



Prosper is a place where everyone matters.

Agenda
Prosper Town Council Meeting
Council Chambers
Prosper Town Hall
250 W. First Street, Prosper, Texas
Tuesday, November 23, 2021
5:45 PM

Notice Regarding Public Participation

Welcome to the Prosper Town Council. Individuals may attend the meeting in person, or access the meeting via videoconference, or telephone conference call.

Join the Zoom Meeting by clicking on the following link: <https://us02web.zoom.us/j/87047432329>

To join the meeting by phone, dial (346) 248-7799

Enter Meeting ID: 8704 743 2329

Addressing the Town Council:

Those wishing to address the Town Council must complete the [Public Comment Request Form](#) located on the Town website or in Council Chambers.

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

If you are attending online/virtually, please submit this form to the Town Secretary prior to 5:00 p.m. on the day of the meeting. Please ensure your full name appears on the screen and you are unmuted so the meeting moderator can recognize you and allow you to speak. The Chat feature is not monitored during the meeting. The Town assumes no responsibility for technical issues that are beyond our control.

If you encounter any problems joining or participating in the meeting, please call our help line at 972-569-1191 for assistance.

Call to Order/ Roll Call.

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

Announcements of recent and upcoming events.

Presentations.

1. Communication and Community Engagement Update. (RB)

CONSENT AGENDA:

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

- [2.](#) Consider and act upon the minutes from the November 9, 2021, Town Council meeting. (MLS)
- [3.](#) Consider and act upon authorizing the Town Manager to execute a Professional Services Agreement between Halff Associates, Inc., and the Town of Prosper, Texas, related to the design of the US 380 Green Ribbon Landscaping and Irrigation (Lovers – Mahard) project. (PN)
- [4.](#) Consider and act upon authorizing the Town Manager to execute a Pipeline License Agreement between BNSF Railway Company, and the Town of Prosper, Texas, related to the construction of drainage improvements at the BNSF Railroad for the downtown apartment and townhome projects along McKinley Street. (HW)
- [5.](#) Consider and act upon an ordinance repealing existing Article 3.16, “Pools and Spas” of Chapter 3 titled “Building Regulations” of the Code of Ordinances and replacing it with a new Article 3.16 “Swimming Pool and Spa Code” and adopting the 2021 Edition of the International Swimming Pool and Spa Code as set forth. (BC)
- [6.](#) Consider and act upon an ordinance amending Chapter 6, "Health and Sanitation" of the Code of Ordinances by adding a new Article 6.06, "Irrigation Systems." (BC)
- [7.](#) Consider and act upon a resolution casting the Town of Prosper’s 35 votes for the Collin County Central Appraisal District Board of Directors (CCAD). (MLS)
- [8.](#) Consider and act upon whether to direct staff to submit a written notice of appeal 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 any Site Plan or Preliminary Site Plan, including Central Fire Station and LIV Townhome-Style Multifamily. (AG)

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.

REGULAR AGENDA:

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. 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. For individuals wishing to speak on a non-public hearing item, they may either address the Council during the Citizen Comments portion of the meeting or when the item is considered by the Town Council.

Items for Individual Consideration:

- [9.](#) Conduct a public hearing and consider and act upon a request for a Specific Use Permit (SUP) for an Incidental Outside Merchandise Display at an existing Convenience Store with Gas Pumps (7-Eleven), on 1.4± acres, in the Victory at Frontier development, located on the southwest corner of Preston Road and Frontier Parkway. (S21-0003). (AG)
- [10.](#) Conduct a public hearing and consider and act upon a request for a Specific Use Permit (SUP) for a Drive-Through Restaurant with Drive-Through Service, on 1.2± acres, in the Victory at Frontier development, located on the west side of Preston

Road, south of Frontier Parkway. The property is zoned Planned Development-10 (PD-10). (S21-0004). (AG)

- [11.](#) Conduct a public hearing and consider and act upon a request to rezone 9.1± acres from Office (O) to Planned Development-Office (PD-O), to allow for a Veterinarian Clinic and/or Kennel, Indoor as a permitted use, located on the north side of Fishtrap Road, west of Legacy Drive. (Z21-0011). (AG)
- [12.](#) Consider the adoption of a resolution calling the Town of Prosper, Texas General Obligation Bonds, Series 2012 for redemption prior to maturity and approving all matters incidental thereto. (BP)
- [13.](#) Consider the adoption of a resolution calling the Town of Prosper, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012 for redemption prior to maturity and approving all matters incidental thereto. (BP)
- [14.](#) Consider all matters incidental and related to the issuance and sale of the Town of Prosper, Texas General Obligation Refunding Bonds, Series 2021, including the adoption of an ordinance authorizing the issuance of the bonds, establishing parameters for the sale and issuance of such bonds, and delegating certain matters to the Town Manager to act on its behalf in selling the bonds. (BP)
- [15.](#) Receive an update on the Town logo and rebranding project. (RB)
- [16.](#) Receive an update on the 2021 Texas Legislative Session and the Town of Prosper's legislative strategy. (RB)

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

17. Discussion regarding public comments during Council meetings. (RB)
18. Discussion regarding the creation of a HOA Broadband Committee. (HJ)

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.

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.

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

Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on

Friday, November 19, 2021, and remained so posted at least 72 hours before said meeting was convened.

Michelle Lewis Sirianni, Town Secretary

Date Notice Removed

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

NOTICE

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

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS: The Prosper Town Council meetings are wheelchair accessible. For special services or assistance, please contact the Town Secretary's Office at (972) 569-1011 at least 48 hours prior to the meeting time.



Prosper is a place where everyone matters.

MINUTES

Prosper Town Council Meeting
Council Chambers
Prosper Town Hall
250 W. First Street, Prosper, Texas
Tuesday, November 9, 2021
5:45 PM

Call to Order/ Roll Call.

The meeting was called to order at 5:45 p.m.

Council Members Present:

Mayor Ray Smith
Mayor Pro-Tem Meigs Miller
Deputy Mayor Pro-Tem Craig Andres
Councilmember Jeff Hodges
Councilmember Charles Cotten
Councilmember Amy Bartley

Council Members Absent:

Councilmember Marcus E. Ray

Staff Members Present:

Harlan Jefferson, Town Manager
Terry Welch, Town Attorney
Michelle Lewis Sirianni, Town Secretary
Todd Rice, Communications Manager
Rebecca Zook, Executive Director of Development and Infrastructure Services
Khara Dodds, Development Services Director
Alex Glushko, Planning Manager
Brady Cudd, Building Official
Frank E. Jaromin, Director of Public Works
Travis Kvaal, Senior Backflow Inspector
Leigh Johnson, IT Director
Betty Pamplin, Finance Director
Stuart Blasingame, Fire Chief
Doug Kowalski, Police Chief

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

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

Announcements of recent and upcoming events.

Thank you to all who attended the Prosper Arbor Day Celebration this past Saturday. A special thanks to Girl Scout Troop 8415, Girl Scout Troup 1325, and Boy Scout Troop 365 for participating. And of course, thank you to our Parks and Recreation Department for staff who provided instruction and guidance on proper tree planting techniques to the group.

The Prosper annual Christmas Festival will take place on Saturday, December 4 at Prosper Town Hall. Come experience the magic of Santa Claus in his Workshop, the Kids Christmas Shoppe, dazzling exhibits, Kids Fun Zone, Community Stage performances, carriage rides, live demonstrations, and food truck vendors. Also, don't miss out on the Prosper Rotary Club

Christmas Parade at 2:30 p.m., and the Tree Lighting at 7:00 p.m. followed by fireworks! The festival is free of charge. For more information visit ProsperChristmas.org

The Prosper annual Light the Night Decorating Contest sponsored by CoServ is back. Residents and businesses may now sign up to participate through December 12 to showcase their holiday lights and decorations. Top entries will earn bragging rights, a yard sign, and a cash prize. Visit ProsperChristmas.org for more information including contest categories.

Registration for the Parks and Recreation Winter 2021 camps and classes are now open. Don't miss out on the 2-day LEGO camp for kids on December 20 to 21. It's a great opportunity to drop off the kids while you take care of the last-minute holiday shopping. Visit Propserparksandrec.org to register.

Reminder that Town Hall Offices will be closed on Thursday, November 25 and Friday, November 26 for the Thanksgiving Holiday. Due to the holiday, residents whose trash service falls on Thursday or Friday will be delayed by one day. The special bulk drop off location at Public Works will also be closed on Saturday, November 27.

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.

- 1. Consider and act upon the minutes from the October 26, 2021, Town Council meeting. (MLS)**
- 2. Receive the September Financial Report. (BP)**
- 3. Receive the Quarterly Investment Report. (BP)**
- 4. Consider and act upon Ordinance No. 2021-65 amending Section 10.03.051, "Franchise Utilities," of Article 10.03, "Subdivision Ordinance," of Chapter 10, "Subdivision Regulation," of the Code of Ordinances, related to Fiber Optic Communications. (AG)**
- 5. Consider and act upon authorizing the Town Manager to execute an Interlocal Agreement for Fire Protection Services with Denton County Fresh Water District No.10 for the Artesia Area. (SB)**
- 6. Consider and act upon Ordinance No. 2021-66 amending Section 5.02 of the Town of Prosper Personnel Policies and Procedures Manual regarding vacation leave for members of the Fire and Police Departments as required by Local Government Code 142.0013 and increasing the maximum vacation accrual limit for all employees. (JE)**
- 7. Consider and act upon whether to direct staff to submit a written notice of appeal 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 any Site Plan or Preliminary Site Plan, including LIV Multifamily. (AG)**

Deputy Mayor Pro-Tem Andres made a motion to approve consent agenda items 1 thru 7. Mayor Pro-Tem Miller seconded that motion, and the motion was unanimously approved.

CITIZEN COMMENTS:

No comments were made.

Items for Individual Consideration:

- 8. Conduct a public hearing and consider and act upon a request for a Sign Waiver at 101 E. Broadway Street (Prosper Chiropractic), regarding downtown signs, located on the northeast corner of Broadway Street and Coleman Street. (MD21-0010) (AG)**

Councilmember Bartley stepped away from the dais for this item.

Mr. Glushko stated the Town's Sign Ordinance currently requires downtown signs to be setback a minimum of fifteen feet from property lines. Due to the location of the existing structure and TxDOT right-of-way width, the sign would be located ten feet from the structure. Therefore, the applicant is requesting to have a minimum of one-foot setback from the property line. There are not any obstructions to visibility and the request meets all other Town standards. Staff is recommending approval.

Mayor Smith opened the public hearing.

No comments were made.

Mayor Smith closed the public hearing.

Councilmember Hodges made a motion to approve the request for a Sign Waiver at 101 E. Broadway Street (Prosper Chiropractic), regarding downtown signs, located on the northeast corner of Broadway Street and Coleman Street. Councilmember Cotten seconded that motion. Motion passes with a 6-0 vote. Councilmember Bartley was not present for the vote.

Councilmember Bartley returned to the dais.

- 9. Conduct a public hearing and consider and act upon a request for a Sign Waiver for CareNow, in the Gates of Prosper, regarding a monument sign, located on the east side of Preston Road, north of Lovers Lane. (MD21-0011) (AG)**

Mr. Glushko stated the Town's Sign Ordinance requires a masonry border surrounding the sign, however, the Gates of Prosper has received approval for a sign style that does not include this requirement. CareNow was not included during the previous approvals. The proposed signage meets all other standards. Staff is recommending approval.

Mayor Smith opened the public hearing.

No comments were made.

Mayor Smith closed the public hearing.

The Town Council discussed the illumination of the sign and the removal of the sign in the back of the facility facing the residential area.

Deputy Mayor Pro-Tem Andres made a motion to approve a request for a Sign Waiver for CareNow, in the Gates of Prosper, regarding a monument sign, located on the east side of Preston Road, north of Lovers Lane subject to the removal of the sign adjacent to Willow Ridge subdivision. Councilmember Hodges seconded that motion, and the motion was unanimously approved.

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

Chief Blasingame stated the Town requested Statements of Qualifications (SOQ) from qualified firms to provide professional architectural and engineering services relating to the conceptual design and planning for Fire Station No. 4. Firms were required to submit information based on four different criteria and then was scored by the evaluation committee. Based on the committees scoring, staff is recommending Brown Reynolds Watford Architects.

Councilmember Hodges made a motion to approve authorizing the Town Manager to execute an agreement between the Town of Prosper, Texas, and Brown Reynolds Watford Architects, Inc., related to architectural and engineering design services for the Fire Station No. 4. Mayor Pro-Tem Miller seconded that motion, and the motion was unanimously approved.

11. Receive an update regarding the Central Fire Station and Fire Administration Construction project. (SB)

Chief Blasingame stated BRW Architects has completed 95% of the construction documents for the new Central Fire Station and Fire Administration building. The Chief provided renderings along with an updated budget summary for the project.

The Town Council discussed the current costs of building a facility and any concerns regarding the ability to complete the project within budget.

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

12. Receive an update regarding the Irrigation Systems Ordinance. (BC)

Mr. Cudd stated that based on new irrigation system requirements within the Texas Local Government Code, the Town is proposing to update the current ordinance. The initial update would include amendments to the licensing, permitting, and irrigation plan requirements. In fall 2022, an additional update to the ordinance will address the backflow assembly requirements, which will be in accordance with Texas Commission on Environmental Quality (TCEQ) Rules. Mr. Cudd indicated that staff will be providing public outreach to HOA's, homeowners, and will come back to the Town Council prior to ordinance approval.

Mr. Jefferson stated this is being done to adhere to the Texas Local Government Code requirements, now that the Town's population is over 20,000.

The Town Council discussed the importance of the public outreach efforts and educating property owners of the new requirements.

13. Discussion regarding Swimming Pool and Spa Code adoption. (BC)

Mr. Cudd stated that Town staff is looking to repeal the current pool and spa code and adopt a new code based on the 2021 International Code with NCTCOG amendments in order to following recent legislative changes. Key components of the changes were provided, including that pool setbacks will remain the same.

The Town Council discussed what defines a 'front yard' and the importance of being proactive on inspections.

14. Discussion regarding the General Obligation Refunding Bonds. (HJ)

Mr. Jefferson provided three options on the 2012 Refunding Bonds based on the feedback received at the last meeting from the Town Council. Summaries of the General Fund, Water and Sewer Fund, and the Stormwater Drainage Utility Fund were reviewed along with historical data for capital expenditures.

Jason Hughes, First Southwest Securities, reviewed a summary analysis of using cash for defeasance of debt versus using cash for project costs.

The Town Council discussed the fund summaries as it pertains to the capital project expenditures. The Town Council requested bringing back option 2 and option 3 for consideration at the next meeting.

15. Discussion regarding the November Strategic Planning discussion. (HJ)

Mr. Jefferson stated staff is looking for a date to hold the next Strategic Planning discussion.

The Town Council agreed on Tuesday, November 30 at 6:00 p.m. at Town Hall.

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.

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 7:11 p.m.

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

The Town Council reconvened the Regular Session at 7:43 p.m.

No action was taken.

Adjourn.

The meeting was adjourned at 7:44 p.m.

These minutes approved on the 23rd day of November 2021.

APPROVED:

Ray Smith, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

DRAFT



PARKS AND RECREATION

To: Mayor and Town Council

From: Paul Naughton, Acting Parks and Recreation Director

Through: Harlan Jefferson, Town Manager
Robyn Battle, Executive Director of Community Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Professional Services Agreement between Halff Associates, Inc., and the Town of Prosper, Texas, related to the design of the US 380 Green Ribbon Landscaping and Irrigation (Lovers – Mahard) project.

Description of Agenda Item:

The Town of Prosper was notified on October 15, 2021 of being selected by the Texas Department of Transportation (TxDOT) for funding through the Green Ribbon Program of \$1,275,000 for landscaping improvements on US 380.

The services associated with this agreement are for the design of the median landscape and irrigation improvements to US 380. The design limits on US 380 are from Lovers Lane to Mahard Parkway totaling approximately 2.2 miles. The design for US 380 will also include the installation of a continuous empty conduit for use in running power to future median street lighting.

At the December 8, 2020, Town Council meeting, the Town Council approved a list of qualified Park design firms, which included services of median landscaping design. Halff Associates, Inc, is included on the list. The Town is currently working with the design consultant on the median landscape improvements on US 380 and has had a good experience.

Budget Impact:

Total cost for the design is \$95,000 and will be funded in account 100-5410-60-01. The City of Frisco will be reimbursing the Town 50% of the cost associated with the design. This is the same arrangement that was agreed to with the previous section of US 380.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the standard Professional Services Agreement as to form and legality.

Attached Documents:

1. Professional Service Agreement
2. Location Map

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Professional Services Agreement between Halff Associates, Inc., and the Town of Prosper, Texas, related to the design of the US 380 Green Ribbon Landscaping and Irrigation (Lovers – Mahard) project.

Proposed Motion:

I move to authorize the Town Manager to execute a Professional Services Agreement between Halff Associates, Inc., and the Town of Prosper, Texas, related to the design of the US 380 Green Ribbon Landscaping and Irrigation (Lovers – Mahard) project.

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND Halff Associates, Inc.
FOR THE US380 GREEN RIBBON LANDSCAPE ENHANCEMENTS, PROJECT (2150-PK)**

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 **Halff Associates, Inc.**, 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."

W I T N E S S E T H:

WHEREAS, Town desires to obtain professional engineering services in connection with the **US380 GREEN RIBBON LANDSCAPE ENHANCEMENTS, Project (2150-PK)**, 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 Ninety-Five Thousand Dollar and Zero Cents (\$95,000.00) 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:

Halff Associates, Inc.
Kirk M. Wilson, PLA, LI
Team Leader & Director of Fort Worth
Landscape & Planning
4000 Fossil Creek Blvd
Fort Worth, Texas 76137
kwilson@halff.com

Town of Prosper
Harlan Jefferson, Town Manager
PO Box 307
Prosper, TX 75078
hjefferson@prospertx.gov

11. **Termination.** The obligation to provide further services under this Agreement may be terminated by either Party in writing upon thirty (30) calendar days notice. In the event of termination by Town, Consultant shall be entitled to payment for services rendered through receipt of the termination notice.

12. **Sole Parties and Entire Agreement.** This Agreement shall not create any rights or benefits to anyone except Town and Consultant, and contains the entire agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.

13. **Assignment and Delegation.** Neither Town nor Consultant may assign its rights or delegate its duties without the written consent of the other Party. This Agreement is binding on Town and Consultant to the extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Town officer, employee or agent.

14. **Texas Law to Apply; Successors; Construction.** This Agreement shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the Parties hereto and their representatives, successors and assigns. Should any provisions in this Agreement later be held invalid, illegal or unenforceable, they shall be deemed void, and this Agreement shall be construed as if such provision had never been contained herein.

15. **Conflict of Interest.** Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated in **Exhibit D - Conflict of Interest Affidavit** and incorporated herein as if written word for word, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit included in the exhibit. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E - Conflict of Interest Questionnaire** and incorporated herein as if written word for word.

16. **Venue.** The Parties herein agree that this Agreement shall be enforceable in Prosper, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Collin County, Texas.

17. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

18. **Prevailing Party.** In the event a Party initiates or defends any legal action or proceeding to enforce

or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

19. **"Anti-Israel Boycott" Provision.** In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Chapter 2270 does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the company is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the company verifies by its signature to this Agreement that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.

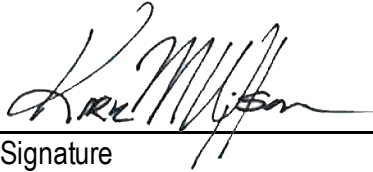
20. **Signatories.** Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Consultant to same.

IN WITNESS WHEREOF, the Parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the _____ day of _____, 20____.

Halff Associates, Inc.

TOWN OF PROSPER, TEXAS

By:



Signature

Kirk M. Wilson

Printed Name

Director of Fort Worth Landscape & Planning

Title

11-12-2021

Date

By:

Signature

Harlan Jefferson

Printed Name

Town Manager

Title

Date

EXHIBIT A SCOPE OF SERVICES

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS & HALFF ASSOCIATES, INC. FOR

US380 GREEN RIBBON LANDSCAPE ENHANCEMENTS PROJECT (2150-PK)

I. PROJECT DESCRIPTION

Halff Associates, Inc. (Halff) will prepare landscape and irrigation plans for the Town of Prosper, Texas (Town) for the medians along US 380 between Lovers Lane in Prosper, Texas and Mahard Parkway in Frisco, Texas (approximately 2.25 miles). The landscape design shall replicate the planting patterns found along US 380 east of this proposed project. The project is funded through the 2022 TxDOT Green Ribbon Program.

II. PROJECT MANAGER (LUMP SUM)

Halff Associates, Inc
Kirk M. Wilson, PLA, LI
Team Leader, Director of Fort Worth LA
4000 Fossil Creek Blvd
Fort Worth, TX 75081
817-764-7447
kwilson@halff.com

III. BASIC SERVICES

Task 1 - Project Management

a. Internal Team Meetings

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

b. Communications and Reporting

1. Kickoff Meeting

Halff will conduct a kickoff meeting the Town of Prosper, the City of Frisco and TxDOT to confirm the projects goals and objectives, project budget and project schedule. Notes will be taken by Halff at this meeting to record items discussed and decisions made and will be delivered in digital format to the Town of Prosper.

2. Design Submittal Review Meetings

Halff will conduct a design submittal review conference calls with Town staff members to discuss all comments related to the project at the 30%, 60%, 95% and 100% submittal milestones. Notes will be taken by Halff at these meetings to record items discussed and decisions made and will be delivered in

digital format to the Town of Prosper.

3. Irving Water District Coordination Meetings:

Halff will conduct no more than two (02) virtual project coordination meeting with the Irving Water District staff. Notes will be taken by Halff at these meeting to record items discussed and decisions made and will be delivered in digital format to the Town of Prosper.

The meeting and submittal milestones shall be as follows:

- (01) Kickoff meeting with Town of Prosper and Texas Department of Transportation
- (02) Design coordination meeting with Irving Water District
- (01) 30% Schematic Design Review – Conference Call
- (01) 60% Design Review - Conference Call
- (01) 95% Design Review - Conference Call
- (01) 100% Final Design Submittal

Total Seven (07) Meetings

Task 2 - Data Compilation

a. Base Map

Compile the digital information provided by the Town during the data gathering exercises into a base plan for use during the planning and design activities. This base plan will identify the location of existing streets; existing wet and dry utilities; vegetation; and existing topography. Location of existing underground utilities will be determined using the GIS utility files provided but the Town of Prosper.

Task 3 – 30% Schematic Design

a. Site Investigation

After receipt of the site base Halff will conduct one (01) site investigation study related to the site visit to confirm all existing improvements have been included on the base plan.

b. 30% Schematic

Based upon the site inventory, site analysis, and the project kick-off meeting, Halff will update the landscape schematic plan prepared as a part of the application process to help communicate the design intent and vision of the project.

c. Town Review Meeting

Halff will conduct one (01) 30% Schematic review meeting with the Town to present and review the proposed schematic plan. The time and place of the meetings will be organized and set up by Town of Prosper.

d. Final 30% Schematic Plan

Based upon comments received from Town staff, Halff will refine the 30% schematic plan. Final 30% schematic plan will be a colored rendered plan for use at the Town Council presentation. The final 30%

schematic plan shall be the basis for the development of construction documents.

e. Cost Estimating

The opinion of probable construction cost prepared for the grant application will be updated and submitted with to the 30% schematic plan. Estimate shall be updated using unit costs from recent TxDOT bid results for similar projects.

Task 4 - Construction Document Preparation

Based on the 30% schematic plan approved by the Town, Halff shall prepare, for approval by TxDOT, a complete set of landscape construction documents and specifications as defined below. Halff shall prepare one 11x17 pdf file copy of drawings for review and comment by the Town. For TxDOT review, Halff will print three 11x17 sets of drawings and bound specification books. Drawings and specifications shall be submitted electronically at 60%, 95% and 100% Final submittal stages. Halff will provide the following drawings for submittal:

a. Quantity Summary Sheet and General Notes

A quantity summary sheet will be prepared in TxDOT format that identifies each bid item and the quantity of each bid item per sheet. A general notes sheet will also be prepared.

This plan will be sealed by a Registered Landscape Architect

b. Demolition Plan

Prepare a 60% and 95% review set and a 100% Final set of plans for existing conditions and demolition.

The plans will be sealed by a Registered Landscape Architect

c. Hardscape Plan

Prepare a 60% and 95% review set and a 100% Final set of hardscape plans that identify the location of concrete mow strips.

The plans will be sealed by a Registered Landscape Architect

d. Planting Plan

Prepare a 60% and 95% review set and a 100% Final set of plans and specifications for Planting Design. Planting plans shall identify the quantity size and location of trees, shrubs, ground cover / native grass and decorative hardscape materials such as decomposed granite and gravel.

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

These plans will also include planting details and notes

The plans will be sealed by a Registered Landscape Architect

e. Irrigation Plan

Prepare irrigation plans for the watering of trees (bubblers) and planter beds (drip) proposed in the Planting plans. The plan will indicate a complete layout and design for an underground, automated irrigation system. The plan will show coverage and proper zoning of the irrigation system to maximize efficient water use. Halff will coordinate pressure data requirements with the Town Water Department and use such data in the design of the irrigation systems. Pressure readings at the site, if required, will be made by the Town. Plans will also include irrigation details, notes and pressure loss tables.

The plans will be sealed by a Licensed Irrigator.

f. Traffic Control Plans and Details

Traffic control plans will be prepared to identify the location of traffic control measures on US 380 during construction. Incorporate standard TxDOT traffic control details and notes on the plans.

These plans will be sealed by a Professional Engineer.

g. Environmental Permitting Plans, Details and EPIC sheet

Environmental permitting plans will identify the location of erosion control measures. Incorporate standard TxDOT erosion control details and notes on the plans. This task will also include the preparation of the TxDOT EPIC sheet.

These plans will be sealed by a Professional Engineer.

h. Cost Estimating, Specifications and Project Manual

Prepare the project manual with TxDOT technical specifications for the tree plantings, landscaping and irrigation. A draft project manual will be included at all submittal stages in the project for review and comment by Prosper staff and TxDOT. The Town and TxDOT will provide Halff with standard "boilerplate" contract documents for incorporation into the project manual. Halff will also update the 30% opinion of probable construction cost and will include it with the 60%, 95% and 100% final review plans and specifications.

III. SPECIAL SERVICES

Task 5 – Bidding Assistance

a. Pre-Bid Meeting

Halff will participate in the pre-bid meeting to describe the project design and expectations to prospective bidders.

b. Bid Document Distribution

Halff will prepare bid documents for digital distribution by others. The bid set will consist of digital PDF copies of both the plans and specifications.

c. Bid Process Coordination:

Halff will assist the Town of Prosper during the bidding process by addressing technical questions and bidder inquiries during the time of bidding. Halff will prepare addenda for issuance and distribution to the bidders by the Town of Prosper.

d. Bid Opening:

Halff will attend the bid opening and prepare a tabulation of bid results.

e. Bid Review:

Halff will assist the Town of Prosper in evaluating the bid results and will provide a recommendation for contract award.

Task 6 – Construction Services

a. Construction Administration

Construction administration shall include preparation and attendance at a pre-construction conference, attendance at up to two (2) meetings during construction and review and approval of hardscape, planting and irrigation submittals. Halff will also be responsible for answering Contractor generated RFI's (Request for Information) by either issuing a change order or change directive.

b. Construction Observation

Construction observation shall include bi-weekly (every two weeks) site visits to observe construction progress. A site visit report will be prepared to record observations.

c. Substantial and Final Observation

At substantial completion a punch list will be prepared to document deficient construction items that will need to be addressed. A final observation will take place to review completion of the substantial completion punch list.

Task 7 - Record Drawings

a. Final Record Drawings

Halff will prepare Final Record Drawings of the construction plans using mark-ups submitted by the Contractor. Halff will produce a PDF of the as-recorded drawings and provide a CD copy to the Town.

IV. DIRECT EXPENSES

Task 8– Reimbursable

a. Expenses

Halff shall include, but are not necessarily limited to expenses for supplies, transportation, equipment, travel, communication, printing of plans and specifications, presentation boards, graphic boards and similar incidentals necessary to complete the project.

V. DELIVERABLES

Task 1 - Project Management	7 meetings
Task 2 – Data Compilation	CAD Base Files
Task 3 – 30% Schematic Design	30% schematic plan
Task 4 - Construction Document	60%, 95% & 100% plans and estimates
Task 5 – Bidding Services	Pre-Bid & Bid-Open meeting
Task 6 –Construction Services	Construction Administration & Observation
Task 7 – Record Drawings	Electronic set for printing, CAD files
Task 8 – Reimbursables	Expenses for supplies and mileage

VI. ADDITIONAL SERVICES

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

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

**EXHIBIT B
COMPENSATION SCHEDULE**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE TOWN OF PROSPER, TEXAS & HALFF ASSOCIATES, INC.
FOR**

US380 GREEN RIBBON LANDSCAPE ENHANCEMENTS PROJECT (2150-PK)

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	November 2021	
Task 1 - Project Management	On Going	\$10,000.00
Task 2 – Data Compilation	December 2021	\$12,000.00
Task 3 – 30% Schematic Design	January 2022	\$5,000.00
Task 4 – Construction Documents	June 2022	\$43,000.00
Task 5 – Bidding Assistance	July 2022	\$ 3,000.00
Task 6 – Construction Services	November 2022	\$ 15,000.00
Task 7 – Record Drawings	December 2022	\$ 2,000.00
Task 8 - Reimbursables	On Going	\$5,000.00
Total Compensation		\$95,000.00

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Amount
Task 1 - Project Management	\$ 10,000.00
Task 2 – Data Compilation	\$ 12,000.00
Task 3 – 30% Schematic Design	\$ 5,000.00
Task 4 – Construction Documents	\$ 43,000.00
Total Compensation	\$70,000.00

Special Services (Hourly)	Amount
Task 5 – Bidding Assistance	\$ 3,000.00
Task 6 – Construction Services	\$ 15,000.00
Task 7 – Record Drawings	\$ 2,000.00
Total Special Services:	\$20,000.00

Direct Expenses	Amount
Task 8 - Reimbursables	\$5,000.00
Total Direct Expenses:	\$5,000.00

EXHIBIT C INSURANCE REQUIREMENTS

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

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

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

B. MINIMUM LIMITS OF INSURANCE

Service Provider shall maintain throughout contract limits not less than:

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

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

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

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the provider, products and completed operations of the provider, premises owned, occupied or used by the provider. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The provider's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the provider's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The provider's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the insured's limits of liability.

2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the provider for the Town.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

4. Professional Liability and / or Errors and Omissions:

"Claims made" policy is acceptable coverage, which must be maintained during the course of the project, and up to two (2) years after completion and acceptance of the project by the Town.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A- VI**, or better.

F. VERIFICATION OF COVERAGE

Service Provider shall provide the Town with certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

Certificate holder to be listed as follows:

Town of Prosper
P.O. Box 307
Prosper, TX 75078

EXHIBIT E

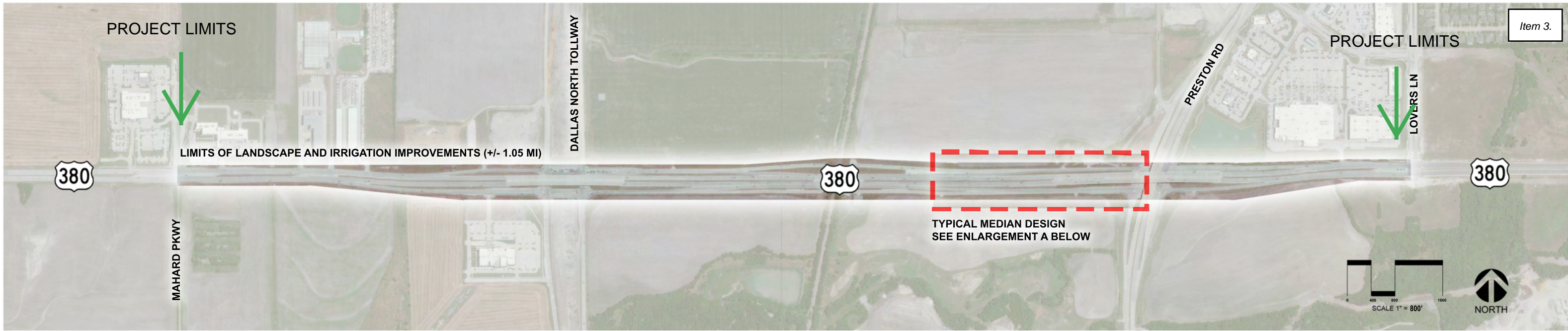
CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>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).</p> <p>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.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<div style="border: 1px solid black; padding: 2px; text-align: center;">OFFICE USE ONLY</div> <div style="border: 1px solid black; height: 100px; margin-top: 5px;"></div>	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">Not Applicable</p> <p style="text-align: center;">_____ Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-top: 20px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </p> <p style="margin-top: 10px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p> <p style="text-align: center; margin-top: 20px;">Not Applicable</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p>_____ Signature of vendor doing business with the governmental entity</p> </div> <div style="width: 45%; text-align: right;"> <p>11-12-2021</p> <p>_____ Date</p> </div> </div>		

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 11/30/2015





ENGINEERING SERVICES

To: Mayor and Town Council

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

Through: Harlan Jefferson, Town Manager
Rebecca Zook, Executive Director of Development and Infrastructure Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Pipeline License Agreement between BNSF Railway Company, and the Town of Prosper, Texas, related to the construction of drainage improvements at the BNSF Railroad for the downtown apartment and townhome projects along McKinley Street.

Description of Agenda Item:

In March 2021, the Town Council approved a Development Agreement between BBG Investments, Inc., and the Town of Prosper which required the developer to design and construct drainage improvements under the existing BNSF Railroad to serve the proposed downtown apartment and townhome projects along McKinley Street. In order to install the drainage improvements within the BNSF corridor, a Pipeline License Agreement is required to be executed by both the Town of Prosper and BNSF Railway Company.

Legal Obligations and Review:

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

Attached Documents:

1. Pipeline License Agreement

Town Staff Recommendation:

Staff recommends the Town Council authorize the Town Manager to execute a Pipeline License Agreement between BNSF Railway Company, and the Town of Prosper, Texas, related to the construction of drainage improvements at the BNSF Railroad for the downtown apartment and townhome projects along McKinley Street.

Proposed Motion:

I move to authorize the Town Manager to execute a Pipeline License Agreement between BNSF Railway Company, and the Town of Prosper, Texas, related to the construction of drainage improvements at the BNSF Railroad for the downtown apartment and townhome projects along McKinley Street.



October 22, 2021

Town of Prosper
Attention: Mr. Dan Heischman
250 W. First Street
Prosper, TX 75078

21W-10270

Dear Mr. Heischman:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print one (1) copy, execute, and **return copy with original signature** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- Submit payment by credit card in the amount of \$25,900.00 to <https://bnsf.railpermitting.com> which covers the contract fee.

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1,266.00 with your payment.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$800.00.

Sincerely,

Kelly Schronk
Kelly Schronk
Permit Manager

Attachment

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 20__ (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **Town of Prosper**, a Texas Municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), seven (7) RCP pipelines, 72 inches in diameter (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Prosper, County of Collin, State of Texas, Line Segment 1046, Mile Posts 679.632, 679.634, 679.636, 679.638, 679.640 and 679.642 as shown on the attached Drawing No. 81633, dated October 22, 2021, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry Storm Water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Twenty-Five Thousand Nine Hundred and No/100 Dollars (\$25,900.00) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and

holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensors, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensors within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensors excepts and reserves the right, to be exercised by Licensors and any other parties who may obtain written permission or authority from Licensors:

- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensors in its sole discretion deems appropriate, provided Licensors uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensors desires the use of its rail corridor in such a manner as would, in Licensors's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensors to such effect, make such changes in the Pipeline as in the sole discretion of Licensors may be necessary to avoid interference with the proposed use of Licensors's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensors in its sole discretion, to the Pipeline promptly upon Licensors's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**

- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensors's representative, the Scheduling Agent or its designee. Licensee shall notify Licensors's Roadmaster, Marc Russell at Marc.Russell@bnsf.com, telephone 817-528-1785, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensors of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensors's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3rd parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the

ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensors concerning the existence and approximate location of Licensors' underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensors' Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensors will provide Licensee with the information Licensors has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensors' standard procedures. Licensors does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensors prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensors' reasonable opinion that granular material is present, Licensors may select a new location for Licensee's use, or may require Licensee to furnish for Licensors' review and approval, in Licensors' sole discretion, a remedial plan to deal with the granular material. Once Licensors has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensors.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
 - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensors' property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensors and Licensors' affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 **Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.**
- 14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR**

THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Sudden and accidental pollution coverage
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
 - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all

of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

☐ Licensee may **elect** to participate in Licensor's Blanket Policy;

☐ Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensors. If Licensors allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensors liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensors an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensors or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensors that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensors may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensors as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensors under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensors to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensors shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.

- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.
- 15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.
- 15.6.18 For purposes of this **Section 15**, Licensors shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensors' applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as

defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensors property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 **"Environmental Law(s)"** shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et

seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

DISCLAIMER OF WARRANTIES

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

LIENS AND TAXES

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.**

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.

- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licenser or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licenser may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licenser for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licenser has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licenser, provide a bill of sale in a form acceptable to Licenser conveying the Pipeline and the other Improvements to Licenser for no additional consideration.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licenser and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licenser, which consent may not be unreasonably withheld or delayed by Licenser. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licenser in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensors for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Licensors shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensors shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensors for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensors: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: Town of Prosper
250 W. First Street
Prosper, TX 75078

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensors and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensors harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: _____
Shane Krueger
Vice President Permits and Special Projects

LICENSEE:

Town of Prosper, a Texas Municipality

By: _____

Title: _____

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

TOWN OF PROSPER



MAP REF. s6

SCALE: 1 IN = 75 FT

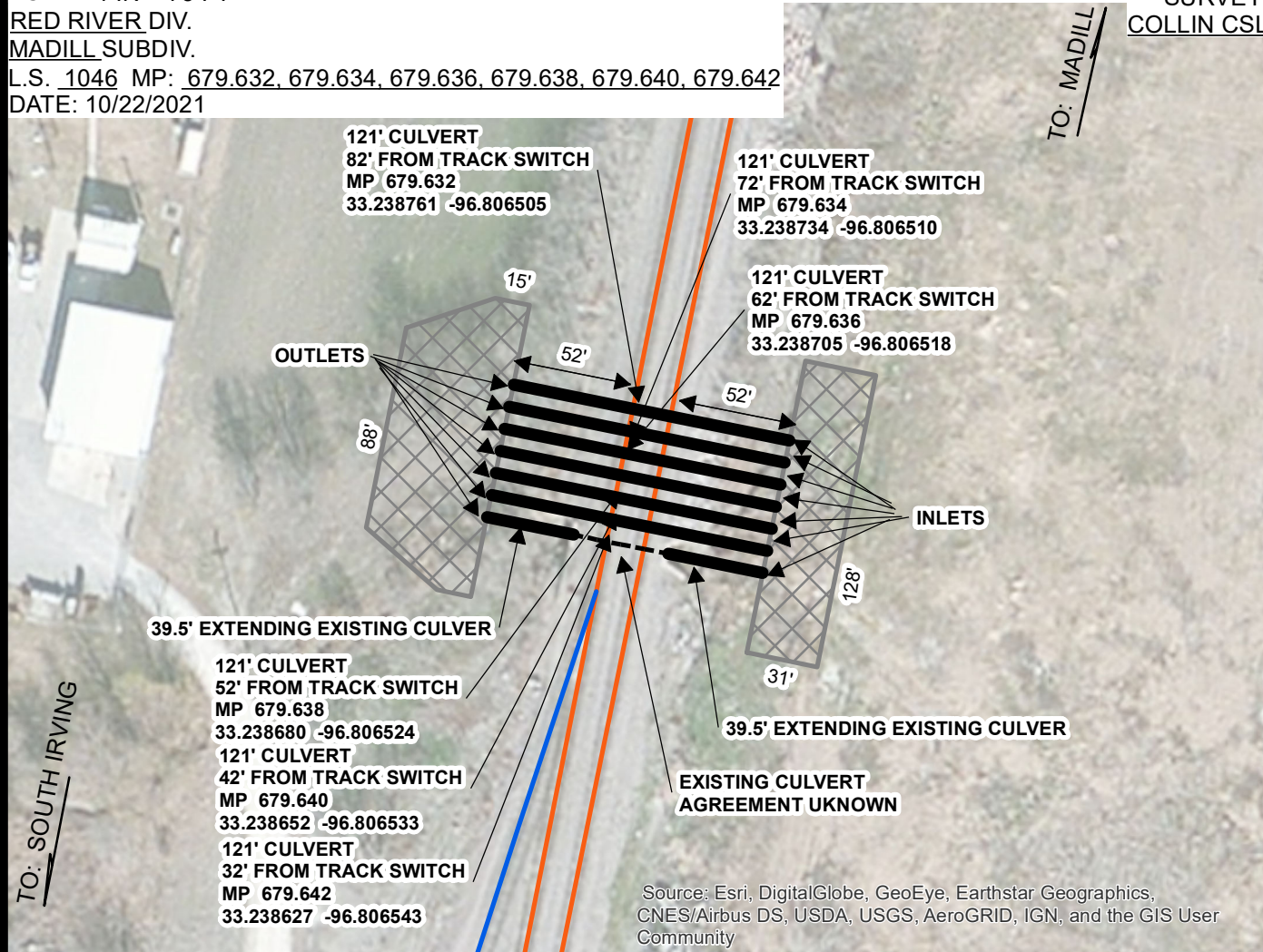
RED RIVER DIV.

MADILL SUBDIV.

L.S. 1046 MP: 679.632, 679.634, 679.636, 679.638, 679.640, 679.642

DATE: 10/22/2021

SURVEY:
COLLIN CSL



- PROPOSED RIPRAP

DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

PROPOSED CULVERTS ARE 10' APART

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	72"	-	LENGTH ON R/W:	805'	-
CONTENTS:	STORM WATER	-	WORKING PRESSURE:	-	-
PIPE MATERIAL:	RCP	-	BURY: BASE/RAIL TO TOP OF PIPE	5.75'	-
SPECIFICATIONS / GRADE:	CLASS IV - 5,000 PSI	-	BURY: NATURAL GROUND	3.5'	-
WALL THICKNESS:	8"	-	BURY: ROADWAY DITCHES	3.5'	-
COATING:	-	-	CATHODIC PROTECTION	-	-

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: PIPE TO BE INSTALLED BY JACK/DRY BORE

PROSPER
COUNTY OF COLLIN

STATE OF TX

TR



DEVELOPMENT SERVICES

To: Mayor and Town Council

From: Brady Cudd, Building Official

Through: Harlan Jefferson, Town Manager
Rebecca Zook, Executive Director of Development and Infrastructure Services
Khara C. Dodds, AICP, Director of Development Services

Re: Town Council Meeting – November 23rd, 2021

Agenda Item:

Consider and act upon an ordinance repealing existing Article 3.16, “Pools and Spas” of Chapter 3 titled “Building Regulations” of the Code of Ordinances and replacing it with a new Article 3.16 “Swimming Pool and Spa Code” and adopting the 2021 Edition of the International Swimming Pool and Spa Code as set forth.

Description of Agenda Item:

This item adopts the 2021 ISPSC (International Swimming Pool and Spa Code) as the swimming pool and spa code for the Town of Prosper. This item will also adopt, per the attached Appendix A, amendments to the code as promulgated by the Regional Codes Coordinating Committee of the NCTCOG (North Central Texas Council of Governments).

The Town's current pool and spa ordinances were last revised in 2006. Many changes have taken place in the industry since that time. More recently, as part of the 86th Legislative Session, the ISPSC was adopted as the municipal swimming pool and spa code for the state effective September 1, 2020, per HB 2858. This statute enables local governments to adopt the ISPSC along with amendments to the ISPSC. As put forth by NCTCOG, the proposed amendments seek to remove any and all conflicts between the ISPSC and Texas Department of State Health Services (TDSHS); *Standards for Public Pools and Spas*, § 285.181 through § 285.208. Key points and features of the ordinance update include:

- Enhance uniformity with surrounding municipalities, state law, and federal law, including the Virginia Graeme Baker Pool and Spa Safety Act.
- Specific codes for commercial pools and aquatic recreation facilities (these items are not addressed in our current ordinance).
- Additional guidance on pool means of egress, decking, and floor slope.
- Pressure testing requirements for circulation system piping.

Strategic Plan

This action is pursuant to Enviro-Action 1.9 entitled, "Pool and Spa Code: Propose Recommendations and Submit for Adoption."

Budget Impact: The budgetary impact from this ordinance adoption will be very limited as the Town currently require permits for pools. Additionally, this ordinance does not change the Town's fee for a pool permit (see Appendix A of the Code of Ordinances for a current fee schedule, including charges for pool permits).

Legal Obligations and Review:

This ordinance has been reviewed by Terrence Welch of Brown & Hofmeister, L.L.P., as to form and legality.

Attached Documents:

1. Ordinance for 2021 ISPSC including Appendix A

Town Staff Recommendation:

Town staff recommends approving an ordinance repealing existing Article 3.16, "Pools and Spas" of Chapter 3 titled "Building Regulations" of the Code of Ordinances and replacing it with a new Article 3.16 "Swimming Pool and Spa Code" and adopting the 2021 Edition of the International Swimming Pool and Spa Code as set forth.

Proposed Motion:

I move to approve an ordinance repealing existing Article 3.16, "Pools and Spas" of Chapter 3 titled "Building Regulations" of the Code of Ordinances and replacing it with a new Article 3.16 "Swimming Pool and Spa Code" and adopting the 2021 Edition of the International Swimming Pool and Spa Code as set forth.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2021-__

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING ARTICLE 3.16, "POOLS AND SPAS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER AND REPLACING IT WITH A NEW ARTICLE 3.16, "SWIMMING POOL AND SPA CODE"; ADOPTING THE 2021 EDITION OF THE INTERNATIONAL SWIMMING POOL AND SPA CODE, SAVE AND EXCEPT THE DELETIONS AND AMENDMENTS SET FORTH HEREIN; REGULATING THE CONSTRUCTION, ALTERATION, MOVEMENT, RENOVATION, REPLACEMENT, REPAIR, AND MAINTENANCE OF AQUATIC RECREATION FACILITIES, POOLS, AND SPAS; 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 it would be advantageous and beneficial to the citizens of Prosper to repeal existing Article 3.16, "Pools and Spas," of the Code of Ordinances and replace it with a new Article 3.16, "Swimming Pool and Spa Code"; and,

WHEREAS, the Town Council has also investigated and determined that it would be advantageous and beneficial to the citizens of Prosper to adopt the 2021 Edition of the International Swimming Pool and Spa Code, save and except the amendments and deletions set forth below.

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

Existing Article 3.16, "Pools and Spas," of the Code of Ordinances of the Town of Prosper Texas, is hereby repealed in its entirety and replace with a new Article 3.16, "Swimming Pools and Spas," to read as follows:

"ARTICLE 3.16. SWIMMING POOL AND SPA CODE

Sec. 3.16.001 Code Adopted; amendments

The International Swimming Pool and Spa Code, 2021 Edition, copyrighted by the International Code Council, Inc., save and except the deletions and amendments set forth in Exhibit "A," attached hereto and incorporated herein for all purposes, is hereby adopted as the Swimming Pool and Spa Code for the Town, regulating the construction, alteration, movement, renovation, replacement, repair, and maintenance of aquatic recreation facilities, pools, and spas within the Town (the "2021 International Swimming Pool and Spa Code"). The 2021 International Swimming Pool and Spa Code is made a part of this Article as if fully set forth herein. A copy of the

International Swimming Pool and Spa Code, 2021 Edition, copyrighted by the International Code Council, Inc., is on file in the office of the Town Secretary of Prosper being marked and so designated as the 2021 International Swimming Pool and Spa Code.

Sec. 3.16.002 Location of Pools and Spas

Pools and spas located in Districts zoned as Agricultural, Single-Family, Townhome, and Two-Family shall be subject to the following restrictions:

1. Pools and Spas shall have a required minimum side yard setback of three feet (3').
2. Pools and spas shall have a required minimum backyard setback of three feet (3').
3. No pool or spa is allowed in the required front yard of any property.
4. Measurements for placement shall be taken from the edge of pool construction (back of beam), not the water's edge."

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 Five Hundred Dollars (\$500.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

This Ordinance shall become effective on January 1, 2022, 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 23TH DAY OF NOVEMBER, 2021.

Ray Smith, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

Exhibit A
TOWN OF PROSPER AMENDMENTS
2021 INTERNATIONAL SWIMMING POOL AND SPA CODE
The following additions, deletions, and amendments to the 2021 International Swimming Pool and Spa Code are hereby approved and adopted.

The following sections, paragraphs, and sentences of the *2021 International Swimming Pool and Spa Code* are hereby amended as follows: Standard type is the text from the ISPSC. Underlined type is text inserted. ~~Lined through type is deleted text from ISPSC.~~

Section R101.1 Title. These regulations shall be known as the Swimming Pool and Spa Code of the Town of Prosper hereinafter referred to as "this code."

Section 102.9 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law, to include but not limited to:

1. Texas Department of State Health Services (TDSHS); *Standards for Public Pools and Spas*; §285.181 through §285.208, (TDSHS rules do not apply to pools serving one- and two-family dwellings or townhouses).
2. Texas Department of Licensing and Regulation (TDLR); *2012 Texas Accessibility Standards (TAS)*, TAS provide the scoping and technical requirements for accessibility for swimming pools, wading pools, and spas and shall comply with *2012 TAS, Section 242*. (TAS rules do not apply to pools serving one- and two-family dwellings or townhouses).

Exception: Elements regulated under Texas Department of Licensing and Regulation (TDLR) and built in accordance with TDLR approved plans, including any variances or waivers granted by the TDLR, shall be deemed to be in compliance with the requirements of this Chapter.

113.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair a pool or spa in violation of the *approved* construction documents or directive of the *code official*, or of a permit or certificate issued under the provisions of this code may be punishable for each day of the violation set forth by the *authority having jurisdiction*. ~~, shall be guilty of a [SPECIFY OFFENSE], punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [NUMBER OF DAYS], or both such a fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

305.1 General. The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools and spas. In only one-and two-family dwellings and townhouses, where spas or hot tubs are equipped with a lockable safety cover complying with ASTM F1346 and swimming pools are equipped with a powered safety cover that complies with ASTM F1346, the areas where those spas, hot tubs or pools are located shall not be required to comply with Sections 305.2 through 305.7.

305.2.7.1 Chain link fencing prohibited. Chain link fencing is not permitted as a barrier in public pools built after January 1, 1994.

305.4 Structure wall as a barrier. Where a wall of a dwelling or structure of a one- and two-family dwelling or townhouse or its accessory structure serves as part of a barrier and where doors or windows provide direct access to the pool or spa through that wall, one of the following shall be required:

1. Remainder Unchanged
2. Remainder Unchanged
3. Remainder Unchanged

4. Remainder unchanged
5. Remainder unchanged

305.6 Natural barriers used in a one- and two-family dwelling or townhouse. In the case where the pool or spa area abuts the edge of a lake or other natural body of water, public access is not permitted or allowed along the shoreline, and required barriers extend to and beyond the water's edge a minimum of eighteen (18) inches, a barrier is not required between the natural body of water shoreline and the pool or spa.

Section 307.1.4 Accessibility; Add exception to section to 307.1.4 as follows:

Exception: Components of projects regulated by and registered with Architectural Barriers Division of Texas Department of Licensing and Regulation shall be deemed to be in compliance with the requirements of this Chapter.

Section 307.2.2.2. Adjacency to Structural Foundation. Depth of the swimming pool and spa shall maintain a ratio of 1:1 from the nearest building foundation or footing of a retaining wall.

Exception: A sealed engineered design drawing of the proposed new structure shall be submitted for approval.

310.1 General. Suction entrapment avoidance for pools and spas shall be provided in accordance with APSP 7 (ANSI/PHTA/ICC 7) or for public swimming pools in accordance with State of Texas Rules for Public Swimming Pools and Spas, Title 25 TAC Chapter 265 Subchapter L, Rule §265.190.

402.12 Water envelopes. The minimum diving water envelopes shall be in accordance with ~~Table 402.12~~ **Texas Department of State Health Services, Administrative Code Title 25, Chapter 265, Section 186 (e) and Figure: 25 TAC 256.186 (e) (6).** (Delete Table 402.12 and Figure 402.12)

ADD: Figure: 25 TAC §265.186 (e) (6)

Maximum Diving Board Height Over Water	¾ Meter	1 Meter	3 Meters
Max. Diving Board Length	12 ft.	16 ft.	16 ft.
Minimum Diving Board Overhang	2 ft. 6 in.	5 ft.	5 ft.
D1 Minimum	8 ft. 6 in.	11 ft. 2 in.	12 ft. 2 in.
D2 Minimum	9 ft.	10 ft. 10 in.	11 ft. 10 in.
D3 Minimum	4 ft.	6 ft.	6 ft.
L1 Minimum	4 ft.	5 ft.	5 ft.
L2 Minimum	12 ft.	16 ft. 5 in.	19 ft. 9 in.
L3 Minimum	14 ft. 10 in.	13 ft. 2 in.	13 ft. 11 in.
L4 Minimum	30 ft. 10 in.	34 ft. 7 in.	38 ft. 8 in.
L5 Minimum	8 ft.	10 ft.	13 ft.
H Minimum	16 ft.	16 ft.	16 ft.
From Plumbet to Pool Wall at Side	9 ft.	10 ft.	11 ft. 6 in.
From Plumbet to Adjacent Plumbet	10 ft.	10 ft.	10 t.

