contractual liability		
	(E) Personal injury		
	(F) Explosion, collapse, underground		
	(G) Broad form property damage, to include fire legal liability		

(3)*	Business automobile liability	Combined single limit for bodily injury and			
	(A) Owned/leased vehicle	property damage of \$1,000,000 per			
	(B) Nonowned vehicles	occurrence or its equivalent			
	(C) Hired vehicles				
(4)*	Professional liability (claims made from)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services			
(5)*	Contractor's pollution liability coverage	\$1,000,000 written on a claims made form with a two-year extended reporting period			
(6)*	Pollution liability motor carrier and trucker coverage endorsing the upset, overturn and remediation of a load in transport	Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence written or an occurrence form			
* If a	* If applicable.				

- (d) The town shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the town, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy revisions are established by law or regulation binding upon any party to the policy or the underwriter of such policy). Upon such request by the town, the ROW user shall exercise reasonable effort to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (e) ROW users shall ensure that all insurance contracts and certificate(s) of insurance contain the following required provisions:
 - (1) Name the town and its council members, officers, employees, volunteers, agents and representatives as additional insured with respect to the operations and activities of, or on behalf of, the named insured performing in the ROW under provision of this article, with the exception of the professional liability, workers' compensation and liability policy;
 - (2) ROW user's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the town;
 - (3) Provide for an endorsement that the "other insurance" clause shall not apply to the town where the town is an additional insured shown on the policy; and
 - (4) Workers' compensation and employers' liability will provide for a waiver of subrogation in favor of the town.
- (f) ROW user shall notify the town in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notices not less than 30 days prior to the change, or 10 days' notice for cancellation due to nonpayment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to the town at the following address:

ROW Manager

<u>Department of Public Works</u>Engineering Services Department 601 W. Fifth Street 250 W. First Street

P.O. Box 307 Prosper, TX 75078

- (g) Nothing herein contained shall be construed as limiting in any way the extent to which the ROW user may be held responsible for payments of damages to persons (including death) or property resulting from the ROW user's, or its subcontractors', performance of the work performed in the public ROW.
- (h) The town-owned utilities shall not be required to provide the insurance specified herein.
- (i) With respect to the ROW user's obligation to comply with the requirements for commercial general (public) liability insurance coverage to include pollution coverage, the town may allow the ROW user to self-insure upon annual production of evidence that is satisfactory to the town. With respect to the ROW user's obligation to comply with the requirements for automobile liability insurance and for workers' compensation insurance, a ROW user may self-insure, provided the ROW user tenders satisfactory evidence of self-insurance as contemplated by the State Motor Vehicle Financial Responsibility Law, V.T.C.A. Transportation Code § 601.124, and the Texas Workers' Compensation Act, V.T.C.A. Labor Code § 407.001 et seq., as amended.

Sec. 13.08.163 Performance/assurance bond and maintenance bond.

- (a) Before a permit shall be issued, the applicant shall execute and deliver to the town, to be kept on file with the town, a good and sufficient bond of performance or assurance, in the sum of \$10,000.00 to be approved by the town and conditioned that the person making the application shall promptly adjust, pay and settle all legitimate claims for damages that may result by reason of carelessness or negligence in the manner of performing such work or by reason of any defects therein caused or arising from careless, negligent or imperfect construction thereof, and to hold the town, its council members, officers, employees, volunteers, agents, and representatives, free and harmless from liability on all such claims for damages to the performance or assurance bond which shall cover the cost of repairs in or upon the street, sidewalk or other public place where the work is to be done that may become necessary by reason of such cut or excavation having been made. The bond shall be maintained until the work is accepted by the town. With respect to the ROW user's obligation to comply with the requirements for a performance/assurance bond, the town may, in the town's sole discretion, allow the ROW user to self-insure such obligation upon production of evidence that is satisfactory to the town.
- (b) Before a permit shall be issued, the applicant shall execute and deliver to the town, to be kept on file with the town, a good and sufficient maintenance bond, in a sum equal to the estimated costs of reconstruction of town facilities related to the work the permit was for, including but not limited to costs of returning streets, sidewalks, ROW and other public property to its original condition as it existed prior to the work performed by the permittee and to insure maintenance required by section 13.08.082, be approved by the town and in favor of the town that indemnifies the town against any repairs that may become necessary to any part of the work performed in connection with the permit arising from defective workmanship or materials used therein for a period of two years from the date of the time period provided for completion of the work in the permit, or as such time may have been extended by the ROW Manager, whichever is later.

Sec. 13.08.164 Optional continuing bond and deposit.