411.2.1 Tread dimensions and area. Treads shall have a minimum unobstructed horizontal depth (i.e., horizontal run) of 12 inches and a minimum width of 20 inches. ~~not be less than 24 inches (607mm) at the leading edge. Treads shall have an unobstructed surface area of not less than 240 square inches (154838mm²) and an unobstructed horizontal depth of not less than 10 inches (254 mm) at the center line.~~

411.2.2 Risers. ~~Risers for steps shall have a maximum uniform height of 10 inches, with the bottom riser height allowed to taper to zero except for the bottom riser, shall have a uniform height of not greater than 12 inches (305 mm) measured at the center line. The bottom riser height is allowed to vary to the floor.~~

Swimouts. Swimouts, located in either the deep or shallow area of a pool, shall comply with all of the following:

1. Unchanged
2. Unchanged
3. Unchanged
4. The leading edge shall be visibly set apart and provided with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the front leading edge of each step. This stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent in nature and shall be a slip-resistant surface.

Underwater seats and benches. Underwater seats and benches, whether used alone or in conjunction with pool stairs, shall comply with all of the following:

1. Unchanged
2. Unchanged
3. Unchanged
4. Unchanged
5. The leading edge shall be visually set apart and provided with a horizontal solid or broken stripe at least 1 inch wide on the top surface along the front leading edge of each step. This stripe shall be plainly visible to persons on the pool deck. The stripe shall be a contrasting color to the background on which it is applied, and the color shall be permanent in nature and shall be a slip-resistant surface.
6. Unchanged
7. Unchanged

610.5.1 Uniform height of 9-10 inches. Except for the bottom riser, risers at the centerline shall have a maximum uniform height of 9-10 inches (229-254 mm). The bottom riser height shall be permitted to vary from the other risers.

Section 804.1 General. The minimum diving water envelopes shall be in accordance with Table 804.1 and Figure 804.1, or the manufacturer's specifications, whichever is greater. Negative construction tolerances shall not be applied to the dimensions of the minimum diving water envelopes given in Table 804.1.

END



DEVELOPMENT SERVICES

To: Mayor and Town Council

From: Brady Cudd, Building Official
Travis Kvaal, Senior Backflow Inspector

Through: Harlan Jefferson, Town Manager
Rebecca Zook, Executive Director of Development and Infrastructure Services
Khara C. Dodds, AICP, Director of Development Services
Frank Jaromin, Public Works Director

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider and act upon an ordinance amending Chapter 6, "Health and Sanitation" of the Code of Ordinances by adding a new Article 6.06, "Irrigation Systems."

Description of Agenda Item:

This ordinance is pursuant to Section 551.006 of the Texas Local Government Code, which requires that municipalities with a population greater than 20,000 people regulate the installation of irrigation systems within the corporate limits of the municipality and within the municipality's extraterritorial jurisdiction in order to protect against the contamination of the agency's water supply. The statute also requires that such regulations include minimum standards for designing, installing, and operating irrigation systems, require proper licensing for irrigation installers, and require permits from the municipality before irrigation systems are installed.

In summary, the ordinance contains new requirements for the installation and alteration of irrigation systems which will support the Town's water conservation and water supply protection efforts. These requirements include:

- Proper licensing requirements for professionals that install irrigation systems
- Permitting requirements for the installation of new systems
- Backflow prevention requirements for the protection of potable water supply
- Irrigation plan requirements to ensure that the irrigation systems are designed, installed, and maintained in a way that promotes water conservation.
- Completion documents at the end of irrigation installation that confirm the installation was in accordance with the ordinance and industry requirements.

In addition to water conservation and water supply protection, other benefits to this ordinance include:

- Provides for additional protections to the Town's water supply against backflow and backpressure.
- Provides homeowners with additional information regarding their irrigation system including plans and a maintenance checklist.
- Provides additional protections for homeowners by increasing the oversight of the irrigation system design and installation.

The irrigation ordinance will be adopted in two different phases. The first phase is what is presented with this amendment and the second phase will be brought back to Council for consideration after the public outreach has been completed (see below).

Backflow Prevention Requirements

Once fully implemented, this ordinance will establish new backflow prevention requirements on properties with on-site sewage facilities. These requirements will be consistent with the Texas Local Government Code and the Texas Commission on Environmental Quality rules. In order to allow additional time for staff to educate affected homeowners regarding these new requirements, the current ordinance will only require annual testing of the existing backflow device at this time. Staff anticipates bringing a subsequent amendment to Council in late 2022 to update the ordinance. This ordinance update will require existing backflow devices to be replaced with an RPZ if they cannot be repaired in-ground, consistent with Section 551.006 of the Texas Local Government Code and TCEQ RG-478.

Public Outreach Strategy

Once adopted, the irrigation ordinance will become effective on January 1, 2022. Before amending the ordinance in late 2022 to require an RPZ in cases where the existing backflow device cannot be repaired in-ground, a public outreach strategy will be deployed to provide notification of the new ordinance to homeowners and HOAs. The following steps will be used:

- 1) Introduce the new ordinance at the HOA President's Meeting- completed on 11/11/21
- 2) Direct mailings will be sent to homeowners in the most affected HOAs (Gentle Creek, Whispering Farms, and Amberwood)
- 3) Attend HOA meetings and explain new law, offer guidance, and answer questions.

Strategic Plan

This action is pursuant to Envisio-Action 2.11 entitled, "Residential Irrigation Ordinance."

Budget Impact:

The budgetary impact from this ordinance adoption will be very limited as Building Inspection already collects fees for irrigation permits.

Legal Obligations and Review:

This ordinance has been reviewed by Terrence Welch of Brown & Hofmeister, L.L.P., as to form and legality.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town staff recommends approving the new ordinance entitled "Irrigation Systems," which will amend Chapter 6, "Health and Sanitation" of the Code of Ordinance by adding a new Article 6.06.

Proposed Motion:

I move to approve an ordinance amending Chapter 6, "Health and Sanitation," of the Code of Ordinances by adding a new Article 6.06 "Irrigation Systems".

TOWN OF PROSPER, TEXAS**ORDINANCE NO. 2021-__**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 6, "HEALTH AND SANITATION," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY ADDING A NEW ARTICLE 6.06, "IRRIGATION SYSTEMS"; ESTABLISHING THE MINIMUM STANDARDS FOR INSTALLATION OF IRRIGATION SYSTEMS WITHIN THE CORPORATE LIMITS OF THE TOWN AND THE TOWN'S EXTRATERRITORIAL JURISDICTION; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; 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 water conservation and environmental protection are important issues and concerns affecting the Town; and

WHEREAS, properly installed irrigation systems will conserve water, help avoid wasteful use, and improve the overall quality of life for the citizens of the Town of Prosper, Texas (the "Town"); and

WHEREAS, Section 551.006 of the Texas Local Government Code requires, part, that a municipality with a population of 20,000 or more regulate the installation of irrigation systems within the corporate limits of the municipality as well as the municipality's extraterritorial jurisdiction; and

WHEREAS, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an urban environment that is protective of the Town's water supply and provides an enhanced quality of life for the citizens of the Town.

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

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Prosper, and they are hereby approved and incorporated into the body of this ordinance as is fully set forth herein.

SECTION 2

From and after the effective date of this ordinance, Chapter 6, "Health and Sanitation," of the Code of Ordinances of the Town of Prosper, Texas, is amended by adding thereto a new Article 6.06, "Irrigation Systems," to read as follows:

"ARTICLE 6.06. IRRIGATION SYSTEMS

Sec. 6.06.001 Definitions.

The following words and terms shall have the following meanings in relation to their use within this Article, except when the context clearly indicates otherwise.

Air-Gap Separation (AG). The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water to a tank, fixture, receptor, sink, or other assembly and the flood level rim of the receptacle. The vertical, physical separation must be at least twice the diameter of the water supply outlet, but never less than 1.0 inch.

Artificially Made Bodies of Water. Bodies of water that have been constructed or modified to fit some decorative or commercial purpose such as, but not limited to, aeration ponds, fish farm ponds, storm retention basins, treatment ponds, and irrigation (channel) facilities. Water depths may vary seasonally or be controlled.

As-Built Drawing. The final irrigation plan produced upon completion of an irrigation system installation and provided to the irrigation system's owner or the owner's representative. The as-built drawing(s) shall reflect all changes made to the original irrigation plan and/or specifications during the construction process and show all aspects (including the dimensions, geometry, and location of all elements) of the irrigation system. May be referred to as "record drawings" or "as-builts."

Auxiliary Water Supply. Any water supply other than the approved public water supply for the Town of Prosper, such as water from another public water supply or from a natural source including, but not limited to, wells, cisterns, springs, rivers, streams, used waters, or industrial fluids.

Backflow Prevention. The prevention of reverse flow, due to back siphonage or backpressure, of non-potable water from an irrigation system into the potable water source.

Backflow Prevention Assembly. A mechanical assembly used to prevent backflow into a potable water system. The type of assembly used is based on the hazard (health hazard or non-health hazard) and hydraulic conditions.

Code Official. Person appointed by Town Manager to be in charge of enforcing this Article.

Commission. The Texas Commission on Environmental Quality.

Completion of irrigation system installation. When the landscape irrigation system has been installed, all minimum standards met, all tests are performed, and the irrigator is satisfied that the system is operating correctly.

Consulting. The act of providing advice, guidance, review, or recommendations related to landscape irrigation systems.

Cross-Connection. A physical connection between a public water system and either another supply of unknown or questionable quality, a source which may contain contaminating or polluting substances, a source of water treated to a lesser degree than approved, or an auxiliary water supply source in the treatment process.

Design. The act of determining the various elements of a landscape irrigation system that will include, but not be limited to, elements such as collecting site-specific information, defining the scope of the project, defining plant watering needs, selecting and laying out any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.

Design Pressure. The pressure that is required for an emission device to operate properly and in conjunction with the head-to-head spacing requirement. Design pressure is the sum of the minimum operating pressure of the emission device to the total of all pressure losses accumulated from the emission device to the water source.

Double Check Valve (DC). An assembly composed of two (2) independently acting, approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient-seated test cocks.

Emission Device. A device that is contained within an irrigation system and used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

Employed. The state of being engaged or hired to provide irrigation services and of being in an employer-employee relationship as defined by Internal Revenue Code, 26 USC § 31.3121(d)-1, based on the behavioral control, financial control, and the type of relationship involved in performing employment-related tasks.

Exempt Business Owner. An owner of a business who employs a licensed irrigator to supervise the irrigation services performed by the business as referenced in the Texas Occupations Code, Chapter 1903.

Graywater. Wastewater from showers, bathtubs, handwashing, lavatories, sinks that are used for disposal, and clothes washing machines. Graywater does not include wastewater from the washing of material, including diapers, soiled with human excreta or wastewater that has come in contact with toilet waste.

Head-to-head spacing. The spacing of emission devices such that the distance between them is within the manufacturer's published radius range and the water spray reaches from device to device. A deviation of 10% or less is acceptable.

Health Hazard. A cross-connection, potential cross-connection, or other situation involving any substance that could cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

Hydraulics. The science of dynamic and static water (pressure of water when it is not moving); the mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

Irrigation Inspector. A water district operator, governmental entity, or licensed irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district and is required to be licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations) or a licensed plumbing inspector.

Irrigation Plan. A scaled drawing of a new landscape irrigation system to be installed. The irrigation plan shall meet all the requirements in 30 TAC §§344.60-344.65 (relating to Water Conservation; Minimum Standards for the Design of the Irrigation Plan; Minimum Design and Installation Requirements; Completion of Irrigation System Installation; Maintenance, Alteration, Repair, or Service of Irrigation Systems; and Reclaimed Water) and is provided as an as-built

drawing to the owner or owner's representative upon completion of the irrigation system installation.

Irrigation Services. All activities involving and irrigation system including, selling, designing, installing, maintaining, altering, repairing, servicing, permitting, consulting services, or connecting an irrigation system to a water supply.

Irrigation System. A system permanently installed on a site and that is composed of an assembly of component parts for the controlled distribution and conservation of water to irrigate, reduce dust, and control erosion in any type of landscape vegetation in any location. This term includes sprinklers and sprinkler systems used for irrigation. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code § 251.002.

Irrigation Technician. A person who works under the supervision of a licensed irrigator to perform irrigation services including the connection of an irrigation system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

Irrigation Zone. A subdivision of an irrigation system with a matched precipitation rate based on plant material type (such as turf, shrubs, or trees), microclimate factors (such as sun/shade ratio), topographic features (such as slope) and soil conditions (such as sand, loam, clay, or combination) or for hydrological control.

Irrigator. A person who performs irrigation services and/or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30.

Irrigator-in-Charge. The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

Landscape Irrigation. The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

License. An occupational license that is issued by the Commission under Title 30, Texas Administrative Code, Chapter 30 to an individual that authorizes the individual to engage in an activity that is covered by Title 30, Texas Administrative Code, Chapter 30.

Mainline. A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

Maintenance Checklist. A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the geographic region, and the

minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

Major maintenance, alteration, repair, or service. Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

Master Valve. A remote control valve located after the backflow prevention assembly that controls the flow of water to the irrigation system mainline.

Matched Precipitation Rate. The condition in which all sprinkler heads within an irrigation zone apply water at the same rate.

Natural Bodies of Water. Bodies of water such as lakes, streams, ponds, rivers, and other naturally occurring bodies of water, which may vary in depth throughout the year.

New Installation. An irrigation system installed at a location where one did not previously exist or is a complete replacement of an existing irrigation system.

Non-Health Hazard. A cross-connection or potential cross-connection involving any substance that generally would not be a health hazard but would constitute a nuisance, or be aesthetically objectionable, if introduced into the potable water supply.

Non-Potable Water. A water supply, which has not been approved for human consumption by the Commission.

Pass-through Contract. A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services. A pass-through contract is also referred to as a sub-contract.

Potable Water. Water that is suitable for human consumption and meets the definition of drinking water in 30 TAC § 290.38(23) (relating to Definitions).

Pressure Vacuum Breaker (PVB). An assembly which contains an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve, with properly located resilient- seated test cocks and tightly closing resilient-seated shutoff valves attached at each end of the assembly. Pressure vacuum breakers shall not be subjected to back pressure situations.

Reclaimed Water. Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.

Records of Landscape Irrigation Activities. The irrigation plans, contracts, warranty information, invoices, copies of permits, and all other documents that relate to irrigation services.

Reduced Pressure Backflow Prevention Assembly (RP). An assembly containing two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same

time below the first check valve. The unit includes properly located resilient-seated test cocks and two (2) tightly closing resilient-seated shutoff valves at each end of the assembly.

Static water pressure. The pressure of water when it is not moving. Generally, this is the pressure available to the irrigation system.

Supervision. The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local and state requirements. Also performed by a licensed technician who is working under the direction of a licensed irrigator to perform irrigation services.

TAC. The Texas Administrative Code, as amended.

Temporary Irrigation System. A temporarily installed, above-ground system of pipes and component parts used to distribute water to the landscaping of a site for the establishment of plant growth, reduction of dust, and erosion control. Temporary irrigation systems must meet the requirements in 30 TAC § 344.66 (relating to Temporary Irrigation Systems).

Town. The Town of Prosper, Texas and its duly authorized representatives.

Water Conservation. The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.

Zone Flow. A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the irrigation zone at a specific pressure.

Zone Valve. An automatic valve that controls a single irrigation zone of a landscape irrigation system.

Sec. 6.06.002 Valid License Required.

Any person who connects an irrigation system to the water supply within the Town shall be registered with the Town and shall hold a valid irrigation license, as defined by Chapter 30, Title 30 of the Texas Administrative Code and as required by Chapter 1903 of the Texas Occupations Code, as amended, or a Texas State Plumbing License.

Exception:

A property owner is not required to be licensed in accordance with Texas Occupations Code § 1903.002(c)(1) if he or she is performing irrigation work in a building or on a premises owned or occupied by said person as the person's home. A home or property owner who installs an irrigation system shall meet the standards contained in Title 30, Texas Administrative Code, Chapter 344 regarding spacing, water pressure, spraying water over impervious materials, rain or moisture shut-off devices or other technology, and backflow and isolation valves. The Town may, at any point, adopt more stringent requirements for a home or property owner who installs an irrigation system (see Texas Occupation Code § 1903.002 for other exemptions to the licensing requirement).

Sec. 6.06.003 Permit Required.

It shall be unlawful for any person to install or cause to be installed, or to allow any person to install an irrigation system, or to make any alterations, additions or changes to an irrigation system, without first having procured a permit to do so from the Building Official. Any plan approved for a permit shall be in compliance with the requirements of this Chapter.

Exemptions:

1. *An irrigation system that is an on-site sewage disposal system, as defined by Section 366.002 of the Texas Health and Safety Code;*
2. *An irrigation system used on or by an agricultural operation as defined by Section 251.002 of the Texas Agriculture Code; or*
3. *An irrigation system connected to a groundwater well used by the property owner for domestic use.*

Sec. 6.06.004 Backflow Prevention Methods and Assemblies.

(a) Any irrigation system that is connected to the potable water supply shall be connected through a backflow prevention method approved by the Commission. The backflow prevention assembly shall be approved by the American Society of Sanitary Engineers; the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or any other laboratory that has equivalent capabilities for both laboratory and field evaluation of backflow prevention assemblies. The backflow prevention assembly shall be installed in accordance with the laboratory approval standards or, if the approval does not include specific installation information, the manufacturer's current published recommendations. The type of assembly used is based on the hazard (health hazard or non-health hazard) and hydraulic conditions. Examples of such include, but are not limited to, reduced pressure backflow assemblies, double check valve assemblies, pressure vacuum breakers, and air-gap separation.

(b) If conditions that present a health hazard exist, one (1) of the following methods shall be used to prevent backflow:

(1) An air-gap separation may be used if:

(A) there is an unobstructed physical separation; and,

(B) the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one (1) inch or twice the diameter of the water supply outlet, whichever is greater.

(2) Reduced pressure backflow prevention assemblies may be used if:

(A) the assembly is installed with the termination point a minimum of twelve inches (12") above finished grade in a location that will ensure that the assembly will not become submerged; and

(B) drainage is provided for any water that may be discharged through the assembly relief valve.

- (3) Spill-Resistant vacuum breaker backflow prevention assemblies may be used if:
- (A) No back-pressure condition will occur; and
 - (B) The assembly is installed at a minimum of twelve inches (12") above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured in the retracted position from the top of the sprinkler.
- (4) Pressure vacuum breaker backflow prevention assemblies may be used if:
- (A) No back-pressure condition will occur; and
 - (B) The assembly is installed at a minimum of twelve inches (12") above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured in the retracted position from the top of the sprinkler.
- (c) At a minimum, all backflow prevention assemblies shall be tested by a licensed backflow prevention assembly tester upon installation, repair, replacement, or relocation. Backflow prevention assemblies used in applications designated as health hazards shall be tested upon installation and annually thereafter.
- (d) If there are no conditions that present a health hazard, double check valve backflow prevention assemblies may be used to prevent backflow if the device is tested upon installation, and test cocks are used for testing only.
- (e) If a double check valve is installed below ground:
- (1) test cocks shall be plugged, except when the double check valve is being tested;
 - (2) test cock plugs shall be threaded, water-tight, and made of non-ferrous material;
 - (3) there shall be a clearance between any fill material and the bottom of the double check valve to allow space for testing and repair; and
 - (4) there shall be a clearance all the way around the assembly to allow space for testing and repair.
- (f) If an irrigation system is connected to a potable water supply and requires major maintenance, alteration, repair, or service, the system shall be connected to the potable water supply through an approved, properly installed backflow prevention method as defined in 30 TAC § 344.50 before any major maintenance, alteration, repair, or service is performed.
- (g) The irrigator shall ensure the backflow prevention assembly is tested prior to being placed into service and the test results shall be provided to the local water purveyor and the irrigation system's owner or owner's representative within ten (10) business days of the testing of the backflow prevention assembly.
- (h) The Town is not responsible for any pressure loss created by the installation of a backflow assembly device.

Sec. 6.06.005 Specific Conditions and Cross-Connection Control.

- (i) Before any chemical is added to an irrigation system connected to the potable water supply, the irrigation system shall be connected through a reduced pressure backflow prevention assembly or air-gap separation.
- (j) Connection of any auxiliary water supply to an irrigation system that is connected to the potable water supply can only be done if the irrigation system is connected to the potable water supply through a reduced pressure backflow prevention assembly or an air-gap separation.
- (k) Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any potable water supply shall be connected through a reduced pressure backflow assembly.
- (l) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Chapter 285 of Title 30, Texas Administrative Code, then:
 - (1) all irrigation piping and valves shall meet the separation distances from the on-site sewage facility system as required for a private water line in Texas Administrative Code, Title 30, Section 285.91(10);
 - (2) any water from the irrigation system that is applied to the surface of the area utilized by the on-site sewage facility system shall be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the on-site sewage facility system from operating effectively.
- (m) Quick couplers or hose connections of any type installed within the irrigation system shall require the proper installation of a reduced pressure backflow prevention assembly. The assembly shall be tested upon installation and annually thereafter.

Sec. 6.06.006 Water Conservation.

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in this Ordinance.

Sec. 6.06.007 Irrigation Plan Design: Minimum Requirements.

- (a) Various components attribute to the creation of an irrigation plan. The determination of various elements of a landscape irrigation system shall include, but not be limited to:
 - (1) collecting site-specific information;
 - (2) defining the scope of the project;
 - (3) defining plant watering needs;
 - (4) selecting and laying out emission devices;
 - (5) locating system components;

- (6) conducting hydraulics calculations;
- (7) identifying local regulatory requirements; and
- (8) scheduling irrigation work at a site.

(b) An irrigator shall prepare an irrigation plan for each site where a new irrigation system will be installed. The Town approved plans shall be on the job site at all times during the installation of the irrigation system. A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:

- (1) diminish the operational integrity of the irrigation system;
- (2) violate any requirements of this Ordinance; and
- (3) go unnoted in red on the irrigation plan.

(c) The irrigation plan shall include complete coverage of the area(s) to be irrigated. If a system does not provide complete coverage of the area(s) to be irrigated, it shall be noted on the irrigation plan.

(d) All irrigation plans used for construction shall be drawn to scale. The plan shall include, at a minimum, the following information:

- (1) the irrigator's seal, signature, and date of signing;
- (2) all major physical features and the boundaries of the area(s) to be watered;
- (3) a North arrow;
- (4) a legend;
- (5) the zone flow measurement for each irrigation zone;
- (6) Location and type of each:
 - (A) controller;
 - (B) sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);
- (7) location, type, and size of each:
 - (A) water source (such as, but not limited to, a water meter and point(s) of connection);

- (B) backflow prevention assembly;
 - (C) water emission device (including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays);
 - (D) valve (including, but not limited to, zone valves, master valves, and isolation valves);
 - (E) pressure regulation component; and
 - (F) mainline and lateral piping.
- (8) the scale used; and
 - (9) the design pressure.

Sec. 6.06.008 Design and Installation: Minimum Requirements.

(a) *Manufacturer Limitations.* No irrigation design or installation shall require the use of any component, including the water meter, in a way, which exceeds the manufacturer's published performance limitations for the component.

(b) *Spacing.*

(1) The maximum spacing between emission devices shall not exceed the manufacturer's published radius or spacing of the devices. The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure.

(2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than forty-eight inches (48"), not including the impervious surfaces, in either length or width, and which contain impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters. If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads shall direct flow away from any adjacent surface and shall not be installed closer than four inches (4") from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.

(3) Narrow paved walkways, jogging paths, golf cart paths, or other small areas located in cemeteries, parks, golf courses, or other public areas may be exempt from this requirement if the runoff drains into a landscaped area.

(c) *Water Pressure.* Emission devices must be installed to operate at the optimum or recommended sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. If an optimum or recommended pressure is not published, then the emission devices must be installed to operate at not below the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include but are not limited to flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) *Piping.* Piping in irrigation systems shall be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet (5') per second for polyvinyl chloride (PVC) pipe.

(e) *Irrigation Zones.* Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements. Irrigation zones with trees and or shrubs shall utilize bubblers.

(f) *Matched Precipitation Rate.* Zones shall be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) *Impervious Surfaces.* Irrigation systems shall not spray water over surfaces made of concrete, asphalt, brick, wood, stones set with mortar, or any other impervious material, such as, but not limited to, walls, fences, sidewalks, streets, etc.

(h) *Master Valve.* When provided, a master valve shall be installed on the discharge side of the backflow prevention assembly of all new installations.

(i) *PVC Pipe Primer Solvent.* All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the most currently adopted International Plumbing Code.

(j) *Auxiliary Water Supply Piping.* Any irrigation system using an auxiliary water supply shall utilize purple components for the system.

(k) *Rain, Freeze and Wind Detectors or other Technology.* All new automatically controlled irrigation systems shall include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture, rain, freeze, and wind. Rain, freeze, and wind detectors or other technology shall be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller shall include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture, rain, freeze, and wind.

(l) *Isolation Valve.* All new irrigation systems shall include an isolation valve between the water meter and the backflow prevention assembly.

(m) *Depth Coverage of Piping.* Piping in all irrigation systems shall be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth of six inches (6") between the top of the topmost pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan/as-built drawing. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan/as-built drawing and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure or roots create an unavoidable obstacle, which makes the six inch (6") depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches (2") between the top of the topmost pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system shall be backfilled and compacted to the original grade.

(n) *Wiring Irrigation Systems.*

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system shall be listed by Underwriters Laboratories (UL listed) as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system shall be sized according to the manufacturer's recommendation.

(3) Electrical wire splices, which may be exposed to moisture, shall be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system shall be buried a minimum of six inches (6").

(o) *Connections.* Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a valve box with a color-coded purple lid or cover, and the hose bib and any hoses connected to the bib must be labeled "non-potable, not safe for drinking." An isolation valve shall be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(p) *On-Site Supervision.* A licensed irrigator or a licensed irrigation technician shall be on-site at all times while the irrigation system is being installed. When an irrigator is not on-site, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

Sec. 6.06.009 Completion of Irrigation System Installation.

When the landscape irrigation system has been installed, all minimum standards have been met, all tests have been performed, and the irrigator is satisfied that the system is operating correctly, the irrigator or irrigation technician who provided supervision for the on-site installation shall be required to complete the following four (4) items:

(1) *Final "Walk Through."* A complete explanation of the operation of the irrigation system with the irrigation system's owner or the owner's representative;

(2) *Maintenance Checklist.* The Maintenance Checklist is a document which shall be made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system. Said document shall include, but not limited to:

(A) directions for checking and repairing the irrigation system;

(B) directions for setting the automatic controller;

- (C) directions for checking the rain or moisture sensor;
- (D) directions for cleaning filters;
- (E) directions for pruning grass and plants away from irrigation emitters;
- (F) directions for using and operating the irrigation system;
- (G) the manufacturer's manual for the automatic controller, if the system is automatic;
- (H) the precipitation rates of each irrigation zone within the system;
- (I) any water conservation measures currently in effect from the water purveyor;
- (J) the name of the water purveyor;
- (K) a suggested seasonal or monthly watering schedule based on either current/real time evapotranspiration or monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;
- (L) the minimum water requirements for the plant material in each irrigation zone based on the soil type and plant material where the system is installed;
- (M) a list of components, such as the nozzle, or pump filters, and other such components; that require maintenance and the recommended frequency for the service; and
- (N) the statement, "This irrigation system has been installed in accordance with all applicable state regulations as well as applicable local laws, ordinances, rules, regulations or orders. I have tested the system and determined that it has been installed according to the Irrigation Plan/As-Built Drawing and is properly adjusted for the most efficient application of water at this time."

The irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the Maintenance Checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the Maintenance Checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative shall be given the original Maintenance Checklist and a duplicate copy of the Maintenance Checklist shall be maintained by the irrigator.

(3) *Irrigation Sticker.* A permanent sticker shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original Maintenance Checklist. The information contained on the sticker shall be printed with waterproof ink and include:

- (A) The irrigator's name;
- (B) Irrigator's license number;

- (C) Company name;
- (D) Telephone number; and
- (E) The dates of the warranty period.

(4) *As-Built Drawing.* The final irrigation plan or as-built drawing indicating the actual installation of the system shall be provided to the irrigation system's owner or owner representative.

Sec. 6.06.010 Maintenance, Alteration, Repair, or Service of Irrigation Systems.

Any activity that involves opening the irrigation mainline to the atmosphere at any point prior to the discharge side of any irrigation zone control valve is considered maintenance, alteration, repair, or service of the irrigation system. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.

(1) The licensed irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system.

(2) All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system shall be returned to the original grade.

(3) Colored PVC pipe primer solvent shall be used on all pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the most currently adopted International Plumbing Code.

(4) When maintenance, alteration, repair, or service of an irrigation system involves excavation work at the water meter or backflow prevention assembly, an isolation valve shall be installed, if an isolation valve is not present.

Sec. 6.06.011 Reclaimed Water.

Reclaimed water may be utilized in landscape irrigation systems if:

- (1) there is no direct contact with edible crops, unless the crop is pasteurized before consumption;
- (2) the irrigation system does not spray water across property lines that do not belong to the irrigation system's owner;
- (3) the irrigation system is installed using purple components;
- (4) the domestic potable water line is connected using an air-gap separation or a reduced pressure backflow prevention assembly, in accordance with 30 TAC § 290.47(f) (relating to Appendices);

(5) a minimum of an eight (8) inch by eight (8) inch sign, in English and Spanish, is prominently posted on/in the area that is being irrigated, that reads, "RECLAIMED WATER – DO NOT DRINK" and "AGUA DE RECUPERACIÓN – NO BEBER"; and

(6) backflow prevention on the reclaimed water supply line shall be in accordance with the regulations of the Town water provider.

Sec. 6.06.011 Water Wells and Bodies of Water.

Water wells and bodies of water may be utilized in landscape irrigation systems if:

(1) the irrigation system has a physical air-gap separation between the irrigation system and the domestic water;

(2) premises isolation is provided by a Reduced Pressure Backflow Assembly at or near the point where the potable water enters the premises;

(3) the irrigation system is installed using purple components;

(4) if utilizing a water well, an approved water well permit has been applied for, issued, and all of the required inspections have been performed; and

(5) backflow prevention on the water supply line shall be in accordance with the Town water provider regulations.

Sec. 6.06.012 Temporary Irrigation Systems.

(a) Temporary irrigation systems shall be installed by a licensed irrigator or an irrigation technician under the supervision of a licensed irrigator.

(b) Temporary irrigation systems shall meet the backflow prevention requirements in 30 TAC Ch. 344, Subchapter E (relating to Backflow Prevention and Cross-Connections).

(c) Temporary irrigation systems shall be installed in accordance with 30 TAC § 344.66

(d) Temporary irrigation systems shall establish, in writing at time of permit submittal, a definite end date at which time the temporary irrigation system shall be removed.

Sec. 6.06.013 Items not covered by this Ordinance.

Any item not covered by this Ordinance and required by law shall be governed by the Texas Occupations Code, the Texas Water Code, Title 30 of the Texas Administrative Code, and any other applicable state statute or TCEQ rule.

Sec. 6.06.014 Fees.

Prior to the issuance of a permit, the applicant shall pay a permit fee in accordance with the Town of Prosper Building Inspections Fee Schedule as adopted by the Town Council, as it exists or may be amended.

Sec. 6.06.015 Enforcement.

(a) The Town shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person, firm, corporation, or agent who shall violate a provision of this Code, or fails to comply therewith, or with any of the requirements thereof, is subject to suit for injunctive relief as well as prosecution for criminal violations.

(b) Any person, firm, or corporation or business entity found to be violating any terms or provisions of this Ordinance, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined a sum not to exceed Two Thousand Dollars (\$2,000.00), and each and every day that such violation continues shall be considered a separate offense; provided, however, that such penal provision shall not preclude a suit to enjoin such violation. The Town retains the legal rights and remedies available to it pursuant to local, state and federal law.

(c) Nothing in this Chapter shall be construed as a waiver of the right for the Town to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

(1) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and

(2) Other available relief.”

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 anyone 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 Five Hundred Dollars (\$500.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

This ordinance shall become effective on January 1st, 2022, 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 23RD DAY OF NOVEMBER, 2021.**

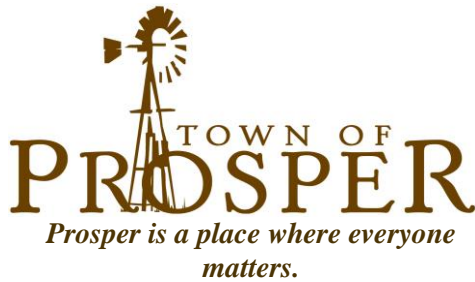
Ray Smith, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



TOWN SECRETARY

To: Mayor and Town Council

From: Michelle Lewis Sirianni, Town Secretary

Through: Harlan Jefferson, Town Manager
Robyn Battle, Executive Director of Community Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider and act upon a resolution casting the Town of Prosper's 35 votes for the Collin County Central Appraisal District Board of Directors (CCAD).

Description of Agenda Item:

Every two years, the Town Council may cast its vote(s) for member(s) of the Board of Directors of the Collin County Central Appraisal District. The Town Council may cast its votes (35) for one candidate or distribute the votes among any number of the candidates listed. There is no provision for write-in candidates, therefore, the chief appraiser may not count votes for someone not listed on the official ballot.

This year's candidates include Earnest Burke (Plano), Ronald Carlisle (Frisco), Zewge Kagnev (Wylie), Ronald L. Kelley (Plano), Brian Mantzey (McKinney), Kenneth Maun (Fairview), Wayne Mayo (Richardson), Gary Rodenbaugh (Allen), Ed Standridge (Parker), and Carson Kincaid Underwood (Plano).

Legal Obligations and Review:

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

Attached Documents:

1. Resolution
2. Official Ballot
3. Board of Directors Nomination List

Town Staff Recommendation:

Town staff recommends that the Town Council approve a resolution casting the Town of Prosper's 35 votes to Brian Mantzey for the Collin Central Appraisal District Board of Directors (CCAD).

Proposed Motion:

I move to approve a resolution casting the Town of Prosper's 35 votes to Brain Mantzey for the Collin Central Appraisal District Board of Directors (CCAD).

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2021-__

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS,
CASTING ITS VOTES FOR THE BOARD OF DIRECTORS OF THE COLLIN CENTRAL
APPRAISAL DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Prosper is a member of the Collin Central Appraisal District; and

WHEREAS, as a member of such organization, Prosper is entitled to nominate and vote on nominees for the Board of Directors; and

WHEREAS, the Town of Prosper has thirty-five (35) votes to cast regarding the election of the Board of Directors; and

WHEREAS, the Town of Prosper does hereby cast its vote(s) by marking the ballot below:

_____	Earnest Burke
_____	Ronald Carlisle
_____	Zewge Kagnev
_____	Ronald L. Kelley
<u>35</u>	Brian Mantzey
_____	Kennth Maun
_____	Wayne Mayo
_____	Gary Rodenbaugh
_____	Ed Standridge
_____	Carson Kincaid Underwood

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

SECTION 1

That the Council of the Town of Prosper, Texas does hereby confirm its thirty-five (35) votes for the election of the Board of Directors of the Collin County Central Appraisal District.

SECTION 2

That this resolution shall become effective immediately upon approval.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER,
TEXAS, THIS 23RD DAY OF NOVEMBER 2021.

Ray Smith, Mayor

ATTEST:

Michelle Lewi Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrance S. Welch, Town Attorney

2022 – 2023
 COLLIN CENTRAL APPRAISAL DISTRICT
 BOARD OF DIRECTOR'S NOMINATIONS
 Page 2 of 2

OFFICIAL BALLOT


ISSUED TO: **Town of Prosper**

NUMBER OF VOTES: **35**

FOR: **BOARD OF DIRECTORS, COLLIN CENTRAL APPRAISAL DISTRICT, TWO-YEAR TERM
 BEGINNING JANUARY 1, 2022.**

NOMINEES	VOTES
<i>EARNEST BURKE</i>	
<i>RONALD CARLISLE</i>	
<i>ZEWGE KAGNEW</i>	
<i>RONALD L. KELLEY</i>	
<i>BRIAN MANTZEY</i>	
<i>KENNETH MAUN</i>	
<i>WAYNE MAYO</i>	
<i>GARY RODENBAUGH</i>	
<i>ED STANDRIDGE</i>	
<i>CARSON KINCAID UNDERWOOD</i>	

October 25, 2021


 Bo Daffin, Chief Appraiser

Section 6.03 (g) of the State Property Tax Code requires the above action be taken by resolution, therefore, please attach a copy of the resolution to this ballot and return to the chief appraiser, at 250 Eldorado Pkwy., McKinney, Texas 75069, before December 15, 2021.



Collin Central Appraisal District

2022 – 2023
COLLIN CENTRAL APPRAISAL DISTRICT
BOARD OF DIRECTOR'S NOMINATIONS

EARNEST BURKE	Is a current board member and has served since 1/2016. Nominated by Plano ISD. Resides in Plano, TX.
RONALD CARLISLE	Is a current board member and has served since 1/1994. Nominated by City of Frisco and Royse City ISD. Resides in Frisco, TX.
ZEWGE KAGNEW	Nominated by the City of Wylie. Resides in Wylie, TX.
RONALD L. KELLEY	Nominated by Plano ISD. Resides in Plano, TX.
BRIAN MANTZEY	Nominated by the City of Anna and the City of McKinney. Resides in McKinney, TX.
KENNETH MAUN	Nominated by the City of Lucas. Resides in Fairview, TX.
WAYNE MAYO	Is a current board member and has served since 1/1998. Nominated by the City of Lucas. Resides in Richardson, TX.
GARY RODENBAUGH	Is a current board member and has served since 1/2001. Nominated by the City of Allen, the City of Lucas and Allen ISD. Resides in Allen, TX.
ED STANDRIDGE	Nominated by the City of Parker. Resides in Parker, TX.
CARSON KINCAID UNDERWOOD	Nominated by the City of Plano. Resides in Plano, TX.

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager
Rebecca Zook, P.E., Executive Director of Development & Infrastructure Services
Khara Dodds, AICP, Director of Development Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider and act upon whether to direct staff to submit a written notice of appeal 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 any Site Plan or Preliminary Site Plan, including Central Fire Station and LIV Townhome-Style Multifamily.

Description of Agenda Item:

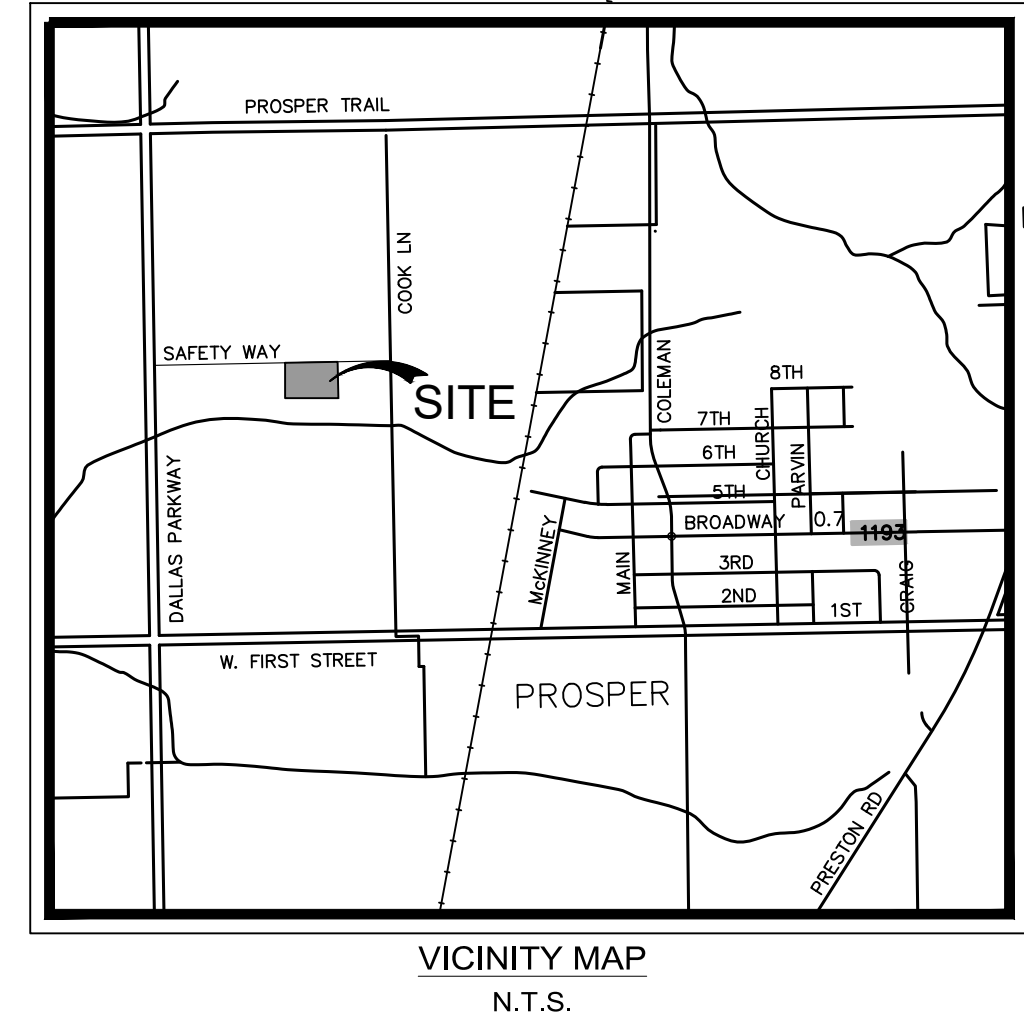
Attached are the Site Plans that were acted on by the Planning & Zoning Commission at their November 16, 2021, meeting. Per the Zoning Ordinance, the Town Council has the ability to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department for any Preliminary Site Plan or Site Plan acted on by the Planning & Zoning Commission.



Attached Documents:

1. Site Plan for Central Fire Station
2. Site Plan for LIV Townhome-Style Multifamily

Town Staff Recommendation:

Town staff recommends the Town Council take no action on this item.



I.D	BLOCK	LOT	TYPE	SIZE	REMARKS	SAN. SEWER
	A	1	DOMESTIC	2"	PROPOSED 2"	6"
	A	1	IRRIGATION	2"	PROPOSED 2"	N/A

<p>NOTES:</p> <ol style="list-style-type: none"> 1. ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED. 2. ALL ON-SITE ELECTRICAL CONDUCTORS ASSOCIATED WITH NEW CONSTRUCTION SHALL BE LOCATED UNDERGROUND. 3. ALL THE REQUIREMENTS OF THE PROSPER SOIL EROSION CONTROL SHALL BE MET DURING THE PERIOD OF CONSTRUCTION. 4. ALL CURB RADI ARE 2.0' UNLESS OTHERWISE NOTED. 5. ALL ISLANDS ARE 10.0' WIDE UNLESS OTHERWISE NOTED.
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SITE PLAN

**TOWN OF PROSPER CENTRAL FIRE STATION
& FIRE ADMINISTRATION**

LOT 1, BLOCK A
12.927 AC. (563,093 S.F.)

PUBLIC SAFETY ADDITION

PROSPER, COLLIN COUNTY, TEXAS

TOWN OF PROSPER PROJECT # D2-01118

<p style="text-align: center;"><u>OWNER</u></p> <p>TOWN OF PROSPER 250 W. FIRST ST PROSPER, TEXAS 75078 757-245-2640 BRYAN AUSENBACH BAUSENBACH@PROSPER.TX.GOV</p>	<p style="text-align: center;"><u>ARCHITECT</u></p> <p>BROWN REYNOLDS WATFORD ARCHITECTS 3535 TRAVIS STREET, SUITE 250 DALLAS, TEXAS 75208 PHONE (214) 528-8704 CONTACT: GARRETT BARKER, INC. NCARB GBARKER@BWRVARCH.COM</p>
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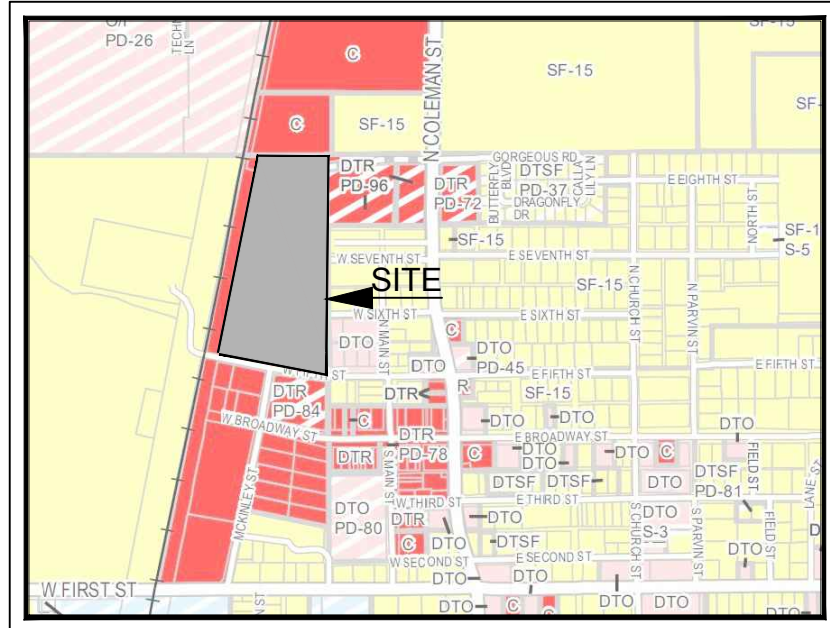
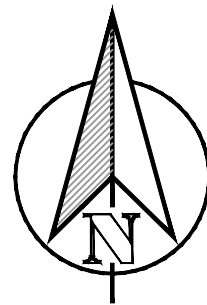
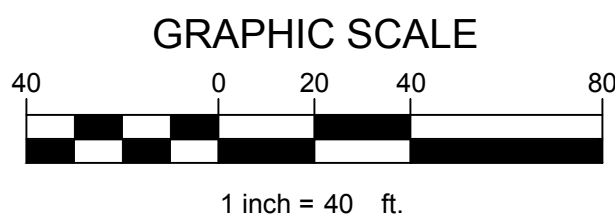
<p style="text-align: center;"><u>SURVEYOR</u></p> <p>BRITTAN & CRAWFORD, LLC 3608 SOUTH FREEDWAY FORT WORTH, TEXAS 76110 PHONE 817-629-0111 FAX 817-629-4367 CHRIS L. CLUBB CLB@BRITTAN-CRAWFORD.COM</p>	<p style="text-align: center;"><u>ENGINEER</u></p> <p>HART, GAUGLER & ASSOCIATES, INC. 12801 N. CENTRAL EXPRESSWAY, SUITE 1400 DALLAS, TEXAS 75244 PHONE 972-594-1111 / 972-594-5565 (FAX) TELE 800-278-7228 (NATIONAL) / 800-4503 JOHN B. BLACKER JBBLACKER@HARTGAUGLER.COM ROTH RANGEL RRANGEL@HARTGAUGLER.COM</p>
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NOVEMBER 9, 2014

<div> <div>C0.01</div> <div>SHEET</div> </div>	Scale:	AS SHOWN
	Designed by:	HGA
	Drawn by:	HGA
	Checked by:	JDB
	Date:	NOVEMBER, 2021
	Project No.	221031

PLOTTED BY: LYNN ROWLAND
PLOT DATE: 11/9/2021 3:35 PM
LOCATION: Z:\PROJECTS\2021-062 LIV LOVELESS\CADD\SHEETS\SP-1 SITE PLAN.DWG
LAST SAVED: 11/9/2021 3:28 PM

SITE DATA SUMMARY																													
LOT	PROPOSED ZONING	PROPOSED USE	LOT SIZE (ACRES)	LOT SIZE (SQ. FT.)	BUILDING AREA (SQ. FT.)			MAX BLDG. HEIGHT	BLDG. HEIGHT	RESIDENTIAL DENSITY	UNIT BREAKDOWN	FINISHED FLOOR ELEVATIONS	100 YEAR FLOOD LEVELS	USABLE OPEN SPACE	LOT COVERAGE		FLOOR RATIO		PARKING				HANDICAP		TOTAL IMPERVIOUS SQ. FT.	LANDSCAPING		OPEN SPACE	
					TYPE 4	TYPE 5	TYPE 6								REQ.	PROV.	REQ.	PROV.	REQ. RATIO	REQ.	PROV.	REQ.	PROV.	REQ.		PROV.			
1	PD-MULTIFAMILY	TOWNHOMES	2.10	91,687	3,169	4,149	1,343	3 STORIES-40'	34'-5"	10.47 UNITS PER ACRE (6 UNITS)	22-2 BEDS	MIN 658.1 FT. FOR ALL STRUCTURES	656.1 FT.	16.00%	45%	9.45%	0.35:1	4.53%	1 PARKS PER BED	44	48	2	2	42,624	46%	720	49,063	6418	14720
2	PD-MULTIFAMILY	TOWNHOMES	2.26	98,362	N/A	4,149	1,343	3 STORIES-40'	34'-5"	3.54 UNITS PER ACRE (8 UNITS)	8-2 BED	MIN 658.1 FT. FOR ALL STRUCTURES	656.1 FT.	40.19%	45%	5.58%	0.35:1	5.58%	1 PARKS PER BED	16	28	2	2	25,357	26%	420	73,005	6885	66014



VICINITY MAP & EXISTING ZONING MAP
N.T.S.

EXISTING ZONING: SF-15
LAND USE: SINGLE FAMILY

JAMES ROWLAND
ABS A0147 C.C.S.L. #12
SHEET 2, TRACT 64.
CALLED 5.2956 AC

EXISTING ZONING: C
LAND USE: COMMERCIAL

DAIRY MANUFACTURERS, INC.
VOL. 3510, PAGE 179
O.P.R.C.C.T.

FLOODPLAIN NOTE

This property is located in "Non-shaded Zone X" & "Zone AE" as scaled from the F.E.M.A. Flood Insurance Rate Map as shown by the Letter of Map Revision (LOMR) dated January 18, 2018 and is located in Community Number 480141 as shown on Map Number 48085C0235J. The location of the Flood Zone is approximate, no vertical datum was collected at the time of the survey. For the exact Flood Zone designation, please contact 1-(877) FEMA MAP.

LEGEND	
	STANDARD DUTY CONCRETE PAVEMENT
	HEAVY DUTY CONCRETE PAVEMENT
	DUMPSTER AREA CONCRETE PAVEMENT
	PROPOSED CONCRETE SIDEWALK
	McKINLEY AVE AND GORGEOUS DR PAVING BY OTHERS
	PROPOSED CONCRETE CURB AND GUTTER
	PARKING COUNT
	FULL-DEPTH SAWCUT
	PROPOSED FIRE LANE STRIPPING
	4' WROUGHT IRON FENCE PER ARCH PLANS

CONSTRUCTION SCHEDULE	
①	10'X10' CORNER CLIP
②	CONCRETE SIDEWALK
③	4" PARKING STALL STRIPING COLOR: WHITE (TYP)
④	ADA RAMP, 12:1 MAX. SLOPE
⑤	PROPOSED TRASH ENCLOSURE
⑥	HANDICAP SYMBOL
⑦	HANDICAP SIGN

EXISTING ZONING: DTR
LAND USE: VACANT

GOODWILL INDUSTRIES OF NORTH TEXAS, INC.
CCF#20080102000008100
O.P.R.C.C.T.

5' LANDSCAPE SETBACK

ZONE AE

OLAY STREET
40' R.O.W.

EXISTING ZONING: DTO
LAND USE: SINGLE FAMILY

LIV LOVELESS	
CASE # : Z21-0006	
OWNER: BBG INVESTMENTS INC FLA TLS INVESTMENTS INC P.O. BOX 129 PROSPER, TX 75078 PH: 214.325.0615	
CONTACT NAME: TREVOR WOOD	
APPLICANT/REPRESENTATIVE: CLAYMOORE ENGINEERING, INC. 301 S. COLEMAN, SUITE #40 PROSPER, TX 75078 PH: 817.201.6982	
CONTACT NAME: MATT MOORE	
SURVEYOR: EAGLE SURVEYING 210 S. ELM STREET, SUITE #104 DENTON, TX 76201 PH: 940.222.3009	
CONTACT NAME: DAN RICK	
LEGAL DESCRIPTION: A PORTION OF DOC. NO. 20180423000483530 O.P.R.C.C.T. 5.30 ACRES	
CITY: PROSPER	STATE: TEXAS
COUNTY: COLLIN	SURVEY: C.C.S.L. #12
ABSTRACT NO. A0147	

DESIGN:	LRR
DRAWN:	LRR
CHECKED:	ASD
DATE:	11/9/2021

SHEET

SP-1

File No. 2021-062

TEXAS REGISTRATION #14199

CLAYMOORE ENGINEERING

PHONE: 817.201.0072
WWW.CLAYMOOREENR.COM

1900 CENTRAL DR., SUITE #400
PROSPER, TX 75078

PRELIMINARY

FOR REVIEW ONLY
Not for construction purposes.
CLAYMOORE ENGINEERING
ENGINEERING AND PLANNING
CONSULTANTS
Engineer: **MATT MOORE**
P.E. No. 98351 Date: 11/9/2021

LIV TOWNHOMES
McKINLEY ST. & GORGEOUS DR.
PROSPER, TEXAS

SITE PLAN



PLANNING

To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager
Rebecca Zook, P.E., Executive Director of Development & Infrastructure Services
Khara Dodds, AICP, Director of Development Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Conduct a public hearing and consider and act upon a request for a Specific Use Permit (SUP) for an Incidental Outside Merchandise Display at an existing Convenience Store with Gas Pumps (7-Eleven), on 1.4± acres, in the Victory at Frontier development, located on the southwest corner of Preston Road and Frontier Parkway. (S21-0003).