In lieu of a bond of performance or assurance required for each permit issued under the performance/assurance bond section of this article, the applicant may maintain a one-time bond of performance or assurance with the ROW Manager in the sum of \$100,000.00 for the purposes specified in section 13.08.163, and shall have on file, with the town, an approved bond of performance or assurance in like amount, being then in full force and effect, against which claims shall not have been presented aggregating more than \$100,000.00; provided, further, that section 13.08.163 shall not apply to applications for permits to make cuts, openings or excavations in any street, plaza or other public place paved under contract with the town, unless the contract of maintenance and the maintenance bond therefor all have expired. The bond shall be maintained until the applicant is no longer working in or on the ROWs.

Sec. 13.08.165 Liability of contractor and sureties for maintenance and repair work.

Any defects of workmanship or material relating to work done by an excavator during the initial project or becoming known, or which should have been known, during the guarantee period (the two years) shall be known as maintenance or repair work, and both the excavator and the sureties and/or the contractor's bond shall be fully liable for any default of such contractor under this section. In the event of a failure in the restoration of an excavation, the ROW user shall, at its sole expense, have one opportunity to repair, in a timely manner, the section of the restoration that has failed, which repair shall be in accordance with the standards set forth in this article. In the event of any subsequent failure of that section of the restoration, the town retains the right and option to terminate the ROW user's guaranty, upon written notice to the ROW user. In such event, the ROW user shall reimburse the town for its direct costs associated with the repair of the failure of the restoration work.

Sec. 13.08.166 When additional security required.

In the event the ROW Manager reasonably believes the contractor's or ROW user's solvency is threatened, the ROW Manager may, at any time, make written demand on a contractor and/or ROW user for bonds, and the contractor and/or ROW user shall immediately furnish such additional bond or bonds to the town.

Sec. 13.08.167 Bonds generally.

All bonds required under this article shall be executed by a surety company holding a license to do business in the state which is solvent and reputable.

Sec. 13.08.168 Decision of ROW Manager binding on contractor, ROW user and sureties.

If any question arises as to when any work was actually begun or other specific dates, the decision of the ROW Manager shall be conclusive on the contractor, ROW user, and the sureties on all such bonds.

Secs. 13.08.169—13.08.190 Reserved.

[REMAINDER OF PAGE LEFT BLANK]

- CODE OF ORDINANCES CHAPTER 13 - UTILITIES ARTICLE 13.08. - RIGHT-OF-WAY MANAGEMENT DIVISION 5. VARIANCES AND EXEMPTIONS

DIVISION 5. VARIANCES AND EXEMPTIONS

Sec. 13.08.191 Procedure.

A permittee or ROW user may request a variance from any of the requirements of this article by filing a written request with the ROW Manager stating the requirement and the basis for the variance. The ROW Manager may reject incomplete variance requests. The applicant shall bear its own expenses of the application process.

- (4a) Any request for a variance from any ROW restoration requirement shall be made in writing, in advance of any contemplated work and shall be accompanied by digitally formatted detailed plans of the substituted reconstruction and/or repair of the excavated area, if applicable.
- (2b) Any request for an exemption and/or variance from any penalty and/or fee, other than as provided in this article, shall be made in writing, and shall be accompanied by a written detailed request stating the reasons therefor.
- (3c) Any request for an exemption and/or variance from any permit, or any other requirement of this article shall be made in writing, stating in detail all reasons for the requested exemption and/or variance.
- (4<u>d</u>) The department shall grant or deny an application for a variance and/or exemption within 10 days of receipt of the application for variance and/or exemption.
- (5e) Denial of the variance may be appealed in accordance with the section 13.08.024 of this article.

Secs. 13.08.192-13.08.220 Reserved.

[REMAINDER OF PAGE LEFT BLANK]

- CODE OF ORDINANCES CHAPTER 13 - UTILITIES ARTICLE 13.08. - RIGHT-OF-WAY MANAGEMENT DIVISION 6. CERTIFIED TELECOMMUNICATIONS PROVIDERS

DIVISION 6. CERTIFIED TELECOMMUNICATIONS PROVIDERS

Sec. 13.08.221 Authority required/nonexclusive use.

CTP must provide evidence that the CTP has acquired authorization from the PUCT pursuant to state law, prior to obtaining a permit to use a public ROW. The CTP's right to use and occupy the public ROW shall not be exclusive and the town shall have the right to exercise its police powers and manage its public ROW, based on the act and all other state or federal laws.

Sec. 13.08.222 Additional authority required.

The CTP, and any of its affiliates, are not authorized to provide cable television service as a cable operator or to operate an open video system in the town, but must first obtain a separate franchise agreement from the town for that purpose, under such terms and conditions as may be required by law. This section does not preclude the CTP from providing its services to cable television companies. Unless a cable television operator shows proof of appropriate town authorization, nothing herein shall authorize the CTP to license, sublicense, lease, sublease or by any instrument authorize any cable television operator the right to use or utilize the transmission media or facilities of the CTP.