Description of Agenda Item:

The zoning and land use of the surrounding properties are as follows:

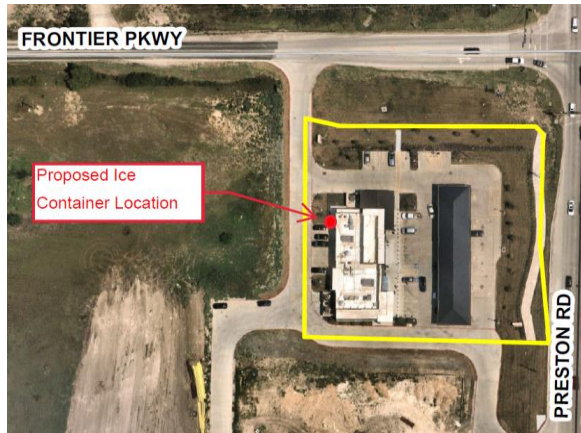
	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Planned Development-10-Retail	Convenience Store with Gas Pumps (7-Eleven)	Retail & Neighborhood Services
North	City of Celina	City of Celina	City of Celina
East	Planned Development-15-Retail	Undeveloped	Retail & Neighborhood Services
South	Planned Development-10-Retail	Undeveloped	Retail & Neighborhood Services
West	Planned Development-10-Retail	Undeveloped	Retail & Neighborhood Services

Requested Zoning – The purpose of this request is to allow for an Incidental Outside Merchandise Display at 7-Eleven. Specifically, the applicant is requesting to allow ice containers outside the store for the sale of pre-bagged ice. The ordinance defines Incidental Outside Merchandise Display as the unenclosed display of commodities, materials, goods, inventory or equipment readily accessible to the public for retail sales in conjunction with a primary enclosed use, which

includes ice machines. The applicant is proposing to allow existing ice machines to remain on the west side of the building and to clad the exterior of the containers with a material that matches the exterior building material color of the building. The proposed cladding is a decorative vinyl covering that will be adhered to the container that will color match the existing building materials.

The location of the proposed container, a picture of the existing containers, and a rendering of the containers wrapped, are shown below.

Ice Container Location



Existing Ice Containers



Rendered Images of Wrapped Containers



The Zoning Ordinance contains four criteria to be considered in determining the validity of a SUP request, as follows:

1. *Is the use harmonious and compatible with its surrounding existing uses or proposed uses?*
2. *Are the activities requested by the applicant normally associated with the requested use?*
3. *Is the nature of the use reasonable?*
4. *Has any impact on the surrounding area been mitigated?*

Staff believes the applicant has satisfied the noted criteria and recommends approval of the request.

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 – The property has direct access to Preston Road and Frontier Parkway, which are major thoroughfare. This request conforms to the Thoroughfare Plan.

Parks Master Plan – The Parks Master Plan does not indicate a park is needed on the subject property; however, a hike and bike trail will be required on the subject property.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by the Zoning Ordinance and state law. To date, staff has not received any Public Hearing Notice Reply Forms in response to this request.

Attached Documents:

1. Location and Zoning Maps
2. SUP Exhibits A and B
3. Existing and Rendered Container Exhibits

Planning & Zoning Commission Recommendation:

At their November 2, 2021, meeting, the Planning & Zoning Commission recommended the Town Council approve the request, by a vote of 6-1, subject to a maximum of two (2) ice machines being permitted outside on the subject property, in addition to a limitation of signage area on the ice machine to the doors of the machine only.

Staff Recommendation:

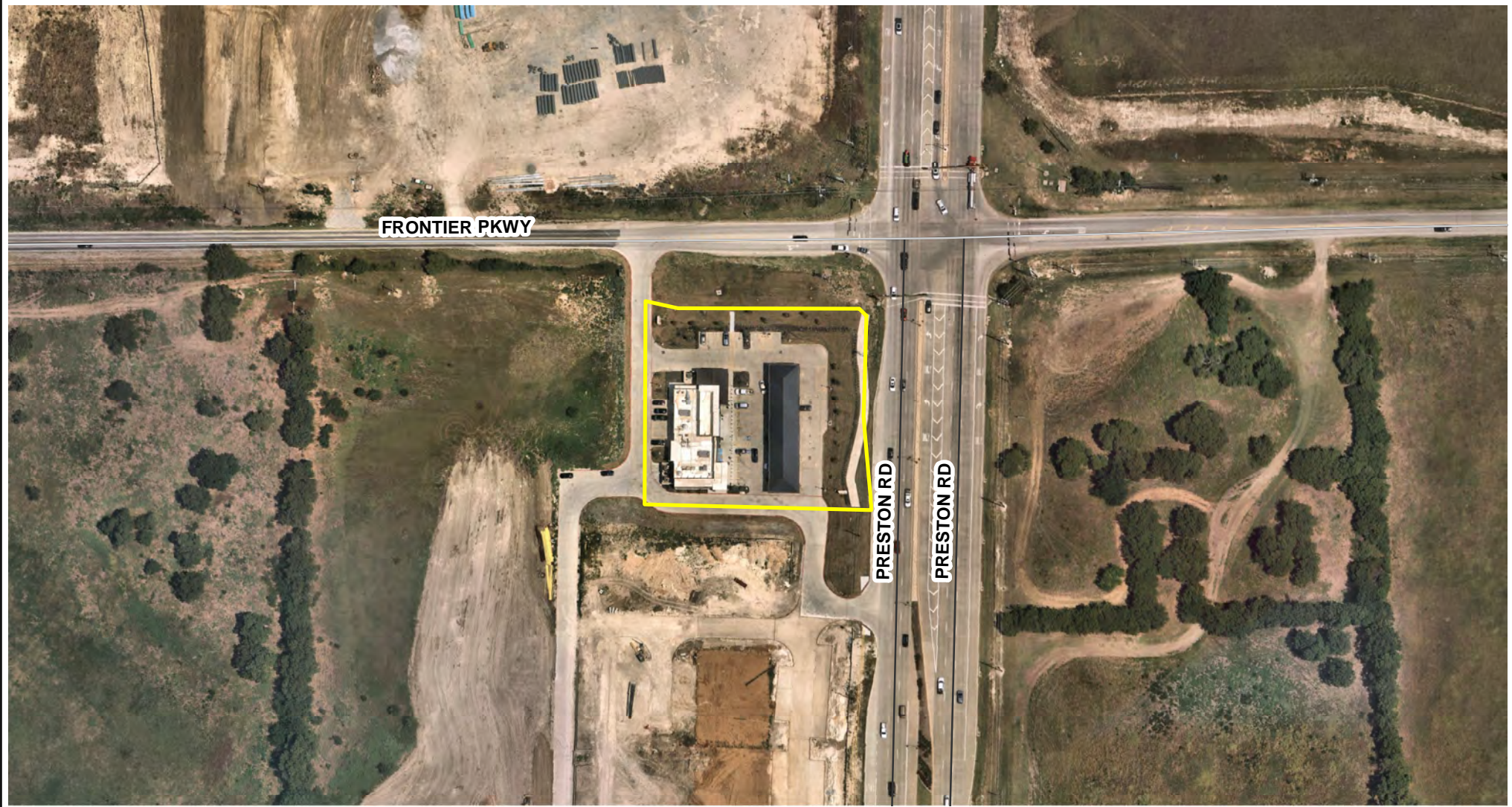
Staff recommends approval of the request for a Specific Use Permit (SUP) for an Incidental Outside Merchandise Display at an existing Convenience Store with Gas Pumps (7-Eleven), on 1.4± acres, in the Victory at Frontier development, subject to a maximum of two (2) ice machines being permitted outside on the subject property, in addition to a limitation of signage area on the ice machine to the doors of the machine only.

Proposed Motion:

I move to approve the request for a Specific Use Permit (SUP) for an Incidental Outside Merchandise Display at an existing Convenience Store with Gas Pumps (7-Eleven), on 1.4± acres, in the Victory at Frontier development, subject to a maximum of two (2) ice machines being permitted outside on the subject property, in addition to a limitation of signage area on the ice machine to the doors of the machine only.

S21-0003 - 7-Eleven, Victory at Frontier

Item 9.



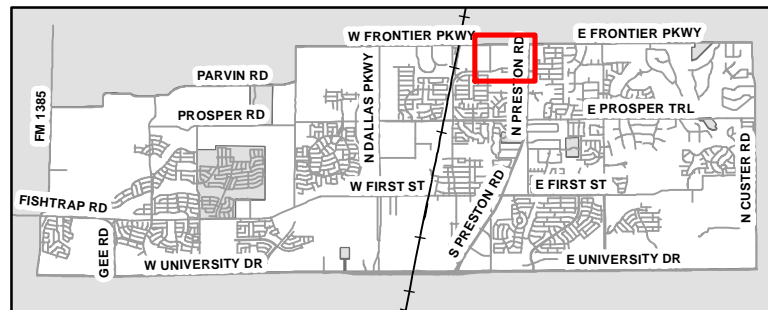
This map is for illustration purposes only.



250

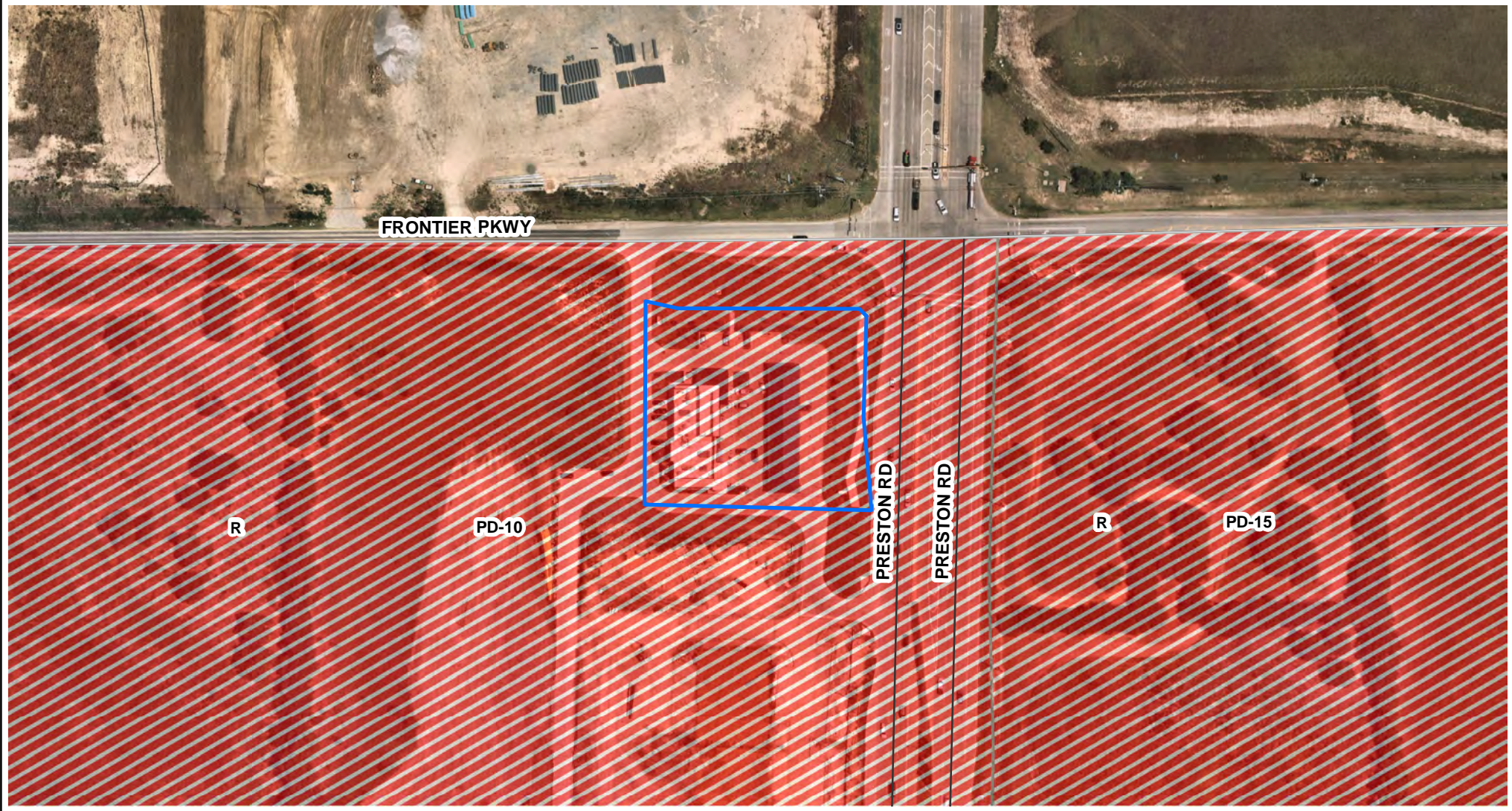
500

Feet



S21-0003 - 7-Eleven, Victory at Frontier

Item 9.

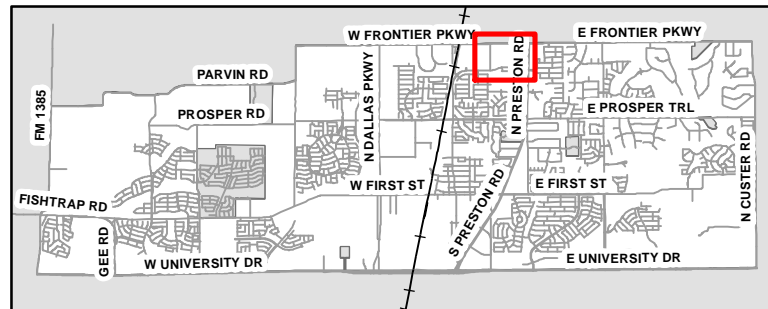


This map is for illustration purposes only.



250

500 Feet





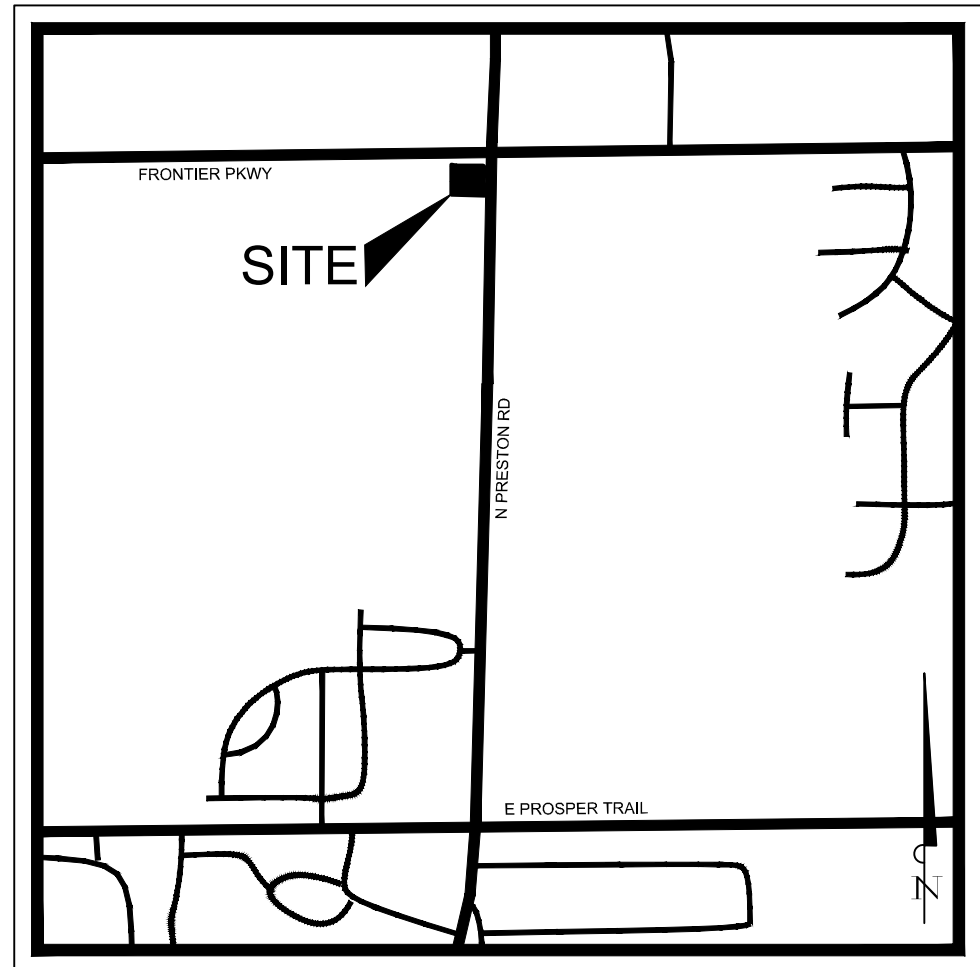
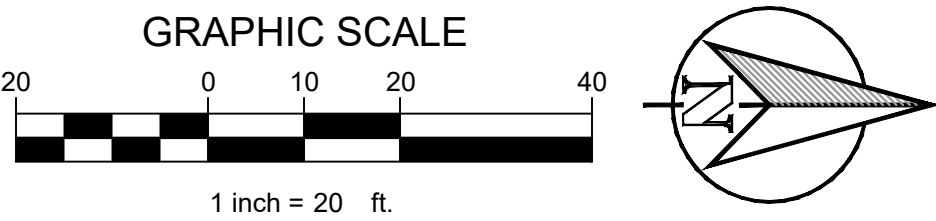
ID	TYPE	SIZE	NO.
1	DOM.	2"	1
2	IRR.	1 1/2"	1
3	GREASE TRAP	1000 gal.	1

BENCHMARK:

1. AN 'X' CUT ON A CURB INLET WHICH BEARS S13°47'E, 84.93' FROM THE SOUTHEAST PROPERTY CORNER, POSTED ELEVATION: 708.16'
2. AN 'X' CUT SET WHICH BEARS S02°38'W, 458.75' FROM THE SOUTHWEST PROPERTY CORNER. ELEVATION: 704.14

SITE DATA SUMMARY																								
LOT	ZONING	PROPOSED USE	LOT SIZE (ACRES)	LOT SIZE (SQ. FT.)	BLDG. AREA (SQ. FT.)	BLDG HGT. (FT)	LOT COVERAGE		FLR AREA RATIO		PARKING				HANDICAP SP.		TOTAL IMPERVIOUS (SQ FT)	LANDSCAPING		OPEN SPACE				
							REQ.	PROV.	REQ.	PROV.	REQ. RATIO		REQ.	PROV.	REQ.	PROV.		REQ. (15 SF PER PARKING SPACE)	PROV.	REQ. (10% NET SITE AREA), SQ FT	PROV.			
2	PD-10	SERVICE STATION / RESTAURANT	1.38	59,998	6,487	22'-0"	40% MAX	10.8%	0.4:1 MAX	0.11	GAS STATION (3 SPACES) 1,516 SF QUALITY REST. (1 PER 100 SF) 510 SF OUTDOOR DINING (1 PER 150 SF)				23	23	2	2	52,262	87%	345	13,483	5999.80	6,144

N. PRESTON ROAD
(STATE HIGHWAY 289)
VARIABLE WIDTH RIGHT-OF-WAY
(VOLUME 621, PG. 114, D.R.D.C.T.)
CONCRETE PAVING



VICINITY MAP
N.T.S.

TOWN OF PROSPER SITE PLAN GENERAL NOTES

1. DUMPSTERS AND TRASH COMPACTORS SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
2. OPEN STORAGE, WHERE PERMITTED, SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
3. OUTDOOR LIGHTING SHALL COMPLY WITH THE LIGHTING AND GLARE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE.
4. LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN.
5. 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 THE FIRE DEPARTMENT.
7. FENCE WALLS SHALL BE DESIGNED AND CONSTRUCTED PER TOWN STANDARDS OR AS DIRECTED BY THE FIRE DEPARTMENT.
8. TWO POINTS OF ACCESS SHALL BE MAINTAINED FOR THE PROPERTY AT ALL TIMES.
9. SPEED BUMPS/HUMPS ARE NOT PERMITTED WITHIN A FIRE LANE.
10. UNPAVED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM TO THE AMERICANS WITH DISABILITIES ACT (ADA) AND WITH THE REQUIREMENTS OF THE CURRENT, ADOPTED BUILDING CODE.
11. ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
12. ALL FEES AND RETAINING WALLS SHALL BE SHOWN ON THE SITE PLAN AND ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
13. ALL EXTERIOR BUILDING MATERIALS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL AND SHALL CONFORM TO THE APPROVED FACADE PLAN.
14. SIDEWALKS OF NOT LESS THAN SIX (6) FEET IN WIDTH ALONG THOROUGHFARES AND SIDEWALKS OF NOT LESS THAN EIGHT (8) FEET IN WIDTH ALONG RESIDENTIAL STREETS, AND BARRIER FREE RAMPS AT ALL CURB CROSSINGS SHALL BE PROVIDED PER TOWN STANDARDS.
15. APPROVAL OF THE SITE PLAN IS NOT FINAL UNTIL ALL ENGINEERING PLANS ARE APPROVED BY THE ENGINEERING DEPARTMENT.
16. SITE PLAN APPROVAL IS SUBJECT TO PRIOR GRADING RELEASE.
17. ALL NEW ELECTRICAL LINES SHALL BE INSTALLED AND/OR RELOCATED UNDERGROUND.
18. ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW IN ACCORDANCE WITH THE ZONING ORDINANCE.
19. ALL LANDSCAPE EASEMENTS MUST BE EXCLUSIVE OF ANY OTHER TYPE OF EASEMENT.
20. IMPACT FEES WILL BE ASSESSED IN ACCORDANCE WITH THE LAND USE CLASSIFICATION(S) IDENTIFIED ON THE SITE DATA SUMMARY TABLE; HOWEVER, CHARGES TO THE PROPOSED DEVELOPER FOR THE TIME TO AND/OR FINISH-OUT PERMIT MAY RESULT IN ADDITIONAL IMPACT FEES AND/OR PARKING REQUIREMENTS.
21. ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
22. APPROVAL OF THE SITE PLAN SHALL BE EFFECTIVE FOR A PERIOD OF 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 APPROVAL OF ENGINEERING PLANS AND BUILDING PERMITS. IF THE ENGINEERING PLANS AND BUILDING PERMITS ARE NOT RECEIVED BY THE SITE PLAN APPROVAL DATE, TOGETHER WITH ANY PRELIMINARY SITE PLAN FOR THE PROPERTY, IS NULL AND VOID.

FLOODPLAIN NOTE

ACCORDING TO MAP NO. 48085C0120J, DATED JUNE 2, 2009 OF THE NATIONAL FLOOD INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF COLLIN COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, THIS PROPERTY IS WITHIN ZONE "X" (UNSHADED) AND IS NOT WITHIN A SPECIAL FLOOD HAZARD AREA.

NO 100-YEAR FLOODPLAIN EXISTS ON THE SITE

CASE #: D18-0127

7 ELEVEN

SUP EXHIBIT B

DEVELOPER

SCHAFFER CONSTRUCTION
2601 NETWORK BLVD., SUITE #413
FRISCO, TEXAS 75034
PH: 972.951.7851

CONTACT NAME: SHANE PARTRIDGE

APPLICANT:

CLAYMOORE ENGINEERING, INC.
1903 CENTRAL DRIVE, SUITE #406
BEDFORD, TX 76021
PH: 817.281.0572

CONTACT NAME: MATT MOORE

SURVEYOR:
WINDROSE LAND SURVEYING & PLATTING
220 SOUTH ELM STREET, SUITE 200
LEWISVILLE, TX 75057
PH: 214.217.2544

CONTACT NAME: JACK BARTON

LEGAL DESCRIPTION:

LOT 2, BLOCK A
VICTORY AT FRONTIER
DOC. NO. 2018-699
DOC. P.R.C.C.T.
1.377 ACRES
(59,998 SF)

CITY:	
TOWN OF PROSPER	
COUNTY	S
COLLIN	SPEN

STATE:
TEXAS

ABSTRACT NO.
787



7 ELEVEN
LOT 2, BLOCK A
VICTORY AT FRONTIER
PROSPER, TEXAS

5	2/18/2021	BOLLARDS	MKT
4	9/23/2020	6" WATER LINE ADDED	MKT
3	5/11/2020	REVERSED DECELERATION LANE PAVEMENT SECTION	MKT
2	2/19/2020	REVERSED DOMESTIC SERVICE & GAS SERVICE LOCATIONS	MKT
1	10/16/2019	REVERSED NOTES FOR EXIST. FIRE HYDRANTS	MKT
No.	DATE	REVISION	BY

**S.U.P. EXHIBIT B
(SHEET 1 OF 2)**

DESIGN:	MKT
DRAWN:	MKT
CHECKED:	ASD
DATE:	9/26/2019





PLANNING

To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager
Rebecca Zook, P.E., Executive Director of Development & Infrastructure Services
Khara Dodds, AICP, Director of Development Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Conduct a public hearing and consider and act upon a request for a Specific Use Permit (SUP) for a Drive-Through Restaurant with Drive-Through Service, on 1.2± acres, in the Victory at Frontier development, located on the west side of Preston Road, south of Frontier Parkway. The property is zoned Planned Development-10 (PD-10). (S21-0004).

Description of Agenda Item:

The zoning and land use of the surrounding properties are as follows:

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Planned Development-10	Undeveloped	Retail & Neighborhood Services District
North	Planned Development-10 & Specific Use Permit	Convenience Store with Gas Pumps (7-Eleven)	Retail & Neighborhood Services District
East	Planned Development-10	Undeveloped	Retail & Neighborhood Services District
South	Planned Development-10	Victory at Frontier	Retail & Neighborhood Services District
West	Planned Development-10	Undeveloped	Retail & Neighborhood Services District

Requested Zoning – The purpose of this request is to allow for a drive-through restaurant use within a 4,845 square-foot multi-tenant building. It is anticipated the drive-through restaurant user will be a Chipotle, or comparable. As shown on Exhibit B, the site includes adequate parking and stacking, as well as an outdoor dining area. Exhibit C is a conceptual landscape plan, which depicts the location of required landscaping. The landscaping meets the minimum standards of the Town's Zoning Ordinance. Exhibit D shows a conceptual rendering of the architectural look and style of the building.

The applicant has also provided a draft master plan of the development depicting the known development at this time in order to show how the subject request fits into their overall vision.

The Zoning Ordinance contains four criteria to be considered in determining the validity of a SUP request, as follows:

1. *Is the use harmonious and compatible with its surrounding existing uses or proposed uses?*
2. *Are the activities requested by the applicant normally associated with the requested use?*
3. *Is the nature of the use reasonable?*
4. *Has any impact on the surrounding area been mitigated?*

Staff believes the applicant has satisfied the noted criteria and recommends approval of the request, subject to the conditions outlined below.

Future Land Use Plan – The Future Land Use Plan recommends Retail & Neighborhood Services uses for the property. This request conforms to the Future Land Use Plan.

Conformance to the Thoroughfare Plan – The property has direct access to Preston Road, a six-lane divided thoroughfare. The SUP exhibit complies with the Thoroughfare Plan.

Parks Master Plan – The Parks Master Plan does not indicate a park is needed on the subject property.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by the Zoning Ordinance and state law. To date, staff has not received any Public Hearing Notice Reply Forms in response to this request.

Attached Documents:

1. Location and Zoning Maps
2. SUP Exhibits A and B
3. Draft Master Plan (for informational purposes only)

Planning & Zoning Commission Recommendation:

At their November 2, 2021, meeting, the Planning & Zoning Commission recommended the Town Council approve the request, by a vote of 6-1, subject to Town Council approval of a Development Agreement, including, but not limited to, right-of-way and/or easement dedication, and architectural building materials.

Staff Recommendation:

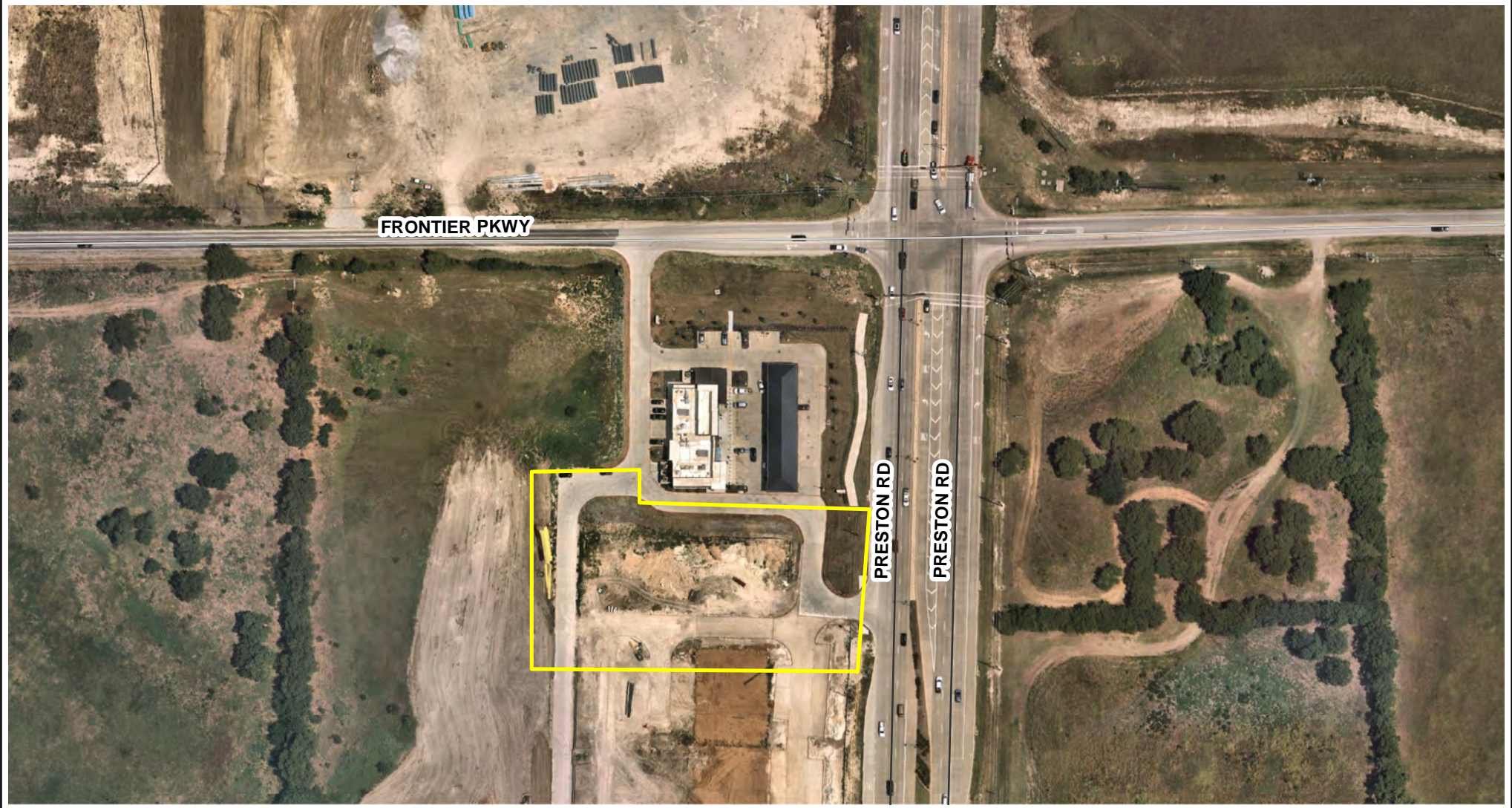
Staff recommends approval of the request for a Specific Use Permit (SUP) for a Drive-Through Restaurant with Drive-Through Service, on 1.2± acres, in the Victory at Frontier development, subject to Town Council approval of a Development Agreement, including, but not limited to, right-of-way and/or easement dedication, and architectural building materials.

Proposed Motion:

I move to approve the request for a Specific Use Permit (SUP) for a Drive-Through Restaurant with Drive-Through Service, on 1.2± acres, in the Victory at Frontier development, subject to approval of a Development Agreement, including, but not limited to, right-of-way and/or easement dedication, and architectural building materials.

S21-0004 Victory at Frontier

Item 10.



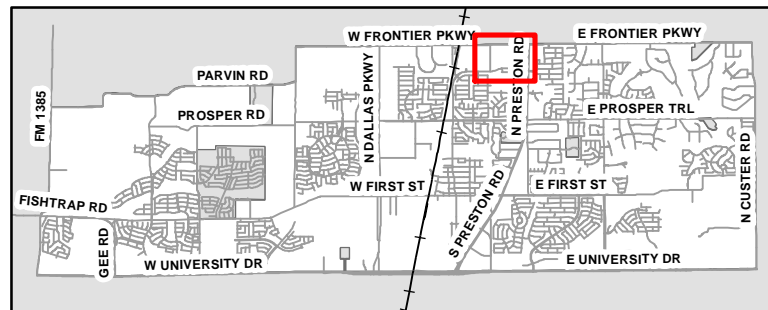
This map is for illustration purposes only.



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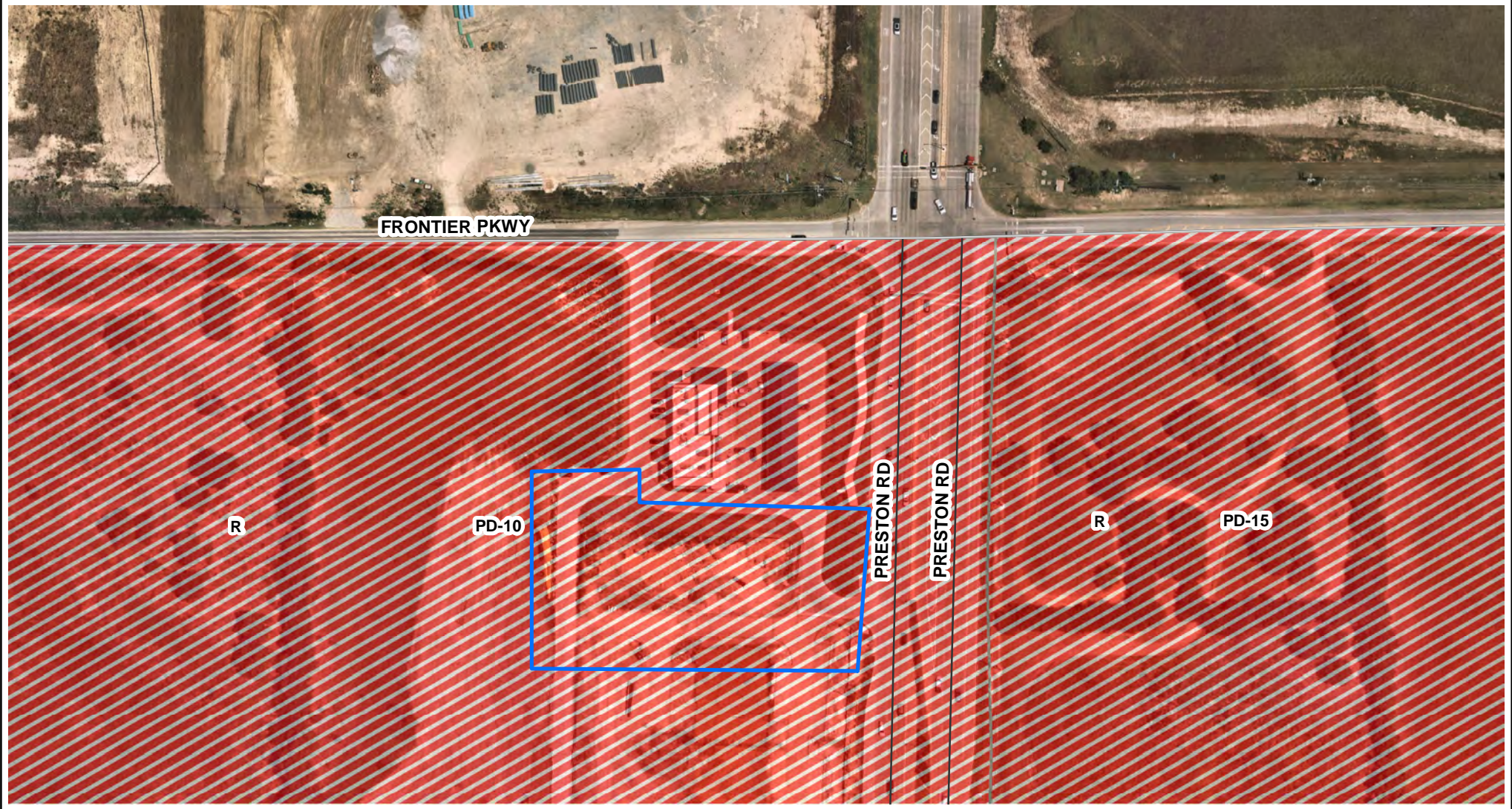
500

Feet



S21-0004 - Victory at Frontier

Item 10.

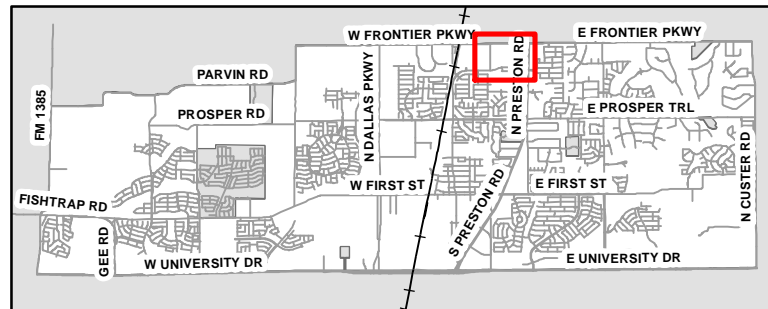


This map is for illustration purposes only.



250

500 Feet



SURVEYOR'S NOTES:

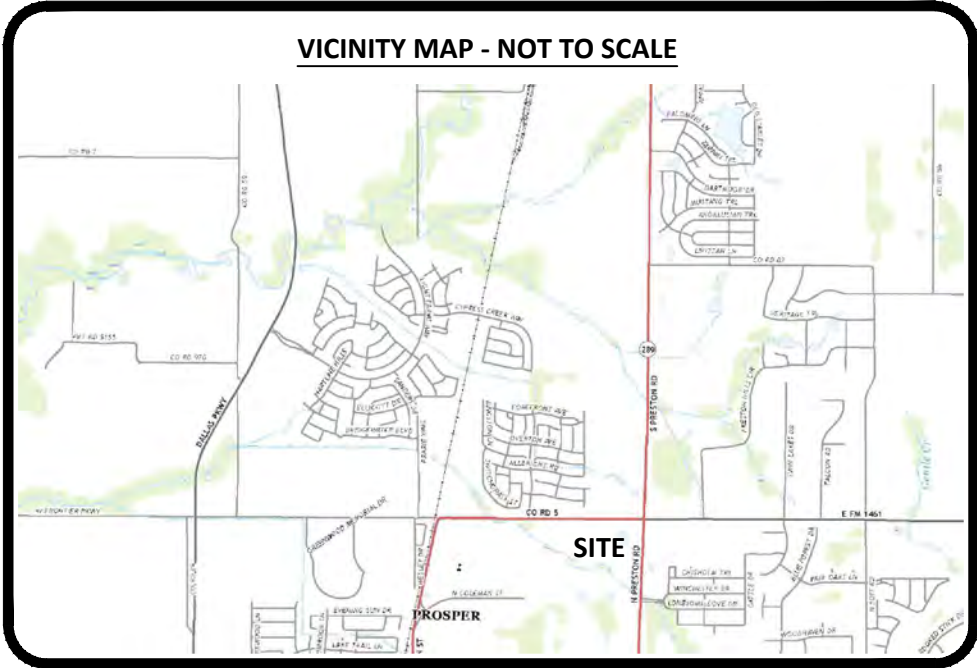
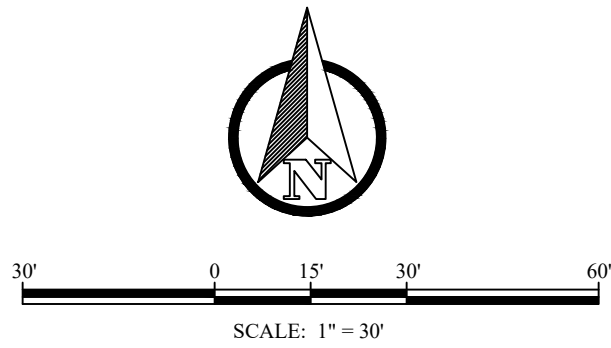
- Bearings are based on the State Plane Coordinate System, Texas North Central Zone (4202) North American Datum of 1983 (NAD '83), distances are surface with a combined scale factor of 1.00015271.
- This property lies within Zone "X" of the Flood Insurance Rate Map for Collin County, Texas and Incorporated Areas, map no. 48085C01201, with an effective date of June 2, 2009, via scaled map location and graphic plotting.
- Monuments are found unless specifically designated as set.
- Elevations (if shown) are North American Vertical Datum of 1988 (NAVD '88).

NOTE REGARDING UTILITIES

Source information from plans and markings will be combined with observed evidence of utilities pursuant to Section 5.E.iv. to develop a view of the underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely, and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation and/or a private utility locate request may be necessary. Utility locations are per observed evidence.

LEGEND OF ABBREVIATIONS

- D.R.C.C.T. DEED RECORDS, COLLIN COUNTY, TEXAS
- P.R.C.C.T. PLAT RECORDS, COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS
- DOC.# DOCUMENT NUMBER
- C.M. CONTROLLING MONUMENT
- SQ. FT. SQUARE FEET
- ROW RIGHT OF WAY
- CRS CAPPED REBAR SET



PROPERTY DESCRIPTION

BEING a portion of Lot 3 in Block A of Victory at Frontier, an addition in the Town of Prosper, Collin County, Texas, according to the plat recorded under Volume 2018, Page 699, Plat Records of Collin County, Texas, (P.R.C.C.T.), the subject tract being more particularly described by metes and bounds as follows (bearings are based on State Plane Coordinate System, Texas North Central Zone, North American Datum of 1983 (NAD '83)):

BEGINNING at a 1/2 inch rebar with pink cap stamped, "BARTON CHAPA" set (hereinafter called "capped rebar set") for the southeast corner of the herein described tract, said point being in the east line of said Lot 3;

THENCE through the interior of said Lot 3 the following calls:

- North 88 degrees 35 minutes 37 seconds West, a distance of 344.09 feet to an "X" cut in concrete set;
- North 01 degrees 24 minutes 24 seconds East, a distance of 167.98 feet to an "X" cut in concrete set;
- North 89 degrees 26 minutes 11 seconds East, a distance of 83.18 feet to an "X" cut in concrete set in the west line of Lot 2 in said Block A;

THENCE South 00 degrees 15 minutes 13 seconds West, with the west line of said Lot 2, a distance of 26.31 feet to a capped rebar set;

THENCE South 88 degrees 35 minutes 36 seconds East, with the south line of said Lot 2, a distance of 263.84 feet to a capped rebar set for the southeast corner thereof, same being a northeast corner of said Lot 3;

THENCE South 01 degrees 24 minutes 24 seconds West, with the east line of said Lot 3, a distance of 76.26 feet to a capped rebar set;

THENCE South 04 degrees 16 minutes 09 seconds West, with the east line of said Lot 3, a distance of 68.37 feet to the **POINT OF BEGINNING** and enclosing 1.198 acres (52,186 square feet) of land, more or less.

TITLE COMMITMENT NOTES

This survey was prepared without the benefit of a commitment for title insurance. Therefore, easements, agreements, or other documents, either recorded, or unrecorded may exist that affect the subject property that are not shown on this survey.

SURVEYOR'S CERTIFICATE

This is to certify that I, John H. Barton III, a Registered Professional Land Surveyor of the State of Texas, have prepared this map from an actual survey on the ground, and that this map correctly represents that survey made by me or under my direction and supervision. This survey meets the minimum requirements for a Category 1A, Condition II Land Title Survey. Fieldwork was completed on September 14, 2020. Date of Plat/Map: **September 15, 2020**

PRELIMINARY

THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED, VIEWED, OR RELIED UPON AS A FINAL SURVEY DOCUMENT September 15, 2020

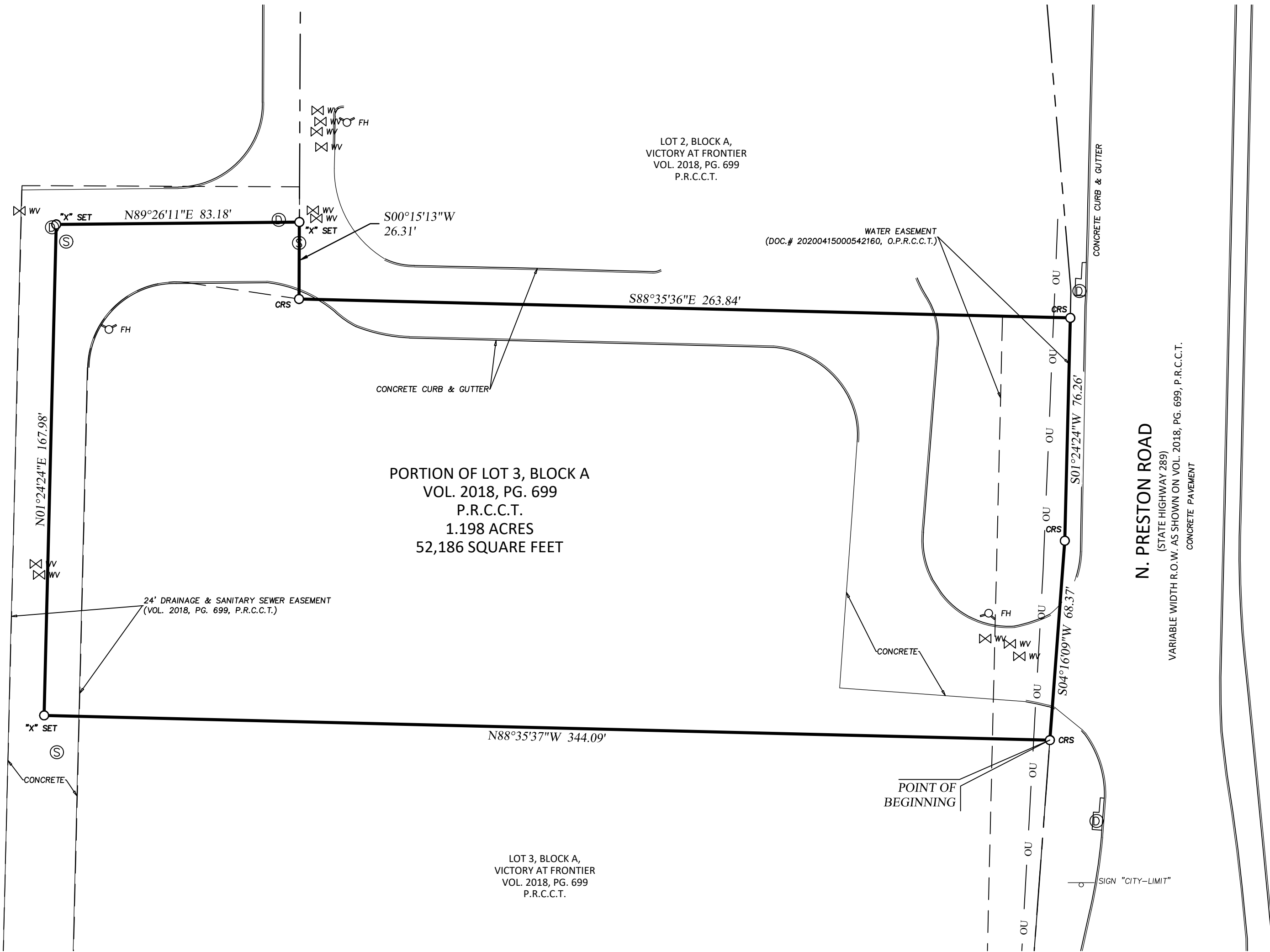
John H. Barton III, RPLS# 6737

TERMS OF ACCEPTANCE OF SURVEY

This survey is issued pursuant to a real estate transaction and is appurtenant to the title commitment referenced in the "Title Commitment Notes" This survey is issued for use in such transaction. Notwithstanding any of the above statements, the surveyor has a contractual relationship with one client or entity. Review/requested revisions by other parties must be received by or through such entity. Client is responsible for reviewing survey (including, but not limited to: notations; existence or lack of spelling/grammatical/typographical errors; certified parties; dates; instruments) within thirty (30) days of the date of plat or map. After such time has passed, client accepts survey as issued, and further revisions are not embraced by the above certification. Additional or altered commitments for title insurance will require an new or re-issued survey. Please feel free to request pricing for this at info@bcsdfw.com, or call (817) 864-1957.

LEGEND OF SYMBOLS

- air conditioning unit
- irrigation control valve
- cable tv
- electric meter
- fence or guardrail
- fire dept. connection
- fire hydrant
- bollard
- area drain
- grate inlet
- gas valve
- gas meter
- gas well
- sign
- sanitary sewer manhole
- storm water manhole
- telephone manhole
- tank fill lid
- telephone pedestal
- traffic signal pole
- utility clean out
- comm. utility cabinet
- electric utility cabinet
- comm. utility vault
- elect. utility vault
- water utility vault
- utility/service pole
- utility sign
- water shutoff
- water valve
- well
- water meter
- cable tv riser
- air release valve
- utility markings
- tree
- shrub/decorative tree or tree with diameter < 4 in.
- contour lines



CATEGORY 1A, CONDITION II LAND TITLE SURVEY

PORTION OF LOT 3, BLOCK A
VICTORY AT FRONTIER
TOWN OF PROSPER
COLLIN COUNTY, TEXAS



5200 State Highway 121
Colleyville, TX 76034
Phone: 817-488-4960

JOB NO. 2020.001.148

DRAWN: BCS

CHECKED: JHB

TABLE OF REVISIONS

DATE	SUMMARY

VICTORY AT
FRONTIER

PROSPER,
TEXAS

SHEET:

VO1

CATEGORY 1A,
CONDITION II
LAND TITLE
SURVEY



Know what's below.
Call before you dig.

LEGEND

- PROPOSED FIRE HYDRANT
- PROPOSED CURB INLET
- ACCESSIBLE ROUTE
- PARKING COUNT
- PROPERTY BOUNDARY
- PROPOSED PAVEMENT

KE SITE PLAN DATA TABLE

EXISTING ZONING	PD-10
LOT AREA (SF) / (ACRES)	52,186 SF / 1.198 AC.
TOTAL BUILDING AREA (SF)	RESTAURANT: 4,845 SF
BUILDING HEIGHT	20'-0" (1 STORY)
MAXIMUM FAR (4:1)	9.28% / 0.0928:1

KE PARKING DATA TABLE

RESTAURANT PARKING REQUIREMENT	1 SPACE PER 100 SF
BUILDING AREA / PATIO AREA	4,585 SF / 260 SF = 4,845 SF
RESTAURANT PARKING SPACES REQUIRED	49 SPACES
TOTAL PARKING SPACES PROVIDED	56 SPACES
REQUIRED ADA PARKING	3 SPACES (1 VAN)
PROVIDED ADA PARKING	3 SPACES (1 VAN)
IMPERVIOUS AREA (SF)	42,956 SF
REQUIRED LANDSCAPING (10% OF LOT AREA)	5,218 SF
PROVIDED LANDSCAPING	8,069 SF

LAYOUT & DIMENSIONAL CONTROL NOTES:

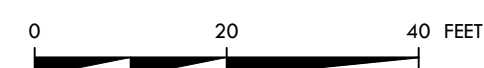
- BOUNDARY LINES AND EASEMENT: REFER TO THE FINAL PLAN TO VERIFY PROPERTY LINES AND EXISTING EASEMENT LOCATIONS.
- DIMENSION CONTROL: UNLESS NOTED OTHERWISE, ALL PAVING DIMENSIONS SHOWN ARE TO FACE OF CURB.
- CURB RADIUS: UNLESS NOTED OTHERWISE, ALL CURB RADII SHALL BE 3' AT FACE OF CURB.
- BUILDING DIMENSIONS: REFERENCE ARCHITECTURAL PLANS FOR EXACT BUILDING DIMENSIONS.
- CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND COORDINATES PRIOR TO CONSTRUCTION.
- ALL COORDINATES ARE U.S. SURVEY FEET, NAD '83 SURFACE.

NOTE TO CONTRACTOR

THE CONTRACTOR SHALL FIELD VERIFY THE LOCATION AND DEPTH OF ALL EXISTING UTILITIES (WHETHER SHOWN ON PLANS OR NOT) PRIOR TO COMMENCING CONSTRUCTION. IF FIELD CONDITIONS DIFFER SIGNIFICANTLY FROM LOCATIONS SHOWN ON THE PLANS, THE CONTRACTOR SHALL CONTACT THE PROJECT ENGINEER PRIOR TO PROCEEDING WITH CONSTRUCTION.



GRAPHIC SCALE



SCALE: 1" = 20'

SITE PLAN

CASE NO. S21-0004

VICTORY AT FRONTIER LOT 5

1.198 ACRES

LOT 5, BLOCK A

VICTORY AT FRONTIER, LLC

(VOL. 2018, PAGE 699)

P.R.C.C.T.

TOWN OF PROSPER, COLLIN, TEXAS

PREPARATION DATE: 10/25/2021

OWNER/APPLICANT
VICTORY AT FRONTIER, LLC
6125 LUTHER LANE STE 583
DALLAS, TX 75225-6202
PH: 214-934-2566
CONTACT: BOBBY MENDOZA

LANDSCAPE ARCHITECT
LONDON LANDSCAPES
P.O. BOX 28
COLLEYSVILLE, TX 76233
CONTACT: AMY LONDON, RLA

ENGINEER
KIRKMAN ENGINEERING, LLC
5200 STATE HIGHWAY 121
COLLEYSVILLE, TX 76034
PH: 817-488-4960
CONTACT: PATRICK FILSON, PE

SURVEYOR
BARTON CHAPA SURVEYING
5300 STATE HIGHWAY 121
COLLEYSVILLE, TX 76034
PH: 817-864-1957
CONTACT: JACK BARTON, RPLS

PRELIMINARY
FOR REVIEW ONLY
THESE DOCUMENTS ARE FOR
DESIGN REVIEW ONLY AND
NOT INTENDED FOR THE
PURPOSES OF CONSTRUCTION,
BIDDING OR PERMIT. THEY
WERE PREPARED BY, OR
UNDER THE SUPERVISION OF:

PATRICK C. FILSON
P.E.# 108577
DATE: 10/26/2021

VICTORY GROUP
Victory Real Estate Group

6125 LUTHER LANE SUITE 583
DALLAS, TX 75225-6202
214-934-2566

**VICTORY AT
FRONTIER - LOT 5**
LOT 5, BLOCK A
TOWN OF PROSPER
COLLIN COUNTY, TEXAS

DESCRIPTION:

REV. DATE:



**kirkman
ENGINEERING**
KIRKMAN ENGINEERING, LLC
5200 STATE HIGHWAY 121
COLLEYSVILLE, TX 76034
TEXAS FIRM NO. 15874

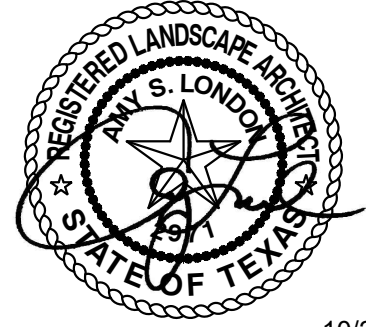
JOB NUMBER: VIC21019

ISSUE DATE: 10/19/2021

**EXHIBIT B
SITE PLAN**

SHEET:

C3.0



10/26/21

VICTORY | GROUP
Victory Real Estate Group

6125 LUTHER LANE SUITE 583
DALLAS, TX 75225-6202
214-934-2566

**VICTORY AT
FRONTIER - LOT 5**
LOT 5, BLOCK A
TOWN OF PROSPER
COLLIN COUNTY, TEXAS

DESCRIPTION:

REV. DATE:



KIRKMAN ENGINEERING, LLC
5200 STATE HIGHWAY 121
COLLEYVILLE, TX 76034
TEXAS FIRM NO. 15874

JOB NUMBER: VIC21019

ISSUE DATE: 10/26/21

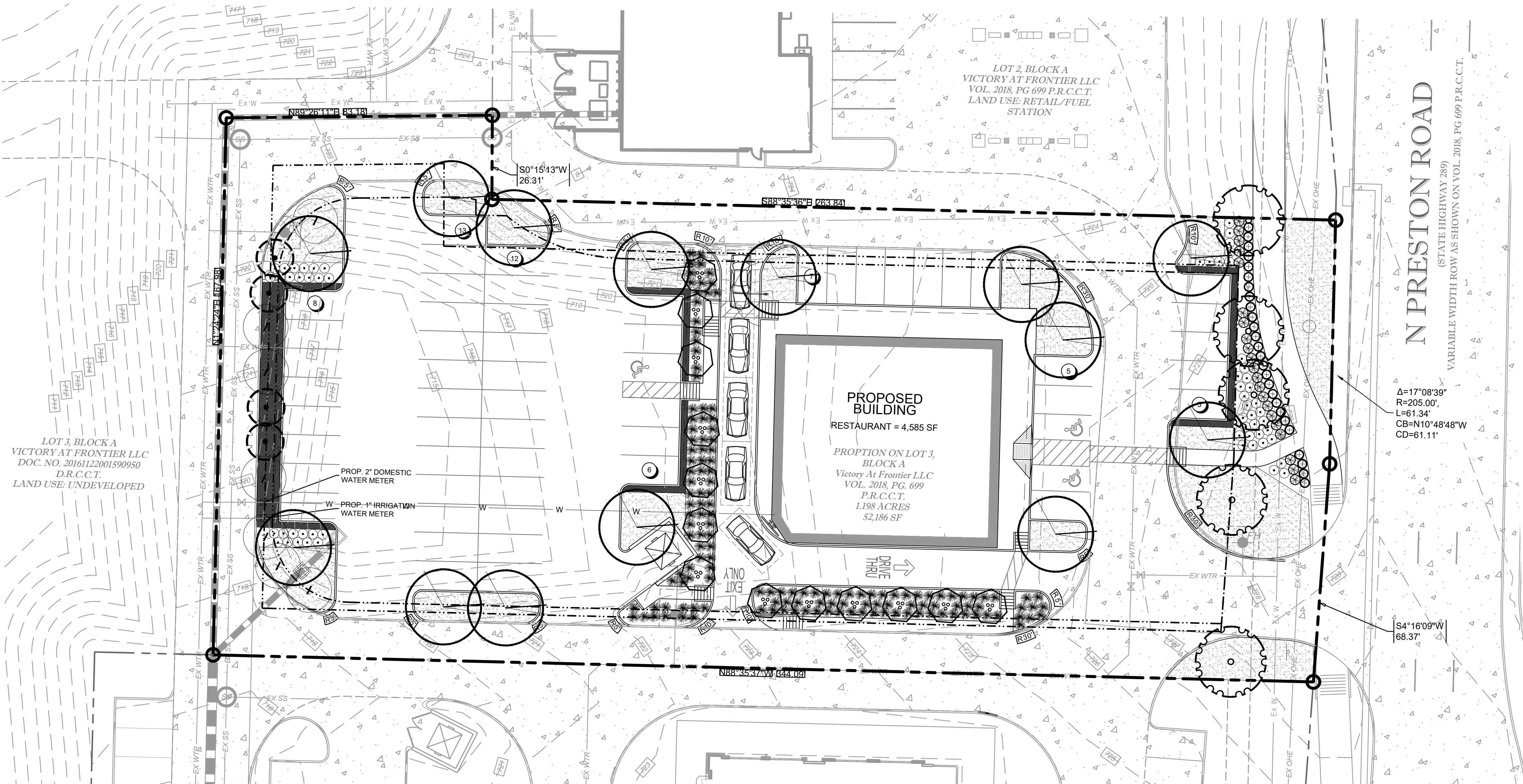
**EXHIBIT C
LANDSCAPE
PLAN**

SHEET:

L1.00

**LONDON
LANDSCAPES**

P.O. BOX 28 COLLINSVILLE, TEXAS 76233
WWW.LONDON-LANDSCAPES.NET

**KEY****TREES**

	14	UL	Ulmus crassifolia	Cedar Elm	3" Cal. Min. Cont. Grown-65 Gal. 12'-15' Height, 6'-8' Spread Specimen
	5	QT	Quercus texana	Texas Red Oak	3" Cal. Min. Cont. Grown-65 Gal. 12'-15' Height, 6'-8' Spread Specimen
	7	QH	Chilopsis linearis	Desert Willow	3" Trunk Min. 30 Gal. Cont. Grown 1" Cal. Per Trunk, 4-5 Canes 8' Height, 5' Spread, Specimen
	4	CL	Ilex opaca	Foster Holly	3" Cal. Min. Cont. Grown - 15 Gal. Full Crown, Min. 1" Canes, Min. 7' ht. Healthy, Plant as Shown
	13	CC	Cercis canadensis	Eastern Redbud	3" Cal. Min. Cont. Grown - 15 Gal. Full Crown, Min. 1" Canes, Min. 7' ht. Healthy, Plant as Shown

SHRUBS

	58	VIB	Viburnum v. davidii 'White'	Viburnum	5 Gal. Minimum 24" - 36" Minimum height at planting Spaced per plan, matching
	21	NER	Abelia x grandiflora	Glossy Abelia	5 Gal. Minimum 30" Minimum height at planting Spaced per plan, matching
	26	NDL	Nandina domestica 'Lemon Lime'	Lemon Lime Nandina	5 Gal. Minimum 4' Height at Planting Spaced per plan, matching
	146	NAN	Nandina domestica	Nandina	5 Gal. Minimum 30" Minimum height at planting Spaced per plan, matching

GROUND COVER

	957 SF	DG	Decomposed Granite		
	5,680 SF	SOD	Common Bermuda Grass	Bermuda Grass	Solid sod Sand fill joints and provide uniform coverage within 30 days of completion

LANDSCAPE CALCULATIONS**A MINIMUM 10% OF PLATTED AREA TO BE LANDSCAPED**

- REQUIRED LANDSCAPE AREA: 52,186 SF X 10% = 5,218 SF
- PROVIDED: 8,069 SF

30' LANDSCAPE BUFFER ALONG PRESTON ROAD MEASURED FROM THE PROPERTY LINE

- REQUIRED: 1 CANOPY TREE FOR EVERY 30 LINEAR FEET
- 129.71 LF / 30 = 5 TREES
- PROVIDED: 5 TREES

- REQUIRED: A MINIMUM OF 15 SHRUBS WITH A MINIMUM SIZE OF FIVE (5) GALLONS EACH WILL BE PLANTED IN THE LANDSCAPE AREA FOR EVERY 30 LINEAR FEET OF FRONTAGE
- 129.71 LF / 30 = 5 X 15 SHRUBS = 75 SHRUBS
- PROVIDED: 75 SHRUBS

5' LANDSCAPE BUFFER AROUND THE PERIMETERS OF THE PROPERTY

- REQUIRED: ONE SMALL TREE AND ONE FIVE-GALLON SHRUB SHALL BE PLANTED EVERY 15 LINEAR FEET.
- 167.98' x 15 = 12 TREES AND 12 SHRUBS
- PROVIDED: 12 TREES AND 23 SHRUBS

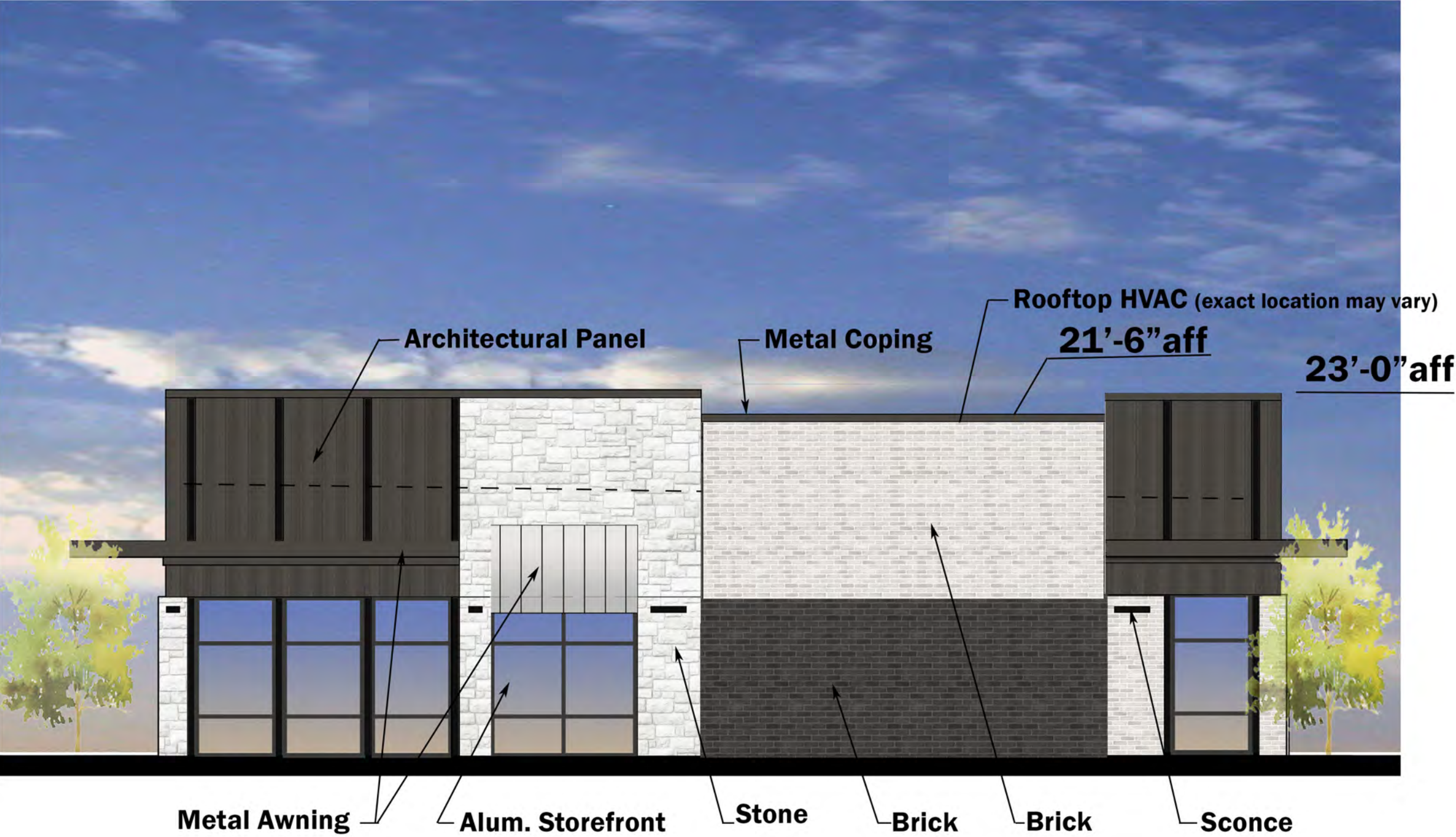
INTERIOR PARKING LANDSCAPING (ALL REQUIRED AND PROVIDED)

- REQUIRED: 15 SQ. FT. OF LANDSCAPING FOR EACH PARKING SPACE SHALL BE PROVIDED WITHIN THE PAVED BOUNDARIES OF THE PARKING LOT AREA.
- PROVIDED: YES

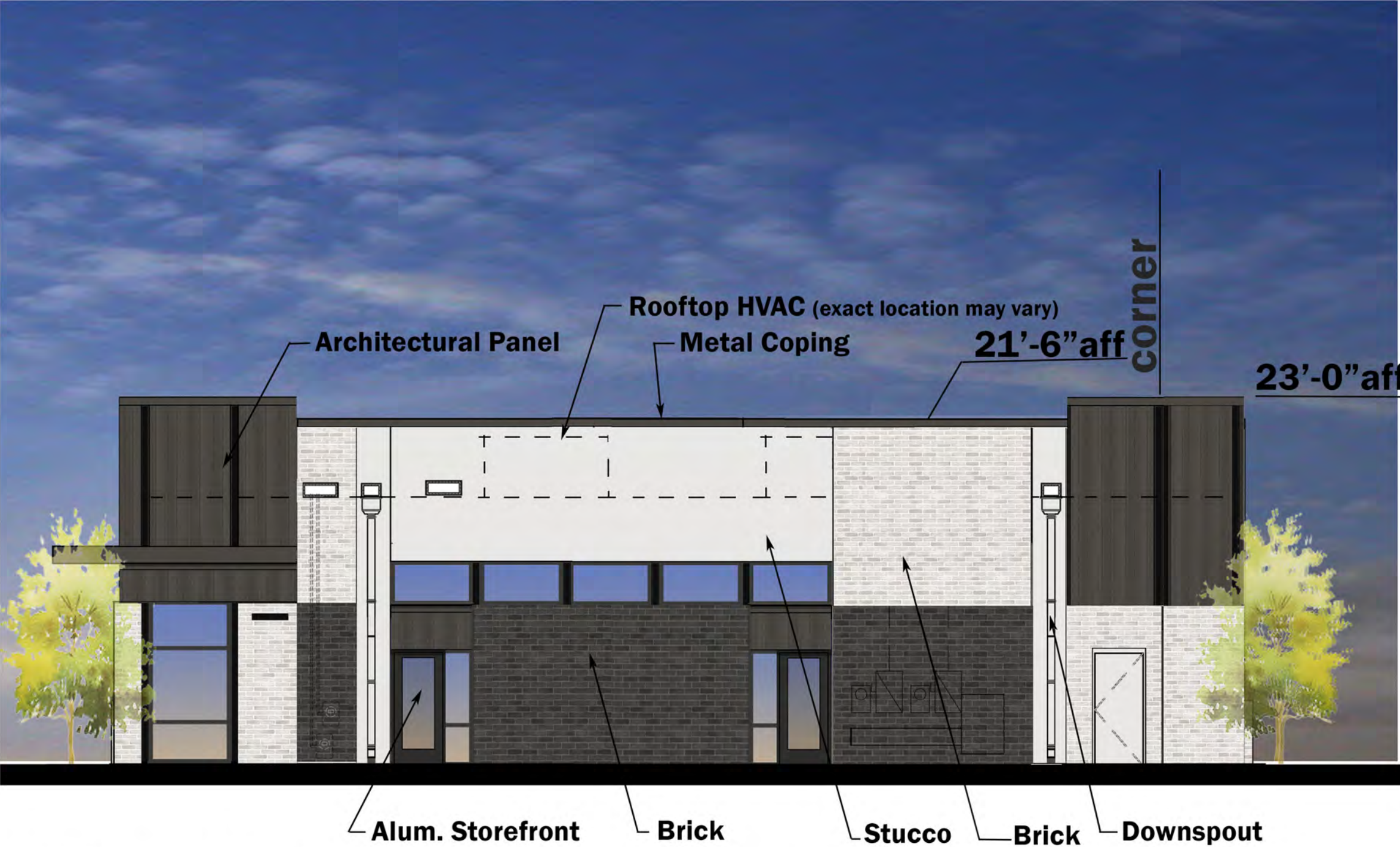
- REQUIRED: LANDSCAPE ISLAND (160 SF & NO LESS THAN 9' WIDE AND AN EQUAL LENGTH TO THE ABUTTING PARKING SPACE) AT THE END OF EVERY PARKING ROW WITH A CANOPY TREE
- PROVIDED: YES

- REQUIRED: EVERY 15 PARKING SPACES MUST BE INTERRUPTED BY A LANDSCAPE ISLAND
- PROVIDED: YES

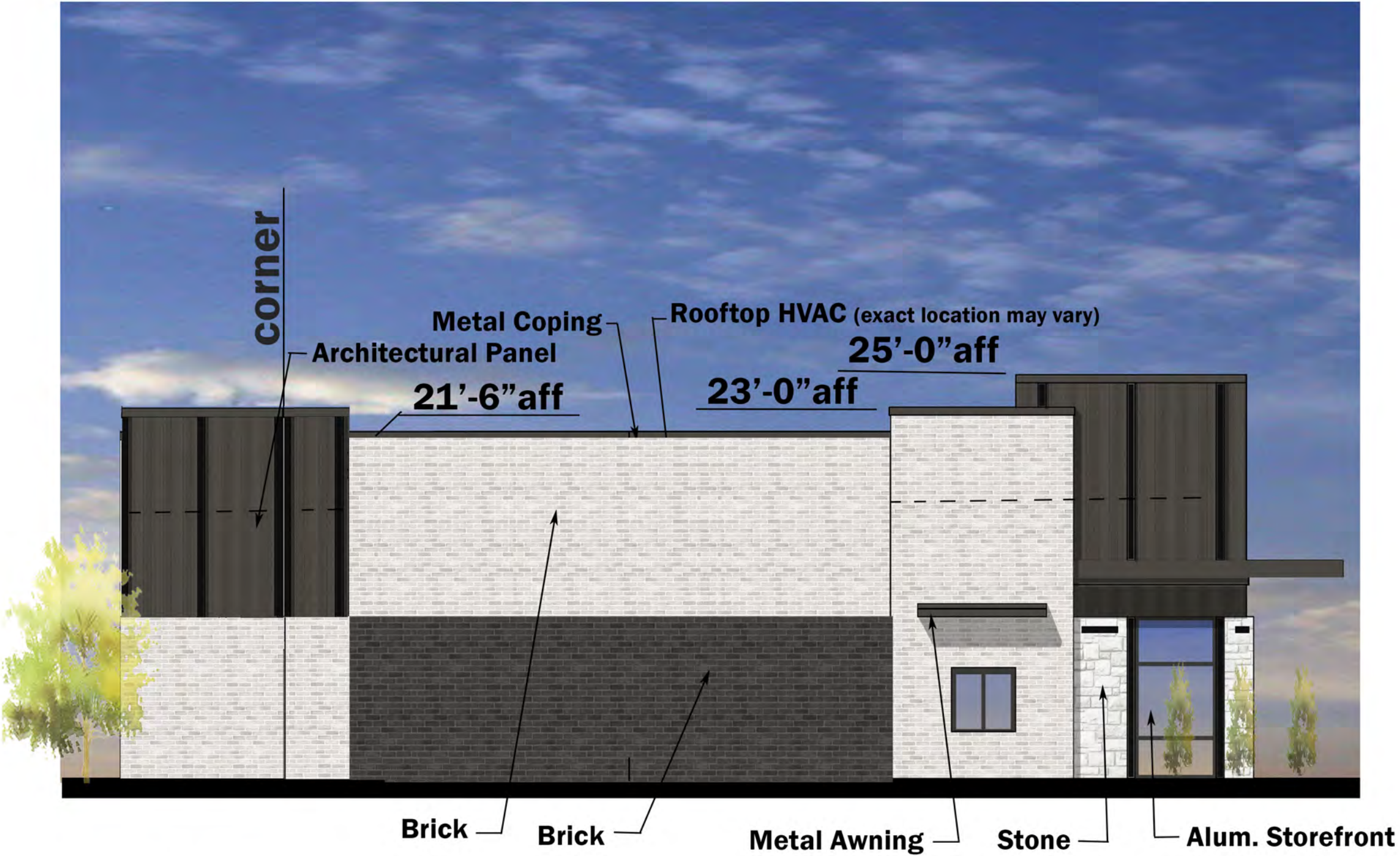
- REQUIRED: A CANOPY TREE WITHIN 150 FEET OF EVERY PARKING SPACE
- PROVIDED: YES



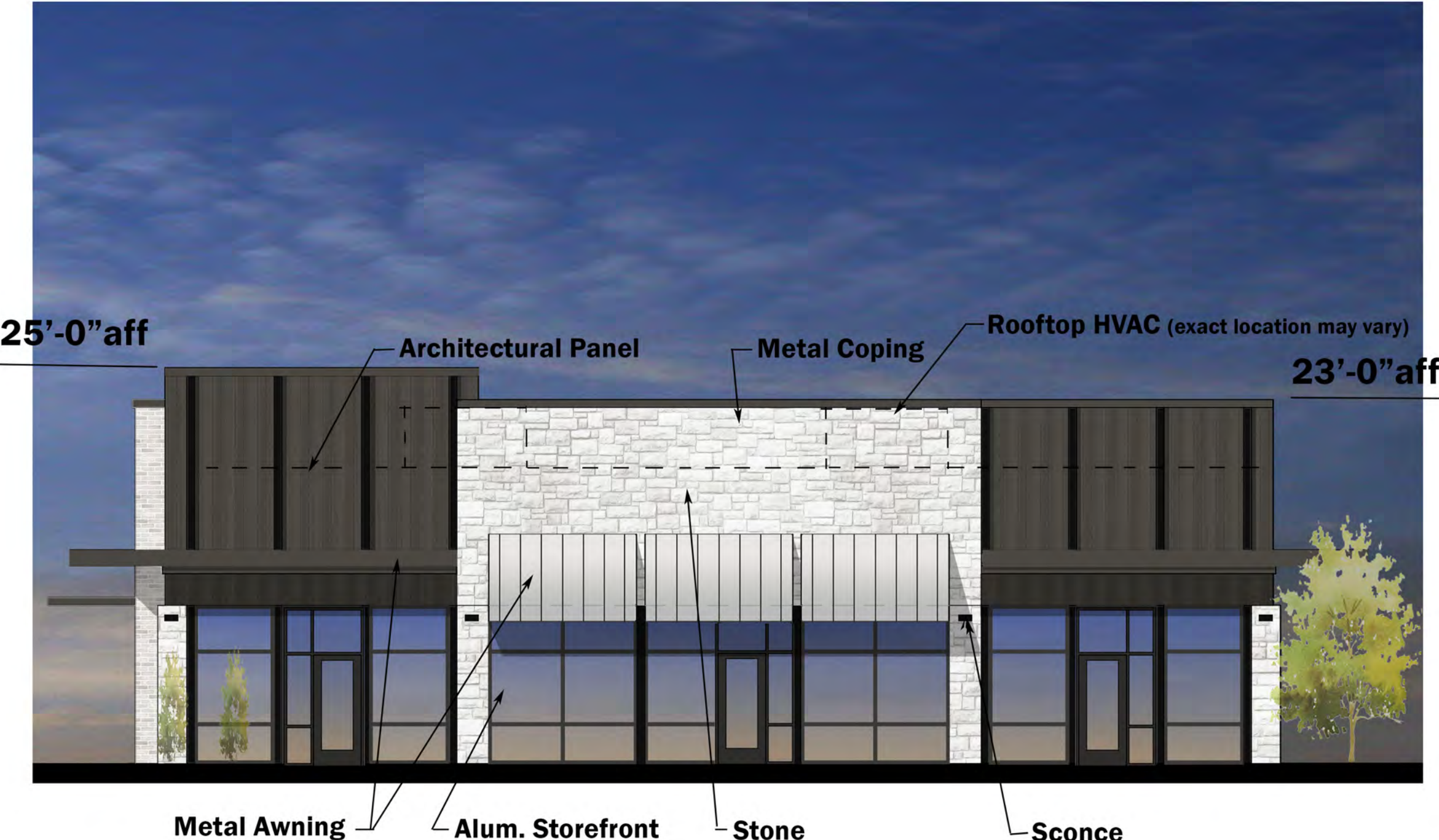
NORTH ELEVATION



WEST ELEVATION



SOUTH ELEVATION



EAST ELEVATION

FACADE NOTES

This Façade 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 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 by the Building Inspections Division.

Windows shall have a maximum exterior visible reflectivity of ten (10) percent.

Any deviation from the approved Façade Plan will require re-approval by the Town of Prosper.

NORTH	
TOTAL FACADE:	1,594 SF
DOORS/GLAZING:	323 SF
NET FACADE:	1,271 SF 100%
MASONRY (STONE):	256 SF 20%
MASONRY (BRICK):	620 SF 49%
TOTAL MASONRY:	69%
PANELS :	320 SF 25%
METAL AWNING:	75 SF 6%

SOUTH	
TOTAL FACADE:	1,596 SF
DOORS/GLAZING:	76 SF
NET FACADE:	1,520 SF 100%
MASONRY (STONE):	51 SF 3%
MASONRY (BRICK):	1,126 SF 74%
TOTAL MASONRY:	77%
PANELS :	277 SF 19%
METAL AWNING:	66 SF 4%

WEST	
TOTAL FACADE:	1,512 SF
DOORS/GLAZING:	184 SF
NET FACADE:	1,328 SF 100%
MASONRY (BRICK):	803 SF 60%
TOTAL MASONRY:	60%
PANELS :	255 SF 19%
METAL AWNING:	66 SF 5%
STUCCO :	214 SF 16%

EAST	
TOTAL FACADE:	1,671 SF
DOORS/GLAZING:	624 SF
NET FACADE:	1,047 SF 100%
MASONRY (STONE):	479 SF 46%
TOTAL MASONRY:	46%
PANELS :	376 SF 36%
METAL AWNING:	192 SF 18%

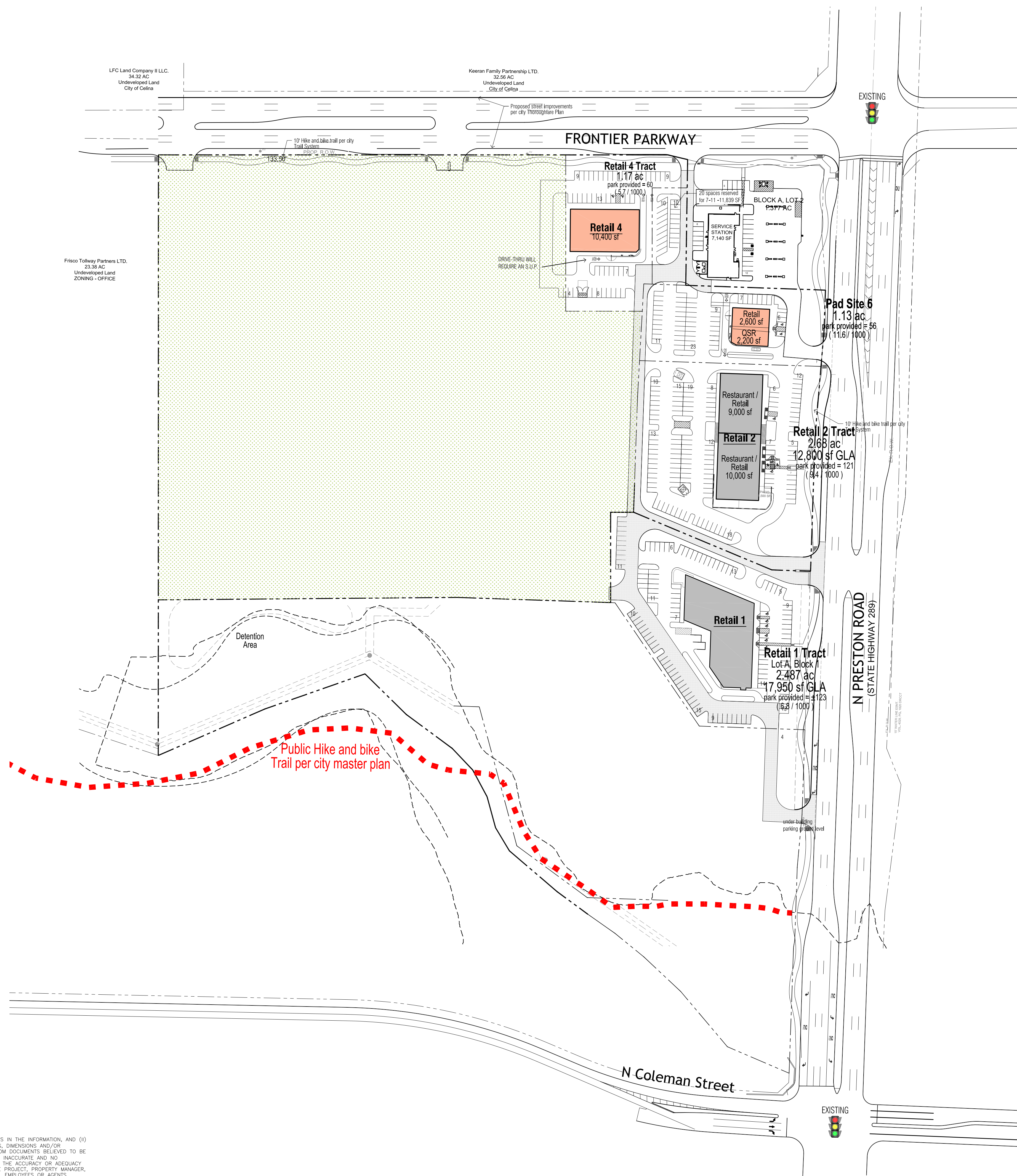
TOTAL FACADE:	6,373 SF
TOTAL DOORS/GLAZING:	1,207 SF

NET FACADE	5,166 SF	100%
TOTAL MASONRY:	3,325 SF	64%
TOTAL ARCHITECTURAL PANEL:	1,228 SF	24%
TOTAL AWNINGS:	399 SF	7%
TOTAL STUCCO:	214 SF	5%

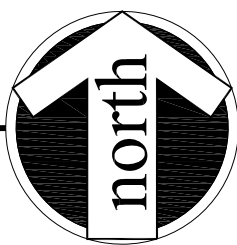
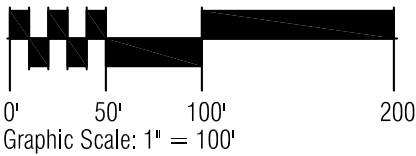


20023-01 tws 10/29/21 updated
20023-01 tws 10/27/21 updated
20023-01 tws 10/22/21

PAD 6 VICTORY at FRONTIER



SITE PLAN



THIS PLAN IS PROVIDED SUBJECT TO (i) ERRORS AND OMISSIONS IN THE INFORMATION, AND (ii) MODIFICATION WITHOUT NOTICE THE INFORMATION, SPECIFICATIONS, DIMENSIONS AND/OR TABULATIONS SET FORTH IN THIS PLAN HAVE BEEN DERIVED FROM DOCUMENTS BELIEVED TO BE RELIABLE. HOWEVER, THIS PLAN MAY BE INCOMPLETE AND/OR INACCURATE AND NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AS TO THE ACCURACY OR ADEQUACY REGARDING SUCH INFORMATION IS MADE BY THE OWNER OF THE PROJECT, PROPERTY MANAGER, OR ANY OF THEIR RESPECTIVE PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS.

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VICTORY AT FRONTIER

Preston Road at Frontier Drive

PROSPER, TEXAS

HODGES
Architecture

architecture planning
13642 Omega Dallas, Texas 75244-4514
phone: 972.387-1000 fax: 972.960-1129
www.hodgesusa.com

project no.

20023

drawn

KO

date

11-12-21

SCHEME

SP-10

PROPOSED TENANT NAMES SHOWN

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager
Rebecca Zook, P.E., Executive Director of Development & Infrastructure Services
Khara Dodds, AICP, Director of Development Services

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Conduct a public hearing and consider and act upon a request to rezone 9.1± acres from Office (O) to Planned Development-Office (PD-O), to allow for a Veterinarian Clinic and/or Kennel, Indoor as a permitted use, located on the north side of Fishtrap Road, west of Legacy Drive. (Z21-0011).

Description of Agenda Item:

The zoning and land use of the surrounding properties are as follows:

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Office	Office Development	Retail & Neighborhood Services
North	Planned Development-66-Single Family	Undeveloped	Medium Density Residential
East	Planned Development-66-Single Family	Undeveloped	Medium Density Residential
South	Planned Development-14-Single Family	Residential Subdivision (Parks at Legacy)	Medium Density Residential
West	Agricultural	Church (Church of Celebration Metro)	Retail & Neighborhood Services

Requested Zoning – The purpose of this request is to rezone the 9.1± acres of land from its current Office (O) designation to a Planned Development-Office (PD-O) district, in order to allow a Veterinarian Clinic and/or Kennel, Indoor as a permitted use by right. The site is currently developed with two (2) existing office buildings. This request would allow a veterinarian and/or indoor kennel to occupy space within the existing development. The proposed use is defined as an establishment, not including outside pens, where animals and pets are admitted for

examination and medical treatment, or where domesticated animals are housed, groomed, bred, boarded, trained, or sold for commercial purposes.

As shown below, the surrounding properties include a church to the west, floodplain to the north and east, and a minor thoroughfare separating the neighborhood to the south.



Staff believes the proposed use is reasonable in an office district in this location.

Future Land Use Plan – The Future Land Use Plan recommends Retail & Neighborhood Services.

Thoroughfare Plan – The property will have direct access to the future extension of Fishtrap Road, a 90-foot right-of-way, 4-lane divided minor thoroughfare.

Parks Master Plan – The Parks Master Plan does not indicate a park is needed on the subject property; however, a hike and bike trail may be needed at the time of development.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by the Zoning Ordinance and state law. To date, staff has not received any Public Hearing Notice Reply Forms in response to this request.

Attached Documents:

1. Location and Zoning Maps
2. PD Exhibits

Planning & Zoning Commission Recommendation:

At their November 2, 2021, meeting, the Planning & Zoning Commission recommended the Town Council approve the request, by a vote of 7-0.

Staff Recommendation:

Staff recommends approval of the request to rezone 9.1± acres from Office (O) to Planned Development-Office (PD-O), to allow for a Veterinarian Clinic and/or Kennel, Indoor as a permitted use, located on the north side of Fishtrap Road, west of Legacy Drive.

Proposed Motion:

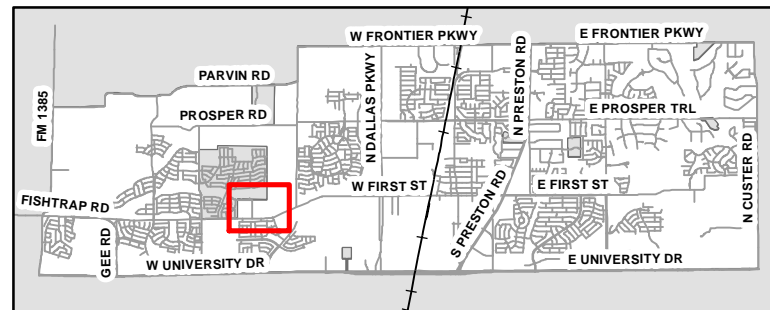
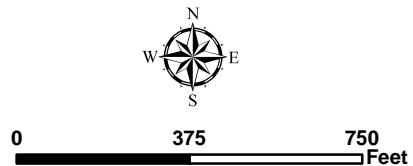
I move to approve the request to rezone 9.1± acres from Office (O) to Planned Development-Office (PD-O), to allow for a Veterinarian Clinic and/or Kennel, Indoor as a permitted use, located on the north side of Fishtrap Road, west of Legacy Drive.

Z21-0011 - CHC Fishtrap

Item 11.

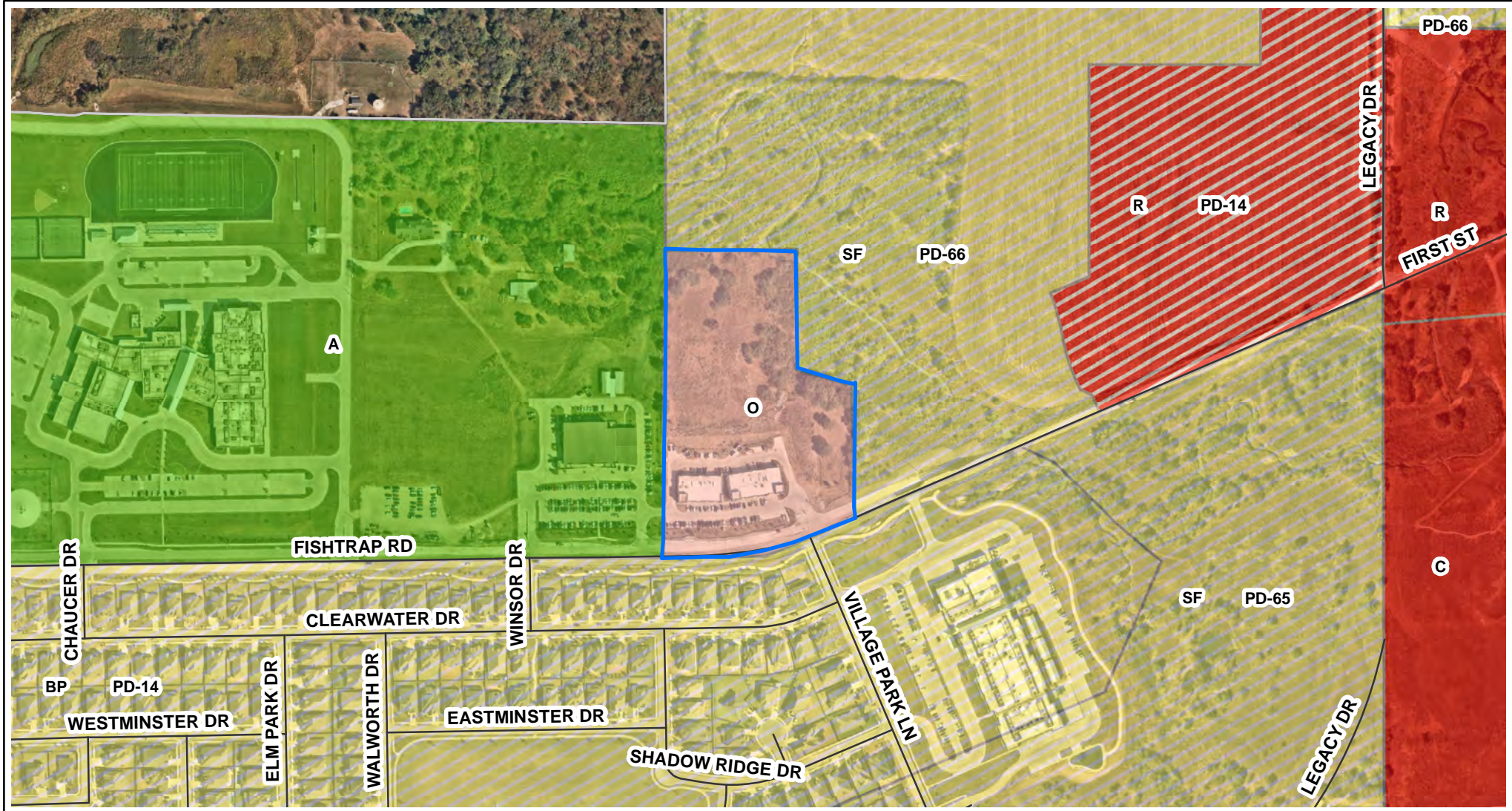


This map is for illustration purposes only.

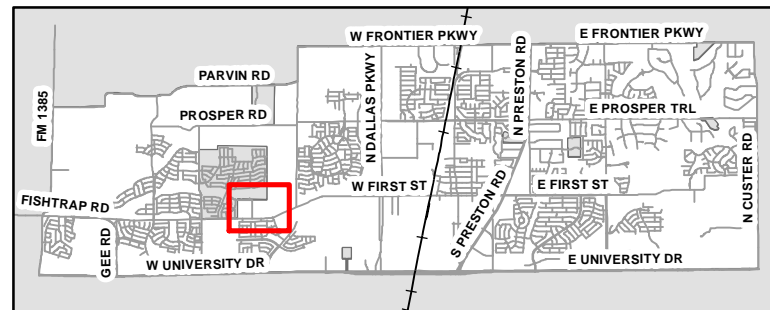
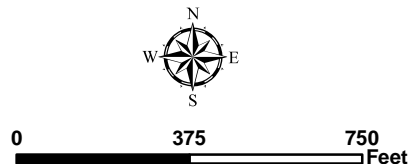


Z21-0011 - CHC Fishtrap

Item 11.



This map is for illustration purposes only.



Z21-0011
EXHIBIT B
DEVELOPMENT STANDARDS
CHC FISHTRAP

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance, as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.

1. Except as noted below, the Tract shall develop in accordance with the Office District, as it exists or may be amended.
2. Permitted Uses
Veterinarian Clinic and/or Kennel, Indoor shall be a permitted use by right.

FINANCE DEPARTMENT

To: Mayor and Town Council

From: Betty Pamplin, Finance Director

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider the adoption of a resolution calling the Town of Prosper, Texas General Obligation Bonds, Series 2012 for redemption prior to maturity and approving all matters incidental thereto. (BP)

Description of Agenda Item:

The 2012 General Obligation Bonds were sold to fund street capital projects. The bonds maturing in years 2023 – 2032 are callable on February 15, 2022. The interest rates on the callable bonds are 3.00% to 3.25% and they are callable at par. The FY 2021-22 adopted budget included \$2.0 million from the Debt Service Fund to pay off a portion of the bonds. During refunding discussions Town Council expressed a desire to pay off the remainder of the debt with cash rather than issue refunding bonds. This resolution would authorize the Town Manager to pay off the full amount of the bonds with cash in the amount of \$2,428,581.25. The balance of the cash needed to pay off the 2012 General Obligation Bonds of \$428,581.25 would be funded from General Fund balance.

Budget Impact:

The fiscal year 2021-2022 adopted Debt Service Fund budget includes \$2M for cash refunding of the bonds. A budget amendment will be needed to increase expenditures in the General Fund by \$428,581.25.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P. and Dan Culver of McCall, Parkhurst and Horton, the Town's bond counsel, have reviewed the resolution as to form and legality.

Attached Documents:

1. Resolution calling the Town of Prosper, Texas General Obligation Bonds, Series 2012.

Town Staff Recommendation:

Town staff recommends adoption of a resolution calling the Town of Prosper, Texas General Obligation Bonds, Series 2012 for redemption prior to maturity and approving all matters incidental thereto.

Proposed Motion:

I move to adopt a resolution calling the Town of Prosper, Texas General Obligation Bonds, Series 2012 for redemption prior to maturity and approving all matters incidental thereto.

TOWN OF PROSPER, TEXAS

RESOLUTION No. 2021-70

**A RESOLUTION DIRECTING THE REDEMPTION OF THE TOWN'S
OUTSTANDING GENERAL OBLIGATION BONDS, SERIES 2012; AND
ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT.**

WHEREAS, Town of Prosper (the "Town") has issued, and there are currently outstanding, the Town's General Obligation Bonds, Series 2012, maturing serially on February 15 in each of the years 2023, 2025 and 2027 through 2032, inclusive, in the aggregate principal amount of \$2,390,000 (the "2012 Bonds"); and

WHEREAS, in the ordinance that authorized the issuance of the Bonds (the "Bond Ordinance"), the Town reserved the right to redeem the 2012 Bonds, in whole or in part, on February 15, 2022, or on any date thereafter at a price equal to the principal amount of the 2012 Bonds so called for redemption plus accrued interest to the redemption date; and

WHEREAS, this Town Council hereby finds and determines that it is necessary and in the best interests of the Town to redeem all of the outstanding 2012 Bonds with funds lawfully available for such purpose, being all of the outstanding principal balance of the 2012 Bonds (collectively, the "Redeemed Bonds"), which redemption shall occur on February 15, 2022; and

WHEREAS, the paying agent/registrars with respect to the 2012 Bonds is U.S. Bank National Association (in such capacity, the "Paying Agent/Registrar"); and

WHEREAS, it is officially found, determined and declared that the meeting at which this Resolution has been adopted was open to the public and public notice of the date, hour, place and subject of said meeting, including this Resolution, was given, all as required by the applicable provisions of Tex. Gov't Code Ann. Ch. 551.

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

SECTION 1. FINDINGS

The declarations, determinations and findings declared, made and found in the preamble to this Resolution are hereby adopted, restated and made a part of the operative provisions hereof. Capitalized terms not defined herein shall have the meanings ascribed such terms in the Bond Ordinance.

SECTION 2. REDEMPTION OF REDEEMED BONDS

The Redeemed Bonds, as more specifically described in Exhibit A hereto, in the aggregate principal amount of \$2,390,000, are hereby called for redemption on February 15, 2022 (the "Redemption Date"), at a redemption price equal to the principal amount thereof plus accrued interest to the Redemption Date in the amount of \$38,581.25. Such principal amount and accrued interest is hereby directed to be irrevocably deposited with the Paying Agent/Registrar on or before the Redemption Date in cash. Lawfully available funds of the Town are hereby authorized and appropriated in the amounts necessary for such purpose.

SECTION 3. AUTHORIZATION OF ACTIONS

(a) The Town Manager, the Director of Finance or other authorized officer of the Town is hereby authorized and directed to issue or cause to be issued the Notice of Redemption in the form set forth in Exhibit A attached hereto to the Paying Agent/Registrar.

(b) In addition, the Paying Agent/Registrar for the Redeemed Bonds is hereby directed to provide the appropriate notice of redemption to the registered owners of the Redeemed Bonds as specified by the Bond Ordinance, so that the Redeemed Bonds may be redeemed on the Redemption Date. Provided funds for the payment thereof have been made available to the Paying Agent/Registrar, the Redeemed Bonds shall not bear interest after the Redemption Date.

(c) The officers and employees of the Town are hereby authorized and directed to take such actions and to execute and deliver such documents, orders and receipts, including without limitation notifying the Municipal Securities Rulemaking Board's Electronic Municipal Market Access service with respect to the redemption of the Redeemed Bonds, and the payment of the costs of the transaction, as necessary or appropriate to consummate the transactions authorized by this resolution and to redeem the Redeemed Bonds in accordance with the provisions and requirements of the Bond Ordinance.

(Execution Page Follows)

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 23RD DAY OF NOVEMBER 2021.

Ray Smith, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

CONDITIONAL NOTICE OF REDEMPTION**TOWN OF PROSPER, TEXAS
GENERAL OBLIGATION BONDS, SERIES 2012**

NOTICE IS HEREBY GIVEN that the Town of Prosper, Texas (the "Town"), in Collin and Denton Counties, Texas, has called for redemption on the date and at the redemption price specified, a portion of the outstanding Bonds of the Town listed below:

Town of Prosper, Texas General Obligation Bonds, Series 2012, dated June 15, 2012, maturing on the dates and in the amounts shown below (the "Redeemed Bonds"), to be redeemed in the aggregate amount of \$2,390,000, on the redemption date, at the redemption price of the principal amount called for redemption plus accrued interest to the date of redemption, as follows:

<u>MATURITY DATES</u>	<u>PRINCIPAL AMOUNT OUTSTANDING</u>	<u>PRINCIPAL AMOUNT REDEEMED</u>	<u>REDEMPTION DATE</u>	<u>REDEMPTION PRICE</u>
February 15, 2023	\$205,000	\$205,000	February 15, 2022	100%
February 15, 2025	435,000	435,000	February 15, 2022	100
February 15, 2027	460,000	460,000	February 15, 2022	100
February 15, 2028	240,000	240,000	February 15, 2022	100
February 15, 2029	250,000	250,000	February 15, 2022	100
February 15, 2030	260,000	260,000	February 15, 2022	100
February 15, 2031	265,000	265,000	February 15, 2022	100
February 15, 2032	275,000	275,000	February 15, 2022	100

On February 15, 2022, interest on the Redeemed Bonds shall cease to accrue and be payable.

THIS CONDITIONAL NOTICE OF REDEMPTION and the payment of the principal of and interest on the Redeemed Bonds on the Redemption Date are subject to the deposit of funds by the Town with U.S. Bank National Association, as paying agent/registrar for the Redeemed Bonds (the "Paying Agent"), in an amount sufficient to pay in full the redemption price for the Redeemed Bonds on or before the Redemption Date. Such deposit of funds with the Paying Agent is scheduled to occur on the Redemption Date. In the event such deposit is not made on or before the Redemption Date, the conditional redemption of the Redeemed Bonds shall be null and void and of no force and effect, and any Redeemed Bonds delivered for redemption shall be returned to the respective owners thereof. In such case, said Redeemed Bonds shall remain outstanding as though this Conditional Notice of Redemption had not been given.

THE REDEEMED BONDS shall be redeemed in whole at U.S. Bank National Association, as the Paying Agent/Registrar for the Redeemed Bonds. Upon presentation of the Redeemed Bonds at the Paying Agent/Registrar on the aforementioned redemption date, the holder thereof shall be entitled to receive the redemption price equal to par and accrued interest to the redemption date.

NOTICE IS FURTHER GIVEN that due and proper arrangements have been made for providing the place of payment of the Redeemed Bonds called for redemption with funds sufficient to pay the principal amount of the Redeemed Bonds and the interest thereon to the redemption date. In the event the Redeemed Bonds are not presented for redemption by the respective date fixed for their redemption, they shall not thereafter bear interest.

THIS NOTICE is issued and given pursuant to the redemption provisions in the proceedings authorizing the issuance of the Redeemed Bonds and in accordance with the recitals and provisions of each of the Redeemed Bonds, respectively.

TOWN OF PROSPER,
TEXAS

A-1



FINANCE DEPARTMENT

To: Mayor and Town Council

From: Betty Pamplin, Finance Director

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider the adoption of a resolution calling the Town of Prosper, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012 for redemption prior to maturity and approving all matters incidental thereto. (BP)

Description of Agenda Item:

The 2012 Certificates of Obligation were sold to fund capital projects for the Town's Water and Sewer Fund and the Drainage Fund. The certificates maturing in years 2023 – 2032 are callable on February 15, 2022. The interest rates on the callable certificates are 3.00% to 3.25% and they are callable at par. During refunding discussions, Town Council requested the option to pay off the certificates with cash rather than issue refunding bonds. This resolution would authorize the Town Manager to give notice to call the certificates and deposit cash in the amount of \$3,149,700 with the Paying Agent for the certificates. The balance of the Water and Sewer portion (\$2,618,251) would be funded from the Water and Sewer Fund balance and the balance of the Drainage fund portion (\$531,449) could be funded from one of the two options presented below.

Budget Impact:

A budget amendment will be required to increase expenditures in the Water and Sewer Fund by \$2,618,251. There are two options to fund the Drainage fund portion: **(Option 1)** A budget amendment will be required to increase expenditures in the General Fund by \$531,449 to pay off the debt **(Option 2)** A budget amendment will be required to reallocate expenditures in the Drainage Fund by \$531,449 to pay off the debt. The Drainage Fund is scheduled to use \$763,323 to cash fund drainage capital projects in the current fiscal year. Under this option if \$531,449 is reallocated to pay off this debt, we will need to issue 20-year debt for those drainage capital projects.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P. and Dan Culver of McCall, Parkhurst and Horton, the Town's bond counsel, have reviewed the resolution as to form and legality.

Attached Documents:

1. Resolution calling the Town of Prosper, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012.

Town Staff Recommendation:

Town staff recommends consideration of adoption of a resolution calling the Town of Prosper, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012 for redemption prior to maturity and approving all matters incidental thereto.

Proposed Motion:

I move to adopt a resolution calling the Town of Prosper, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012 for redemption prior to maturity and approving all matters incidental thereto.

TOWN OF PROSPER, TEXAS**RESOLUTION No. 2021-71****A RESOLUTION DIRECTING THE REDEMPTION OF THE TOWN'S OUTSTANDING COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT.**

WHEREAS, Town of Prosper (the "Town") has issued, and there are currently outstanding, the Town's Combination Tax and Revenue Certificates of Obligation, Series 2012, maturing serially on February 15 in each of the years 2023 through 2032, inclusive, in the aggregate principal amount of \$3,100,000 (the "2012 COs"); and

WHEREAS, in the ordinance that authorized the issuance of the Bonds (the "Bond Ordinance"), the Town reserved the right to redeem the 2012 COs, in whole or in part, on February 15, 2022, or on any date thereafter at a price equal to the principal amount of the 2012 COs so called for redemption plus accrued interest to the redemption date; and

WHEREAS, this Town Council hereby finds and determines that it is necessary and in the best interests of the Town to redeem all of the outstanding 2012 COs with funds lawfully available for such purpose, being all of the outstanding principal balance of the 2012 COs (collectively, the "Redeemed COs"), which redemption shall occur on February 15, 2022; and

WHEREAS, the paying agent/registrar with respect to the 2012 COs is U.S. Bank National Association (in such capacity, the "Paying Agent/Registrar"); and

WHEREAS, it is officially found, determined and declared that the meeting at which this Resolution has been adopted was open to the public and public notice of the date, hour, place and subject of said meeting, including this Resolution, was given, all as required by the applicable provisions of Tex. Gov't Code Ann. Ch. 551.