Sec. 13.08.223 Transfer and notice.

A CTP shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a CTP's business within 30 days of such sale, transfer, merger or assignment. A CTP shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the CTP uses the ROW.

Sec. 13.08.224 Exemption from fees.

CTPs are exempted from the following fees provided for in this article:

- (4a) Permit application fee, including expedited application fee and permit expiration fee;
- (2b) Additional permit fee;
- (3c) Saturday inspection fee; and
- (4d) Registration fee.

Sec. 13.08.225 Waiver bonds.

Unless determined otherwise by the ROW Manager, a CTP will be exempt from the bonding requirements of this article, including sections 13.08.163 and 13.08.164, however, in the event that the ROW Manager determines, based upon reasonable grounds, that a bond is necessary to protect the public assets, and/or the health and safety of the public, then the ROW Manager may require that a CTP post a reasonable bond not to exceed \$100,000.00. Factors to be considered in determining reasonable grounds may include, but are not limited to, a conviction for violation of this article, a general pattern of substandard adherence to the provisions of this article or the failure to comply with this article. If three years pass from the date that the ROW Manager requires a bond of a CTP and it has not been necessary for the town to seek performance under the bond, then a bond will no longer be required pursuant to this section.

Sec. 13.08.226 CTP indemnity.

A CTP shall indemnify the town as specified by V.T.C.A. Local Government Code § 283.057, as may be amended. A CTP shall be exempt from all indemnity requirements of this article that are inconsistent with V.T.C.A. Local Government Code § 283.057, as amended.

Secs. 13.08.227—13.08.250 Reserved.

DIVISION 7. NETWORK PROVIDERS

Sec. 13.08.251 Network provider's authority required/nonexclusive use.

A network provider must provide evidence that the network provider has acquired all required authorization pursuant to state law, prior to obtaining a permit to use public ROW. The network provider's right to use and occupy the public ROW shall not be exclusive, and the town shall have the right to exercise its police powers and manage its public ROW, based on the V.T.C.A. Local Government Code ch. 284, as amended, and all other state or federal laws.

Sec. 13.08.252 Transfer and notice.

A network provider shall notify the ROW Manager of any sale, transfer, merger or assignment of the ownership or control of a network provider's business within 30 days of such sale, transfer, merger or assignment. A network provider shall also maintain and provide current point-of-contact information with the ROW Manager at all times during which the network uses the ROW.

Sec. 13.08.253 Network provider indemnity.

A network provider shall indemnify the town as specified by the Texas Local Government Code, as may be amended.

Sec. 13.08.254 Compliance with design manual.

A network provider shall comply with the town's design manual, as amended, for the installation of network nodes and node support poles, as amended by the ROW Manager.

Sec. 13.08.255 Fees.

The following fees shall apply to a network provider's use of the town's ROW, as follows:

- (1a) Small cell application fee. \$500.00 (1-5 network nodes); \$250.00 (each additional network node); \$1,000.00 per pole.
- (2b) Small cell user fee. \$250.00 annually for each network node; \$20.00 per year for town pole attachment.
- (3c) Transport facility monthly user fee. \$28.00 multiplied by the number of the network provider's network nodes located in the public ROW for which the installed transport facilities provide backhaul, until the time the network provider's payment to the town exceeds its monthly aggregate per month compensation to the town.



AND COMMUNITY ENGAGEMENT

To: Mayor and Town Council

From: Robyn Battle, Executive Director

Through: Mario Canizares, Town Manager

Re: Nonprofit Support Options

Town Council Meeting – January 9, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Discussion regarding nonprofit support options.

Description of Agenda Item:

The Town Council received an update on the Town's existing levels of support for nonprofit organizations at the June 27, 2023, Town Council Work Session. Following that meeting, the Council received an inventory of all the support provided by the Town to local nonprofit organizations.

A summary of the Town's support for nonprofit organizations are listed below:

- Direct financial assistance through the purchase of tables/tickets for annual fundraisers
- In Kind support through the following activities:
 - o In-Kind support through promotion of nonprofit organizations on the Town website
 - In-Kind support through inclusion in Town events such as the Citizens Academy, Celebrate Prosper, and the New Resident Mixer
 - In-Kind support through awareness campaigns and drives, such as toy, clothing, and food drives
 - Fee waivers for Special Events

Budget Impact:

Current direct financial support by the Town to local nonprofit organizations is approximately \$5,900 and is budgeted through the Town Secretary's Office.

Town Staff Recommendation:

Town staff is seeking direction from the Council on whether to continue or modify the Town's current levels of support for nonprofit organizations.