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

SECTION 1. FINDINGS.

The declarations, determinations and findings declared, made and found in the preamble to this Resolution are hereby adopted, restated and made a part of the operative provisions hereof. Capitalized terms not defined herein shall have the meanings ascribed such terms in the Bond Ordinance.

SECTION 2. REDEMPTION OF REDEEMED COs.

The Redeemed COs, as more specifically described in Exhibit A hereto, in the aggregate principal amount of \$3,100,000, are hereby called for redemption on February 15, 2022 (the "Redemption Date"), at a redemption price equal to the principal amount thereof plus accrued interest to the Redemption Date in the amount of \$49,700.00. Such principal amount and accrued interest is hereby directed to be irrevocably deposited with the Paying Agent/Registrar on or before the Redemption Date in cash. Lawfully available funds of the Town are hereby authorized and appropriated in the amounts necessary for such purpose.

SECTION 3. AUTHORIZATION OF ACTIONS

(a) The Town Manager, the Director of Finance or other authorized officer of the Town is hereby authorized and directed to issue or cause to be issued the Notice of Redemption in the form set forth in Exhibit A attached hereto to the Paying Agent/Registrar.

(b) In addition, the Paying Agent/Registrar for the Redeemed COs is hereby directed to provide the appropriate notice of redemption to the registered owners of the Redeemed COs as specified by the Bond Ordinance, so that the Redeemed COs may be redeemed on the Redemption Date. Provided funds for the payment thereof have been made available to the Paying Agent/Registrar, the Redeemed COs shall not bear interest after the Redemption Date.

(c) The officers and employees of the Town are hereby authorized and directed to take such actions and to execute and deliver such documents, orders and receipts, including without limitation notifying the Municipal Securities Rulemaking Board's Electronic Municipal Market Access service with respect to the redemption of the Redeemed COs, and the payment of the costs of the transaction, as necessary or appropriate to consummate the transactions authorized by this resolution and to redeem the Redeemed COs in accordance with the provisions and requirements of the Bond Ordinance.

(Execution Page Follows)

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
PROSPER, TEXAS, ON THIS 23RD DAY OF NOVEMBER 2021.**

Ray Smith, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

EXHIBIT A**CONDITIONAL NOTICE OF REDEMPTION**

TOWN OF PROSPER, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012

NOTICE IS HEREBY GIVEN that the Town of Prosper, Texas (the "Town"), in Collin and Denton Counties, Texas, has called for redemption on the date and at the redemption price specified, a portion of the outstanding Bonds of the Town listed below:

Town of Prosper, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012, dated June 15, 2012, maturing on the dates and in the amounts shown below (the "Redeemed COs"), to be redeemed in the aggregate amount of \$3,100,000, on the redemption date, at the redemption price of the principal amount called for redemption plus accrued interest to the date of redemption, as follows:

<u>MATURITY DATES</u>	<u>PRINCIPAL AMOUNT OUTSTANDING</u>	<u>PRINCIPAL AMOUNT REDEEMED</u>	<u>REDEMPTION DATE</u>	<u>REDEMPTION PRICE</u>
February 15, 2023	\$265,000	\$265,000	February 15, 2022	100%
February 15, 2024	275,000	275,000	February 15, 2022	100
February 15, 2025	285,000	285,000	February 15, 2022	100
February 15, 2026	295,000	295,000	February 15, 2022	100
February 15, 2027	305,000	305,000	February 15, 2022	100
February 15, 2028	315,000	315,000	February 15, 2022	100
February 15, 2029	325,000	325,000	February 15, 2022	100
February 15, 2030	335,000	335,000	February 15, 2022	100
February 15, 2031	345,000	345,000	February 15, 2022	100
February 15, 2032	355,000	355,000	February 15, 2022	100

On February 15, 2022, interest on the Redeemed COs shall cease to accrue and be payable.

THIS CONDITIONAL NOTICE OF REDEMPTION and the payment of the principal of and interest on the Redeemed COs on the Redemption Date are subject to the deposit of funds by the Town with U.S. Bank National Association, as paying agent/registrar for the Redeemed COs (the "Paying Agent"), in an amount sufficient to pay in full the redemption price for the Redeemed COs on or before the Redemption Date. Such deposit of funds with the Paying Agent is scheduled to occur on the Redemption Date. In the event such deposit is not made on or before the Redemption Date, the conditional redemption of the Redeemed COs shall be null and void and of no force and effect, and any Redeemed COs delivered for redemption shall be returned to the respective owners thereof. In such case, said Redeemed COs shall remain outstanding as though this Conditional Notice of Redemption had not been given.

THE REDEEMED COS shall be redeemed in whole at U.S. Bank National Association, as the Paying Agent/Registrar for the Redeemed COs. Upon presentation of the Redeemed COs at the Paying Agent/Registrar on the aforementioned redemption date, the holder thereof shall be entitled to receive the redemption price equal to par and accrued interest to the redemption date.

NOTICE IS FURTHER GIVEN that due and proper arrangements have been made for providing the place of payment of the Redeemed COs called for redemption with funds sufficient

to pay the principal amount of the Redeemed COs and the interest thereon to the redemption date. In the event the Redeemed COs are not presented for redemption by the respective date fixed for their redemption, they shall not thereafter bear interest.

THIS NOTICE is issued and given pursuant to the redemption provisions in the proceedings authorizing the issuance of the Redeemed COs and in accordance with the recitals and provisions of each of the Redeemed COs, respectively.

TOWN OF PROSPER, TEXAS



FINANCE DEPARTMENT

To: Mayor and Town Council
From: Betty Pamplin, Finance Director
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – November 23, 2021

Agenda Item:

Consider all matters incidental and related to the issuance and sale of the Town of Prosper, Texas General Obligation Refunding Bonds, Series 2021, including the adoption of an ordinance authorizing the issuance of the bonds, establishing parameters for the sale and issuance of such bonds, and delegating certain matters to the Town Manager to act on its behalf in selling the bonds. (BP)

Description of Agenda Item:

The 2012 Certificates of Obligation were sold to fund capital projects for the Town's Water and Sewer Fund and Drainage Fund. The certificates maturing in years 2023 – 2032 are callable on February 15, 2022. The interest rates on the callable certificates are 3.00% to 3.25% and they are callable at par. The Town can refinance the remaining Series 2012 Certificates of Obligation on a tax-exempt basis. It is currently estimated that they could be refinanced at an interest rate of 1.50% to 2.0%. The estimated savings is approximately \$20,620 annually for a total of \$226,795.

The attached ordinance would authorize the issuance of the Refunding Bonds and delegate to the Town Manager the final pricing within 90 days that meets the following conditions:

- for an amount not to exceed \$3,225,000
- at a maximum interest rate of 2.25%
- with a final maturity of February 15, 2032
- the refunding must produce debt service savings of at least 3% measured on a present value basis as a percentage of the principal amount of the refunded bonds

It is anticipated that private placement sale will occur mid December.

Budget Impact:

The reduced debt service payments from the Refunding Bonds will be paid by the Water and Sewer Fund and the Drainage Fund.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P. and Dan Culver of McCall, Parkhurst and Horton, the Town's bond counsel, have reviewed the ordinance as to form and legality.

Attached Documents:

1. Ordinance authorizing the issuance and sale of the Town of Prosper, Texas General Obligation Refunding Bonds, Series 2021.
2. Certificate Regarding Adoption of Ordinance
3. Presentation

Town Staff Recommendation:

Town staff recommends consideration of adoption of an ordinance authorizing the issuance and sale of the Town of Prosper, Texas General Obligation Refunding Bonds, Series 2021 and approving all matters incidental thereto.

Proposed Motion:

I move to adopt an ordinance authorizing the issuance and sale of the Town of Prosper, Texas General Obligation Refunding Bonds, Series 2021 and approving all matters incidental thereto.

Purpose of Refunding

- Reduce interest costs by refinancing outstanding debt.
- Utilize the Debt Service fund balance that can only be used for this purpose.
- By using fund balance to avoid 20-year debt in 2022 versus avoiding 10-year debt the Town will save \$526,704.
 - The Town has historically used excess fund balance to fund capital projects. By utilizing fund balance to pay off debt we will need to issue 20-year debt for projects which will increase interest costs in the long run.

Fund Balance Restrictions

ALL FUND BALANCES

	9/30/2020 Actual	09/30/2021 Projected	09/30/2022 Proposed
General Fund	13,923,232	15,014,096	11,199,924
Water/Sewer Fund	6,867,399	7,020,631	7,274,236
Vehicle Equipment Replacement Fund	3,741,880	3,368,028	4,053,578
Crime Special Purpose District Fund	302,439	404,460	452,398
Fire Special Purpose District Fund	203,982	365,899	408,108
Debt Service Fund	2,619,367	2,499,129	512,124
Stormwater Drainage Fund	632,579	711,503	107,464
Park Dedication and Improvement Fund	2,660,035	2,758,936	2,813,686
TIRZ #1	301,260	301,260	301,260
TIRZ #2	25,189	25,052	25,000
Water Impact Fee Fund	4,271,873	8,579,210	889,210
Wastewater Impact Fee Fund	2,792,362	3,812,784	3,333,784
East Thoroughfare Impact Fee Fund	2,192,887	2,142,117	1,121,117
West Thoroughfare Impact Fee Fund	2,899,566	5,737,061	4,452,061
Special Revenue Funds	567,535	774,229	327,739
American Rescue Plan Act Funds	-	3,045,165	6,090,330
Health Insurance Trust Fund	756,091	704,592	712,466
Capital/Bond Funds Cash Balance	33,497,278	57,962,138	37,675,390
Restricted Escrow Cash	4,411,045	4,000,000	3,750,000
	82,665,999	119,226,290	85,499,875
Available	20,790,631	22,034,727	18,474,160
Currently Dedicated to Vehicle/Equipment Replacement	3,741,880	3,368,028	4,053,578
Restricted to Fund Specific Uses	58,133,488	93,823,535	62,972,137

General Fund Summary

FUND BALANCE AND RESERVE POSITIONING

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	ACTUAL TO DATE 2020-2021	ADOPTED BUDGET 2021-2022
REVENUES					
	<i>TOTAL REVENUES</i>	\$ 33,181,348	\$ 36,430,243	\$ 39,372,679	\$ 37,297,081
EXPENDITURES					
	<i>TOTAL EXPENDITURES</i>	\$ 29,139,608	\$ 38,591,231	\$ 34,199,716	\$ 41,142,021
	<i>Net Period Excess/(Deficit)</i>	\$ 4,041,740	\$ (2,160,988)	\$ 5,172,962	\$ (3,844,940)
NET CHANGE IN FUND BALANCE		\$ 4,041,740	\$ (2,160,988)	\$ 5,172,962	\$ (3,844,940)
BEGINNING FUND BALANCE		\$ 9,881,492	\$ 13,923,232	\$ 13,923,232	\$ 19,096,194
ENDING FUND BALANCE		\$ 13,923,232	\$ 11,762,244	\$ 19,096,194	\$ 15,251,254
BALANCE OF UNRESTRICTED FUNDS		\$ 13,923,232	\$ 11,762,244	\$ 19,096,194	\$ 15,251,254
Less: Contingency per Charter		5,827,922	7,718,246	6,839,943	8,228,404
5% Reserve		1,456,980	1,929,562	1,709,986	2,057,101
AMOUNT OVER (UNDER) MINIMUM RESERVE TARGET		\$ 6,638,330	\$ 2,114,436	\$ 10,546,265	\$ 4,965,749
% AMOUNT OVER MINIMUM RESERVE TARGET		23%	5%	31%	12%
AMOUNT OVER (UNDER) IN DAYS OPERATING COST		82	20	111	43

Water and Sewer Fund Summary

NET ASSETS AND RESERVE POSITIONING

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	ACTUAL TO DATE 2020-2021	ADOPTED BUDGET 2021-2022
REVENUES					
	<i>TOTAL REVENUES</i>	\$ 26,102,101	\$ 24,504,693	\$ 26,179,104	\$ 30,454,845
EXPENDITURES					
	<i>TOTAL EXPENDITURES</i>	\$ 26,164,371	\$ 24,593,130	\$ 22,767,594	\$ 30,201,240
	<i>Net Income (Loss)</i>	\$ (62,270)	\$ (88,437)	\$ 3,411,510	\$ 253,605
CHANGE IN NET ASSETS		\$ (62,270)	\$ (88,437)	\$ 3,411,510	\$ 253,605
BEGINNING NET ASSETS		\$ 6,929,669	\$ 6,867,399	\$ 6,867,399	\$ 10,278,909
ENDING NET ASSETS		\$ 6,867,399	\$ 6,778,962	\$ 10,278,909	\$ 10,532,514
1.25 times Debt Service Reserve Limit		1.75	1.83	2.78	2.84
AMOUNT OVER (UNDER) IN DAYS OPERATING COST		94	99	163	126

Stormwater Drainage Utility Fund Summary

FUND BALANCE

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	PROJECTED 2020-2021	ACTUAL TO DATE 2020-2021	ADOPTED BUDGET 2021-2022
REVENUES						
	TOTAL REVENUES	\$ 682,786	\$ 715,200	\$ 727,200	\$ 746,764	\$ 763,300
EXPENDITURES						
	Operating Expenses	178,898	303,834	303,841	221,598	251,040
	Debt Service	248,640	245,592	245,592	245,592	253,142
	Transfers Out	100,135	98,843	98,843	98,843	99,834
	Capital	-	-	-	-	763,323
	Miscellaneous Capital Repairs					200,000
2024DR	Old Town Regional Pond					48,323
1613DR	Old Town Drainage					215,000
2003DR	Frontier Lakes Drainage					300,000
	TOTAL EXPENDITURES	\$ 527,673	\$ 648,269	\$ 648,276	\$ 566,033	\$ 1,367,339
	Period Excess / (Deficit)	\$ 155,113	\$ 66,931	\$ 78,924	\$ 180,731	\$ (604,039)
NET CHANGE IN FUND BALANCE						
		\$ 155,113	\$ 66,931	\$ 78,924	\$ 180,731	\$ (604,039)
BEGINNING FUND BALANCE						
		\$ 477,466	\$ 632,579	\$ 632,579	\$ 632,579	\$ 813,310
ENDING FUND BALANCE						
		\$ 632,579	\$ 699,510	\$ 711,503	\$ 813,310	\$ 209,271
AMOUNT OVER (UNDER) IN DAYS OPERATING COST						
		432	388	395	517	55

Water Impact Fee Fund Summary

FUND BALANCE

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	PROJECTED 2020-2021	ADOPTED BUDGET 2021-2022	PLANNING YEAR 2022-2023	PLANNING YEAR 2023-2024	PLANNING YEAR 2024-2025	PLANNING YEAR 2025-2026
REVENUES									
	Impact Fees	3,987,887	2,500,000	5,052,000	3,500,000	3,200,000	3,200,000	3,200,000	3,200,000
	Investment Income	52,497	12,000	20,000	20,000	20,000	20,000	20,000	20,000
	TOTAL REVENUES	\$ 4,040,384	\$ 2,512,000	\$ 5,072,000	\$ 3,520,000	\$ 3,220,000	\$ 3,220,000	\$ 3,220,000	\$ 3,220,000
EXPENDITURES									
	Operations-Developer Agreements	1,137,832	840,000	610,000	1,310,000	1,110,000	950,000	950,000	950,000
8012DV	Tellus Windsong	-	400,000	285,000	350,000	350,000	350,000	350,000	350,000
8006DV	Parks at Legacy	-	140,000	75,000	400,000	200,000	-	-	-
8011DV	Star Trail	-	300,000	50,000	400,000	400,000	-	-	-
8016DV	Victory at Frontier	-	-	-	60,000	60,000	-	-	-
8017DV	Westside	-	-	200,000	100,000	100,000	-	-	-
FUTURE AGREEMENTS							600,000	600,000	600,000
	Capital	140,615	1,054,663	154,663	9,900,000	-	-	-	9,000,000
1715WA	Fishtrap EST	-	244	244	-	-	-	-	-
1716WA	24 WL Conn County Line EST/DNT	-	54,419	54,419	-	-	-	-	-
1810WA	Lower Pressure Plane Easements Phase II	-	1,000,000	100,000	900,000	-	-	-	-
1501WA	LPP Pump Station	-	-	-	9,000,000	-	-	-	9,000,000
			-			-	-	-	-
	TOTAL EXPENDITURES	\$ 1,278,447	\$ 1,894,663	\$ 764,663	\$ 11,210,000	\$ 1,110,000	\$ 950,000	\$ 950,000	\$ 9,950,000
	Period Excess / (Deficit)	\$ 2,761,937	\$ 617,337	\$ 4,307,337	\$ (7,690,000)	\$ 2,110,000	\$ 2,270,000	\$ 2,270,000	\$ (6,730,000)
NET CHANGE IN FUND BALANCE		\$ 2,761,937	\$ 617,337	\$ 4,307,337	\$ (7,690,000)	\$ 2,110,000	\$ 2,270,000	\$ 2,270,000	\$ (6,730,000)
BEGINNING FUND BALANCE		\$ 1,509,936	\$ 4,271,873	\$ 4,271,873	\$ 8,579,210	\$ 889,210	\$ 2,999,210	\$ 5,269,210	\$ 7,539,210
ENDING UNRESTRICTED FUND BALANCE		\$ 4,271,873	\$ 4,889,210	\$ 8,579,210	\$ 889,210	\$ 2,999,210	\$ 5,269,210	\$ 7,539,210	\$ 809,210

Wastewater Impact Fee Fund Summary

FUND BALANCE

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	PROJECTED 2020-2021	ADOPTED BUDGET 2021-2022	PLANNING YEAR 2022-2023	PLANNING YEAR 2023-2024	PLANNING YEAR 2024-2025	PLANNING YEAR 2025-2026
REVENUES									
	Impact Fees	1,489,545	850,000	2,800,000	2,000,000	1,400,000	1,400,000	1,400,000	1,400,000
	Equity Fees	310,500	200,000	400,000	300,000	250,000	250,000	250,000	250,000
	Investment Income	37,668	12,000	16,000	16,000	16,000	16,000	16,000	16,000
	TOTAL REVENUES	\$ 1,837,713	\$ 1,062,000	\$ 3,216,000	\$ 2,316,000	\$ 1,666,000	\$ 1,666,000	\$ 1,666,000	\$ 1,666,000
EXPENDITURES									
	Operations-Developer Reimbursements	815,427	890,000	2,195,578	1,295,000	1,295,000	1,795,000	1,225,000	1,200,000
	Future Agreements	-	-	-	-	-	500,000	500,000	500,000
8001DV	Tellus Weside Utilities	138,277	250,000	275,000	275,000	275,000	275,000	-	-
8004DV	Frontier Estates	31,037	50,000	25,000	25,000	25,000	25,000	25,000	-
8008DV	Brookhollow	-	25,000	385,000	220,000	220,000	220,000	-	-
8002DV	Prosper Partners	251,239	200,000	446,424	-	-	-	-	-
8005DV	LaCima	18,060	50,000	10,000	50,000	50,000	50,000	50,000	50,000
8013DV	Cook Addition (All Storage)	-	15,000	27,090	50,000	50,000	50,000	50,000	50,000
8012DV	Tellus Windsong	285,488	200,000	700,000	600,000	600,000	600,000	600,000	600,000
8014DV	Legacy Garden	15,709	100,000	100,000	75,000	75,000	75,000	-	-
1608DV	LaCima Interceptor Agreement	75,617		227,064	-	-	-	-	-
	Capital	-	1,500,000	-	1,500,000	3,359,669	-	-	-
2103	Doe Branch Interceptor	-	-	-	1,500,000	1,450,000	-	-	-
2103	Construction of Doe Branch PH3 WWTP	-	1,500,000	-	-	1,909,669	-	-	-
	TOTAL EXPENDITURES	\$ 815,427	\$ 2,390,000	\$ 2,195,578	\$ 2,795,000	\$ 4,654,669	\$ 1,795,000	\$ 1,225,000	\$ 1,200,000
	<i>Period Excess / (Deficit)</i>	\$ 1,022,286	\$ (1,328,000)	\$ 1,020,422	\$ (479,000)	\$ (2,988,669)	\$ (129,000)	\$ 441,000	\$ 466,000
NET CHANGE IN FUND BALANCE									
		\$ 1,022,286	\$ (1,328,000)	\$ 1,020,422	\$ (479,000)	\$ (2,988,669)	\$ (129,000)	\$ 441,000	\$ 466,000
BEGINNING FUND BALANCE									
		\$ 1,770,076	\$ 2,792,362	\$ 2,792,362	\$ 3,812,784	\$ 3,333,784	\$ 345,115	\$ 216,115	\$ 657,115
ENDING UNRESTRICTED FUND BALANCE									
		\$ 2,792,362	\$ 1,464,362	\$ 3,812,784	\$ 3,333,784	\$ 345,115	\$ 216,115	\$ 657,115	\$ 1,123,115

East Thoroughfare Impact Fee Fund Summary

FUND BALANCE

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	PROJECTED 2020-2021	ADOPTED BUDGET 2021-2022	PLANNING YEAR 2022-2023	PLANNING YEAR 2023-2024	PLANNING YEAR 2024-2025	PLANNING YEAR 2025-2026
REVENUES	Impact Fees	1,265,175	1,000,000	1,850,000	1,200,000	1,000,000	1,000,000	1,000,000	1,000,000
	Investment Income	25,097	8,000	9,000	9,000	9,000	9,000	9,000	9,000
	TOTAL REVENUES	\$ 1,290,272	\$ 1,008,000	\$ 1,859,000	\$ 1,209,000	\$ 1,009,000	\$ 1,009,000	\$ 1,009,000	\$ 1,009,000
EXPENDITURES	Operations-Developer Reimbursements	-	300,000	610,697	175,000	175,000	-	-	-
	Reimb FM1461	-	-	175,000	175,000	175,000	-	-	-
	Tanner's Mill	-	300,000	435,697	-	-	-	-	-
	Capital	232,695	1,299,073	1,299,073	2,055,000	1,725,000	1,000,000	-	3,800,000
1938ST	FM 1461 (SH289-CR166)	-	175,000	175,000	175,000	175,000	-	-	-
2121ST	Preston Rd/Prosper Trail Dual Turn Lanes	-	-	-	-	800,000	-	-	-
2142ST	Coleman Prosper Trail to HS	-	-	-	-	300,000	-	-	-
1710ST	Coit Rd (First-Frontier)	-	364,755	364,755	-	-	-	-	3,800,000
2018PK	Coleman @ Prosper HS median landscaping	-	350,000	350,000	-	-	-	-	-
2005TR	Traffic Signal - Coit Rd & Richland Blvd	-	409,318	409,318	-	-	-	-	-
2014ST	First Street - Coit - Custer 4 lanes Eas./Const	-	-	-	1,880,000	-	-	-	-
	First Street DNT-Coleman	-	-	-	-	-	1,000,000	-	-
	Traffic Signal - First St & LaCima Blvd	-	-	-	-	450,000	-	-	-
	TOTAL EXPENDITURES	\$ 232,695	\$ 1,599,073	\$ 1,909,770	\$ 2,230,000	\$ 1,900,000	\$ 1,000,000	\$ -	\$ 3,800,000
	Period Excess / (Deficit)	\$ 1,057,577	\$ (591,073)	\$ (50,770)	\$ (1,021,000)	\$ (891,000)	\$ 9,000	\$ 1,009,000	\$ (2,791,000)
NET CHANGE IN FUND BALANCE		\$ 953,409	\$ (591,073)	\$ (50,770)	\$ (1,021,000)	\$ (891,000)	\$ 9,000	\$ 1,009,000	\$ (2,791,000)
BEGINNING FUND BALANCE		\$ 1,239,478	\$ 2,192,887	\$ 2,192,887	\$ 2,142,117	\$ 1,121,117	\$ 230,117	\$ 239,117	\$ 1,248,117
ENDING UNRESTRICTED FUND BALANCE		\$ 2,192,887	\$ 1,601,814	\$ 2,142,117	\$ 1,121,117	\$ 230,117	\$ 239,117	\$ 1,248,117	\$ (1,542,883)

West Thoroughfare Impact Fee Fund Summary

FUND BALANCE

FUND	ACCOUNT TYPE	ACTUAL 2019-2020	AMENDED BUDGET 2020-2021	PROJECTED 2020-2021	ADOPTED BUDGET 2021-2022	PLANNING YEAR 2022-2023	PLANNING YEAR 2023-2024	PLANNING YEAR 2024-2025	PLANNING YEAR 2025-2026
REVENUES	Impact Fees	4,473,468	2,500,000	5,300,000	4,000,000	3,500,000	3,500,000	3,500,000	3,500,000
	Investment Income	29,506	10,000	15,000	15,000	15,000	15,000	15,000	15,000
	TOTAL REVENUES	\$ 4,502,974	\$ 2,510,000	\$ 5,315,000	\$ 4,015,000	\$ 3,515,000	\$ 3,515,000	\$ 3,515,000	\$ 3,515,000
EXPENDITURES	Operations-Developer Agreements	1,971,627	2,625,000	1,770,000	5,300,000	2,800,000	2,800,000	2,800,000	2,800,000
8006DV	Parks/Legacy	-	300,000	900,000	600,000	600,000	600,000	600,000	600,000
8011DV	Star Trail	-	1,000,000	750,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
8012DV	Tellus Windsong	-	1,250,000	-	3,500,000	1,000,000	1,000,000	1,000,000	1,000,000
8014DV	Legacy Garden	-	75,000	120,000	200,000	200,000	200,000	200,000	200,000
	Capital	583,344	945,005	707,505	-	5,000,000	-	-	-
	Braided Ramps NTTA	-	-	-	-	5,000,000	-	-	-
1708ST	Cook Lane (First-End)	-	78,938	78,938	-	-	-	-	-
1928TR	Traffic Signals - Fishtrap & Teel Parkway	-	43,002	43,002	-	-	-	-	-
2004TR	Traffic Signals - Fishtrap & Gee Rd	-	256,548	256,548	-	-	-	-	-
2011ST	Gee Road	-	-	-	-	-	-	-	-
2101TR	Traffic signal at Fishtrap & Artesia	-	237,500	-	-	-	-	-	-
2013ST	Teel - 380 Intersection improvements	-	329,017	329,017	-	-	-	-	-
	TOTAL EXPENDITURES	\$ 2,554,971	\$ 3,570,005	\$ 2,477,505	\$ 5,300,000	\$ 7,800,000	\$ 2,800,000	\$ 2,800,000	\$ 2,800,000
	Period Excess / (Deficit)	\$ 1,948,003	\$ (1,060,005)	\$ 2,837,495	\$ (1,285,000)	\$ (4,285,000)	\$ 715,000	\$ 715,000	\$ 715,000
NET CHANGE IN FUND BALANCE		\$ 1,848,003	\$ (1,060,005)	\$ 2,837,495	\$ (1,285,000)	\$ (4,285,000)	\$ 715,000	\$ 715,000	\$ 715,000
BEGINNING FUND BALANCE		\$ 1,051,563	\$ 2,899,566	\$ 2,899,566	\$ 5,737,061	\$ 4,452,061	\$ 167,061	\$ 882,061	\$ 1,597,061
ENDING FUND BALANCE		\$ 2,899,566	\$ 1,839,561	\$ 5,737,061	\$ 4,452,061	\$ 167,061	\$ 882,061	\$ 1,597,061	\$ 2,312,061

HISTORICAL USE OF FUND BALANCE FOR CAPITAL EXPENDITURES

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22
GENERAL FUND	\$ 4,671,997	\$ 3,525,000	\$ 1,250,000	\$ 3,885,225	\$ 4,405,000
WATER/SEWER FUND	\$ 2,000,000	\$ 350,000	\$ 4,126,507	\$ 471,250	\$ 4,000,000
STORMWATER FUND	\$ -	\$ -	\$ -	\$ 100,000	\$ 763,323

HISTORICAL USE OF FUND BALANCE FOR CAPITAL EXPENDITURES GENERAL FUND

FY 17/18		FY 20/21	
First Street Right of Way Acquisition	1,464,000	Silo Purchase	763,000
DNT Road Improvements	659,184	Apparatus for Fire Station 3	1,810,000
Prosper Trail (Coit - Custer)	1,378,813	In-Car Camera/Body worn Cameras	387,225
Windsong Road Repairs	920,000	Prosper Trail Median Landscape	275,000
Highway 289 Gateway Monument	250,000	Coleman Median Landscape	650,000
	<u>\$ 4,671,997</u>		<u>\$3,885,225</u>
FY 18/19		FY 21/22	
Public Safety Furniture, Fixtures, and	1,500,000	Quint Engine Fire Station 4	1,100,000
Aerial Ladder Truck	1,650,000	Lakewood Park Lighting	1,545,000
Coleman (Gorgeous-Prosper Trail)	375,000	Coleman (Gorgeous-PHS) Design	450,000
	<u>\$ 3,525,000</u>	Coleman (Gorgeous-PHS) Land	
		Acquisition	625,000
		Legacy (Prairie-Fishtrap) Design	575,000
		Additional Funds Fire Station 3	
		Apparatus	110,000
	<u>\$ 1,250,000</u>		<u>\$4,405,000</u>

HISTORICAL USE OF FUND BALANCE FOR CAPITAL EXPENDITURES
WATER AND SEWER FUND

FY 17/18		FY 20/21	
Land Purchase (Public Works Facility)	2,000,000	Water Meter and MTU Upgrades	471,250
	<u>\$ 2,000,000</u>		<u>\$ 471,250</u>
FY 18/19		FY 21/22	
EW Collector Cook Ln Water Line	250,000	12" Water Line Frontier (Preston-Custer)	4,000,000
Church/Parvin Water Line Relocation	100,000		<u>\$ 4,000,000</u>
	<u>\$ 350,000</u>		
FY 19/20			
Custer Rd Meter Station and Water Line			
Relocation	3,576,507		
Cook Lane Water Line Relocation	400,000		
Broadway (Craig-Parvin) Water Line			
Relocation	150,000		
	<u>\$ 4,126,507</u>		

OTHER FUNDING SOURCES
ALTERNATIVE TO DEBT ISSUANCE OR USE OF FUND BALANCE

- EDA Grant \$3M - Lower Pressure Plane Project
- American Rescue Plan Act - \$6.09M - Doe Branch Phase 3 WWTP

Town of Prosper

Comparison of Using Cash for Defeasance of Debt vs. Using Cash for Project Costs

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
			Cash Used to Defeasance Series 2012 Certificates of Obligation - Issuance of Series 2022 Certificates of Obligation to Fund \$3,154,700 in Project Proceeds						Refunding of Series 2012 Certificates of Obligation - Cash Used to Fund \$3,154,700 in Projects						
Fiscal Year	Series 2012 CO Debt Service (Water + Drainage)	Debt Service AFTER Defeasance	Series 2022 CO Issuance			Net Total P+I		Series 2012 CO Debt Service (Water + Drainage)	Series 2022 GO Refunding Issuance			Series 2022 CO Issuance	Net Total P+I		PV @
End	Total P+I	Total P+I	Principal	Interest	Total P+I	(C + F)		Total P+I	Principal	Interest	Total P+I	Total P+I	(K + L)	Difference	1.75%
2022	\$ 485,100	\$ 385,700				\$ 385,700		\$ 485,100	\$ 425,000	\$ 40,142	\$ 465,142	\$ -	\$ 465,142	\$ 79,442	\$ 79,270
2023	360,425	-	\$ 50,000	\$ 153,308	\$ 203,308	203,308		360,425	290,000	52,413	342,413	-	342,413	139,104	136,416
2024	362,325	-	100,000	104,100	204,100	204,100		362,325	295,000	47,294	342,294	-	342,294	138,194	133,192
2025	363,569	-	100,000	99,100	199,100	199,100		363,569	300,000	42,088	342,088	-	342,088	142,988	135,442
2026	364,144	-	110,000	93,850	203,850	203,850		364,144	305,000	36,794	341,794	-	341,794	137,944	128,417
2027	364,394	-	115,000	88,225	203,225	203,225		364,394	315,000	31,369	346,369	-	346,369	143,144	130,966
2028	364,319	-	120,000	82,350	202,350	202,350		364,319	320,000	25,813	345,813	-	345,813	143,463	129,000
2029	363,919	-	125,000	76,225	201,225	201,225		363,919	320,000	20,213	340,213	-	340,213	138,988	122,827
2030	363,194	-	130,000	69,850	199,850	199,850		363,194	325,000	14,569	339,569	-	339,569	139,719	121,349
2031	362,144	-	140,000	63,100	203,100	203,100		362,144	330,000	8,838	338,838	-	338,838	135,738	115,864
2032	360,769	-	145,000	55,975	200,975	200,975		360,769	340,000	2,975	342,975	-	342,975	142,000	119,125
2033	-	-	150,000	49,350	199,350	199,350		-	-	-	-	-	-	(199,350)	(164,360)
2034	-	-	155,000	44,025	199,025	199,025		-	-	-	-	-	-	(199,025)	(161,270)
2035	-	-	160,000	39,300	199,300	199,300		-	-	-	-	-	-	(199,300)	(158,715)
2036	-	-	165,000	34,425	199,425	199,425		-	-	-	-	-	-	(199,425)	(156,083)
2037	-	-	170,000	29,400	199,400	199,400		-	-	-	-	-	-	(199,400)	(153,379)
2038	-	-	175,000	24,225	199,225	199,225		-	-	-	-	-	-	(199,225)	(150,609)
2039	-	-	185,000	18,825	203,825	203,825		-	-	-	-	-	-	(203,825)	(151,436)
2040	-	-	190,000	13,200	203,200	203,200		-	-	-	-	-	-	(203,200)	(148,376)
2041	-	-	195,000	7,425	202,425	202,425		-	-	-	-	-	-	(202,425)	(145,267)
2042	-	-	200,000	2,250	202,250	202,250		-	-	-	-	-	-	(202,250)	(142,646)
	<u>\$ 4,114,300</u>	<u>\$ 385,700</u>	<u>\$ 2,880,000</u>	<u>\$ 1,148,508</u>	<u>\$ 4,028,508</u>	<u>\$ 4,414,208</u>		<u>\$ 4,114,300</u>	<u>\$ 3,565,000</u>	<u>\$ 322,505</u>	<u>\$ 3,887,505</u>	<u>\$ -</u>	<u>\$ 3,887,505</u>	<u>\$ (526,704)</u>	<u>\$ (180,274)</u>

Staff asked our Financial Advisors for a statement on the value of present value savings and his statement is below:

“ Typically, present value in the municipal bond world is used only on refunding's. This is due to the fact that an issuer does not receive money for the savings, but rather takes the savings over time via reduced debt service payments.”

Purpose of Refunding

- Reduce interest costs by refinancing outstanding debt.
- Utilize the Debt Service fund balance that can only be used for this purpose.
- By using fund balance to avoid 20-year debt in 2022 versus avoiding 10-year debt the Town will save \$526,704.
 - The Town has historically used excess fund balance to fund capital projects. By utilizing fund balance to pay off debt we will need to issue 20-year debt for projects which will increase interest costs in the long run.

ORDINANCE NO. 2021-64

of the

TOWN OF PROSPER, TEXAS

AUTHORIZING THE ISSUANCE OF

**TOWN OF PROSPER, TEXAS
GENERAL OBLIGATION REFUNDING BONDS
SERIES 2021**

Table of Contents

Section 1. Recitals, Amount, Purpose and Designation of the Bonds	2
Section 2. Definitions.....	2
Section 3. Delegation to Pricing Officer.....	2
Section 4. Characteristics of the Bonds	4
Section 5. Form of Bonds	8
Section 6. Tax Levy	15
Section 7. Perfection of Security Interest	16
Section 8. Defeasance of Bonds.....	16
Section 9. Damaged, Mutilated, Lost, Stolen, or Destroyed Bonds	17
Section 10. Custody, Approval, and Registration of Bonds; Bond Counsel's Opinion, CUSIP Numbers and Contingent Insurance Provision, if Obtained	18
Section 11. Covenants Regarding Tax Exemption of Interest on the Bonds.....	19
Section 12. Sale of Bonds; Official Statement.....	21
Section 13. Further Procedures; Engagement of Bond Counsel; Appropriation	22
Section 14. Compliance with Rule 15c2-12	22
Section 15. Method of Amendment	26
Section 16. Redemption of Refunded Obligations	27
Section 17. Governing Law	28
Section 18. Severability	28
Section 19. Events of Default	28
Section 20. Remedies for Default	29
Section 21. Remedies Not Exclusive	29
Section 22. Effective Date	29

ORDINANCE NO. 2021-64 AUTHORIZING THE ISSUANCE OF TOWN OF PROSPER, TEXAS GENERAL OBLIGATION REFUNDING BONDS; APPOINTING A PRICING OFFICER AND DELEGATING TO THE PRICING OFFICER THE AUTHORITY TO APPROVE ON BEHALF OF THE TOWN THE SELECTION OF BONDS TO BE REFUNDED, THE SALE OF THE BONDS, THE TERMS OF THE BONDS AND THE OFFERING DOCUMENTS FOR THE BONDS; ESTABLISHING CERTAIN PARAMETERS FOR THE APPROVAL OF SUCH MATTERS BY THE PRICING OFFICER; APPROVING THE USE OF AN ESCROW AGREEMENT AND A PAYING AGENT/REGISTRAR AGREEMENT; ENGAGING BOND COUNSEL; LEVYING AN ANNUAL AD VALOREM TAX FOR THE PAYMENT OF THE BONDS; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

THE STATE OF TEXAS	§
COLLIN AND DENTON COUNTIES	§
TOWN OF PROSPER	§

WHEREAS, Town of Prosper, Texas (the "Issuer") has previously issued, and there are presently outstanding, the obligations of the Issuer styled "Town of Prosper Combination Tax and Revenue Certificates of Obligation, Series 2012," which are currently outstanding in the principal amount of \$3,480,000 (the "Eligible Refunded Obligations"); and

WHEREAS, the Issuer now desires to refund all or part of the Eligible Refunded Obligations, and those Eligible Refunded Obligations designated by the Pricing Officer in the Pricing Certificate, each as defined below, to be refunded are herein referred to as the "Refunded Obligations"; and

WHEREAS, Chapter 1207, Texas Government Code ("Chapter 1207"), authorizes the Issuer to issue refunding bonds and to deposit the proceeds from the sale thereof, and any other available funds or resources, directly with a place of payment (paying agent) for the Refunded Obligations, and such deposit, if made before such payment dates, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the Town Council of the Issuer hereby finds and determines that it is a public purpose and in the best interests of the Issuer to refund the Refunded Obligations in order to achieve a present value debt service savings, with such savings, among other information and terms to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer (hereinafter designated), all in accordance with the provisions of Section 1207.007, Texas Government Code, as amended; and

WHEREAS, all the Refunded Obligations mature or are subject to redemption prior to maturity within 20 years of the date of the bonds hereinafter authorized; and

WHEREAS, the Bonds hereinafter authorized to be issued and are to be issued, sold and delivered pursuant to the general laws of the State of Texas, including Chapter 1207; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Ordinance has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Ordinance, was given, all as required by the applicable provisions of Tex. Gov't Code Ann. ch. 551;

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

SECTION 1. RECITALS, AMOUNT, PURPOSE AND DESIGNATION OF THE BONDS.

(a) The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

(b) The bonds of the Issuer are hereby authorized to be issued and delivered in the maximum aggregate principal amount hereinafter set forth for the public purpose of providing funds to refund the Refunded Obligations and to pay the costs incurred in connection with the issuance of the Bonds.

(c) Each bond issued pursuant to this Ordinance shall be designated (unless otherwise provided in the Pricing Certificate): "TOWN OF PROSPER, TEXAS GENERAL OBLIGATION REFUNDING BOND, SERIES 2021," and initially there shall be issued, sold, and delivered hereunder fully registered Bonds, without interest coupons, payable to the respective registered owners thereof (with the initial bonds being made payable to the initial purchaser as described in Section 12 hereof), or to the registered assignee or assignees of said bonds or any portion or portions thereof (in each case, the "Registered Owner"). The Bonds shall be in the respective denominations and principal amounts, shall be numbered, shall mature and be payable on the date or dates in each of the years and in the principal amounts or amounts due at maturity, as applicable, and shall bear interest to their respective dates of maturity or redemption, if applicable, prior to maturity at the rates per annum, as set forth in the Pricing Certificate.

SECTION 2. DEFINITIONS. Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following term shall have the meanings specified below:

"Bonds" means and includes the Bonds initially issued and delivered pursuant to this Ordinance and all substitute Bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term "Bond" shall mean any of the Bonds.

SECTION 3. DELEGATION TO PRICING OFFICER. (a) As authorized by Section 1207.007, Texas Government Code, as amended, the Town Manager is hereby authorized to act on behalf of the Issuer in selling and delivering the Bonds (in carrying out such authorization, the Town Manager shall be hereinafter referred to as, and shall for all purposes be, the "Pricing Officer" of the Town with respect to the sale of the Bonds) in one or more series, determining which of the Eligible Refunded Obligations shall be refunded and carrying out the other procedures specified in this Ordinance, including, determining the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment and record dates, the price and terms, if any, upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Issuer, as well as any mandatory sinking fund redemption provisions, whether the Bonds shall be issued on a tax-exempt basis or on a taxable basis, whether the Bonds shall be designated as "qualified tax-exempt obligations" as defined in section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), limiting the types of securities and obligations that may be used as Defeasance Securities, modifying the Issuer's undertaking pursuant to Rule 15c2-12 as set forth in Section 14 hereof, and establishing all other matters relating to the issuance, sale, and delivery of the Bonds and the refunding of the Refunded Obligations, including without limitation establishing the redemption date for and effecting the redemption of the Refunded Obligations and obtaining bond insurance if bond insurance is deemed beneficial to the Issuer to achieve the objectives of the refunding, all of which shall be specified in a certificate of the Pricing Officer (the "Pricing Certificate"); provided that:

- (i) the aggregate original principal amount of the Bonds issued hereunder shall not exceed \$3,225,000;
- (ii) no Bond shall mature after February 15, 2032;
- (iii) the true interest cost for the Bonds shall not exceed 2.25%; and
- (iv) the refunding achieved by the Bonds sold in accordance with this Ordinance must produce debt service savings of at least 3.00% measured on a present value basis as a percentage of the principal amount of the Refunded Obligations refunded with the Bonds, with such savings to be net of any Issuer contribution to the refunding and net of the costs of issuance.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not exceeding the amount authorized in Subsection (a) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The delegation made hereby shall expire if not exercised by the Pricing Officer on or prior to the date that is six months after the adoption of this Ordinance. The Bonds shall be sold at such price, with and subject to such terms as set forth in the Pricing Certificate.

(c) The Bonds may be issued as Current Interest Bonds or Capital Appreciation Bonds, or a combination thereof, as set forth in the Pricing Certificate. The Bonds may be sold by public offering (either through a negotiated or competitive offering) or by private placement. If the Bonds are sold by private placement, the Pricing Certificate shall so state, and the Pricing Certificate may make changes to this Ordinance to effect such private placement, including the provisions hereof that pertain to the book-entry-only procedures (including eliminating the book-entry-only system of registrations, payment and transfers) and to the provisions of Section 14 hereof relating to the Rule 15c2-12 undertaking (including eliminating or replacing such undertaking with an agreement to provide alternative disclosure information). In addition, if the Bonds are sold in more than one series, and one of such series is an issue with respect to which the interest on the Bonds of such series is not exempt from federal income taxation, the Pricing Certificate shall so state and may make changes to this Ordinance to effect such taxable issuance, including, specifically providing that the covenants of Section 11 hereof shall not be applicable to such series.

(d) In the event any of the Bonds are issued as Capital Appreciation Bonds, the Pricing Certificate shall have attached thereto a schedule which sets forth the rounded original principal amounts at the issuance date for the Capital Appreciation Bonds and the Compounded Amounts thereof (per \$5,000 payment at maturity), including the initial premium, if any, as of each date and commencing on the date set forth in such schedule.

(e) It is hereby found and determined that the refunding of the Refunded Obligations is advisable and necessary in order to restructure the debt service requirements of the Issuer, and that the debt service requirements on the Bonds will be less than those on the Refunded Obligations, resulting in a reduction in the amount of principal and interest which otherwise would be payable. The Refunded Obligations are subject to redemption, at the option of the Issuer, and the Pricing Officer is hereby authorized to cause all of the Refunded Obligations to be called for redemption on the respective date or dates consistent with the savings analysis set forth in Section 3(a)(iv) hereof, and the proper notices of such redemption to be given, and in each case at a redemption price of par, plus accrued interest to the date fixed for redemption. In furtherance of authority granted by Section 1207.007(b), Texas Government Code, the Pricing Officer is further authorized to enter into and execute on behalf of the Issuer with the escrow agent named therein, an escrow agreement, in substantially the form presented to the Town Council at the meeting at which this Ordinance was adopted and as shall be approved by the Pricing Officer, which escrow agreement will provide for the payment in full of the Refunded Obligations (the "Escrow Agreement"). In addition, the Pricing Officer is authorized to purchase such securities with proceeds of the Bonds, including, without limitation, to execute such subscriptions for the purchase of the United States Treasury Securities State and Local Government Series or other United States Treasury or United States Agency securities that may be purchased in the open market, and to transfer and deposit such cash from available funds, as may be necessary or appropriate for the escrow fund described in the Escrow Agreement.

(f) In satisfaction of Section 1201.022(a)(3)(B), Texas Government Code, the Town Council hereby determines that the delegation of the authority to the Pricing Officer to approve

the final terms of the Bonds set forth in this Ordinance is, and the decisions made by the Pricing Officer pursuant to such delegated authority and incorporated into the Pricing Certificate will be, in the Issuer's best interests, and the Pricing Officer is hereby authorized to make and include in the Pricing Certificate a finding to that effect.

SECTION 4. CHARACTERISTICS OF THE BONDS. (a) Registration, Transfer, Conversion and Exchange. The Issuer shall keep or cause to be kept at the principal corporate trust office of the bank named in the Pricing Certificate as the paying agent/registrar for the Bonds (the "Paying Agent/Registrar") books or records for the registration of the transfer, conversion and exchange of the Bonds (the "Registration Books"), and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided within three days of presentation in due and proper form. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each Bond to which payments with respect to the Bonds shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Issuer shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Bond or Bonds. Registration of assignments, transfers, conversions and exchanges of Bonds shall be made in the manner provided and with the effect stated in the FORM OF BOND set forth in this Ordinance. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond.

(b) Authentication. Except as provided in Section 4(e) hereof, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, date and manually sign said Bond, and no such Bond shall be deemed to be issued or outstanding unless such Bond is so executed. The Paying Agent/Registrar promptly shall cancel all paid Bonds and Bonds surrendered for conversion and exchange. No additional ordinances, orders or resolutions need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Bonds in the manner prescribed herein. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of conversion and exchange of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Bond, the converted and exchanged Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) Payment of Bonds and Interest. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the Bonds, and of all conversions and exchanges of Bonds, and all replacements of Bonds, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each registered owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(d) Substitute Paying Agent/Registrar. The Issuer covenants with the registered owners of the Bonds that at all times while the Bonds are outstanding the Issuer will provide a competent and legally qualified bank, trust company, financial institution or other agency to act as and perform the services of Paying Agent/Registrar for the Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity. The Issuer reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 50 days written notice to the Paying Agent/Registrar, to be effective not later than 45 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Issuer covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the Issuer. Upon any change in the Paying Agent/Registrar, the Issuer promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(e) General Characteristics of the Bonds. The Bonds (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the Registered Owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the Issuer at least 35 days prior to any such redemption date), (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Bonds, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and

authenticated, (vii) the principal of and interest on the Bonds shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the Bonds, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF BOND set forth in this Ordinance. The Bonds initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Bond issued in conversion of and exchange for any Bond or Bonds issued under this Ordinance the Paying Agent/Registrar shall execute the Paying Agent/registrar's Authentication Certificate, in the FORM OF BOND set forth in this Ordinance.

(f) Book-Entry Only System. The Bonds issued in exchange for the Bonds initially issued to the purchaser specified herein shall be initially issued in the form of a separate single fully registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York ("DTC"), and except as provided in subsection (g) hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("DTC Participant") to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of Bonds, as shown on the Registration Books, of any notice with respect to the Bonds, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of Bonds, as shown in the Registration Books of any amount with respect to principal of or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Registration Books as the absolute owner of such Bond for the purpose of payment of principal and interest with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the registered owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a registered owner, as shown in the Registration Books, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new

nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the registered owner at the close of business on the Record date, the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(g) Successor Securities Depository; Transfers Outside Book-Entry Only System. In the event that the Issuer determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Issuer to DTC or that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

(h) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the representation letter of the Issuer to DTC.

(i) Cancellation of Initial Bonds. On the closing date, one initial Bond representing the entire principal amount of the Current Interest Bonds and one initial Bond representing the entire maturity amount of the Capital Appreciation Bonds, payable in stated installments to the order of the initial purchaser of the Bonds or its designee, executed by manual or facsimile signature of the Mayor and Town Secretary, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to such purchaser or its designee. Upon payment for the initial Bonds, the Paying Agent/Registrar shall cancel the initial Bond or Bonds and deliver to The Depository Trust Company ("DTC") on behalf of such purchaser one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all of the Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC's FAST System, pursuant to an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Bonds in safekeeping for DTC.

(j) Conditional Notice of Redemption. With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice

of redemption, such notice shall state that said redemption may, at the option of the Issuer, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Issuer shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

SECTION 5. FORM OF BONDS. The form of the Bonds, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Bonds initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance, and with the Bonds to be completed with information set forth in the Pricing Certificate. The Form of Bond shall be completed with information set forth in the Pricing Certificate and shall be attached to the Pricing Certificate as an exhibit thereto.

(a) [Form of Bond]

NO. R-	UNITED STATES OF AMERICA STATE OF TEXAS TOWN OF PROSPER, TEXAS GENERAL OBLIGATION REFUNDING BOND SERIES 2021	PRINCIPAL AMOUNT \$
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INTEREST RATE	DATE OF INITIAL DELIVERY OF BONDS	MATURITY DATE	CUSIP NO.
_____%	_____, 2021	_____	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT: _____ DOLLARS

ON THE MATURITY DATE specified above, the Town of Prosper, in Collin and Denton Counties, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above. The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from _____ at the Interest Rate per annum specified above. Interest is payable on _____ and semiannually

on each _____ and _____ thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND INTEREST ON this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the registered owner hereof upon presentation and surrender of this Bond at maturity, or upon the date fixed for its redemption prior to maturity, at the principal corporate trust office of _____, in _____, _____, which is the "Paying Agent/Registrar" for this Bond. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the registered owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the ordinance authorizing the issuance of this Bond (the "Bond Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the registered owner hereof, at its address as it appeared on the fifteenth day of the month preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Bond appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Bond prior to maturity as provided herein shall be paid to the registered owner upon presentation and surrender of this Bond for payment or redemption at the designated corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the registered owner of this Bond that on or before each principal payment date and interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IF THE DATE for any payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day that is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS BOND is one of a series of Bonds dated _____, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$_____ for the purpose of providing funds to refund a portion of the Issuer's outstanding obligations.

ON _____, or on any date thereafter, the Bonds of this series that mature on or after _____ may be redeemed prior to their scheduled maturities, at the option of the Issuer, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the Issuer (provided that a portion of a Bond may be redeemed only in an integral multiple of \$5,000), at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

AT LEAST 30 days prior to the date fixed for any redemption of Bonds or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption, to the registered owner of each Bond to be redeemed at its address as it appeared on the 45th day prior to such redemption date; provided, however, that the failure of the registered owner to receive such notice, or any defect therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the proceedings for the redemption of any Bond. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds or portions thereof that are to be so redeemed. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Bonds or portions thereof that are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed, a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Bond Ordinance.

ALL BONDS OF THIS SERIES are issuable solely as fully registered bonds, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Bond Ordinance, this Bond may, at the request of the registered owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate principal amount of fully registered Bonds, without interest coupons, payable to the appropriate registered owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate registered owner, assignee or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Ordinance. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Bond may be executed by the registered owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Bond or any portion or portions hereof from time to time by the registered owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Bond or portion thereof will be paid by the Issuer. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Bond or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Bonds is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Bond Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the registered owners of the Bonds.

IT IS HEREBY certified, recited and covenanted that this Bond has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Bond have been performed, existed and been done in accordance with law; and that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Bond, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in said Issuer, and have been pledged for such payment, within the limit prescribed by law, all as provided in the Bond Ordinance.

THE ISSUER HAS RESERVED THE RIGHT to amend the Bond Ordinance as provided therein, and under some (but not all) circumstances amendments thereto must be approved by the registered owners of a majority in aggregate principal amount of the outstanding Bonds.

BY BECOMING the registered owner of this Bond, the registered owner thereby acknowledges all of the terms and provisions of the Bond Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Bond Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Bond and the Bond Ordinance constitute a contract between each registered owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be signed with the manual or facsimile signature of the Mayor of the Issuer (or in the absence of the Mayor, by the Mayor Pro-tem) and countersigned with the manual or facsimile signature of the Town Secretary of the Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Bond.

(signature)
Town Secretary

(signature)
Mayor

(SEAL)

14

(b) [Form of Paying Agent/Registrar's Authentication Certificate]

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE
 (To be executed if this Bond is not accompanied by an executed Registration
 Certificate of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Bond has been issued under the provisions of the Bond Ordinance described in the text of this Bond; and that this Bond has been issued in conversion or replacement of, or in exchange for, a Bond, Bonds, or a portion of a Bond or Bonds of a series that originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: _____.

_____,
 Paying Agent/Registrar

By: _____
 Authorized Representative

(c) [Form of Assignment]

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

 Please insert Social Security or Taxpayer Identification Number of Transferee:

 Please print or typewrite name and address, including zip code of Transferee:

 the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

_____, attorney, to register the
 transfer of

 the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.

NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.

(d) [Form of Registration Certificate of the Comptroller of Public Accounts]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this _____.

Comptroller of Public Accounts of the State of Texas

(COMPTROLLER'S SEAL)

(e) [Initial Bond Insertions]

(i) The initial Bond shall be in the form set forth in paragraph (a) of this Section, except that:

A. immediately under the name of the Bond, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As shown below" and "CUSIP No. _____" shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"THE TOWN OF PROSPER, TEXAS, in Collin and Denton Counties, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on _____ in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Years</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>	<u>Years</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
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The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from _____ at the respective Interest Rate per annum specified above. Interest is payable on _____, and semiannually on each _____ and _____ thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full."

C. The Initial Bond shall be numbered "T-1."

Section 6. TAX LEVY. A special "Interest and Sinking Fund" is hereby created and shall be established and maintained by the Issuer at an official depository bank of said Issuer. Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of said Issuer, and shall be used only for paying the interest on and principal of said Bonds. All amounts received from the sale of the Bonds as accrued interest shall be deposited upon receipt to the Interest and Sinking Fund, and all ad valorem taxes levied and collected for and on account of said Bonds shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while any of said Bonds are outstanding and unpaid, the governing body of said Issuer shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on said Bonds as such interest comes due, and to

provide and maintain a sinking fund adequate to pay the principal of said Bonds as such principal matures (but never less than 2% of the original amount of said Bonds as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of said Issuer, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in said Issuer, for each year while any of said Bonds are outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of said Bonds, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law. If lawfully available moneys of the Issuer are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes that otherwise would have been required to be levied pursuant to this Section may be reduced to the extent and by the amount of the lawfully available funds then on deposit in the Interest and Sinking Fund.

Section 7. PERFECTION OF SECURITY INTEREST. Chapter 1208, Texas Government Code, applies to the issuance of the Bonds and the pledge of the taxes granted by the Issuer under this Section, and is therefore valid, effective, and perfected. Should Texas law be amended at any time while the Bonds are outstanding and unpaid, the result of such amendment being that the pledge of the taxes granted by the Issuer under this Section is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, in order to preserve to the registered owners of the Bonds a security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing of a security interest in said pledge to occur.

Section 8. DEFEASANCE OF BONDS. (a) Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities, and thereafter the Issuer

will have no further responsibility with respect to amounts available to the Paying Agent/Registrar (or other financial institution permitted by applicable law) for the payment of such Defeased Bonds, including any insufficiency therein caused by the failure of the Paying Agent/Registrar (or other financial institution permitted by applicable law) to receive payment when due on the Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Bonds that is made in conjunction with the payment arrangements specified in subsection 8(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Bonds immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Issuer also be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Bonds may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 8(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Bonds, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.

(c) The term "Defeasance Securities" means any securities and obligations now or hereafter authorized by State law that are eligible to refund, retire or otherwise discharge obligations such as the Bonds.

(d) Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) In the event that the Issuer elects to defease less than all of the principal amount of Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Bonds by such random method as it deems fair and appropriate.

Section 9. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED BONDS.

(a) Replacement Bonds. In the event any outstanding Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new

bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

(b) Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen, or destroyed Bonds shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the registered owner applying for a replacement bond shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the registered owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Bond. In every case of damage or mutilation of a Bond, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of or interest on the Bond, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement bond, the Paying Agent/Registrar shall charge the registered owner of such Bond with all legal, printing, and other expenses in connection therewith. Every replacement bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen, or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen, or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Bonds duly issued under this Ordinance.

(e) Authority for Issuing Replacement Bonds. In accordance with Subchapter B, Chapter 1206, Texas Government Code, this Section shall constitute authority for the issuance of any such replacement bond without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Bonds in the form and manner and with the effect, as provided in Section 4(b) of this Ordinance for Bonds issued in conversion and exchange for other Bonds.

Section 10. CUSTODY, APPROVAL, AND REGISTRATION OF BONDS; BOND COUNSEL'S OPINION, CUSIP NUMBERS AND CONTINGENT INSURANCE PROVISION, IF OBTAINED. The Mayor of the Issuer is hereby authorized to have control of the Bonds initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Bonds pending their delivery and their investigation, examination, and approval by the Attorney General

of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Bonds said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Bonds, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the Issuer's Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on the Bonds issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Bonds. If bond insurance is obtained, the Bonds may bear an appropriate legend as provided by the insurer.

Section 11. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE BONDS. Subject to the determination of the Pricing Officer, as set forth in the Pricing Certificate as to the treatment of the Bonds as taxable or tax-exempt obligations pursuant to the Code, the Issuer makes the following covenants with respect to the Bonds, in the event that the Bonds are issued as obligations the interest on which is exempt from federal income taxation.

(a) Covenants. The Issuer covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days or less until such proceeds are needed for the purpose for which the bonds are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(8) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and

(9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the Issuer for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The Issuer understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the Refunded Obligations expended prior to the date of issuance of the Bonds. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Mayor or the Town Manager to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(d) Disposition of Project. The Issuer covenants that the projects funded with the proceeds of the Refunded Obligations will not be sold or otherwise disposed of in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Bonds. For purpose of the foregoing, the Issuer may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Designation as Qualified Tax-Exempt Obligations. The Bonds may be designated as "qualified tax-exempt obligations" as defined in section 265(b)(3) of the Code, if so provided in the Pricing Certificate, and further conditioned upon the Purchaser certifying that the aggregate initial offering price of the Bonds to the public (excluding any accrued interest) is no greater than \$10 million (or such other amount permitted by such section 265 of the Code). Assuming such condition is met, in furtherance of such designation, the Issuer represents, covenants and warrants the following: (a) that during the calendar year in which the Bonds are issued, the Issuer (including any subordinate entities) has not designated nor will designate obligations, which when aggregated with the Bonds, will result in more than \$10,000,000 (or such other amount permitted by such section 265 of the Code) of "qualified tax-exempt obligations" being issued; (b) that the Issuer reasonably anticipates that the amount of tax-exempt obligations issued during the calendar year in which the Bonds are issued, by the Issuer (or any subordinate entities) will not exceed

\$10,000,000 (or such other amount permitted by such section 265 of the Code); and, (c) that the Issuer will take such action or refrain from such action as necessary, and as more particularly set forth in this Section, in order that the Bonds will not be considered "private activity bonds" within the meaning of section 141 of the Code.

Section 12. SALE OF BONDS; OFFICIAL STATEMENT. (a) The Bonds shall be sold and delivered subject to the provisions of Section 1 and Section 3 and pursuant to the terms and provisions of a bond purchase agreement, notice of sale and bidding instructions or private placement agreement (collectively, the "Purchase Agreement") which the Pricing Officer is hereby authorized to execute and deliver and in which the purchaser or purchasers (collectively, the "Purchaser") of the Bonds shall be designated. The Bonds shall initially be registered in the name of the purchaser thereof as set forth in the Pricing Certificate.

(b) The Pricing Officer is hereby authorized, in the name and on behalf of the Issuer, to approve, distribute, and deliver a preliminary official statement and a final official statement relating to the Bonds to be used by the Purchaser in the marketing of the Bonds.

Section 13. FURTHER PROCEDURES; ENGAGEMENT OF BOND COUNSEL; APPROPRIATION. (a) The Mayor or Mayor Pro-tem and Town Secretary of the Issuer and the Town Manager of the Issuer and all other officers, employees and agents of the Issuer, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer a Paying Agent/Registrar Agreement with the Paying Agent/Registrar in substantially the form presented to the Town Council at the meeting at which this Ordinance was adopted and all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Letter of Representations, the Bonds, the sale of the Bonds and the Official Statement. Notwithstanding anything to the contrary contained herein, while the Bonds are subject to DTC's Book-Entry Only System and to the extent permitted by law, the Letter of Representations is hereby incorporated herein and its provisions shall prevail over any other provisions of this Ordinance in the event of conflict. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

(b) The obligation of the initial purchasers to accept delivery of the Bonds is subject to the initial purchasers being furnished with the final, approving opinion of McCall, Parkhurst & Horton L.L.P., bond counsel to the Issuer, which opinion shall be dated as of and delivered on the date of initial delivery of the Bonds to the initial purchasers. The engagement of such firm as bond counsel to the Issuer in connection with issuance, sale and delivery of the Bonds is hereby approved and confirmed. The execution and delivery of an engagement letter between the Issuer and such firm, with respect to such services as bond counsel, is hereby authorized in such form as may be

approved by the Mayor, Mayor Pro-tem or the Town Manager are hereby authorized to execute such engagement letter.

(c) To pay the debt service coming due on the Bonds, if any (as determined by the Pricing Certificate) prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

Section 14. COMPLIANCE WITH RULE 15c2-12.

(a) If the Bonds are sold by public offering, and are subject to the Rule (as defined below), the following provisions shall apply:

(i) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(ii) Annual Reports. (A) The Issuer shall provide annually to the MSRB, in the electronic format prescribed by the MSRB, financial information and operating data with respect to the Issuer consisting of the information described in the Pricing Certificate (the "Annual Operating Report"). The Issuer will additionally provide financial statements of the Issuer (the "Financial Statements"), that will be (i) prepared in accordance with the accounting principles described in the Pricing Certificate or such other accounting principles as the Issuer may be required to employ from time to time pursuant to State law or regulation and shall be in substantially the form included in the final Official Statement and (ii) audited, if the Issuer commissions an audit of such Financial Statements and the audit is completed within the period during which they must be provided. The Issuer will update and provide the Annual Operating Report within six months after the end of each fiscal year and the Financial Statements within 12 months of the end of each fiscal year, in each case beginning with the fiscal year ending in and after 2021. The Issuer may provide the Financial Statements earlier, including at the time it provides its Annual Operating Report, but if

the audit of such Financial Statements is not complete within 12 months after any such fiscal year end, then the Issuer shall file unaudited Financial Statements within such 12-month period and audited Financial Statements for the applicable fiscal year, when and if the audit report on such Financial Statements becomes available.

(B) If the Issuer changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's internet website or filed with the SEC.

(iii) Event Notices. The Issuer shall notify the MSRB, in a timely manner not in excess of ten Business Days after the occurrence of the event, of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the Issuer;
13. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor Paying Agent/Registrar or change in the name of the Paying Agent/Registrar, if material;
15. Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material; and

16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

The Issuer shall notify the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with subsection (ii) of this Section by the time required by subsection (ii). As used in clause (iii)12 above, the phrase "bankruptcy, insolvency, receivership or similar event" means the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court of governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if jurisdiction has been assumed by leaving the Town Council and officials or officers of the Issuer in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

(iv) Limitations, Disclaimers, and Amendments. (A) The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the Issuer in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes the Bonds no longer to be outstanding.

(B) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

(C) UNDER NO CIRCUMSTANCES SHALL THE ISSUER BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(D) No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.

(E) The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Issuer (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Bonds. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

(b) If the Bonds are sold by private placement or are not subject to the Rule, the Pricing Officer may agree to provide for an undertaking in accordance with the Rule or may agree to provide other public information to the purchaser as may be necessary for the sale of the Bonds on the most favorable terms to the Issuer, or neither.

Section 15. METHOD OF AMENDMENT. The Issuer hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The Issuer may from time to time, without the consent of any Registered Owner, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance to (i) cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the Registered Owners, (ii) grant additional rights or security for the benefit of the Registered Owners, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the Registered Owners, (v) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (iv) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be materially inconsistent with the

provisions of this Ordinance and that shall not, in the opinion of nationally-recognized bond counsel, materially adversely affect the interests of the Registered Owners.

(b) Except as provided in paragraph (a) above, a majority of the Registered Owners of Bonds then outstanding measured by original principal amount that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the Issuer; provided, however, that without the consent of 100% of the Registered Owners in aggregate principal amount of the then outstanding Bonds, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Bonds so as to:

- (1) Make any change in the maturity of any of the outstanding Bonds;
- (2) Reduce the rate of interest borne by any of the outstanding Bonds;
- (3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Bonds;
- (4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Bonds or any of them or impose any condition with respect to such payment; or
- (5) Change the minimum percentage of the principal amount of the Bonds necessary for consent to such amendment.

(c) If at any time the Issuer shall desire to amend this Ordinance under this Section, the Issuer shall send by U.S. mail to each registered owner of the affected Bonds a copy of the proposed amendment.

(d) Whenever at any time within one year from the date of mailing of such notice the Issuer shall receive an instrument or instruments executed by the Registered Owners of at least a majority in aggregate principal amount of all of the Bonds then outstanding that are required for the amendment (or 100% if such amendment is made in accordance with paragraph (b)), which instrument or instruments shall refer to the proposed amendment and which shall specifically consent to and approve such amendment, the Issuer may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such amendatory Ordinance, and the respective rights, duties, and obligations of the Issuer and all Registered Owners of such affected Bonds shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the Registered Owner of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of such consent and shall be conclusive and binding upon all future Registered Owners of the same Bond during such period. Such consent may be revoked at any time after six months from the date of said consent by the Registered Owner who gave such consent, or by a successor in title, by filing notice with the Issuer, but such revocation shall not be effective if the Registered Owners the required amount of the affected Bonds then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

(g) For the purposes of establishing ownership of the Bonds, the Issuer shall rely solely upon the registration of the ownership of such Bonds on the Registration Books kept by the Paying Agent/Registrar.

Section 16. REDEMPTION OF REFUNDED OBLIGATIONS.

(a) Subject to execution and delivery of the Purchase Agreement with the Purchaser, the Issuer hereby directs that the Refunded Obligations be called for redemption on the dates and at the prices set forth in the Pricing Certificate.

(b) The paying agent/registrar for the Refunded Obligations is hereby directed to provide the appropriate notice of redemption as required by the Refunded Obligations and is hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on the appropriate redemption date.

(c) If the redemption of the Refunded Obligations results in the partial refunding of any maturity of the Refunded Obligations, the Pricing Officer shall direct the paying agent/registrar for the Refunded Obligations to designate at random and by lot which of the Refunded Obligations will be payable from and secured solely from ad valorem taxes of the Issuer pursuant to the order of the Issuer authorizing the issuance of such Refunded Obligations (the "Refunded Bond Ordinance"). For purposes of such determination and designation, all Refunded Obligations registered in denominations greater than \$5,000 shall be considered to be registered in separate \$5,000 denominations. The paying agent/registrar shall notify by first-class mail all registered owners of all affected bonds of such maturities that: (i) a portion of such bonds have been refunded and are secured until final maturity solely with cash and investments maintained by the Escrow Agent in the Escrow Fund, (ii) the principal amount of all affected bonds of such maturities registered in the name of such registered owner that have been refunded and are payable solely from cash and investments in the Escrow Fund and the remaining principal amount of all affected bonds of such maturities registered in the name of such registered owner, if any, have not been refunded and are payable and secured solely from ad valorem taxes of the Issuer described in the Refunded Obligation Ordinance, (iii) the registered owner is required to submit his or her Refunded Obligations to the paying agent/registrar, for the purposes of re-registering such registered owner's bonds and assigning new CUSIP numbers in order to distinguish the source of payment for the principal and interest on such bonds, and (iv) payment of principal of and interest

on such bonds may, in some circumstances, be delayed until such bonds have been re-registered and new CUSIP numbers have been assigned as required by (iii) above.

(d) The source of funds for payment of the principal of and interest on the Refunded Obligations on their respective maturity or redemption dates shall be from the funds deposited with the Escrow Agent, pursuant to the Escrow Agreement approved in Section 3 of this Ordinance, or from amounts deposited with the paying agent/registrar for the Refunded Obligations from proceeds of the Bonds, if there is no Escrow Agreement.

Section 17. GOVERNING LAW. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 18. SEVERABILITY. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 19. EVENTS OF DEFAULT. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an event of default (an "Event of Default"):

- (i) the failure to make payment of the principal of or interest on any of the Current Interest Bonds or the Maturity Value of the Capital Appreciation Bonds when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the Issuer, the failure to perform which materially, adversely affects the rights of the Registered Owners, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the Issuer.

Section 20. REMEDIES FOR DEFAULT. (a) Upon the happening of any Event of Default, then and in every case, any Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the Issuer for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then outstanding.

Section 21. REMEDIES NOT EXCLUSIVE. (a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(c) By accepting the delivery of a Bond authorized under this Ordinance, such Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Issuer or the Town Council.

Section 22. EFFECTIVE DATE. In accordance with the provisions of V.T.C.A., Government Code, Section 1201.028, this Ordinance shall be effective immediately upon its adoption by the Town Council.

CERTIFICATE REGARDING ADOPTION OF ORDINANCE NO. 2021-__**THE STATE OF TEXAS**

§

COUNTIES OF COLLIN AND DENTON

§

TOWN OF PROSPER

§

We, the undersigned officers of the Town, hereby certify as follows:

1. The Town Council of the Town convened in REGULAR MEETING ON THE 23RD DAY OF NOVEMBER, 2021, at the Town Hall, and the roll was called of the duly constituted officers and members of the Town Council, to-wit:

Ray Smith, Mayor
 Meigs Miller, Mayor Pro-Tem
 Craig Andres, Deputy Mayor Pro-Tem
 Amy Bartley
 Charles Cotton
 Jeff Hodges
 Marcus E. Ray

Michelle Lewis Sirianni, Town Secretary

and all of said persons were present, except the following absentees: _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

ORDINANCE NO. _____ AUTHORIZING THE ISSUANCE OF TOWN OF PROSPER, TEXAS GENERAL OBLIGATION REFUNDING BONDS; APPOINTING A PRICING OFFICER AND DELEGATING TO THE PRICING OFFICER THE AUTHORITY TO APPROVE ON BEHALF OF THE TOWN THE SELECTION OF BONDS TO BE REFUNDED, THE SALE OF THE BONDS, THE TERMS OF THE BONDS AND THE OFFERING DOCUMENTS FOR THE BONDS; ESTABLISHING CERTAIN PARAMETERS FOR THE APPROVAL OF SUCH MATTERS BY THE PRICING OFFICER; APPROVING THE USE OF AN ESCROW AGREEMENT AND A PAYING AGENT/REGISTRAR AGREEMENT; ENGAGING BOND COUNSEL; LEVYING AN ANNUAL AD VALOREM TAX FOR THE PAYMENT OF THE BONDS; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

was duly introduced for the consideration of the Town Council. It was then duly moved and seconded that said Ordinance be adopted and, after due discussion, said motion, carrying with it the adoption of said Ordinance, prevailed and carried by the following vote:

AYES: All members of the Town Council shown present above voted "Aye," except as shown below:

NOES: _____

ABSTAIN: _____

2. That a true, full and correct copy of the aforesaid Ordinance adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Ordinance has been duly recorded in said Town Council's minutes of said Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from the Town Council's minutes of said Meeting pertaining to the adoption of said Ordinance; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the Town Council as indicated therein; that each of the officers and members of the Town Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Ordinance would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose, and that said Meeting was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

3. That the Mayor of the Town has approved and hereby approves the aforesaid Ordinance; that the Mayor and the Town Secretary of the Town have duly signed said Ordinance; and that the Mayor and the Town Secretary of the Town hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of said Ordinance for all purposes.

SIGNED and SEALED this, the 23rd day of November, 2021.

Town Secretary

Mayor

[Seal]



COMMUNITY SERVICES

To: Mayor and Town Council

From: Robyn Battle, Executive Director of Community Services

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Receive an update on the Town logo and rebranding project.

Description of Agenda Item:

In July 2021, the Prosper Community Library rolled out a new logo to establish a graphic identity to be used on print and digital publications. The logo chosen by the Library is similar to the EDC logo with respect to font style, color, and the integration of windmill blades. The rollout of the Library logo in July prompted a conversation with Council about the official Town of Prosper logo, and whether Council would be in favor of a change. Some members of Council have expressed a desire to update the Town logo with a new color, updated font style, and a more modern look that still reflects the Town's history and culture.

At the September 28, 2021 Town Council meeting, the Council was presented with four options regarding the Town logo:

- Option 1: Keep log as is, no change
- Option 2: Create a Town variation of the EDC & Library logo
- Option 3: Redesign/refresh the existing logo (new color palette, updated font, cleaner graphics)
- Option 4: Redesign a completely new logo with a full public input process

Town staff was directed to pursue Option 2 to create a Town logo variation that is similar to the EDC and the Library, and to provide a more detailed plan for phasing in the rebranding of all Town assets.

Town staff has communicated with the consultant who designed the EDC and Library logo. The consultant has provided a draft agreement for the development of a new Town logo that is similar to the EDC and Library. The agreement would include logo versions for all Town departments, a brand and style guide, an interior and exterior signage package, stationary package, and vehicle signage. Up to three draft versions would be developed for review.

In order to obtain public support of the new logo, it is important to include some level of public input from the community. Town staff believes that engaging public input from residents early in

process, either through a committee or through a full public input process, would provide Council with feedback on how a new logo would be perceived by the public. It would also help create buy-in from residents and ensure a more successful rollout to the public.

The Town can pursue several options to receive public input. The consultant recommends putting together a small group of staff and residents/community stakeholders to review the draft versions and make a final recommendation. Alternatively, Council could choose to pursue a broader public input process, including focus groups, surveys, and virtual public meetings. Depending on the level of public input desired, the consultant's cost would range between \$5,000-\$20,000, and could take several weeks to several months. In either case, the final recommendation on a logo change would be presented to Council for approval.

As part of the agreement, the consultant would provide a phasing-in plan for replacing the logos on hard assets, and a plan for rolling out the new logo to the public through a rebranding campaign intended to generate enthusiasm and support for the new logo. The consultant has previous experience with municipalities in developing and launching a new logo using a phased-in approach.

Town staff is continuing to investigate cost savings to rebrand Town assets. At this time, the estimated cost has been reduced from \$388,000 to approximately \$300,000. Town staff and the logo consultant recommend phasing in the new logo over a period of no more than three years.

Town Staff Recommendation:

Town staff requests feedback and direction from the Council on the Town logo and rebranding project.



COMMUNITY SERVICES

To: Mayor and Town Council

From: Robyn Battle, Executive Director of Community Services

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – November 23, 2021

Agenda Item:

Receive an update on the 2021 Texas Legislative Session and the Town of Prosper's legislative strategy.

Description of Agenda Item:

The Town Council adopted Resolution 2020-85 on November 24, 2020, which established the Town's Legislative Agenda for the 2021 Texas Legislative Session. The Legislative Agenda is intended to convey the Town's legislative initiatives and establish an official position on key issues. It is to be used as a communication tool with legislators and residents to convey what we believe to be our top priority issues, which cover a wide range of topics that are important to the Town of Prosper.

Over the course of the last year, Town staff and the Town's own legislative delegation comprised of the Mayor and Deputy Mayor Pro-Tem have worked with our legislators in Austin to convey our position on the issues identified in our legislative agenda and worked to support or oppose legislation based on the best interests of the Town. Notably, the Town initiated legislation that would have eliminated the \$1.5 million cap on the use of Competitive Sealed Proposals (CSP) for the construction on Town infrastructure projects. While that legislation did not pass, it did provide an opportunity for Town staff to reevaluate the use of CSP and its uses under the existing statute. Several bills were passed in the Regular Session that are of interest to the Town, including, but not limited to:

- Public Utility Commission and ERCOT Reform
- Constitutional or Permitless Carry
- Paid Quarantine Leave for First Responders
- Mental Health Leave for Police Officers
- Chapter 380 Agreement Reporting
- Establishment of a Statewide Broadband Office
- Confidentiality of Utility Customer Information
- Personal Information of Elected Officials is Confidential

Governor Abbott called the first of three Special-Called Sessions on July 8, and the Senate passed most of the items laid out by the Governor; however, no business was conducted in the House of Representatives during the first Special Session due to a lack of quorum caused by House members who had left the state in an effort to block voting legislation. The Second-Called Special Session, which had been cut short due to the continued lack of quorum in the House, ended on September 2, resulting in the passage of the Election Integrity Protection Act. The Third-Called Special Session ended on October 18, which affected legislative district boundaries and appropriated federal funds from the American Rescue Plan Act. A copy of the Town's 2021 Legislative Agenda as well as a full summary of the bills passed in the 2021 Regular and Special Sessions is available in the attached documents. Town staff has already implemented, or is working to implement, policy and operational changes in order to comply with legislation passed during the 2021 legislative sessions.

Town staff will continue to develop the Town's legislative strategy in an effort to promote legislation that will benefit the Town and oppose or provide recommendations for beneficial changes to legislation that is not in the Town's best interests. This will be achieved through a variety of strategies, most importantly, through the development of positive working relationships with local, regional, and state elected officials and their staff members by scheduling regular meetings and inviting them to Town events.

Several Town staff members maintain memberships in various professional organizations for their respective subject-matter areas and use those opportunities to gather input on pending issues of interest. Participation by Town staff and Councilmembers on local and regional boards, agencies, and other leadership opportunities is another way to increase the Town's influence on policies affecting the Town. Town staff has begun the process of searching for a new firm to provide legislative advocacy services and assist in the pursuit of the Town's legislative agenda.

Attached Documents:

1. Town of Prosper 2021 Legislative Agenda
2. June 11, 2021, TML Legislative Update
3. July 30, 2021, TML Legislative Update
4. September 3, 2021, TML Legislative Update
5. October 22, 2021, TML Legislative Update

Town Staff Recommendation:

Town staff requests feedback and direction from the Town Council on the 2021 Legislative Session and legislative strategy and recommends the Town Council discuss the legislative strategy further during the annual Strategic Planning session in February 2022.

TOWN OF PROSPER, TEXAS**RESOLUTION NO. 2020-85**

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, APPROVING THE TOWN'S LEGISLATIVE AGENDA FOR THE 87TH TEXAS LEGISLATIVE SESSION; AUTHORIZING CERTAIN PERSONS TO REPRESENT AND COMMUNICATE THE TOWN'S LEGISLATIVE INTERESTS; AUTHORIZING THE MAYOR AND TOWN MANAGER TO SIGN ALL LETTERS, PETITIONS, AND/OR OTHER DOCUMENTS ON BEHALF OF THE CITY TO PROMOTE THE CITY'S LEGISLATIVE AGENDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 87th Texas Legislature convenes in January 2021; and

WHEREAS, the Texas Legislature and its administrative agencies will consider many measures and actions that may affect the Town of Prosper, Texas; and

WHEREAS, Town staff has prepared and recommends approval of the Town of Prosper's 2021 Legislative Agenda, attached hereto as Exhibit "A"; and

WHEREAS, the Town Council finds that the 2021 Legislative Agenda represents the issues and priorities that are in the best interest of the Town and its citizens, should be adopted, and should be forwarded to the Town's Legislative delegation for consideration; and

WHEREAS, the Town Council is of the further opinion that the Mayor, the Town Manager and/or the Town Manager's designee should be authorized and directed to take action with regard to the 2021 Legislative Agenda as outlined below.

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

SECTION 1

The Town of Prosper 2021 Legislative Agenda, attached hereto as Exhibit "A," is hereby adopted and approved.

SECTION 2

The Mayor, the Town Manager, and/or the Town Manager's designee are authorized to communicate the items included in the Town's Legislative Agenda to members of the Texas Legislature, in general, and/or to the appropriate legislative committees, committee members, and other persons or groups that may influence the 87th Legislative Session.

SECTION 3

For those items designated as "support," the Mayor, the Town Manager and/or the Town Manager's designee are directed to actively pursue passage of the appropriate legislation if it is introduced by some other entity. Efforts to obtain passage of the legislation may include drafting

appropriate legislation, seeking a sponsor, and actively pursuing passage of such legislation by providing testimony and through other means.

SECTION 4

For those items designated as "oppose," the Mayor, Town Manager, and/or the Town Manager's designee are directed to oppose the passage of any such legislation.

SECTION 5

The Mayor and the Town Manager are specifically authorized to sign any and all letters, petitions, and/or other documents on behalf of the Town in order to promote the Town's 2021 Legislative Agenda.

SECTION 6

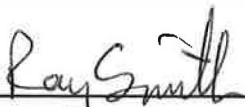
When testimony before various committees is needed to support or oppose a bill, the Mayor, the Town Council Members, the Town Manager, or the Town Manager's designee are authorized to testify so long as the testimony is consistent with the approved 2021 Legislative Agenda.

SECTION 7

This Resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS THE 24TH DAY OF NOVEMBER, 2020.

APPROVED:

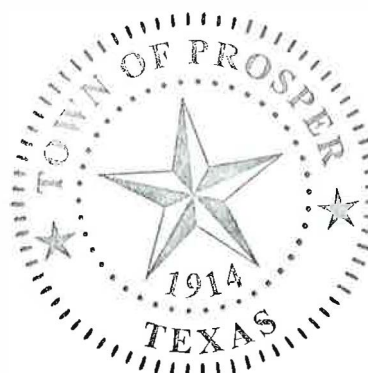

Ray Smith, Mayor

ATTEST:


Melissa Lee, Town Secretary

APPROVED AS TO FORM AND LEGALITY:


Terrence S. Welch, Town Attorney



TOWN OF PROSPER 2021 LEGISLATIVE AGENDA

LEGISLATIVE PHILOSOPHY

The following Legislative Agenda represents the Town of Prosper’s legislative initiatives and priorities for the 87th Legislative Session and establishes the Town’s position on key legislative issues. The Town of Prosper is committed to providing efficient and effective municipal government services to its residents, businesses, visitors, and community stakeholders.

The Town will support legislation that protects home rule authority, advances the principles of local decision-making, protects or enhances municipal revenue sources, and enhances the health, safety and welfare of its residents in the spirit of self-governance. Conversely, the Town will oppose legislation that preempts or erodes municipal authority on local matters, impedes the Town’s ability to allocate resources to locally determined projects and services, or is otherwise detrimental to the Town and its constituents.

Throughout this document, it is understood that a position statement supporting a legislative action also establishes opposition to legislative measures that would have the opposite effect, and vice versa.

LEGISLATIVE INITIATIVES

- Support legislation that eliminates the \$1.5 million cap on certain municipal competitive sealed proposals, codified in Section 252.043(d-1) of the Texas Local Government Code, and expands the use of the competitive sealed proposal method of procurement for road and utility (horizontal) infrastructure projects.

LEGISLATIVE PRIORITIES

TRANSPORTATION

- Support legislation that seeks to fund local transportation projects.
- Support legislation that provides funding to maintain and rehabilitate existing and aging infrastructure.
- Support legislation that promotes innovative financing tools for the construction, rehabilitation, and maintenance of local transportation and infrastructure projects.
- Support legislation that promotes pay-as-you-go financing for capital projects by authorizing a dedicated property tax rate that is classified similarly to the debt service tax rate in property tax rate calculations.

DEVELOPMENT

- Support legislation that seeks to repeal, or makes beneficial amendments to, H.B. 2439 from the 86th legislative session (the building materials bill), now codified in Chapter 3000 of the Texas Government Code.
- Support legislation that seeks to limit state intrusion in the land development process by making beneficial amendments to H.B. 3167 regarding platting procedures (the 30-day shot clock bill).

- Oppose legislation that preempts municipal authority related to land use and zoning, local amendments to building codes, local building permit fees, tree preservation, short-term rentals, and eminent domain.

PUBLIC SAFETY

- Support legislation and measures that strengthen the integrity, effectiveness, and transparency of local law enforcement, and oppose any measures that weaken the same.
- Support legislation that preserves qualified immunity for public safety personnel acting within the bounds of departmental policies and procedures in the performance of their official duties.
- Support legislation that clarifies the roles of state, county and municipal governments in emergency management, and their respective authority, powers, and duties during a local state of disaster.

ECONOMIC DEVELOPMENT

- Support legislation that preserves all economic development programs and tools currently available under state law.
- Support legislation and programs that retain and attract new and existing businesses.
- Support legislation that promotes new and innovative financing tools that would leverage state funds to create jobs.
- Support legislation that would maintain funding for grants and programs that improve workforce training.

FINANCIAL STRENGTH

- Support legislation that would preserve the Town's use of certificates of obligation (COs) to fund necessary capital projects, and for the debt from COs to continue to be funded from the Town's interest and sinking (I&S) tax rate.
- Support legislation that preserves the Town's ability to control, manage, and collect reasonable compensation for the use of municipal rights-of-way.
- Oppose legislation that imposes further revenue caps or tax caps that restrict the Town's capacity to generate the revenue needed to provide the high level of municipal services expected by Town of Prosper residents.

SMART CITIES/BROADBAND ACCESS

- Support legislation that removes barriers that restrict the provision of broadband service as a utility.
- Support legislation to incentivize and recognize the importance of smart cities and the application of technology solutions through grants, awards, and other means.
- Support legislation that develops plans and resources needed for greater broadband connectivity to enhance public access to education, healthcare, employment, information, and services.

WATER RESOURCES

- Support legislation that provides ample funding for developing affordable and reliable water resources across North Texas.
- Support legislation that provides funding for the construction, maintenance, and rehabilitation of new and aging water utility infrastructure.

RECREATIONAL AND CULTURAL RESOURCES

- Support amendments to the hotel occupancy tax statute that expand the use of hotel occupancy tax revenue for the construction or expansion of municipal parks, trails, and facilities to promote tourism within the Town.
- Support legislation that directly benefits public library services that support workforce, cultural, and educational programs.

OPEN GOVERNMENT

- Support legislation that simplifies the budget and tax rate notification and adoption process with the goal of improving transparency.
- Support legislation that would allow required legal notices to be published on the Town website rather than requiring publication in an official newspaper.
- Support legislation that enhances and makes permanent the beneficial amendments made to the Texas Open Meetings Act to allow for the expanded use of teleconference and videoconference technology in public meetings.

ELECTIONS

- Oppose legislation that eliminates the May or November uniform election dates.
- Oppose legislation that requires candidates for a Town office to declare party affiliation in order to run for office.

LOCAL CONTROL

- Support legislation that preserves local control and the right of Prosper residents to govern themselves, and to work with their municipal government to adopt and enforce ordinances that address the health, safety, and welfare of the community.
- Support legislation that preserves local authority for property taxation and appraisal decisions.
- Oppose legislation that limits or prohibits the Town's current ability to use municipal funds to communicate or advocate with legislators.
- Oppose legislation that creates unfunded mandates at the city and/or county level.



Legislative UPDATE

October 22, 2021
Number 40

Third-Called Special Session Ends

Late Monday night, the House and Senate adjourned sine die concluding the third-called special session. The legislature passed several bills on the governor's call including new redistricting maps for the [Texas Senate](#), the [Texas House of Representatives](#), the [United States House of Representatives](#), and the [State Board of Education](#).

The legislature approved [3S.B.8](#) which appropriates the state's federal COVID-19 relief funds from the American Rescue Plan Act. A significant portion, \$7.2 billion, is allocated to the state's unemployment compensation fund and over \$500 million is dedicated to broadband infrastructure. In a last-minute effort to provide tax relief to Texans, the legislature passed [3S.J.R. 2](#) increasing the homestead exemption on school district property taxes from \$25,000 to \$40,000. The constitutional amendment will go to voters in May 2022. City-related bills that passed during the third-called special session can be found in "City-Related Bills Passed" article, below.

Late items added to the call – a prohibition on COVID-19 vaccine mandates and increased penalties for illegal voting – did not make it through the process. It is important to note that while legislation prohibiting vaccine mandates stalled in the legislature, the [governor's Executive Order No. GA-40](#), which provides that no entity can compel an individual to receive a COVID-19 vaccine, remains in effect.

Reminder: PUC Filing Requirements for Affected Water Utilities Due November 1, 2021

[S.B. 3](#) created a requirement for affected utilities, which includes municipally owned water utilities that serve more than one customer, to submit certain required information to: (1) the Public Utility Commission (PUC); (2) each electric utility that provides transmission and distribution service to the affected utility; (3) each retail electric provider that sells electric power to the affected utility; (4) the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by the PUC; and (5) the division of emergency management of the governor. The required information an affected utility must submit to those entities listed above is: (1) information identifying the location and providing a general description of all water and wastewater facilities that qualify for critical load status; and (2) emergency contact information for the affected utility, including: (a) the person who will serve as a point of contact and the person's telephone number; (b) the person who will serve as an alternative point of contact and the person's telephone number; and (c) the affected utility's mailing address.

The PUC has created an information sheet with the filing requirements [here](#). The deadline to submit the required information is **November 1, 2021**.

City-Related Bills Passed

[3S.B. 5 \(Lucio/Patterson\)](#) – **Unlawful Restraint of Dog**: this bill, among other things: (1) prohibits and creates an offense for the unlawful restraint of a dog; and (2) provides that the prohibition in (1) does not preempt a local regulation relating to the restraint of a dog or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the restraint of a dog if the regulation, ordinance, or requirement: (a) is compatible with and equal to, or more stringent than, the prohibition; or (b) relates to an issue not specifically addressed by the prohibition. (Effective January 18, 2022.)

[3S.B. 8 \(Nelson/Bonnen\)](#) – **Federal Coronavirus Relief Appropriation**: makes supplemental appropriations of roughly \$13 billion received from the Coronavirus State Fiscal Recovery Fund and Coronavirus Capital Projects Fund established under the American Rescue Plan Act of 2021 to include, among many other appropriations, the amount of \$500,475,163 to the comptroller of public accounts for the purpose of providing funding for broadband infrastructure. (Effective immediately.)

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Legislative UPDATE

September 3, 2021
Number 34

Bills Effective September 1

Hundreds of new Texas laws that passed the 87th Legislature went into effect on September 1, including more than 200 city-related bills. Several require some city action. The League has prepared articles (some including papers or Q&As) on city-related bills that went into effect immediately upon passage, or on September 1. Links to those articles are listed below.

[S.B. 2](#): Public Utility Commission and ERCOT Reform

[S.B. 3](#): Utility Preparedness

[S.B. 6](#): Pandemic-Related Liability Protections

[S.B. 22](#): Workers' Compensation "Disease Presumption" to Include COVID-19

[S.B. 24](#): New Pre-Employment Screening Procedures for Law Enforcement Agencies

[S.B. 157](#): Eminent Domain Reporting

[S.B. 374](#): Contiguity of Roads for Annexation

[S.B. 475](#): Regional Cybersecurity Working Groups

[S.B. 877](#): Building Inspections

[S.B. 968](#): Responding to Disasters

[S.B. 1090](#): Building Materials, Revisited

[S.B. 1359](#): Mental Health Leave for Police Officers

[S.B. 1438](#): Property Tax Rate Calculation Following a Disaster

[H.B. 5](#): Statewide Broadband Office
[H.B. 692](#): Public Works Contracts
[H.B. 872](#): Utility Customer Information May Not Be Disclosed
[H.B. 1082](#): Personal Information of Elected Officers Is Confidential
[H.B. 1118](#): Mandated Cybersecurity Training
[H.B. 1281](#): Golf Carts
[H.B. 1475](#): Grounds for Zoning Variances Expanded
[H.B. 1925](#): Statewide Public Camping Ban
[H.B. 1927](#): Constitutional or Permitless Carry
[H.B. 1929](#): ETJ Development Agreements
[H.B. 2073](#): Paid Quarantine Leave for First Responders
[H.B. 2404](#): Chapter 380 Agreement Reporting
[H.B. 3853](#): Middle Mile Broadband Service
[H.B. 4492](#): Financing for the Electric Market

All city-related bills that passed are summarized by category in the June 11 [wrap-up edition](#) of the Legislative Update.

Additional Post-Session Update: “Constitutional” or “Permitless Carry in Meetings”

City officials should be aware that some now argue that H.B. 1927, the so-called “constitutional” or “permitless” carry bill that became law on September 1, 2021, no longer allows a city to prohibit licensed carry during an open meeting. The bill, known formally as the “Firearm Carry Act of 2021,” authorizes most Texans over 21 years of age to carry a handgun in a concealed manner or openly in a holster, without the requirement to first obtain a handgun license.

H.B. 1927 does not repeal licensed carry, and the argument heard by League staff relates to licensed handgun carry in the room where a body subject to the Open Meetings Act is taking place. For unlicensed carriers, this is an outright ban; for license holders only, the League maintains that this is an optional prohibition. An unlicensed carrier is prohibited from carrying a handgun into the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the Open Meetings Act, and if the entity provided notice as required by the Open Meetings Act. A license holder isn’t prohibited from carrying into a meeting described above, unless the entity provides notice that doing so is prohibited using a Penal Code 30.06 and/or 30.07 sign. Id. § 46.03(a)(14); 46.15(b)(6); 30.06; & 30.07.

Some now argue that the legislation allows license holders to carry into a local government’s meeting by right. In other words, they argue that the local government no longer has the option to provide notice that doing so is prohibited using a Penal Code 30.06 (concealed carry) and/or 30.07 (open carry) sign. That interpretation has not yet been tested through the attorney general’s investigatory process, a formal attorney general opinion, or in court.

For a full description of the new law, including a discussion of local government facilities where carrying of a handgun is authorized or prohibited, city officials can access the [Cities and Firearms](#) paper on the TML website, along with the [cheat sheet version](#) of the larger paper.

ERCOT Requests Order from PUC for Winter Storm Financing

The Electric Reliability Council of Texas (ERCOT) is requesting an [order](#) from the Public Utility Commission (PUC) under H.B. 4492 for financing to address extraordinary costs incurred by ERCOT and market participants because of Winter Storm Uri. The League [previously reported](#) on H.B. 4492.

There is another proceeding before the PUC for entities to opt out of the financing order [here](#). Entities interested in participating in the proceedings should speak with their city attorney to determine the best way to proceed.

TCEQ Sends Letter to Water Utilities for Preparedness Plan

If your city has a municipally owned water utility (MOU), the MOU probably received a letter from the Texas Commission on Environmental Quality (TCEQ) informing the MOU it must adopt an emergency preparedness plan (EPP) required by S.B. 3. The League [previously reported](#) on S.B. 3.

S.B. 3 codified section 13.1394 of the Texas Water Code. It requires all water systems located outside of Harris and Fort Bend Counties with residential customers or that provide overnight accommodations at their facility to provide water service with a minimum of 20 psi during an extended power outage lasting 24 hours or more.

TCEQ has created an [Emergency Preparedness Plan Homepage](#) that includes [a template](#) for MOUs to use in developing their EPPs. MOUs have fourteen options in the form to ensure compliance with the requirements of section 13.1394. An MOU must submit its EPP to TCEQ for review by **March 1, 2022** and implement the plan by **July 1, 2022**.

An MOU can apply for an extension of the deadlines and/or a waiver of the EPP requirement. An MOU seeking a waiver of the EPP requirement should review the [Emergency Preparedness Plan Homepage](#) as well as [this TCEQ guidance](#) on the waiver. Requesting a waiver will not extend the deadline to submit an EPP.

Post-Session Update: Public Works Contracts

[H.B. 692](#) became effective June 15, 2021. The bill addresses retainage used in contracts for public works projects. “Retainage” is defined to mean the part of a public works contract payment

withheld by a city to secure performance of the contract. The bill limits the amount of retainage for certain public works projects and governs when retainage may be withheld and how it must be handled in case of a dispute. A more detailed summary of the bill is available [here](#). The League's [Procurement Made Easy](#) publication will soon be updated to reflect this and other purchasing bills.

Texas Joins \$21 Billion Opioid Settlement

Attorney General Ken Paxton recently [announced](#) that Texas joined the \$21 billion distributor opioid settlement. Texas, along with a broad coalition of states and subdivisions, reached final agreements with four companies to resolve legal claims for their role in the opioid crisis. One agreement is with opioid manufacturer Johnson & Johnson. The other is with three major pharmaceutical distributors: AmerisourceBergen, Cardinal Health, and McKesson. The settlement includes up to \$1.1 billion awarded to Texas and its political subdivisions, including cities.

Local governments need to join the settlement by **January 2, 2022**, in order to maximize the benefits of the settlement. Funding received under the settlement will be used to support opioid abatement strategies. More information, including the steps necessary to formally join the settlement, can be found [here](#).

Bills on the Move

[2S.B.1 \(Hughes\)](#), relating to election integrity and security. Sent to Governor.

[2S.B. 8 \(Bettencourt\)](#), relating to homestead exemptions. Sent to Governor.

City-Related Bills

Elections

[2H.B. 235 \(Burrows\)](#) – **Charter Amendments**: would require the ordinance ordering a charter election to provide for the election to be held on the earlier of the first authorized uniform election date prescribed by the Election Code, the date of the next municipal general election, or the date of the next presidential general election.

[2H.B. 241 \(Klick\)](#) – **Voting Systems**: would, among other things, prohibit a voting system from being used in an election unless the voting system requires a person seeking to vote by personal appearance, before the person may access the ballot, to confirm that the person: (1) is a United States citizen; (2) is a resident of the county in which the person seeks to vote; (3) has not been determined by a final judgment of a court exercising probate jurisdiction to be partially or totally mentally incapacitated; and (4) has not been finally convicted of a felony, or, if so convicted, has: (a) fully discharged the person's sentence, including any term of incarceration, parole, or

supervision, or completed a period of probation ordered by any court; or (b) been pardoned or otherwise released from the resulting disability to vote.

Personnel

2H.B. 243 (Cason) – **Workers’ Compensation:** would provide that an employee who suffers an injury caused by an adverse reaction to a COVID-19 vaccine resulting in disability or death is presumed to have suffered the injury during the course and scope of employment if the employee was required to receive the vaccine as a condition of employment. (Companion is **2S.B. 96** by Hall.)

2S.B. 96 (Hall) – **Workers’ Compensation:** would provide that an employee who suffers an injury caused by an adverse reaction to a COVID-19 vaccine resulting in disability or death is presumed to have suffered the injury during the course and scope of employment if the employee was required to receive the vaccine as a condition of employment. (Companion is **2H.B. 243** by Cason.)

Utilities and Environment

2H.B. 228 (Rosenthal) – **Electricity Supply Chain:** would, among other things, require: (1) the Railroad Commission to adopt rules to require an operator of certain gas supply chain facilities to provide to the RRC: (a) a summary report of a criticality analysis of the facility; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the operator has implemented the plan described by (1)(b) over a reasonable period, in a form satisfactory to the RRC, which may be in the form of inspections or documents; (2) the Public Utility Commission adopt rules to require a provider of electric generation service to provide to the PUC: (a) a summary report of a criticality analysis of the provider’s generation assets; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the provider has implemented the plan described by (2)(b) over a reasonable period, in a form satisfactory to the PUC, which may be in the form of inspections or documents; (3) the Public Utility Commission adopt rules to require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to provide to the PUC: (a) a summary report of a criticality analysis of the cooperative’s or utility’s facilities; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the cooperative or utility has implemented the plan described by (3)(b) over a reasonable period, in a form satisfactory to the PUC, which may be in the form of inspections or documents; and (4) the RRC to adopt rules to require an operator of certain gas pipeline facilities to provide to the RRC: (a) a summary report of a criticality analysis of the facility; (b) a plan to mitigate risk factors identified in the criticality analysis; and (c) proof that the operator has implemented the plan described by (4)(b) over a reasonable period, in a form satisfactory to the RRC, which may be in the form of inspections or documents.

2H.B. 230 (Rosenthal) – **Electricity:** would provide that a transmission and distribution utility, municipally owned utility, or electric cooperative that transmits or distributes power purchased at wholesale in the ERCOT power region may construct, own, and operate facilities as necessary to:

(1) access transmission service from outside of the ERCOT power region; and (2) purchase power at wholesale from outside of the ERCOT power region.

COVID-19 Update (No. 201)

All pandemic-related updates continue to be found in the [Legislative Update Newsletter](#).

Mask Mandate Update: Legal Battle Continues

Please see the last several [COVID-19 Updates](#) for a more complete background on the various cases filed by cities and school districts related to mask mandates. While there has been judicial action by the Texas Supreme Court, including a decision to [stay a temporary injunction](#) issued by a Bexar County District Court, some movement has shifted to the Texas Legislature.

Recall that the Texas Legislature is in the midst of its second special session of the year, which was [called by Governor Abbott on August 7th](#). Procedurally, the legislature can only consider bills which relate to the governor's call. Last week, [Governor Abbott added an additional item](#) for possible consideration by the legislature, which allows the legislature to consider whether any state or local governmental entity can mandate a COVID-19 vaccine. The initial call contained some room for consideration of mask mandates in schools, and a couple school-specific bills were filed. [H.B. 141](#) and [H.B. 164](#) are still pending in committee and may never reach the floor. Bills have also been filed to both [mandate](#) and [prohibit the mandating of](#) COVID-19 vaccines for students. Again, these bills are school-specific, but any legislative movement on the COVID-19 front is worth watching.

Additionally, some cities and city officials have received letters from local county or district attorneys discussing or threatening criminal prosecution for violation of Governor Abbott's executive orders. Please consult your local attorney for guidance and assistance related to potential criminal liability analysis.

Open Meetings Act Reminder

In March 2020, as Texans worked to mitigate the spread of COVID-19, Governor Abbott's office granted the attorney general's request to suspend certain open-meeting statutes in an effort to reduce in-person meetings that assemble large groups of people. [These suspensions ended at 12:01 a.m. on September 1, 2021](#), and all provisions of the Open Meetings Act are, once again, effective. Therefore, all Texas governmental bodies subject to the Open Meetings Act must conduct their meetings in full compliance with the Open Meetings Act as written in state law.

In case you need a rules refresher, TML maintains a webpage of OMA-related information that can be found [here](#). Additionally, the Texas Attorney General has an [Open Meetings Act training page](#), which has a useful video overview of Texas open meetings requirements.

American Rescue Plan Act Funds

The state of Texas received the first tranche of ARPA funds from the U.S. Treasury, and TML is hearing from cities that are beginning to receive the first half of their allotted ARPA/CLFRF funds.

Keep in mind that “non-entitlement units of local government” (NEUs are generally cities under 50,000 population) must register with the [Texas Division of Emergency Management](#) (“TDEM”) to receive ARPA funds. TDEM maintains its [Coronavirus Local Fiscal Recovery Fund FAQ](#) which includes a link to the [CLFRF Timeline Check-in document](#) and step-by-step instructions on registering your city with the [TDEM Grant Management System](#). Cities serving a population over 50,000 need to [apply for funding directly to the U.S. Treasury](#). [Looking at the spreadsheet](#), it appears that 51 cities have not applied for the funds. If your city has not yet registered but wants to participate in the ARPA funding opportunities, register now. TDEM has also [updated its CLFRF page](#) with allocation information, spreadsheets and maps that could be useful.

ARPA FAQs

The U.S. Treasury Department’s Coronavirus State and Local Fiscal Recovery Funds FAQ contains a number of questions and answers related to eligibility for recovery funds and eligible uses of recovery funds. The entire FAQ can be accessed [here](#).

The National League of Cities also maintains an ARPA-related FAQ which can be found [here](#).

Reminder: TML Coronavirus materials are archived by date [here](#) and by subject [here](#).

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The logo for the Texas Municipal League, featuring a green square with a white star in the center. The words "Texas", "Municipal", and "League" are stacked vertically in white text within the square.

Legislative UPDATE

July 30, 2021
Number 29

Stalemate Continues at Capitol

The Texas Legislature remains in a standstill after a majority of Texas House democrats left the state for Washington, D.C. in an effort to break quorum over voting legislation. There have been reports that some democrats have returned to Austin; however, their presence is not enough for a quorum in the House. Under House rules, no business can be conducted during a lack of quorum except to compel the attendance of absence members. The House democrats have stated they will not return until after the first called special session ends on August 6.

The Senate has passed most items included on the governor's call, but none can be considered in the House due to the lack of quorum.

Broadband Legal Update: FCC and Federal and State Court Proceedings

The League's last general update on the status of various broadband actions affecting cities was in March of this year. The switch in party control at the federal level typically leads to FCC

appointees who tend to push back at industry attempts to preempt municipal right-of-way and other authority related to cellular and broadband deployment.

That seems to be happening now after the President's appointment of a new FCC chairwoman early in 2021. However, federal courts have consistently ruled against cities base on appeals of previously-adopted FCC orders in most of the following proceedings:

- **Federal Small Cell Order Lawsuit:** Early in 2019, the FCC issued its “Declaratory Ruling and Third Report and Order” relating to state and local management of small cell wireless infrastructure deployment. It preempts cities in many areas, but the most significant provisions are: (1) “shot clocks” for small cell wireless facility siting review; (2) limits on recurring fees for small cells in the rights-of-way, such as rights-of-way access fees, to a “reasonable approximation” of the city’s “objectively reasonable costs” for maintaining the rights-of-way or a structure within the rights-of-way; and (3) limits allowable local aesthetic requirements, including minimum spacing requirements.

Shortly after the order became effective, a nationwide coalition of cities and state leagues, including TML, filed a lawsuit to overturn it. In 2020, the U.S. Court of Appeals for the Tenth Circuit denied the coalition’s motion to postpone implementation of the order while the lawsuit advances.

After the case was transferred for procedural reasons, a three-judge panel of the Ninth Circuit Court of Appeals issued its opinion in *City of Portland v. the United States of America/Federal Communications Commission*. The opinion was a mixed bag for cities, with most issues decided in favor of the cellular industry. The most important issue involved the cap on right-of-way rental (a.k.a., “franchise”) fees for small cell deployment. The panel upheld the provision limiting a city’s right-of-way fees to “an amount needed to recover administrative costs.” After several intermediate steps, the coalition appealed the federal order to the U.S. Supreme Court on March 22, 2021. On June 28, the Court rejected the appeal, making the appeals court decision final.

- **FCC Cable In-Kind Order and Lawsuit:** In 2018, the FCC released a “Second Further Notice of Proposed Rulemaking” that will allow cable companies to deduct the fair market value of a wide range of franchise obligations, including public, educational, and governmental (PEG) channel capacity and other PEG-related franchise requirements, from their existing franchise fee payments. If the FCC’s proposed new rules are adopted, cities that operate PEG channels will see reductions in franchise fee payments from cable operators.

The League is participating in another coalition of cities that filed comments on the proposal, filed a motion for stay at the FCC, and filed a lawsuit in September of 2019 in federal court to halt the implementation of the rules.

Following the President’s appointment of the new chair, the FCC asked the Sixth Circuit court to delay oral argument in the case, which is scheduled for April 15, 2021, to allow further review of the issue. The court rejected the request on March 19. On May 26, the

Sixth Circuit issued its opinion in *City of Eugene et al. v. Federal Communications Commission*. While the court upheld the FCC's order concluding that a provider may deduct in-kind obligations from its franchise fee payment, the court reversed the way in which that amount is calculated in a way that could greatly lessen the financial impact on some cities.

- **FCC Collocation Petitions for Declaratory Ruling:** In September 2019, the Wireless Industry Association (WIA) and the Communications Technology Industry Association (CTIA) filed petitions with the FCC to further limit local oversight of wireless towers and pole attachments.

The FCC requested comments on the proposals and whether it should expand the scope of an existing federal law (Section 6409 of the Middle-Class Tax Relief and Job Creation Act of 2012) that already preempts certain municipal regulations relating to wireless towers. If enacted, the proposals from WIA and CTIA would substantially limit the authority of local governments to manage large wireless towers in their communities, as well as further limiting the control that pole owners, such as municipal utilities, have over pole attachments.

TML joined a coalition consisting of the National League of Cities, the Texas Coalition of Cities for Utilities Issues, and several cities to file comments in opposition to the proposal. The litigation was moving forward in the Ninth Circuit Court of Appeals, but the FCC also requested an abeyance in this case to allow its staff more time to study the issue. In this case, the court granted that request and stayed all proceedings until July 2021. However, the FCC has asked for another 120 days, and the court will likely grant that request.

- **State Court Franchise Fee Lawsuit:** This lawsuit claims that small cell rental fees, and the elimination of video franchise fees or telephone access line fees, violates the Texas Constitution's "donations" provisions.

In 2017, the City of McAllen and a coalition of around 40 cities sued the state to challenge the unconstitutionally low right-of-way rental fees in [S.B. 1004](#). That bill, passed during the 2017 regular session, requires a city to allow access for cellular antennae and related equipment ("small cell nodes") in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, street signs, and other poles.

The bill gives cities limited authority over placement, and it caps a city's right-of-way rental fee at around \$250 per small cell node. The artificially low price per node is a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. The bill does precisely what the Texas Constitution prohibits: It is an action by the legislature forcing cities to give away their valuable assets to a private company. That lawsuit was recently amended to add a claim based on S.B. 1152, the "franchise fee elimination" bill passed in 2019. That bill, [S.B. 1152](#) authorizes a cable or phone company to stop paying the lesser of its state cable franchise or telephone access line fees, whichever is less for the company statewide. Because it also requires an

unconstitutional gift of use of cities' rights of way, the pleadings in the small cell lawsuit were amended to include that bill.

These bills, if left unchecked, could lead the way to the complete elimination of all franchise fees in future sessions. That is why the lawsuit to prove that they are unconstitutional, which is still pending in state district court, is so important to Texas cities. The coalition filed a motion for summary judgment on June 2. The City of Houston, which is not a coalition member, but which has intervened in the lawsuit, filed a similar motion.

League staff will continue to participate in these proceedings and report on future activity.

Post-Session Update: Response to Winter Storm Uri

After Winter Storm Uri in mid-February, the Texas Legislature shifted some of its focus to respond to the electricity and water issues Texans experienced during the storm. In an effort to address those issues, it passed a number of bills, including S.B. 2, S.B. 3, and H.B. 4492. All three of these bills are effective immediately.

S.B. 2 – Public Utility Commission and ERCOT Reform

[S.B. 2](#) requires the presiding officer of the Public Utility Commission (PUC) and all members of the Electric Reliability Council of Texas (ERCOT) board to be residents of Texas. It replaces the ERCOT board with political appointees and involves the PUC more closely in ERCOT's regulations. It also changes the members of the ERCOT board from mostly electric industry members to members with executive-level experience in areas such as finance, business, engineering, trading, risk management, law, or electric market design.

S.B. 3 – Utility Preparedness

[S.B. 3](#) is the omnibus utility weatherization bill for certain electric, gas, and water utilities. Most importantly, it requires electric generation facilities, electric transmission and distribution facilities, and certain natural gas pipeline facilities and wells to implement measures to operate during a weather emergency. The bill also: (1) creates an alert system to be activated when the power supply in Texas may be inadequate to meet demand; (2) requires the Railroad Commission (RRC) and the PUC to designate certain natural gas facilities as critical infrastructure during energy emergencies so the electricity generators can still get fuel to produce power; and (3) establishes the Texas Energy Reliability Council to: (a) ensure that the energy and electric industries in Texas meet high priority human needs and address critical infrastructure concerns; and (b) enhance coordination and communication in the energy and electric industries in Texas.

Except in Harris County or in a county with a population of 550,000 or more adjacent to Harris County, the bill requires municipally owned water utilities to: (1) ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by the Texas Commission on Environmental Quality (TCEQ), as soon as safe and practicable following the occurrence of a natural disaster;

and (2) by March 1, 2022, adopt and submit to TCEQ for its approval: (a) an emergency preparedness plan that demonstrates the utility's ability to provide the emergency operations described by (2); and (b) a timeline for implementing the plan. Cities with a municipally owned water utility should take a look at the bill to ensure they comply with the requirements.

Even though the bill has an immediate effective date, it requires TCEQ, the RRC, and the PUC to adopt rules to implement most of its provisions. These agencies will need time to adopt their rules, so many of the provisions of the bill won't actually be in operation until sometime in the future.

H.B. 4492 – Financing for the Electric Market

[H.B. 4492](#) provides two financing mechanisms to address extraordinary costs incurred by ERCOT and market participants because of Winter Storm Uri. The first mechanism utilizes an \$800 million dollar loan from the state's rainy day fund to address the non-payments of market participants. This allows ERCOT to "clear the market" by using these funds to pay the market participants that ERCOT owes. The loan to ERCOT will be paid by the assessment of a charge to remaining market participants which will eventually be paid by their customers over a period of time not to exceed 30 years. The second financing mechanism addresses the ancillary charges that were assessed to certain market participants during the storm. It allows market participants who choose to participate to utilize securitization financing to spread their cost over a period of time not to exceed 30 years in order to lessen the immediate impact on customers. This mechanism is also backed by a customer charge and it includes a provision that benefits received by a provider will be passed along to any customer who has paid for the assessment. This fund is capped at \$2.1 billion.

Post-Session Update: Statewide Broadband Office

[H.B. 5](#) was signed by the governor on June 15, 2021 and is effective immediately. This bill establishes a State Broadband Development Office (SBDO) within the Comptroller's office and requires the SBDO, in developing a statewide broadband plan, to consult with political subdivisions to explore state and regional approaches to broadband deployment.

The bill would also:

1. require the governor's broadband development council to: (a) research and monitor the progress of: (i) deployment of broadband statewide; (ii) purchase of broadband by residential and commercial customers; and (iii) patterns and discrepancies in access to broadband; and (b) study industry and technology trends in broadband and the detrimental impact of pornographic or other obscene materials on residents of this state and the feasibility of limiting access to those materials;
2. for purposes of the broadband development office, defines "broadband service" as internet service with the capability of providing: (a) a download speed of 25 megabits per second or faster; and (b) an upload speed of three megabits per second or faster;
3. authorizes the comptroller by rule to adjust the threshold speeds for broadband services defined in Number 3, above, if the Federal Communications Commission adopts upload or download threshold speeds for advanced telecommunications capability that are different from those listed in Number 2, above;

4. requires the broadband development office to: (a) serve as a resource for information regarding broadband service and digital connectivity in the state; (b) engage in outreach to communities regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office; and (c) serve as an information clearinghouse in relation to federal programs providing assistance to local entities with respect to broadband service and addressing barriers to digital connectivity;
5. requires the broadband development office to create, update annually, and publish on the comptroller's website a map classifying each designated area in the state as: (a) an eligible area, if fewer than 80 percent of the addresses in the designated area have access to broadband service and the federal government has not awarded funding under a competitive process to support the deployment of broadband service in the designated area; or (b) an ineligible area, if 80 percent or more of the addresses in the designated area have access to broadband service or the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area;
6. requires the map described in Number 5, above, to display: (a) the number of broadband service providers that serve each designated area; (b) for each eligible area, an indication of whether the area has access to Internet service that is not broadband service, regardless of the technology used to provide the service; and (c) each public school in the state and an indication of whether the area has access to broadband service;
7. provides that if information available from the Federal Communications Commission is not sufficient for the broadband development office to create or update the map, the office may request the necessary information from a political subdivision or broadband service provider, and the subdivision or provider may report the information to the office;
8. establishes a petition process, under which a political subdivision or broadband service provider may petition the broadband development office to reclassify a designated area on the map as an eligible area or ineligible area;
9. requires the broadband development office to establish a program to award grants, low-interest loans, and other financial incentives to applicants for the purpose of expanding access to, and adoption of, broadband service in designated areas determined to be eligible areas;
10. requires the broadband development office to establish and publish eligibility criteria for award recipients under Number 9, above;
11. provides that the broadband development office may not award a grant, loan, or other financial incentive to a noncommercial provider of broadband service for an eligible area if a commercial provider of broadband service has submitted an application for the eligible area;
12. provides that an award granted under the broadband development program does not affect distributions received by a broadband provider from the state universal service fund;
13. requires the broadband development office to prepare, update, and publish on the comptroller's Internet website a state broadband plan that establishes long-term goals for greater access to and adoption, affordability, and use of broadband service in Texas;
14. establishes the broadband development account in the state's general revenue fund consisting of: (a) appropriations of money to the account by the legislature; (b) gifts, donations, and grants, including federal grants; and (c) interest earned on the investment of the money in the account; and

15. establishes the broadband development office board of advisors to provide guidance to the broadband development office regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office.

The SBDO is required to establish and annually update a map that designates the eligibility of each census block. The bill requires the SBDO to develop a state broadband plan by **September 1, 2022**, and the map will need to be published by the SBDO on its website by **January 1, 2023**.

Post-Session Update: Middle Mile Broadband Service

[H.B. 3853](#), signed by the governor on June 15, 2021 and effective immediately, allows an electric utility to provide broadband facilities for Internet Service Providers to use and provide broadband services to end-use customers. This process would require an electric utility that plans to deploy middle mile broadband to submit a detailed written plan to the Public Utility Commission (PUC). The PUC would be required to approve, modify, or reject a plan no later than 181 days from the date the plan is submitted.

This bill also: (1) authorizes certain electric utilities, not including a municipally owned utility, to own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service in unserved and underserved areas; (2) provides that if a city is already collecting a charge or fee from the electric utility for the use of the public rights-of-way for the delivery of electricity to retail electric customers, the city may not require a franchise, an amendment to a franchise, or an additional charge, fee, or tax from the electric utility for the use of the public rights-of-way for middle mile broadband service; and (3) provides that if a city or local government is not already collecting a charge or fee from the electric utility for the use of the public rights-of-way, the city may impose a charge on the provision of middle mile broadband service, but the charge may not be greater than the lowest charge that the city or local government imposes on other providers of broadband service for use of the public rights-of-way in its jurisdiction.

City-Related Bills

Property Tax

[1H.B. 300 \(Middleton\)](#) – **Homestead Exemption**: would increase the maximum percentage of a local option homestead exemption from 20 percent of the appraised value of an individual's residence homestead to 100 percent of an individual's residence homestead. (See **1H.J.R. 28**, below.)

[1H.J.R. 28 \(Middleton\)](#) – **Property Tax Exemption**: would amend the Texas Constitution to authorize the governing body of a political subdivision to exempt up to 100 percent of the market value of a residence homestead. (See **1H.B. 300**, above.)

Community and Economic Development

1H.B. 297 (Oliverson) – **Land Development Applications:** would provide that, unless specifically authorized by state law, a municipal planning commission or the governing body of the municipality may not: (1) require a person to fulfill any prerequisites or conditions or obtain any approvals before the person files a copy of a plan or plat with the municipal planning commission or governing body; (2) delay the starting date for calculating any applicable timeframe to approve or disapprove a plan or plat by not considering the date the plan or plat was filed as the starting date; or (3) refuse to accept, acknowledge, process, or act on a filed copy of the plan or plat. (Companion bill is **1S.B. 75** by Hughes.)

Elections

1.H.B. 295 (Noble) – **Cancelled Ballots by Mail:** would, among other things: (1) provide that a person: (a) may cancel an application to vote by mail by returning the person's ballot and then voting by personal appearance; or (b) whose ballot is cancelled in any other manner may cast a provisional ballot; (2) require the early voting clerk and presiding election judge to keep a log of returned ballots and provide a copy of the list to the early voting ballot board to ensure that the cancelled ballot is not counted in the election; and (3) require the election officer to electronically submit a record to the secretary of state of each application canceled in a primary, a runoff primary, a general election, or any special election ordered by the governor on the day the application is canceled.

1H.B. 299 (Noble) – **Early Voting by Mail:** would: (1) require that the following be signed using ink on paper: (a) an application for an early voting ballot to be voted by mail by the applicant; (b) certificate on the official carrier return envelope by the applicant; and (c) carrier envelope by a person, other than the voter, who assists a voter by: (i) depositing the carrier envelope in the mail with a common or contract carrier; or (ii) who obtains the carrier envelope for that purpose; and (2) provide that an electronic signature or photocopied signature is not permitted for any document referenced in (1).

1H.B. 301 (Noble) – **Ballot by Mail:** would require: (1) the early voting clerk to deliver to the early voting ballot board: (a) copies of the applications for ballots to be voted by mail for each ballot voted by mail received; and (b) copies of the voter's signature from the voter's application for voter registration; (2) before reviewing a carrier envelope certificate, the early voting ballot board to review each application for a ballot to be voted by mail that correlates with the carrier envelope to determine if the signature on the ballot application was executed by a person other than the voter, unless the application was signed by a witness; (3) the early voting clerk to make available for review signatures for each applicant for a ballot to be voted by mail from the previous six years; and (4) the early voting clerk to have software available to display all electronically available signatures together.

COVID-19 Update (No. 196)

All pandemic-related updates, including information about the American Rescue Plan's city-related provisions, will be in the [Legislative Update Newsletter](#) from now on.

- **Governor's Order GA-38 Related to Mask Mandates and Vaccine Passports:** On July 29, the governor issued [Executive Order GA-38](#), which basically restates previously-ordered limitations on local governments' and certain business owners' ability to require proof of COVID-19 vaccines, as well as restating previous limitations on local governments' ability to require face-coverings. The portions of this Order related to vaccines and "vaccine passports" mirror [Executive Order GA-35](#) from April, and the portions of this Order related to face coverings mirror [Executive Order GA-36](#) issued in May. Details are below:
 - **Mask Mandates:** Under this order, no governmental entity or governmental official may require any person to wear a face covering. No local governmental entity or official may limit business activities, or legal proceedings for COVID-19-related reasons. Any limitations imposed by a local government or official could be subject to a fine up to \$1,000. Exempt from this portion of the order are state-supported living centers, government-owned or operated hospitals, Texas Department of Criminal Justice facilities, Texas Juvenile Justice Department facilities, and county and municipal jails.
 - **COVID-19 Vaccines:** No governmental entity can compel any individual to receive a COVID-19 vaccine, and no political subdivision shall adopt any order, ordinance, policy, regulation, rule or similar measure that requires an individual to provide documentation regarding that individual's COVID-19 vaccination status as a condition to receiving any service or entering any place. Any public or private entity that is receiving or will receive public funds through any means, shall not require a consumer to provide documentation regarding their COVID-19 vaccination status as a condition of receiving any service or entering any place. Exempt from this portion of the order are nursing homes, state supported living centers, assisted living facilities, and long-term care facilities.

Additionally, this Order contains requirements for any entity conducting COVID-19 tests to report results to the Department of State Health Services and for all hospitals to report their available bed capacity to DSHS as well.

League attorneys interpret the order (like the previous orders) to prohibit a city from requiring: (1) citizens to wear masks anywhere, including on city property; and (2) its employees to wear masks or be vaccinated, unless they fall under a stated exception. As always, each city should consult local legal counsel on these issues.

- **American Rescue Plan Act Funds DEADLINE APPROACHING:** August 2, 2021 is a state deadline for "non-entitlement units of local government" (NEUs are generally cities under 50,000 population) to register with the Texas Division Emergency Management to receive ARPA funds. TDEM updated its [Coronavirus Local Fiscal Recovery Fund FAQ](#).

NEUs should pay special attention to *Question 13: How does my NEU receive funding?* The answer includes a link to the [CLFRF Timeline Check-in document](#) with step-by-step instructions on registering your city with the [TDEM Grant Management System](#), which is a critical step to receiving funds.

Registration with the TDEM GMS and completion of the TDEM Timeline steps must be completed by August 2, 2021 to receive this funding.

- **CDC Updated Health Precautions:** Given the sharp rise in COVID-19 cases due to the Delta-variant of the virus, on July 27, 2021, the Centers for Disease Control and Prevention (CDC) updated their [guidance related to health precautions for fully-vaccinated individuals](#). To reduce the risk of being infected with the Delta variant and possibly spreading it to others, the CDC recommends wearing a mask indoors in public if the individual is in an area of substantial or high transmission, even if the person is fully-vaccinated.

The [CDC recommendations for unvaccinated individuals](#) remains substantially unchanged, including recommendations to get vaccinated, maintain physical distance from others, wear masks, and avoid crowds.

- **Counties Across Texas Seeing Rise in COVID-19 Threat Levels:** Over the last few weeks, the counties of [Harris](#), [Dallas](#), [Bexar](#), [Tarrant](#), [Travis](#), [El Paso](#), [Nueces](#), [Williamson](#), and [many more](#) have all moved back into “very high,” “high,” “extreme,” or “significant” COVID-19 threat levels.
- **Emergency Orders Issued by Texas Supreme Court:** On July 19, 2021, the Supreme Court of Texas issued Emergency Order 39 and Emergency Order 40.

[Emergency Order 39](#) renews the [Texas Eviction Diversion Program](#) for tenants and landlords under a statewide rental assistance program intended to avoid evictions for tenants behind on rent. The order allows an eviction proceeding to be abated by agreement for 60 days, requires courts (including county courts hearing trials de novo on appeal from a justice court) to provide tenants with information about the program, and makes court records for participants confidential while eviction cases are delayed. The order also outlines procedure for reinstating evictions. Without such reinstatement, eviction cases will be subject to dismissal.

[Emergency Order 40](#) permits courts to modify or suspend deadlines and procedures through October 1, 2021; permits courts to continue to use reasonable efforts to hold proceedings remotely; permits all courts to hold in-person proceedings, including jury trials; encourages the adoption of minimum standard health protocols and an in-person schedule; terminates locally adopted plans and minimum standard health protocols unless readopted by local officials on or before September 1, 2021; and permits courts to hold virtual jury proceedings in certain cases with technology provided to certain prospective jurors.

- **Open Meetings Act Reminder:** In March 2020, as Texans worked to mitigate the spread of COVID-19, Governor Abbott’s office granted the attorney general’s request to suspend certain open-meeting statutes. The temporary suspension allows, among other things, for telephonic or videoconference meetings of governmental bodies that are accessible to the public in an effort to reduce in-person meetings that assemble large groups of people.

On June 30, 2021, [the governor’s office approved a request by the attorney general to lift those suspensions](#). The suspensions will lift at 12:01 a.m. on September 1, 2021. Thus, as of September 1, 2021, all provisions of the Open Meetings Act will be effective and all Texas governmental bodies subject to the Open Meetings Act must conduct their meetings in full compliance with the Open Meetings Act as written in state law.

This could change, given the rising numbers of COVID-19 cases across the state, but as of now, plan for the September 1 expiration.

- **No ARPA Funds Received by Texas:** On July 26, 2021, the U.S. Treasury updated its “Status of Payments to States for Distribution to Non-Entitlement Units of Local Government” chart reflecting payments made to states under the American Rescue Plan Act for distribution to non-entitlement units of local government. A non-entitlement unit of local government is typically a city or town which serves fewer than 50,000 people, and their portions of the ARPA funds are sent to the state and should be distributed by the state to the individual cities within 30 days of receipt. Texas remains one of only 7 states to have received no funding through the ARPA. Whether the Governor has made the required application to the Treasury Department is unclear. The complete chart, updated weekly, can be found [here](#).
- **ARPA FAQs:** The U.S. Treasury Department’s Coronavirus State and Local Fiscal Recovery Funds FAQ contains a number of questions and answers related to eligibility for recovery funds and eligible uses of recovery funds. The entire FAQ can be accessed [here](#).

The National League of Cities also maintains an ARPA-related FAQ which can be found [here](#).

Reminder: TML Coronavirus materials are archived by date [here](#) and by subject [here](#).

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Legislative UPDATE

Subject Index for City-Related Bill Summaries

Property Tax	3
Public Safety	8
Sales Tax.....	24
Community and Economic Development	25
Elections	34
Emergency Management	37
Municipal Courts	40
Open Government.....	42
Other Finance and Administration	43
Personnel.....	58
Purchasing.....	62
Transportation.....	66
Utilities and Environment	68

June 11, 2021
Number 22

Eighty-Seventh Legislature Adjourns: **Cities Retain Their Voice**

A legislative session that got its start during two major disasters—the Coronavirus Pandemic and Winter Storm Uri—ended just as unusually, with House members leaving the building on the penultimate day to break a quorum on a bill they disliked.

In between, important legislation was passed, much of it beneficial for Texas cities. One bill that passed, H.B. 5, will speed the expansion of broadband to underserved communities by creating a new Broadband Development Office to be overseen by the comptroller. Assisting the expansion of broadband—as H.B. 5 does—was a TML priority.

Another TML priority was supporting legislation that hardens the electric grid in the wake of Uri. Several grid-related bills were passed, including S.B. 3, to try to prevent future electric disasters.

Good annexation legislation passed, as well. S.B. 374, corrects unintended consequences related to annexing roads that was caused by legislation passed in 2017 and 2019.

Many bills that would have harmed city authority either failed to pass or passed in negotiated form that cities can live with, including the following:

- A community censorship bill that would have prevented cities from hiring advocates or joining associations that advocate for their issues at the Capitol.
- A debt bill that, in its early form, would have prevented the issuance of most certificates of obligation for infrastructure projects by requiring they be paid from the maintenance and operations side of the property tax rate.
- A bill that would have harmfully expanded the application of calendar “shot clocks” in the building permitting and land development fields.
- A “super preemption” bill that would have prevented many city regulations from applying to any state license holder.
- Legislation requiring paid sick and injury leave for first responders that was duplicative of already existing workers compensation laws.
- A bill that would have prevented cities from regulating backyard agricultural practices.

There were many more harmful bills that ended up on the “cutting room floor”, as it were, or were negotiated by the League and its cities into an acceptable format.

Not all restrictive bills were defeated, however, and all of the ones that passed will be summarized in detail later in this edition of the Update. Included among those that passed are a bill preventing police “defunding” in certain large cities, legislation waiving governmental immunity for development agreements, and a bill limiting the scope of the disaster exception under last session’s revenue cap bill.

On balance, it was a positive session for Texas cities as they emerge from two unprecedented disasters. City leaders had a “seat at the table” on important legislation and constructive communication between city officials and legislators was critical in fighting back some of the most problematic legislation. There will be a special session later in 2021 to address legislative redistricting, in addition to other unfinished business from the regular session, during which any of the harmful ideas mentioned above could be revived. We will be ready.

City-Related Bills

The following sections contain summaries of the 249 city-related bills passed by the Eighty-Seventh Legislature. The governor has until June 20 to sign bills, veto them, or let them become law without his signature. The effective date of each bill is noted in a parenthetical following each bill described below. Some of the bills will become effective as soon as they are signed (e.g., “effective immediately”), others (unless vetoed) will become effective on September 1, and a few have special effective dates.

Future issues of the *TML Legislative Update* or *Texas Town & City* magazine will provide additional details on some of the bills described here, may include summaries of “straggler” bills that for various reasons were not summarized at the time of printing, and will provide other updates as appropriate.

The link for each bill leads to its “landing page” on the Texas Legislature Online website. To read the final version, click on the “text” tab and click on the “enrolled” version on that screen.

Property Tax

H.B. 988 (Shine/Hancock) – **Property Tax Appraisal**: this bill, among other things: (1) provides that a member of the governing body, officer, or employee of a taxing unit commits a Class A misdemeanor if the person directly or indirectly communicates with the chief appraiser or another employee of the appraisal district in which the taxing unit participates for the purpose of influencing the value at which property in the district is appraised, unless the person owns or leases the property that is the subject of the communication; (2) authorizes the governing body of a taxing unit, any part of which is located in an area designated a disaster area on or after January 1, 2020, to take official action to extend the date by which goods-in-transit must be transported to another location in the state or outside the state to a date not later than the 270th day after the date the person acquired the property in or imported the property into the state for the purposes of the goods-in-transit property tax exemption; and (3) provides that the authority described in (2), above, expires on December 31, 2025. (Summarized provisions are effective January 1, 2022, certain other provisions in the bill are effective immediately.)

H.B. 1090 (Bailes/Nichols) – **Property Tax Appraisal**: provides that, if the chief appraiser discovers that real property was omitted from an appraisal roll in one of the three preceding tax years, the chief appraiser shall appraise the property as of January 1 of each tax year that it was omitted and enter the property and its appraised value in the appraisal records. (Effective September 1, 2021.)

H.B. 1197 (Metcalf/Campbell) – **Property Tax Exemption**: extends from six years to ten years the amount of time that a tract of land that is contiguous to the tract of land on which a religious organization’s place of regular religious worship is located may be exempted from property taxes

when the religious organization is expanding or constructing a new place of religious worship. (Effective January 1, 2022.)

H.B. 1869 (Burrows/Bettencourt) – Debt Financing: modifies the definition of “debt” for purposes of the debt service property tax rate calculation to only include debt that meets one of the following requirements: (1) has been approved at an election; (2) includes self-supporting debt; (3) evidences a loan under a state or federal financial assistance program; (4) is issued for “designated infrastructure”, which means infrastructure, including a facility, equipment, rights-of-way, or land, for the following purposes: (a) streets, roads, highways, bridges, sidewalks, parks, landfills, parking structures, or airports; (b) telecommunications, wireless communications, information technology systems, applications, hardware, or software; (c) cybersecurity; (d) as part of any utility system, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, or flood control and drainage project; (e) police stations, fire stations, or other public safety facilities, jails, juvenile detention facilities, or judicial facilities, and any facilities that are physically attached to these facilities; (f) as part of any school district; or (g) as part of any hospital district that includes a teaching hospital; (5) is a refunding bond; (6) is issued in response to an emergency related to a hurricane or tropical storm; (7) is issued for renovating, improving, or equipping existing buildings or facilities; (8) is issued for vehicles or equipment; or (9) is issued for a tax increment reinvestment zone or a transportation reinvestment zone. (Effective September 1, 2021.)

H.B. 2429 (Meyer/Bettencourt) – Property Tax Rate Notice: this bill, for a city with a population of less than 30,000 that is not required to hold a tax rate election and for which the qualified voters may not petition to hold an election, establishes alternate provisions for notice of the property tax rate when the de minimis tax rate of the city exceeds the voter-approval tax rate. (Effective immediately.)

H.B. 2535 (Sanford/Perry) – Property Tax Appraisal: provides that, in determining the market value of real property, the chief appraiser shall analyze the effect on that value of, and exclude from that value the value of, any chicken coops or rabbit pens used for the noncommercial production of food for personal consumption. (Effective January 1, 2022.)

H.B. 2723 (Meyer/Bettencourt) – Tax Rate Notice: requires: (1) the Department of Information Resources to develop and maintain an easily accessible Internet website that lists each property tax database and includes a method to assist a property owner in identifying the appropriate property tax database for the owner’s property; and (2) certain existing property tax rate notices to contain a statement encouraging taxpayers to visit a website collecting property tax database information to read as follows: “Visit Texas.gov/PropertyTaxes to find a link to your local property tax database on which you can easily access information regarding your property taxes, including information about proposed tax rates and scheduled public hearings of each entity that taxes your property.” (Effective immediately, but changes made by the bill apply only to a notice required to be delivered for a property tax year beginning on or after January 1, 2021.)

H.B. 3610 (Gervin-Hawkins/Springer) – Property Tax Exemption: this bill, among other things: (1) exempts property owned by an open-enrollment charter school from property taxes; and (2) exempts the portion of real property that is leased to an independent school district, community

college district, or open-enrollment charter school from property taxes if the portion of the real property that is leased to the public school is: (a) used exclusively by the public school for the operation or administration of the school or the performance of other educational functions of the school; and (b) reasonably necessary for a purpose under (a) as found by the school's governing body. (Effective September 1, 2021.)

H.B. 3629 (Bonnen/Taylor) – **Property Tax Deferral**: this bill, among other things, provides that a taxing unit may not file suit to collect delinquent taxes on the residence homestead of an elderly or disabled person or disabled veteran, and the property may not be sold at a sale to foreclose the lien, until the 181st day after the date the collector for the taxing unit delivers a notice of delinquency of the taxes following the date the individual no longer owns and occupies the property as a residence homestead. (Effective September 1, 2021.)

H.B. 3833 (P. King/Hancock) – **Property Tax Appraisal**: this bill, among other things: (1) modifies the appraisal of certain nonexempt property used for low-income or moderate-income housing if the property in question is under construction or has not reached stabilized occupancy on January 1 of the tax year in which the property is appraised; (2) eliminates the requirement for a property owner to pay interest along with an additional tax imposed on certain agriculture land and timber land if a change in the use of the land occurs; and (3) provides that, if land appraised as recreational, park, scenic land, or public access airport property is diverted to another use, an additional tax is imposed on the land equal to the difference between the taxes imposed on the land for each of the previous three years and interest is eliminated. (Effective immediately.)

H.B. 3971 (Meyer/West) – **Appraisal of Property in Historic District**: provides that when determining the market value of residential real property located in an area that is zoned or otherwise designated as a historic district under city, state, or federal law, the chief appraiser shall consider the effect on the property's value of any restriction placed by the historic district on the property owner's ability to alter, improve, or repair the property. (Effective January 1, 2022.)

S.B. 63 (Nelson/Meyer) – **Appraisal Process**: makes several changes to the property tax appraisal process, including: (1) imposing term limits on appraisal district board of directors members for appraisal districts established in a county with a population of 120,000 or more; (2) prohibiting certain former employees of an appraisal district from later serving on an appraisal district board of directors; (3) prohibiting certain former members of the appraisal review board from serving as an employee of the appraisal district; (4) providing that a person is entitled to an exemption from property taxation of the appraised value of a solar or wind-powered energy device owned by the person that is installed or constructed on real property and is primarily for production and distribution of energy for on-site use, regardless of whether the person owns the real property on which the device is installed or constructed; (5) imposing a 90-day and 30-day time limit on various determinations that a chief appraiser can make on certain exemptions and other appraisal applications; and (6) limiting the ability of a chief appraiser to offer evidence at certain protest and appraisal hearings in support of modifying or denying an application. (Effective September 1, 2021.)

S.B. 611 (Campbell/Lopez) – **Property Tax Exemption**: this bill: (1) exempts from property taxes the residence homestead of the surviving spouse of a member of the armed services who is

fatally injured in the line of duty; (2) except as provided by (3), below, requires a chief appraiser to accept and approve or deny an application for a residence homestead exemption after the deadline for filing it has passed if it is filed not later than two years after the delinquency date for taxes on the homestead; and (3) requires a chief appraiser to accept and approve or deny an application for a homestead exemption for a partially or totally disabled veteran after the deadline for filing it has passed if it is filed not later than five years after the delinquency date for the taxes on the property. (Effective January 1, 2022, but only if **S.J.R. 35** is approved at the election on November 2, 2021.)

S.B. 742 (Birdwell/Anderson) – **Installment Payments in Disaster or Emergency Area:** provides that, for certain property owned or leased by a business entity in a disaster or emergency area that has not been damaged as a result of a disaster or emergency, the governing body of a taxing unit may authorize a person to pay the taxing unit’s property taxes in four equal installments without penalty or interest if the first installment is paid before the delinquency date and is accompanied by notice to the taxing unit that the person will pay the remaining taxes in three equal installments. (Effective immediately.)

S.B. 794 (Campbell/Meyer) – **Disabled Veteran Property Tax Exemption:** modifies the eligibility for a homestead property tax exemption for a totally disabled veteran to a disabled veteran who “has been awarded by” the United States Department of Veterans Affairs 100 percent disability compensation, instead of a disabled veteran who “receives from” the United States Department of Veterans Affairs 100 percent disability compensation. (Effective January 1, 2022.)

S.B. 1257 (Birdwell/Murphy) – **Property Tax Abatement:** requires a chief appraiser to include in a tax abatement report submitted to the comptroller a list of the kind, number, and location of all proposed improvements of the property in connection with each tax abatement agreement within the district in the year following the year in which or an agreement is executed. (Effective September 1, 2021.)

S.B. 1421 (Bettencourt/Thierry) – **Property Tax Appraisal:** this bill, among other things, authorizes the appraisal review board, on the motion of the chief appraiser or of a property owner, to direct by written order changes in the appraisal roll or related appraisal records under certain circumstances for the current tax year and for either of the two preceding tax years to correct an inaccuracy in the appraised value of the owner’s tangible personal property that is the result of an error or omission in a rendition statement or property report filed for the applicable tax year. (Effective September 1, 2021.)

S.B. 1427 (Bettencourt/Shine) – **Property Tax Exemption:** clarifies that the temporary property tax exemption for a portion of the appraised value of property damaged by a disaster only applies when there is physical damage to a property caused by a disaster. (Effective immediately.)

S.B. 1438 (Bettencourt/Meyer) – **Tax Rate Calculation in Disaster Area:** this bill, among other things:

1. repeals existing law relating to the calculation of a tax rate in a disaster area;

2. provides that the governing body of a taxing unit, other than a school district, may direct the designated officer or employee to calculate the voter-approval tax rate of the taxing unit in the manner provided for a special taxing unit (an eight percent voter-approval rate) if any part of the taxing unit is located in an area declared a disaster area during the current tax year by the governor or by the president of the United States and at least one person is granted a temporary property tax exemption for a portion of the appraised value of property damaged by a disaster;
3. requires the designated officer or employee to continue calculating the voter-approval tax rate in the manner provided by Number 2, above, until the earlier of: (a) the first tax year in which the total taxable value of property taxable by the taxing unit as shown on the appraisal roll for the taxing unit submitted by the assessor for the taxing unit to the governing body exceeds the total taxable value of property taxable by the taxing unit on January 1 of the tax year in which the disaster occurred; or (b) the third year after the tax year in which the disaster occurred;
4. provides that in the first tax year following the last tax year for which the designated officer or employee calculates the voter-approval tax rate under Number 2, above, the taxing unit's voter-approval tax rate is reduced by the taxing unit's emergency revenue rate;
5. provides that when increased expenditure of money by a taxing unit other than a school district is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, epidemic, or pandemic, that has impacted the taxing unit and the governor has declared any part of the area in which the taxing unit is located as a disaster area, an election is not required to approve a tax rate exceeding the voter-approval tax rate or de minimis tax rate, as applicable, for the year following the year in which the disaster occurs;
6. provides that, if a taxing unit adopts a tax rate under Number 5, above, the amount by which the rate exceeds the taxing unit's voter-approval tax rate for that tax year may not be considered when calculating the taxing unit's voter-approval tax rate for the tax year following the year in which the taxing unit adopts the rate;
7. requires a taxing unit that calculates the taxing unit's voter-approval tax rate under Number 2, above, or adopts a tax rate that exceeds the taxing unit's voter-approval tax rate for that tax year without holding an election under Number 5, above, to specify the disaster declaration that provides the basis for authorizing the taxing unit to calculate or adopt a tax rate under the applicable statute;
8. provides that a taxing unit that in a tax year specifies a disaster declaration under Number 7, above, may not in a subsequent tax year specify the same disaster declaration as providing the basis for authorizing the taxing unit to calculate or adopt a tax rate under the disaster authority if, in an intervening year, the taxing unit specifies a different disaster declaration as the basis for authorizing the taxing unit to calculate or adopt a tax rate; and
9. eliminates the ability of a local taxing unit to adopt the temporary exemption for qualified property damaged by a disaster following the date the taxing unit adopts a tax rate, making the property tax exemption mandatory regardless of when the disaster occurs.

(Effective immediately.)

S.B. 1449 (Bettencourt/Murphy) – Property Tax Exemption: provides that a person is entitled to a property tax exemption for tangible personal property with a taxable value of less than \$2,500 and that is held or used for the production of income. (Effective January 1, 2022.)

S.J.R. 35 (Campbell/Lopez) – Property Tax Exemption: amends the Texas Constitution to authorize the legislature to exempt from property taxes the residence homestead of the surviving spouse of a member of the armed services who is fatally injured in the line of duty. (Effective if approved at the election on November 2, 2021.)

Public Safety

H.B. 9 (Klick/Campbell) – Obstructing Highway: provides that it is a state jail felony if, in committing the offense of obstructing a highway or other passageway, the actor knowingly: (1) prevents the passage of an authorized emergency vehicle that is operating the vehicle's emergency audible or visual signals; or (2) obstructs access to a hospital or other health care facility that provides emergency medical care. (Effective September 1, 2021.)

H.B. 54 (Talarico/Whitmire) – Police Reality TV Shows: prohibits a law enforcement agency from authorizing a person to accompany and film a peace officer acting in the line of duty for the purpose of producing a reality television program. (Effective immediately.)

H.B. 103 (Landgraf/Zaffirini) – Active Shooter Alert System: requires the Texas Department of Public Safety to establish the Texas Active Shooter Alert System and allows local law enforcement agencies to request activation of the system when certain criteria are met. (Effective September 1, 2021.)

H.B. 390 (S. Thompson/Huffman) – Human Trafficking: imposes requirements for human trafficking awareness and prevention in commercial lodging establishments, and provides that: (1) a peace officer may enter the premises of a commercial lodging establishment between the hours of 9 a.m. and 5 p.m. Monday through Friday to ensure compliance with the requirements of the bill; (2) a city ordinance, rule, or other regulation related to human trafficking awareness and prevention in commercial lodging establishments, including training and certification requirements, is not preempted; and (3) in the case of a conflict between a city ordinance and this new law, the more stringent regulation controls. (Effective January 1, 2022, except that the requirement that the attorney general adopt related rules is effective September 1, 2021.)

H.B. 402 (Hernandez/Alvarado) – Asset Forfeiture: provides, among other things, that the head of a law enforcement agency may cover the costs of a contract with a city or county program to provide services to domestic victims of trafficking using any portion of the gross amount credited to the agency's special asset forfeiture fund from the forfeiture of contraband that: (1) is used in the commission of, or used to facilitate or intended to be used to facilitate the commission of, an offense of human trafficking; or (2) consists of proceeds gained from the commission of, or property acquired with proceeds gained from the commission of, an offense of human trafficking. (Effective September 1, 2021.)

H.B. 558 (White/Hall) – Blood and Breath Specimens: this bill:

1. requires a peace officer to take a specimen of a person's blood if:
 - a. the officer arrests the person for certain intoxication offenses involving the operation of a motor vehicle or a watercraft;
 - b. the person refuses the officer's request to submit to the taking of a specimen voluntarily;
 - c. the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense; and
 - d. at the time of the arrest, the officer reasonably believes that as a direct result of the accident any individual has died, will die, or has suffered serious bodily injury;
2. requires a peace officer to take the specimen of a person's breath or blood under any of the following circumstances, if the officer arrests the person for an intoxication offense involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily:
 - a. the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and, at the time of the arrest, the officer reasonably believes that as a direct result of the accident an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment;
 - b. the offense for which the officer arrests the person is an offense of driving while intoxicated with a child passenger; or
 - c. at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:
 - i. has been previously convicted of or placed on community supervision for the offense of driving while intoxicated with a child passenger, intoxication assault, or intoxication manslaughter, or an offense under the laws of another state containing elements substantially similar to the elements of such offenses; or
 - ii. on two or more occasions, has been previously convicted of or placed on community supervision for the offense of driving while intoxicated, flying while intoxicated, boating while intoxicated, or assembling or operating an amusement ride while intoxicated, or an offense under the laws of another state containing elements substantially similar to the elements of such offenses;
3. provides that the peace officer shall designate the type of specimen to be taken under the provisions of Number 2, above; and
4. provides that a peace officer may not require the taking of a specimen unless the officer:
 - a. obtains a warrant directing that the specimen be taken; or
 - b. has probable cause to believe that exigent circumstances exist.

(Effective September 1, 2021.)

H.B. 763 (Toth/Zaffirini) – Seized Alcoholic Beverages: provides that an alcoholic beverage, its container, and its package which has been seized by a peace officer shall be: (1) destroyed or disposed of by a peace officer; or (2) delivered to the Texas Alcoholic Beverage Commission

(TABC) for immediate public or private sale in the manner TABC considers best. (Effective September 1, 2021.)

H.B. 929 (Sherman/West) – **Body Worn Cameras**: provides that: (1) a body worn camera policy must: (a) include provisions related to the collection of a body worn camera, including the applicable video and audio recorded by the camera, as evidence; (b) require a peace officer who is equipped with a body worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer’s active participation in the investigation unless the camera has been deactivated in compliance with such policy; and (2) a peace officer equipped with a body worn camera may choose not to activate a camera or may choose to discontinue a recording currently in progress for any encounter with a person that is not related to an investigation. (Effective September 1, 2021.)

H.B. 1024 (Geren/Hancock) – **Alcohol To-Go**: this bill allows for the pickup and delivery of alcoholic beverages for off-premises consumption under certain circumstances. (Effective immediately.)

H.B. 1069 (Harris/Birdwell) – **First Responders Carrying Handguns**: this bill:

1. prohibits a city with a population of 30,000 or less that has not adopted collective bargaining from adopting or enforcing an ordinance, order, or other measure that generally prohibits a first responder who holds a license to carry a handgun, holds an unexpired certification of completion of a handgun training course for first responders, and has the required liability insurance from: (a) carrying a concealed or holstered handgun while on duty; or (b) storing a handgun on the premises of or in a vehicle owned or leased by the city if the handgun is secured with a device approved by the Texas Department of Public Safety (DPS);
2. provides that the prohibition in Number 1, above, does not prohibit a city from adopting an ordinance, order, or other measure that: (a) prohibits a first responder from carrying a handgun while on duty based on the conduct of the first responder; or (b) limits the carrying of a handgun only to the extent necessary to ensure that carrying the handgun doesn’t interfere with the first responder’s duties;
3. authorizes a city with a population of 30,000 or less that has not adopted collective bargaining to adopt a policy authorizing a first responder who holds a license to carry a handgun, holds an unexpired certification of completion of a handgun training course for first responders, and has the required liability insurance to: (a) carry a concealed or holstered handgun while on duty; or (b) store a handgun on the premises of or in a vehicle owned or leased by the city if the handgun is secured with a device approved by DPS;
4. provides that a first responder may not engage in the conduct described in Number 3(a)-(b), above, unless the city has adopted a policy authorizing the conduct;
5. provides that a first responder may discharge a handgun while on duty only in self-defense;
6. provides that a city that employs or supervises a first responder is not liable in a civil action arising from the discharge of a handgun by a first responder who is licensed to carry a handgun;
7. provides that the discharge of a handgun by a first responder who is licensed to carry a handgun is outside the course and scope of the first responder’s duties;

8. provides that one or more complaints received by a city with respect to a specific first responder constitute grounds for prohibiting or limiting that first responder's carrying a handgun while on duty;
9. defines "first responder" to mean a public safety employee whose duties include responding rapidly to an emergency, including fire protection personnel and emergency medical services personnel, but not including volunteer emergency services personnel, or a peace officer or reserve law enforcement officer who is performing law enforcement duties; and
10. requires the public safety director of DPS to establish a handgun training course for first responders.

(Effective September 1, 2021.)

H.B. 1172 (Howard/Zaffirini) – Sexual Assault Victims: this bill, among other things: (1) provides that a peace officer or an attorney representing the state may not request or take a polygraph examination of a person who, in a complaint, charges or seeks to charge the commission of certain sexual offenses; (2) provides that a law enforcement agency that receives a report of a sexual assault shall, within 120 hours of the assault and with the requisite consent, request a forensic medical examination of the victim for use in the investigation or prosecution of the offense; (3) repeals a provision that provides that a law enforcement officer may refuse to request a forensic medical examination of the victim of a sexual assault if: (a) the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency; and (b) there is no other evidence to corroborate the current allegations of sexual assault; (4) provides that, before conducting an investigative interview with a sexual assault victim, the peace officer conducting the interview shall offer the victim the opportunity to have an advocate from a sexual assault program present with the victim during the interview, if the advocate is available at the time; (5) provides that, if the advocate described in (4), above, is not available at the time of the interview, the peace officer conducting the interview shall offer the victim the opportunity to have a crime victim liaison from the law enforcement agency, a peace officer who has completed a sexual assault training program, or a victim's assistance counselor from a state or local agency or other entity present with the victim during the interview; and (6) provides that a peace officer or law enforcement agency that provides an advocate, liaison, or counselor with access to a victim reporting a sexual assault is not subject to civil or criminal liability for providing that access. (Effective September 1, 2021.)

H.B. 1407 (Schaefer/Hughes) – Handguns: excepts a handgun that is visible, in a holster, and in a motor vehicle (along with the licensed holder of the gun) from the prohibition against displaying a handgun in plain view of another person in a public place. (Effective September 1, 2021.)

H.B. 1419 (Hull/Alvarado) – Missing Persons: provides, among other things, that: (1) a law enforcement agency shall: (a) on receiving a report of a missing child or person, immediately, but not later than two hours after receiving the report, report the name of the person to the Alzheimer's Association Safe Return emergency response center, if applicable; (b) not later than the 60th day after the date the agency receives the report described in (1)(a), above, enter the name of the missing child or person into the National Missing and Unidentified Persons System, with all available identifying features such as dental records, fingerprints, other physical characteristics,

and a description of the clothing worn when last seen, as well as all available information describing any person reasonably believed to have taken or retained the missing child or missing person; (c) inform the person who filed the report of the missing child or missing person that the information will be entered into the clearinghouse, the national crime information center missing person file, and the National Missing and Unidentified Persons System, and reported to the Alzheimer's Association Safe Return emergency response center, if applicable; and (d) as soon as possible, enter information not immediately available to the agency when the original entry is made into the clearinghouse, the national crime information center file, and the National Missing and Unidentified Persons System as a supplement to the original entry; and (2) immediately after the return of a missing person or the identification of an unidentified body, the local law enforcement agency having jurisdiction of the investigation shall: (a) clear the entry in the National Crime Information Center database; and (b) notify the National Missing and Unidentified Persons System. (Effective September 1, 2021.)

H.B. 1545 (Cyrier/Hall) – **Commission on Jail Standards:** continues the functions of the Commission on Jail Standards and, among other things, repeals the requirement that the chief jailer of each municipal lockup submit to the commission an annual report of persons under 17 years of age securely detained in the lockup. (Effective September 1, 2021.)

H.B. 1694 (Raney/Schwertner) – **9-1-1 Good Samaritan:** this bill, known as the Jessica Sosa Act, provides: (1) a defense to prosecution for certain drug offenses if the actor: (a) was the first person to request emergency medical assistance in response to the possible overdose of another person and: (i) made the request for medical assistance during an ongoing medical emergency; (ii) remained on the scene until medical assistance arrived; and (iii) cooperated with medical assistance and law enforcement; or (b) was the victim of a possible overdose for which emergency medical assistance was requested by the actor or by another person during an ongoing medical emergency; (2) exceptions to the defense in (1), above, if: (a) at the time the request for emergency medical assistance was made: (i) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made, or (ii) the actor was committing certain other offenses other than one for which the defense is available; (b) the actor has previously been convicted or placed on deferred adjudication community supervision for certain offenses; (c) the actor was acquitted in a previous proceeding in which the actor successfully used the defense in (1), above; (d) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person; and (3) that the defense in (1), above, does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency assistance if that evidence pertains to an offense for which the defense in (1), above, is not available. (Effective September 1, 2021.)

H.B. 1755 (Metcalf/Hancock) – **Alcohol To-Go:** provides that a mixed beverage permittee may not permit any person to take any alcoholic beverage purchased on the licensed premises from the premises where sold, except that a person who orders wine with food may remove the container of wine from the premises whether the container is opened or unopened. (Effective September 1, 2021.)

H.B. 1758 (Krause/Birdwell) – Unmanned Aircraft: this bill: (1) requires each law enforcement agency that uses or intends to use a drone for law enforcement purposes to: (a) adopt a written policy regarding the agency's use of force by means of a drone, before the agency first uses a drone, and update the policy as necessary; and (b) not later than January 1 of each even-numbered year submit the policy to the Texas Commission on Law Enforcement (TCOLE) in the manner prescribed by TCOLE; and (2) provides that, notwithstanding any other law, the use of force, including deadly force, involving a drone is justified only if: (a) at the time the use of force occurred, the actor was employed by a law enforcement agency; and (b) the use of force: (i) would have been justified under certain other law; and (ii) did not involve the use of deadly force by means of an autonomous drone; and (c) before the use of force occurred, the law enforcement agency employing the actor adopted and submitted to TCOLE a policy on the agency's use of force by means of a drone, as described in (1), above, and the use of force conformed to the requirements of that policy. (Effective September 1, 2021.)

H.B. 1900 (Goldman/Huffman) – Law Enforcement Funding: this bill:

1. characterizes a “defunding municipality” as a city with a population of more than 250,000: (a) that adopts a budget for a fiscal year that, in comparison to the city's preceding fiscal year, reduces the appropriation to the city's police department; and (b) for which the criminal justice division of the governor's office issues a written determination finding that the city has made a reduction described by (a);
2. provides that, in making a determination of whether a city is a “defunding municipality” according to the budget adopted for the first fiscal year beginning on or after September 1, 2021, the criminal justice division of the governor's office shall compare the appropriation to the city's police department in that budget to the appropriation to the police department in the budget of the preceding fiscal year or the second preceding fiscal year, whichever is greater (this specific requirement expires on September 1, 2023);
3. provides that a city is not considered to be a defunding municipality under Number 1, above, if: (a) for a fiscal year in which the city adopts a budget that is less than the budget for the preceding fiscal year, the percentage reduction to the appropriation to the city's police department does not exceed the percentage reduction to the total budget; or (b) before adoption of the budget, the city applies for and is granted approval from the criminal justice division of the governor's office for a reduction to the appropriation to the city's police department to account for: (i) capital expenditures related to law enforcement during the preceding fiscal year; (ii) the city's response to a state of disaster; or (iii) another reason approved by the division;
4. provides that, for purposes of making a determination of whether a city is a defunding municipality, a city's appropriation to the city's police department does not include: (a) any grant money received by the city during any fiscal year; or (b) any sales and use tax revenue received by the city for the purpose of financing a crime control and prevention district;
5. provides that a city is considered a defunding municipality until the criminal justice division of the governor's office issues a written determination finding that the city has reversed the inflation-adjusted reductions described in Number 1(a), above;
6. requires the criminal justice division of the governor's office to: (a) compute the inflation rate used to make determinations under Number 5, above, each fiscal year using a price

- index that accurately reports changes in the purchasing power of the dollar for cities in this state; and (b) publish the inflation rate in the Texas Register;
7. provides that a defunding municipality may not annex an area during the period beginning on the date that the criminal justice division of the governor's office issues the written determination that the city is a defunding local government and ending on the 10th anniversary of the date on which the criminal justice division of the governor's office issues a written determination finding that the defunding municipality has reversed the reductions described in Number 1, above;
 8. provides: (a) that a defunding municipality, on the next available uniform date that occurs after the date on which the criminal justice division of the governor's office issues a written determination that a city is a defunding municipality, shall hold a separate election in each area annexed in the preceding 30 years by the city on the question of disannexing the area; (b) that the defunding municipality shall immediately disannex an area by ordinance for which a majority of votes received in the election favor disannexation; (c) that if an area is disannexed pursuant to an election under (a), the city may not attempt to annex the area before the 10th anniversary of the date on which the criminal justice division of the governor's office issues a written determination finding that the city has reversed the reductions described in Number 1, above; and (d) that a city holding a disannexation election under (a) may not use public funds on informational campaigns relating to the election;
 9. requires a defunding municipality to calculate a municipal public safety expenditure adjustment to the city's property tax rate;
 10. prohibits the governing body of a defunding municipality from adopting a property tax rate for the current tax year that exceeds the lesser of the city's no-new-revenue tax rate or voter-approval tax rate for that tax year;
 11. provides: (a) that the comptroller may not, before July 1 of each state fiscal year, send to a defunding municipality its share of city sales and use taxes collected by the comptroller during the state fiscal year; and (b) that before sending the defunding municipality its share of sales and use taxes, the comptroller shall deduct the amount reported to the comptroller for the defunding municipality under Number 12, below, and credit that deducted amount to the general revenue fund, which must be appropriated only to the Department of Public Safety;
 12. provides that not later than August 1 of each state fiscal year, the criminal justice division of the governor's office shall report to the comptroller for each defunding municipality the amount of money the state spent in that state fiscal year to provide law enforcement services in the defunding municipality;
 13. requires a defunding municipality to, for the purpose of funding retirement benefits, increase municipal contributions to a public retirement system in which its employees participate as members in a manner that ensures that the total amount the city and members contribute to the system for the fiscal year on which the determination is based is not less than the total amount the city and members of the system contributed to the system for the fiscal year immediately preceding the fiscal year on which the determination is based;
 14. prohibits the governing body of a municipally-owned electric utility that is located in a city that is a defunding local government from charging a customer: (a) at a rate higher than the rate the customer was charged or would have been charged on January 1 of the year that the city was determined to be a defunding local government; (b) any customer fees in

amounts higher than the customer fees the customer was charged or would have been charged on January 1 of the year that the city was determined to be a defunding local government; and (c) any types of customer fees that the customer was not charged or would not have been charged on January 1 of the year that the city was determined to be a defunding local government;

15. provides that if a municipally-owned utility has not transferred funds to the defunding municipality under Number 14, above, the municipally-owned utility may increase its rates to account for: (a) pass-through charges imposed by a state regulatory body or the Electric Reliability Council of Texas; (b) fuel, hedging, or wholesale power cost increases; or (c) to fulfill debt obligations; and
16. prohibits a municipally-owned utility that increases rates under Number 15, above, from transferring funds to the defunding municipality until the date the criminal justice division of the governor's office issues a written determination finding that the city has reversed the reduction.

(Effective September 1, 2021.)

H.B. 1927 (Schaefer/Schwertner) – **Unlicensed Handgun Carry**: this bill, known as the *Firearms Carry Act of 2021*:

1. leaves the current handgun licensing scheme in place, presumably for purposes of reciprocity with other states and ease of handgun purchases;
2. authorizes most Texans over 21 years of age to carry a handgun in a concealed manner or openly in a holster, without the requirement to obtain a handgun license;
3. modifies language in the Texas Penal Code to make it a crime to carry a handgun only by someone who is younger than 21 years of age or in the previous five years has been convicted of the following state crimes: (a) assault causing bodily injury, including to a spouse; (b) deadly conduct, including discharging a firearm at persons, a habitation, a vehicle or a building; (c) making a terroristic threat; or (d) disorderly conduct by: (i) discharging a firearm in a public place other than a public road or a sport shooting range; or (ii) displaying a firearm or other deadly weapon in a public place in a manner calculated to alarm;
4. prohibits a person who is a member of a criminal street gang or a person convicted of a felony or a family violence offense from possessing a firearm, with some limited exceptions (Note: The federal Gun Control Act makes it unlawful for certain additional categories of persons convicted of serious crimes to ship, transport, receive, or possess firearms or ammunition);
5. mandates that the Texas Department of Public Safety (DPS) develop free-of-charge and post online a course on firearms safety and handling, and that DPS prepare an annual report to the legislature related to handgun carry;
6. provides that a licensed or unlicensed carrier is prohibited from entering certain places listed in Penal Code Section 46.03, including, among many others and most relevant to cities: (a) the premises of a polling place on the day of an election or while early voting is in progress; and (b) the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court (it remains

unclear whether this prohibition applies to the building or only the rooms housing the court or court offices);

7. provides that a licensed carrier is prohibited from entering the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to the Open Meetings Act, only if: (a) the entity provided notice as required by the Open Meetings Act, and (b) the entity provides notice that carry is prohibited in the meeting (e.g., by posting the existing 30.06 sign [licensed concealed carry prohibition] and/or 30.07 sign [licensed open carry prohibition] at the entrance to the meeting room);
8. provides that an unlicensed carrier may not enter the room or rooms where an open meeting of a governmental entity is held (Note: the new 46.15(o) sign, described in Number 9, below, allows only a “person” to prohibit unlicensed carry, and a city is not a person under the Penal Code definition);
9. provides that a person or business, but not a city, may provide notice under Penal Code Section 46.15(o) that firearms and other weapons are prohibited on the premises or other property by posting a sign at each entrance to the premises or other property that: (a) includes language that is identical to or substantially similar to the following: “Pursuant to Section 46.03 Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property”; (b) includes the language described by (a) in both English and Spanish; (c) appears in contrasting colors with block letters at least one inch in height; and (d) is displayed in a conspicuous manner clearly visible to the public;
10. provides that a person or a business, but not a city, may post a notice similar to that in Number 9, above, but under the authority of Penal Code Section 30.05, to prohibit unlicensed carry on their property;
11. provides that the signage in Number 9, above, should be posted at each entrance to the property and: (a) include language that is identical to or substantially similar to the following: “Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm”; (b) include the language described by (a) in both English and Spanish; (c) appear in contrasting colors with block letters at least one inch in height; and (d) be displayed in a conspicuous manner clearly visible to the public;
12. provides that a city may not prohibit a person who is authorized by law to carry a handgun from doing so: (a) in a public park (prior to this bill, a city could prohibit anyone other than a handgun license holder from carrying a firearm in a city park, but after this bill’s passage, a city can’t prohibit anyone who is lawfully carrying a firearm from bringing it into the park); (b) at a public meeting of a city, county, or other governmental body, unless the entity posts proper notice to prohibit that carry is prohibited; (c) at a political rally, parade, or official political meeting; or (d) at a nonfirearms-related school, college, or professional athletic event; and
13. authorizes a peace officer who is acting in the lawful discharge of the officer’s official duties to temporarily disarm an unlicensed carrier when that person enters a nonpublic, secure portion of a law enforcement facility, if the law enforcement agency provides a gun locker where the peace officer can secure the person’s handgun, and if the peace officer returns the handgun to the person immediately after the person leaves the nonpublic, secure portion of the law enforcement facility.

(Effective September 1, 2021.)

H.B. 1938 (Jetton/Kolkhorst) – Body Worn Camera Grants: provides that a law enforcement agency that provides body worn cameras to its peace officers may apply to the office of the governor for a grant to defray the cost of data storage for recordings created with the body worn cameras. (Effective September 1, 2021.)

H.B. 2106 (Perez/Zaffirini) – Credit Card Skimmers: this bill, among other things: (1) transfers rulemaking authority regarding credit card skimmers at motor fuel dispensers from the attorney general to the Texas Department of Licensing and Regulation (TDLR), and redesignates the payment card fraud center as the financial crimes intelligence center at TDLR; (2) provides that a law enforcement agency or the financial crimes intelligence center may disclose certain information regarding the discovery of a credit card skimmer (which would otherwise be confidential) to the public if the law enforcement agency or the chief intelligence coordinator for the center determines that the disclosure of the information furthers a law enforcement purpose; (3) provides that TDLR may enter into agreements with law enforcement agencies or other governmental agencies for the operation of the financial crimes intelligence center; and (4) provides that the financial crimes intelligence center may, among other things, provide training and educational opportunities to law enforcement. (Effective September 1, 2021.)

H.B. 2366 (Buckley/Hughes) - Penal Offenses: provides, among other things, that: (1) the offense of directing a light from a laser pointer to a uniformed safety officer, including a peace officer, security guard, firefighter, emergency medical service worker, or other uniformed city, state, or federal officer is enhanced to: (a) a felony of the third degree if the conduct causes bodily injury to the officer; or (b) a felony of the first degree if the conduct causes serious bodily injury to the officer; and (2) a person commits an offense if the person explodes or ignites fireworks with the intent to: (a) interfere with the lawful performance of an official duty by a law enforcement officer; or (b) flee from a person the actor knows is a law enforcement officer attempting to lawfully arrest or detain the actor. (Effective September 1, 2021.)

H.B. 2462 (Neave/Paxton) – Forensic Medical Examinations: this bill, among other things,: (1) provides that a victim of a sexual assault is entitled to a forensic medical examination if, within 120 hours of the offense: (a) the offense is reported to a law enforcement agency; or (b) a forensic medical examination is otherwise conducted at a health care provider; (2) provides that, if a sexual assault is reported to a law enforcement agency within 120 hours after the assault, the law enforcement agency, with the consent of the victim of the reported assault, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a forensic medical examination of the victim for use in the investigation or prosecution of the offense; (3) provides that, if a sexual assault is not reported within the period described by (2), above, and the victim is a minor, on receiving the appropriate consent, a law enforcement agency shall request a forensic medical examination of the victim for use in the investigation or prosecution of the offense; (4) provides that, if a sexual assault is not reported within the period described by (2), above, and the victim is not a minor, on receiving the appropriate consent, a law enforcement agency may request a forensic medical examination of a victim of a reported sexual assault for use in the investigation or prosecution of the offense if: (a) based on the circumstances of the reported assault, the agency believes a forensic medical examination would further that investigation or prosecution; or (b) after a medical evaluation by a physician, sexual assault examiner, or sexual assault nurse examiner, the physician or examiner

notifies the agency that a forensic medical examination should be conducted; (5) provides that, if a sexual assault is reported to a law enforcement agency as described by (2), (3), or (4), above, the law enforcement agency shall document, in the form and manner required by the attorney general, whether the agency requested a forensic medical examination, and the law enforcement agency shall: (a) provide the documentation of the agency's decision regarding a request for a forensic medical examination to: (i) the health care provider and the physician, sexual assault examiner, or sexual assault nurse examiner, as applicable, who provides services to the victim that are related to the sexual assault; and (ii) the victim or the person who consented to the forensic medical examination on behalf of the victim; and (b) maintain the documentation of the agency's decision in accordance with the agency's record retention policies; (6) eliminates the provision in state law that requires a law enforcement agency that requests a forensic medical examination under (2), (3), and (4), above, to pay all costs of the examination and provides that a healthcare provider that provides such services shall be entitled to reimbursement by the attorney general; (7) provides that the statewide electronic tracking system for evidence collected in relation to a sexual assault or other sex offense that is implemented by the Texas Department of Safety (DPS) shall include the evidence collection kit and any other items collected during the forensic medical examination in relation to a sexual assault or other sex offense and submitted for a laboratory analysis that is necessary to identify the offender or offenders, regardless of whether the evidence is collected in relation to an individual who is alive or deceased; (8) provides that a law enforcement agency that fails to submit evidence of a sexual assault or other sex offense to a public accredited crime laboratory within 30 days after the date on which that evidence was received shall provide to DPS written documentation of the failure, including a detailed explanation for the failure, and shall submit such documentation on or before the 30th day after the date on which the agency discovers that the evidence was not submitted within the required period; and (9) provides that the failure of a law enforcement agency to comply with certain requirements related to collection, preservation, tracking, and submitting for analysis evidence of sexual assault or other sex offenses may be used to determine eligibility for receiving grant funds from DPS, the office of the governor, or another state agency. (Effective September 1, 2021.)

H.B. 2677 (Bonnen/Taylor) – **CLEAR Alert**: renames the statewide alert for missing adults between the ages of 18 to 65 to the Coordinated Law Enforcement Adult Rescue (CLEAR) Alert for Missing Adults. (Effective immediately.)

H.B. 2706 (Howard/Nelson) – **Forensic Medical Examinations**: this bill, among other things: (1) provides that evidence collected during a forensic medical examination may not be used to investigate or prosecute a misdemeanor offense, or an offense related to a controlled substance, alleged to have been committed by the victim from whom the evidence was collected; and (2) eliminates the provision in state law that requires a law enforcement agency that requests for a forensic medical examination for victims of sexual assault to pay all costs of the examination, and provides that a healthcare provider that provides such services shall be entitled to reimbursement by the attorney general. (Effective September 1, 2021.)

H.B. 2911 (White/Hancock) – **Next Generation 9-1-1 Service**: this bill, among other things: (1) provides that before September 1, 2025, all parts of the state must be covered by Next Generation 9-1-1 service; (2) creates the next generation 9-1-1 service fund as a fund in the state treasury outside the general revenue fund; (3) requires the comptroller to transfer to the credit of the next

generation 9-1-1 service fund any amount available from federal money provided to Texas from the Coronavirus State and Local Fiscal Recovery Funds of the American Rescue Plan Act of 2021 or from any other federal governmental source; (4) provides that money deposited to the credit of the next generation 9-1-1 service fund may be used only for the purpose of supporting the deployment and reliable operation of next generation 9-1-1 service, including the costs of equipment, operations, and administration and may be distributed to only the Commission on State Emergency Communications and emergency communication districts and must be used in a manner that complies with federal law; (5) provides that the comptroller may issue guidelines for use by the commission and emergency communication districts in implementing the bill; (6) requires all money in the next generation 9-1-1 service fund to be distributed in accordance with the requirements of the bill not later than December 31, 2022, and all money distributed under the bill be spent not later than December 31, 2024, for the deployment and reliable operation of next generation 9-1-1 service; and (7) repeals the provisions in state law: (a) that provide that on receipt of an invoice from a wireless service provider for reasonable expenses for network facilities, including equipment, installation, maintenance, and associated implementation costs, the Commission or an emergency services district of a home-rule city or an emergency communication district created under state law shall reimburse the wireless service provider in accordance with state law for all expenses related to 9-1-1 service; and (b) that provide that funds collected under the equalization surcharge are not precluded from being used to cover costs under (7)(a) as necessary and appropriate, including for rural areas that may need additional funds for wireless 9-1-1. (Effective September 1, 2021.)

H.B. 3026 (Canales/Alvarado) – **Automated Motor Vehicle:** this bill: (1) adopts the current definitions for: (a) “automated motor vehicle” as a motor vehicle on which an automated driving system is installed; and (b) “automated driving system” as hardware and software that, when installed on a motor vehicle and engaged, are collectively capable of performing, without any intervention or supervision by a human operator: (i) all aspects of the entire dynamic driving task for the vehicle on a sustained basis; and (ii) any fallback maneuvers necessary to respond to a failure of the system; and (2) exempts automated motor vehicles and driving systems from certain required vehicle equipment and inspection screenings. (Effective September 1, 2021.)

H.B. 3363 (Harless/West) – **Warrants:** provides, among other things, that: (1) for the purpose of requesting a judicial order for the installation and use of a mobile tracking device, a peace officer’s affidavit must provide facts and circumstances that show probable cause to believe (instead of reasonable suspicion under current law) that criminal activity has been, is, or will be committed and the installation and use of the mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity; (2) unless a magistrate directs in the warrant a shorter period for the execution of any search warrant issued for the search of any property, for a wire intercept, or for the installation of tracking equipment, the period allowed for the execution of the warrant, exclusive of the day of its issuance and of the day of its execution, is: (a) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples; (b) 10 whole days if the warrant is issued for certain customer data information held in electronic storage or certain location information held in electronic storage; or (c) three whole days if the warrant is issued for a purpose other than that described by (2)(a) or (2)(b); (3) only a prosecutor or a prosecutor’s assistant with jurisdiction in a county within a specific judicial district may file

an application for a warrant for certain location information held in electronic storage; (4) an authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the Texas Department of Public Safety (DPS) may, without a warrant, require the disclosure of certain location information held in electronic storage if: (a) the officer reasonably believes an immediate life-threatening situation exists that: (i) is within the officer's territorial jurisdiction; and (ii) requires the disclosure of the location information before a warrant can, with due diligence, be obtained; and (b) there are sufficient grounds on which to obtain a warrant requiring the disclosure of the location information; and (5) not later than 48 hours after requiring disclosure of location information without a warrant under (4), above, an authorized peace officer shall obtain a warrant for that purpose. (Effective September 1, 2021.)

H.B. 3712 (E. Thompson/West) – Peace Officer Training: provides that: (1) the basic peace officer training course required as part of the peace officer training program may not be less than 720 hours; (2) the basic peace officer training course must include training on: (a) the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person; (b) the duty of the officer to intervene or stop or prevent another peace officer from using force against a person suspected of committing an offense in certain situations; and (c) the duty of a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and, while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment; (3) the Texas Commission on Law Enforcement (TCOLE) shall develop and maintain a model training curriculum and model policies for law enforcement agencies and peace officers that must include the items described in (2), above; and (4) before the first day of each 24-month training unit during which peace officers are required to complete 40 hours of continuing education programs, TCOLE shall specify the mandated topics to be covered in up to 16 of the required hours. (Effective September 1, 2021.)

S.B. 64 (Nelson/White) – Peer Support: provides, among other things, that: (1) the Texas Commission on Law Enforcement (TCOLE) shall develop a peer support network for law enforcement officers that includes: (a) peer-to-peer support; (b) training for peer service coordinators and peers that includes suicide prevention training; (c) technical assistance for program development, peer service coordinators, licensed mental health professionals, and peers; and (d) identification, retention, and screening of licensed mental health professionals; (2) as part of the peer support network for law enforcement officers, TCOLE shall ensure law enforcement officers have support in both urban and rural jurisdictions; (3) information relating to a law enforcement officer's participation in peer-to-peer support and other peer-to-peer services under the network is confidential and may not be disclosed under the Public Information Act, by: (a) TCOLE; (b) a law enforcement agency that employs a law enforcement officer participant; or (c) any other state agency or political subdivision that employs a law enforcement officer participant; and (4) a law enforcement officer's participation in peer-to-peer support and other peer-to-peer

services under the network may not: (a) serve as the basis for a revocation, suspension, or denial of a license issued by TCOLE; or (b) be considered in any proceeding related to the officer's TCOLE licensure. (Effective immediately.)

S.B. 69 (Miles/White) – Use of Force: provides that: (1) a peace officer has a duty to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if: (a) the amount of force exceeds that which is reasonable under the circumstances; and (b) the officer knows or should know that the other officer's use of force: (i) violates state or federal law; (ii) puts a person at risk of bodily injury, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and (iii) is not required to apprehend the person suspected of committing an offense; (2) a peace officer who witnesses the use of excessive force by another peace officer shall promptly make a detailed report of the incident and deliver the report to the supervisor of the peace officer making the report; and (3) the use of any force, by any person, including a peace officer or person acting in and at the direction of an officer, in connection with the arrest of another person, is not a justified use of force if such force is used in a manner that impedes the normal breathing or circulation of the blood of the person by applying pressure to the person's throat, neck, or torso or by blocking the person's nose or mouth. (Effective September 1, 2021.)

S.B. 111 (West/Collier) – Duties of Law Enforcement Agency: provides that: (1) a law enforcement agency filing a case with an attorney representing the state in a criminal case, excluding a city attorney or prosecutor appearing in a justice or municipal court, shall submit to the attorney a written statement by an employee of such agency with knowledge of the case acknowledging that all documents, items, and information in the possession of the agency that are required to be disclosed to the defendant as discovery have been transmitted to the attorney; and (2) at any time after a case is filed with the attorney representing the state a law enforcement agency discovers or acquires any additional document, item, or information required to be disclosed to a defendant, an employee of the agency shall promptly transmit such document to the attorney. (Effective September 1, 2021.)

S.B. 112 (West/Sherman) – Warrants: provides, among other things, that: (1) for the purpose of requesting a judicial order for the installation and use of a mobile tracking device, a peace officer's affidavit must provide facts and circumstances that show probable cause to believe (instead of reasonable suspicion under current law) that criminal activity has been, is, or will be committed and the installation and use of the mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity; (2) unless a magistrate directs in the warrant a shorter period for the execution of any search warrant issued for the search of any property, for a wire intercept, or for the installation of tracking equipment, the period allowed for the execution of the warrant, exclusive of the day of its issuance and of the day of its execution, is: (a) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples; (b) 10 whole days if the warrant is issued for certain customer data information held in electronic storage or certain location information held in electronic storage; or (c) three whole days if the warrant is issued for a purpose other than that described by (2)(a) or (2)(b); (3) only a prosecutor or a prosecutor's assistant with jurisdiction in a county within a specific judicial district may file an application for a warrant for certain location information held in electronic storage; (4) an

authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the Texas Department of Public Safety (DPS) may, without a warrant, require the disclosure of certain location information held in electronic storage if: (a) the officer reasonably believes an immediate life-threatening situation exists that: (i) is within the officer's territorial jurisdiction; and (ii) requires the disclosure of the location information before a warrant can, with due diligence, be obtained; and (b) there are sufficient grounds on which to obtain a warrant requiring the disclosure of the location information; and (5) not later than 48 hours after requiring disclosure of location information without a warrant under (4), above, the authorized peace officer shall obtain a warrant for that purpose. (Effective September 1, 2021.)

VETOED S.B. 281 (J. Hinojosa/Lucio) – Hypnotically Induced Testimony: provides that a statement made during or after a hypnotic session by a person who has undergone investigative hypnosis for the purposes of enhancing the person's recollection of an event at issue in a criminal investigation or case is not admissible against a defendant in a criminal trial, whether offered in the guilt or innocence phase or the punishment phase of the trial. (Effective September 1, 2021.)

S.B. 315 (Huffman/Hunter) – Sexually Oriented Businesses: this bill: (1) provides that an individual younger than 18 years may not be on the premises covered by a permit or license issued by the Texas Alcoholic Beverage Commission (TABC) if a sexually oriented business operates on the premises; (2) provides that the holder of a license or permit covering a premises described in (1), above, may not knowingly or recklessly allow an individual younger than 18 years to be on the premises; (3) provides that if a permit or license holder is found to violate (2), above, TABC shall suspend the permit or license for the first and second violation, and cancel the permit or license for the third violation; (4) prohibits a sexually oriented business from allowing an individual younger than 18 years to enter the premises of the business; (5) provides that a sexually oriented business commits an offense if it violates (4), above; (6) amends current law to provide that it is a common nuisance to: (i) employ or enter into a contract for the performance of work or the provision of services with an individual younger than 21 years for work or services performed at a sexually oriented business; or (ii) permit an individual younger than 18 years to enter the premises of a sexually oriented business; (7) amends current law to provide that a sexually oriented business may not hire or enter into a contract with an individual younger than 21 years for the performance of work or the provision of services other than a contract to perform repairs, maintenance, or construction services at the business; and (8) amends current law to provide that a child is a person younger than 21 years for purposes of the criminal offense of employing, authorizing, or inducing a child to work in a sexually oriented commercial activity or in any place of business permitting, requesting or requiring a child to work nude or topless. (Effective immediately.)

S.B. 335 (Johnson/Wu) – Toxicological Evidence: provides, among other things, that: (1) a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of toxicological evidence, shall ensure that toxicological evidence collected pursuant to an investigation or prosecution of an intoxication and alcoholic beverage offense, is retained and preserved for the greater of two years or the period of the statute of limitations for the offense if the indictment or information charging the defendant, or the petition in a juvenile proceeding, has not been presented or has been dismissed without prejudice; (2) a person from whom toxicology

evidence is collected and, if the person is a minor, the person's parent or guardian, shall be notified of the periods for which evidence may be retained and preserved, and such notice must be given by: (a) an entity or individual described by (1), above, that collects the evidence, if the entity or individual collected the evidence directly from the person or collected it from a third party; or (b) the court, if the records of the court show that the person was not given the notice described by (2)(a) and the toxicological evidence is subject to the certain retention periods; (3) the entity or individual charged with storing toxicological evidence may destroy the evidence on expiration of the applicable retention period, provided that: (a) notice is given in accordance with (2), above; and (b) if applicable, the prosecutor's office gives written approval for the destruction; (4) before requesting a person who is arrested for certain offenses related to operating a motor vehicle or a watercraft while intoxicated to submit to the taking a specimen of the person's blood or breath, a peace officer shall inform the person orally and in writing that if the person submits to the taking of a blood specimen, the specimen will be retained in accordance with applicable retention periods; and (5) if a person consents to the request of an officer to submit to the taking of a specimen described in (4), above, the officer shall request the person to sign a statement that: (a) the officer requested that the person submit to the taking of a specimen; (b) the person was informed of the consequences of not submitting to the taking of a specimen; and (c) the person voluntarily consented to the taking of a specimen. (Effective September 1, 2021.)

S.B. 476 (Nelson/Stucky) – Sexual Assault: provides for the establishment of a county adult sexual assault response team in each county that consists of, among others, the police chief, or the police chief's designee, of the police department with the largest population in the county, for the purpose of strengthening the collaborative response and enhancing health and judicial outcomes for sexual assault survivors who are adults. (Effective September 1, 2021.)

S.B. 709 (Hall/Canales) – Texas Commission on Fire Protection: this bill, among other things, (1) provides that the Texas Commission on Fire Protection (Commission) is continued until 2033; (2) provides that advisory members appointed by the Commission shall serve six-year staggered terms but may not be appointed to more than two consecutive terms; (3) provides that if a person holds more than one certificate issued by the Commission, the Commission may collect only one fee for the renewal of those certificates; (4) provides that a certificate issued by the Commission is valid for one or two years as determined by Commission rule; (5) provides that the Commission may: (a) waive any prerequisite to obtaining a certificate for an applicant who holds a license or certificate issued by another jurisdiction: (i) that has licensing or certification requirements substantially equivalent to those of Texas; or (ii) with which Texas has a reciprocity agreement; (6) makes an agreement with another state to allow for Commission certification by reciprocity; and (7) eliminates a provision in state law that provides that, in adopting or amending a rule under the Commission's authority or any other law, the Commission shall seek the input of the fire fighter advisory committee, and that the Commission shall permit the advisory committee to review and comment on any proposed rule, including a proposed amendment to a rule, before the rule is adopted. (Effective September 1, 2021.)

S.B. 1056 (Huffman/Wu) – False Reports: this bill, among other things: (1) creates a criminal offense for a person if: (a) the person makes a report of a criminal offense or an emergency or causes a report of a criminal offense or an emergency to be made to a peace officer, law enforcement agency, 9-1-1 service, official or volunteer agency organized to deal with

emergencies, or any other governmental employee or contractor who is authorized to receive reports of a criminal offense or emergency; (b) the person knows that the report is false; (c) the report causes an emergency response from a law enforcement agency or other emergency responder; and (d) in making the report or causing the report to be made, the person is reckless with regard to whether the emergency response by a law enforcement agency or other emergency responder may directly result in bodily injury to another person; and (2) provides that if a person is convicted of an offense under (1), above, the court may order the defendant to make restitution to an entity for the reasonable costs of the emergency response by that entity resulting from the false report. (Effective September 1, 2021.)

S.B. 1550 (Nelson/Goldman) – **Airport Police Force:** provides that: (1) the governing body of a joint board, or the governing body of a political subdivision, including a city, that operates an airport served by an air carrier certified by the Federal Aviation Administration or the United States Department of Transportation may: (1) establish an airport police force; and (2) commission and employ a peace officer, if the employee takes and files the oath required of peace officers. (Effective September 1, 2021.)

S.B. 2212 (West/S. Thompson) – **Duty to Render and Request Aid:** provides that a peace officer: (1) who encounters an injured person while discharging the officer's official duties shall immediately and as necessary: (a) request emergency medical services personnel to provide the person with emergency medical services; and (b) while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skill and training; and (2) is not required to request emergency medical services or provide first aid or treatment under (1), above, if: (a) making the request or providing the treatment would expose the officer or another person to a risk of bodily injury; or (b) the officer is injured and physically unable to make the request or provide the treatment. (Effective September 1, 2021.)

Sales Tax

H.B. 1445 (Oliverson/Nichols) – **Sales Tax Exemption:** exempts from sales taxes a medical billing service performed before the original submission of: (1) a medical or dental insurance claim related to health or dental coverage; or (2) a claim related to health or dental coverage made to a medical assistance program funded by the federal government, a state government, or both. (Effective January 1, 2022.)

H.B. 3799 (Metcalf/Nichols) – **Sales Tax Exemption:** exempts items sold by a nonprofit organization at a county fair from sales taxes. (Effective October 1, 2021.)

S.B. 153 (Perry/Sanford) – **Sales Tax Exemption:** exempts from sales taxes data processing services designed to process payment made by credit card or debit card. (Effective October 1, 2021.)

S.B. 197 (Nelson/Noble) – **Sales Tax Exemption:** exempts the sale of an animal by a nonprofit animal welfare organization from sales and use taxes. (Effective October 1, 2021.)

S.B. 313 (Huffman/Meyer) – **Sales Tax Exemption:** exempts firearm safety equipment from sales taxes. (Effective September 1, 2021.)

S.B. 1524 (Hughes/Guillen) – **Sales Tax Refund Pilot Program:** establishes a sales tax refund pilot program for a person who employs at least one apprentice in a qualified apprenticeship position for at least seven months during a calendar year. (Effective January 1, 2022.)

Community and Economic Development

H.B. 5 (Ashby/Nichols) – **Broadband Development Office:** this bill, among other things:

1. requires the governor's broadband development council to: (a) research and monitor the progress of: (i) deployment of broadband statewide; (ii) purchase of broadband by residential and commercial customers; and (iii) patterns and discrepancies in access to broadband; and (b) study industry and technology trends in broadband and the detrimental impact of pornographic or other obscene materials on residents of this state and the feasibility of limiting access to those materials;
2. establishes a broadband development office within the comptroller's office;
3. for purposes of the broadband development office, defines "broadband service" as internet service with the capability of providing: (a) a download speed of 25 megabits per second or faster; and (b) an upload speed of three megabits per second or faster;
4. authorizes the comptroller by rule to adjust the threshold speeds for broadband services defined in Number 3, above, if the Federal Communications Commission adopts upload or download threshold speeds for advanced telecommunications capability that are different from those listed in Number 3, above;
5. requires the broadband development office to: (a) serve as a resource for information regarding broadband service and digital connectivity in the state; (b) engage in outreach to communities regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office; and (c) serve as an information clearinghouse in relation to federal programs providing assistance to local entities with respect to broadband service and addressing barriers to digital connectivity;
6. requires the broadband development office to create, update annually, and publish on the comptroller's website a map classifying each designated area in the state as: (a) an eligible area, if fewer than 80 percent of the addresses in the designated area have access to broadband service and the federal government has not awarded funding under a competitive process to support the deployment of broadband service in the designated area; or (b) an ineligible area, if 80 percent or more of the addresses in the designated area have access to broadband service or the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area;
7. requires the map described in Number 6, above, to display: (a) the number of broadband service providers that serve each designated area; (b) for each eligible area, an indication of whether the area has access to Internet service that is not broadband service, regardless of the technology used to provide the service; and (c) each public school in the state and an indication of whether the area has access to broadband service;

8. provides that if information available from the Federal Communications Commission is not sufficient for the broadband development office to create or update the map, the office may request the necessary information from a political subdivision or broadband service provider, and the subdivision or provider may report the information to the office;
9. establishes a petition process, under which a political subdivision or broadband service provider may petition the broadband development office to reclassify a designated area on the map as an eligible area or ineligible area;
10. requires the broadband development office to establish a program to award grants, low-interest loans, and other financial incentives to applicants for the purpose of expanding access to, and adoption of, broadband service in designated areas determined to be eligible areas;
11. requires the broadband development office to establish and publish eligibility criteria for award recipients under Number 10, above;
12. provides that the broadband development office may not award a grant, loan, or other financial incentive to a noncommercial provider of broadband service for an eligible area if a commercial provider of broadband service has submitted an application for the eligible area;
13. provides that an award granted under the broadband development program does not affect distributions received by a broadband provider from the state universal service fund;
14. requires the broadband development office to prepare, update, and publish on the comptroller's Internet website a state broadband plan that establishes long-term goals for greater access to and adoption, affordability, and use of broadband service in Texas;
15. requires the broadband development office, in developing the state broadband plan, to: (a) to the extent possible, collaborate with state agencies, political subdivisions, broadband industry stakeholders and representatives, and community organizations that focus on broadband services; (b) consider the policy recommendations of the governor's broadband development council; (c) favor policies that are technology-neutral and protect all members of the public; (d) explore state and regional approaches to broadband development; and (e) examine broadband service needs related to public safety, public education, and public health;
16. establishes the broadband development account in the state's general revenue fund consisting of: (a) appropriations of money to the account by the legislature; (b) gifts, donations, and grants, including federal grants; and (c) interest earned on the investment of the money in the account; and
17. establishes the broadband development office board of advisors to provide guidance to the broadband development office regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office.

(Effective immediately.)

H.B. 738 (Paul/Nichols) – Building Codes: this bill: (1) provides that the 2012 version of the International Residential Code is the residential building code in this state, and the 2012 version of the International Building Code is the commercial building code in this state; (2) authorizes a city to establish procedures to adopt local amendments “that may add, modify, or remove requirements” set by the codes in (1), above, but only if the city: (a) holds a public hearing on the local amendment before adopting the amendment; and (b) adopts the local amendment by

ordinance; (3) prohibits a city from enacting an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling; and (4) excepts from the prohibition in (3), above, a city that has enacted an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire protection sprinkler system in a new or existing one- or two-family dwelling on or before January 1, 2009. (Effective January 1, 2022, except that a requirement that a city establish rules and take other necessary action to implement (1) and (2) before January 1, 2022, is effective September 1, 2021.)

H.B. 871 (Morrison/Kolkhorst) – **Contractor Registration Fees:** this bill: (1) prohibits a city from charging a licensed air conditioning and refrigeration contractor a registration fee for: (a) work performed in the city; or (b) notice that an air conditioning and refrigeration license has been obtained; and (2) provides that the prohibition in (1), above, does not prohibit a city from charging a building permit fee. (Effective September 1, 2021.)

H.B. 1475 (Cyrier/Buckingham) – **Board of Adjustment:** provides that, in exercising its authority to grant or deny a variance, a board of adjustment may consider the following as grounds to determine whether compliance with the zoning ordinance as applied to a structure would result in an unnecessary hardship: (1) whether the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent certified appraisal roll; (2) whether compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur; (3) whether compliance would result in the structure not being in compliance with a requirement of a city ordinance, building code, or other requirement; (4) whether compliance would result in the unreasonable encroachment on an adjacent property or easement; or (5) whether the city considers the structure to be a nonconforming structure. (Effective September 1, 2021.)

H.B. 1505 (Paddie/Hancock) – **Broadband:** establishes: (1) state funding for the Texas Broadband Pole Replacement Program; and (2) a process by which a broadband provider may apply for and attach an affixture of cables, strands, wires, and associated equipment used in the provision of a broadband provider's services to a pole owned and controlled by an electric cooperative. (Effective September 1, 2021.)

H.B. 1543 (Parker/Creighton) – **Public Improvement Districts:** this bill, among other things: (1) provides that the resolution adopted by a city council authorizing the creation of a public improvement district (PID), other than a tourism PID, takes effect on the date the resolution is adopted; (2) requires a city to file a copy of a PID-creation resolution under (1), above, with the county clerk of each county in which all or part of the PID is located not later than the seventh day after the date the city council adopts the resolution; (3) requires a city council to approve a PID service plan, or amend or update the plan, only by ordinance; (4) requires a city to file a copy of the initially-adopted or amended PID service plan with the county clerk of each county in which all or part of the PID is located not later than the seventh day after the date the city council approves the service plan; (5) revises the language of the mandatory notice of obligations related to a PID used in a real estate transaction to include, among other things, additional information about the PID assessment levied against the property; (6) authorizes the city or county that created the PID

to provide additional information regarding the district in the PID obligation notice described in (5), above, including whether an assessment has been levied, the amount of the assessment, and the payment schedule for assessments; (7) requires the PID obligation notice described in (5), above, to be given to a prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract; (8) provides that in the event a contract of purchase and sale is entered into without the seller providing the required notice of PID obligations, the purchaser is entitled to terminate the contract; and (9) provides that it shall be conclusively presumed that the purchaser has waived all rights to terminate the contract under (8), above, or recover damages or other remedies or rights, if the seller furnishes the notice of PID obligations at or before closing the purchase and sale contract and the purchaser elects to close even though the notice was not timely furnished before execution of the contract. (Effective September 1, 2021.)

H.B. 1554 (Rogers/ Buckingham) – **Municipal Development Districts:** authorizes a municipal development district to use money in the development project fund to pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more development projects located outside the district if: (1) the project is located in the extraterritorial jurisdiction of the city that created the district; (2) the board determines that the development project will provide an economic benefit to the district; and (3) the following entities, as applicable, approve the development project by resolution: (a) the city that created the district; and (b) each city in whose corporate limits or extraterritorial jurisdiction the project is located. (Effective Immediately.)

H.B. 1929 (Wilson/Buckingham) – **ETJ Development Agreements:** this bill: (1) defines the term “contract” to mean a contract for an ETJ development agreement and defines such a contract to be a program authorized by the legislature under Article III, Section 52-a of the Texas Constitution; (2) provides that: (a) a city that enters into a contract described in (1), above, waives immunity from suit for the purpose of adjudicating a claim for breach of contract; (b) actual damages (but not exemplary damages), specific performance, or injunctive relief may be granted in an adjudication brought against a city for breach of a contract, and that damages are limited to (i) the balance due and owed by the city under the contract, (ii) any amount owed by the landowner as a result of the city’s failure to perform under the contract, including compensation for the increased cost of infrastructure as a result of delays or accelerations caused by the city, (iii) reasonable attorney’s fees, and (iv) interest; (3) provides that a contract described in (1), above, that is entered into by a city and a landowner prior to the effective date of this bill is validated, enforceable, and may be adjudicated subject to the terms and conditions of this bill; and (4) annexation by a city of the land subject to a contract does not invalidate the enforceability of the contract. (Effective September 1, 2021.)

H.B. 2127 (C. Turner/Hancock) – **Public Entertainment Zones:** this bill: (1) defines the term “public entertainment zone” to mean an area of land that: (a) is owned by a city with a population of 175,000 or more; (b) is designated as a public entertainment zone by the governing body of a city in a formal meeting; and (c) contains a public safety facility; and (2) authorizes the concessionaire for a public entertainment zone to allow a patron who possess an alcoholic beverage to enter or leave a licensed or permitted premises within the zone if the alcoholic beverage: (a) is in an open container; (b) appears to be possessed for present consumption; (c) remains within the

confines of the zone, excluding a parking lot; and (d) was purchased legally at a licensed or permitted premises within the zone. (Effective September 1, 2021.)

H.B. 2404 (Meyer/Zaffirini) – **Chapter 380 Economic Development Agreements:** this bill, among other things:

1. requires the comptroller to create and make accessible on the Internet a database, to be known as the Chapter 380 and 381 Agreement Database, that contains information regarding all city and county economic development agreements under Chapters 380 and 381 of the Local Government Code, respectively;
2. provides that, for each local economic development agreement described in Number 1, above, the database must include: (a) the name of the local government that entered into the agreement; (b) a numerical code assigned to the local government by the comptroller; (c) the address of the local government's administrative offices and public contact information; (d) the name of the appropriate officer or other person representing the local government and that person's contact information; (e) the name of any entity that entered into the agreement with the local government; (f) the date on which the agreement went into effect and the date on which the agreement expires; (g) the focus or scope of the agreement; (h) an electronic copy of the agreement; and (i) the name and contact information of the individual reporting the information to the comptroller;
3. requires a city, not later than the fourteenth day after entering into, amending, or renewing an economic development agreement under Chapter 380 of the Local Government Code, to submit to the comptroller the information described by Number 2, above, in the form and manner prescribed by the comptroller in addition to providing a direct link on the city's website to the location of the agreement information published on the comptroller's website;
4. authorizes the comptroller to consult with the appropriate officer of, or other person representing, each local government that enters into a local economic development agreement to obtain the information necessary to operate and update the database;
5. requires the comptroller to enter the relevant information into the database not later than the 15th business day after the date the comptroller receives the information from the providing local government;
6. requires the information, including a copy of the agreement, to remain accessible to the public through the database during the period the agreement is in effect;
7. provides that if a local government that enters into a local economic development agreement described in Number 1, above, does not comply with the requirement to provide information to the comptroller, the comptroller shall send a written notice to the local government describing the information that must be submitted to the comptroller and inform the local government that if the information is not provided on or before the 30th day after the date the notice is provided, the local government will be subject to a civil penalty of \$1,000;
8. provides that, if a local government does not report the required information to the comptroller, the local government is liable to the state for a civil penalty of \$1,000 and the attorney general may sue to collect a civil penalty; and

9. creates a defense to an action brought under Number 8, above, that the local government provided the required information or documents to the extent the information or documents are not exempt from disclosure or confidential under the Public Information Act.

(Effective September 1, 2021.)

VETOED H.B. 2667 (Smithee/Perry) – Broadband: this bill: (1) provides that the statewide uniform charge in support of the universal service fund is payable by each provider of Voice over Internet Protocol Service; and (2) defines “high cost rural area” for purposes of the universal service fund as: (a) an area: (i) receiving support from the universal service fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas on December 31, 2020; and (ii) served by a telecommunications provider that is subject to rate regulation; and (b) any other exchange: (i) receiving support under the Texas High Cost Universal Service Plan or the Small and Rural Incumbent Local Exchange Company Universal Service Plan; and (ii) not excluded by PUC rule based on the number of telecommunications providers serving the exchange, the population density in the exchange, and the number of customers served per route mile of plant in service used to provide basic local telecommunications service served by a small provider. (Effective immediately.)

H.B. 3215 (Geren/Hughes) – Energy Efficiency Building Standards: provides that Standard 301 of the American National Standard for the Calculation and Labeling of the Energy Performance of Dwelling and Sleeping Units using an Energy Rating Index accredited energy efficiency program, commonly cited as ANSI/RESNET/ICC 301, is in compliance with certain state law provided that: (a) the building meets the mandatory requirements of Section R406.2 of the 2018 International Energy Conservation Code; (b) the building’s thermal envelope is at least equal to the levels of efficiency and solar heat gain coefficient in Table R402.1.2 or Table R402.1.4 of the 2018 International Energy Conservation Code; and (c) the standard used to measure compliance for single-family residential construction uses a certain energy rating index depending on climate zone. (Effective September 1, 2021.)

H.B. 3853 (Anderson/Perry) – Middle Mile Broadband Service: this bill, among other things: (1) defines “middle mile broadband service” as the provision of excess fiber capacity on an electric utility’s electric delivery system or other facilities to an Internet service provider to provide broadband service, and provides that the term does not include the provision of Internet service to end-use customers on a retail basis; (2) authorizes certain electric utilities, not including a municipally owned utility, to own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service in unserved and underserved areas; (3) provides that if a city is already collecting a charge or fee from the electric utility for the use of the public rights-of-way for the delivery of electricity to retail electric customers, the city may not require a franchise, an amendment to a franchise, or an additional charge, fee, or tax from the electric utility for the use of the public rights-of-way for middle mile broadband service; (4) provides that if a city or local government is not already collecting a charge or fee from the electric utility for the use of the public rights-of-way, the city may impose a charge on the provision of middle mile broadband service, but the charge may not be greater than the lowest charge that the city or local government imposes on other providers of broadband service for use of the public rights-of-way in its jurisdiction; and (5) establishes a system by which an electric utility that plans

a project to deploy middle mile broadband must submit a written plan to the Public Utility Commission (PUC) for PUC approval. (Effective immediately.)

S.B. 4 (Buckingham/Burrows) – **National Anthem:** this bill provides that: (1) a governmental entity, including a city, may not enter into an agreement with a professional sports team that requires a financial commitment by the state or any governmental entity unless the agreement includes a written verification that the professional sports team will play the United States national anthem at the beginning of each team sporting event held at the team’s home venue or other facility controlled by the team for the event; (2) a team’s failure to comply with the written verification requirement in (1), above, for any team sporting event at the team’s home venue or other facility: (a) constitutes a default of the agreement; (b) immediately subjects the team to any penalty the agreement authorizes for default; and (c) may subject the team to debarment from contracting with the state; and (3) the attorney general may intervene to enforce the provision in (1), above, if the governmental entity fails to timely adhere to the default provision. (Effective September 1, 2021.)

S.B. 113 (West/Rodriguez) – **Community Land Trusts:** this bill, among other things: (1) expands the type of nonprofit organizations that may constitute a community land trust; (2) provides that, once adopted by the governing body of a taxing unit, certain community land trust tax exemptions continue to apply to the property until the governing body rescinds the exemption in the manner provided by law; and (3) imposes certain requirements on a chief appraiser who is appraising land or a housing unit leased by a community land trust, including that the chief appraiser use the income method of appraisal. (Effective September 1, 2021.)

S.B. 291 (Schwertner/Bucy) – **Commercial Construction:** requires a developer, as soon as practicable after beginning construction of a commercial building project, to visibly post the following information at the entrance to the construction site: (1) the name and contact information of the developer; and, (2) a brief description of the project. (Effective September 1, 2021.)

S.B. 374 (Seliger/Shine) – **Annexation of Rights-of-Way:** this bill provides that: (1) a city annexing an area on request of the owners, an area with less than 200 population by petition, an area with at least 200 population by election, or certain special districts may also annex with the area the right-of-way of a street, highway, alley or other public way or of a railway line spur, or roadbed that is: (a) contiguous and runs parallel to the city’s boundaries; and (b) contiguous to the area being annexed; (2) a city may annex a right-of-way described under (1), above, only if: (a) the city provides written notice of the annexation to the owner of the right-of-way not later than the 61st day before the date of the proposed annexation; and (b) the owner of the right-of-way does not submit a written objection to the city before the date of the proposed annexation; and (3) certain width requirements do not apply to the annexation of a right-of-way under (1), above. (Effective immediately.)

S.B. 500 (Miles/Rose) – **Operating Boarding Home without License:** this bill: (1) creates a Class B misdemeanor offense for operating a boarding home facility without a permit; and (2) provides that (1), above, only applies in a county or city that requires a permit to operate a boarding home facility as authorized by certain state law. (Effective September 1, 2021.)

S.B. 507 (Nichols/Anderson) – **Broadband in State Rights-of-Way:** requires the Texas Transportation Commission to promulgate rules: (1) establishing an accommodation process that authorizes broadband-only providers to use state highway rights-of-way, subject to highway purposes, for: (a) new broadband facility installations; (b) additions to or maintenance of existing broadband facility installations; (c) adjustments or relocations of broadband facilities; and (d) existing broadband facilities retained within the rights-of-way; and (2) prescribing minimum requirements for the accommodation, method, materials, and location for the installation, adjustment, and maintenance of broadband facilities under the accommodation process. (Effective immediately.)

S.B. 678 (Alvarado/Button) – **Small Business Disaster Recovery Loans:** requires the governor's Economic Development and Tourism Office by rule to establish a loan program to use money from the small business disaster recovery revolving fund to provide financial assistance to small businesses affected by a disaster. (Effective September 1, 2021.)

S.B. 804 (Menéndez/Cortez) – **Tourism Public Improvement Districts:** this bill: (1) authorizes a city council to include property in a tourism public improvement district after establishment of the district if: (a) the property is a hotel; and (b) a sufficient number of the record owners of the real property currently included and proposed to be included in the district have consented to be included in the district by signing the original petition to establish the district or by signing a petition or written consent to include property in the district; (2) provides that no newly constructed hotel property may be added to the district unless the record owner of the property consents to its inclusion; and (3) provides that for purposes of (1)(b), above, the number of consenting record owners is sufficient if the record owners own more than 60 percent of the appraised value of taxable real property liable for assessment in the district and: (a) constitute more than 60 percent of all record owners of taxable real property liable for assessment in the district; or (b) own, in aggregate, more than 60 percent of the area of all taxable real property liable for assessment in the district. (Effective immediately.)

S.B. 877 (Hancock/Morrison) – **Building Inspections:** this bill: (1) provides that, in an area of a city subject to a disaster declaration by the governor or a declaration of local disaster, a building inspection may be performed by a person: (a) other than the owner of the building, or a person whose work is the subject of the inspection; and (b) who is: (i) certified to inspect buildings by the International Code Council; (ii) employed as a building inspector by the city in which the building is located; (iii) employed as a building inspector by any political subdivision, if the city in which the building is located has approved the person to perform inspections during a disaster; or (iv) a licensed engineer; (2) prohibits a city from collecting an additional inspection fee related to the inspection of a building performed under (1), above; (3) provides that a person who performs an inspection under (1), above, must comply with the city's building regulations and policies, and not later than the 30th day after the date of the inspection, provide notice to the city of the inspection; and (4) allows a city to prescribe a reasonable format for the notice required in (3), above. (Effective immediately.)

S.B. 1090 (Buckingham/Murr) – **Building Materials:** exempts the following from certain regulations regarding the use of building products, materials, or methods used in the construction or renovation of residential or commercial buildings: (1) a city, to the extent that the city regulates

outdoor lighting for the purpose of reducing light pollution, that has adopted a resolution stating the city's intent to become certified as a Dark Sky Community that does not regulate outdoor lighting in a manner that is more restrictive than the prohibitions or limitations required to become certified as a Dark Sky Community; (2) a standard for a plumbing product required by an ordinance or other regulation implementing certain water conservation plans or programs; (3) a standard for a plumbing product imposed by the Texas Water Development Board as a condition for applying for or receiving financial assistance under a program administered by the board; and (4) certain land use restrictions contained in plats and other instruments in certain cities. (Effective September 1, 2021.)

S.B. 1168 (Campbell/C. Bell) – **Extraterritorial Jurisdiction:** in an area in a city's extraterritorial jurisdiction that has been disannexed under certain law or for which the city has attempted and failed to obtain consent for annexation under certain law, this bill: (1) prohibits a city from imposing a fine or fee on a person on the basis of an activity that occurs wholly in the area, or the management or ownership of property located wholly in the area; and (2) provides that the prohibition in (1), above, does not apply to a fine or fee for water, sewer, drainage, or other related utility services. (Effective immediately.)

S.B. 1210 (Johnson/Oliverson) – **Refrigerants:** provides that a building code or other requirement applicable to commercial or residential buildings or construction may not prohibit the use of certain substitutes for hydrofluorocarbon refrigerants authorized under federal law. (Effective January 1, 2023.)

S.B. 1269 (Whitmore/K. King) – **Main Street:** would amend current state law allowing cities to participate in a main street program by modifying the program to include "communities" and their historic neighborhood commercial districts rather than cities. (Effective September 1, 2021.)

S.B. 1338 (Zaffirini/Sanford) – **Annexation/Development Agreements:** this bill: (1) requires that, at the time a city makes an offer to a landowner to enter into an agreement in which the landowner consents to annexation or makes an offer to enter into a development agreement, the city provide the landowner with a written disclosure: (a) that the landowner is not required to enter into the agreement; (b) of the authority under which the city may annex the land with references to relevant law; (c) with a plain-language description of the annexation procedures applicable to the land; (d) whether the procedures require the landowner's consent; and (e) with a statement regarding the city's waiver of immunity to suit; and (2) provides that a failure to provide the disclosure in (1), above, makes the agreement void. (Effective September 1, 2021.)

S.B. 1465 (Hinojosa/Guillen) – **Small and Rural Community Success Fund:** this bill, among other things, establishes the Texas small and rural community success fund to make loans to economic development corporations (EDCs) for eligible EDC projects. (Effective immediately.)

S.B. 1585 (Hughes/Cyrier) – **Historic Landmark:** provides that: (1) a city may not designate a property as a local historic landmark or include property within the boundaries of a local historic district unless: (a) the owner of the property consents; or (b) if the property owner does not consent, the governing body and the zoning, planning, or historical commission of the city approve the designation or inclusion by a three-fourths vote; (2) a city that has more than one

zoning, planning, or historical commission shall designate one of those commissions as the entity with the exclusive authority to approve the designations of properties as local historic landmarks; (3) property owned by a religious organization may be included in a local historic district only if the organization consents to the inclusion; and (4) a city must, not later than the 15th day before the date of the initial hearing in front of the zoning, planning, or historical commission, if any, or the governing body of the municipality, provide the property owner a statement that describes the impact that inclusion of the owner's property in a local historic district may have on the owner and the owner's property. (Effective September 1, 2021.)

Elections

H.B. 574 (Bonnen/Taylor) – **Election Offenses:** provides that a person commits a felony of the second degree if the person knowingly or intentionally makes any effort to: (1) count votes the person knows are invalid or alter a report to include votes the person knows are invalid; or (2) refuse to count votes the person knows are valid or alter a report to exclude votes the person knows are valid. (Effective September 1, 2021.)

H.B. 1128 (Jetton/Kolkhorst) – **Election Bystanders:** this bill: (1) authorizes the following people to be lawfully present in a polling place during the time the presiding judge arrives there on election day until the precinct returns have been certified and the election records assembled for distribution following the election: (a) an election judge or clerk; (b) a watcher; (c) the secretary of state; (d) a staff member of the Elections Division of the Office of the Secretary of State performing an official duty; (e) an election official, a sheriff, or a staff member of an election official or sheriff delivering election supplies; (f) a state inspector; (g) a person admitted to vote; (h) a child under 18 years of age accompanying a parent who has been admitted to vote; (i) a person providing authorized assistance to a voter; (j) a person accompanying a voter who has a disability; (k) a special peace officer appointed by the presiding judge; (l) the county chair of a political party conducting a primary election; (m) an authorized voting system technician; (n) the county election officer as necessary to perform tasks related to the administration of the election; or (o) a person whose presence has been authorized by the presiding judge; (2) authorizes the following people to be lawfully present in the meeting place of an early voting ballot board during the time of the board's operation: (a) a presiding judge or member of the board; (b) a watcher; (c) a state inspector; (d) an authorized voting system technician; (e) the county election officer, as necessary to perform tasks related to the administration of the election; or (f) a person whose presence has been authorized by the presiding judge; and (3) authorizes the following people to be lawfully present in the central counting station while ballots are being counted: (a) a counting station manager, tabulation supervisor, assistant to the tabulation supervisor, presiding judge, or clerk; (b) a watcher; (c) a state inspector; (d) an authorized voting system technician; (e) the county election officer, as necessary to perform tasks related to the administration of the election; or (f) a person whose presence has been authorized by the counting station manager. (Effective September 1, 2021.)

H.B. 1264 (K. Bell/Springer) – **Deceased Resident Report:** the bill, among other things, requires the local registrar of deaths to file each abstract of a death certificate with the voter registrar of the decedent's county of residence and the secretary of state as soon as possible, but not later than the seventh day after the date the abstract is prepared. (Note: previous law required the local registrar

to file the abstract with the voter registrar not later than the 10th day of the month following the month in which the abstract was prepared.) (Effective September 1, 2021.)

H.B. 1382 (Bucy/Hughes) – **Mail Ballot Tracking:** requires the secretary of state to develop or otherwise provide an online tool to each early voting clerk that enables a person who submits an application for a ballot to be voted by mail to track the location and status of the person's application and ballot on the secretary's Internet website and on the county's Internet website if the early voting clerk is the county clerk of a county that maintains an Internet website. (Effective September 1, 2021.)

H.B. 1622 (Guillen/ Hughes) – **Early Voting Reporting:** this bill: (1) allows a person registered to vote in the county where the early voting clerk is conducting early voting to submit a complaint to the secretary of state stating that an early voting clerk has not delivered to the local canvassing authority a report of the early voting votes cast not later than the time of the local canvass; (2) requires the secretary of state to create and maintain a system for receiving and recording complaints; and (3) requires the secretary of state to maintain a record indicating which counties and early voting clerks have failed to comply with the requirements of early voting reporting. (Effective September 1, 2021.)

H.B. 3107 (Clardy/Zaffirini) – **Election Practices and Procedures:** this bill, among many other things: (1) provides that in the case of an election in which any members of a political subdivision's governing body are elected from territorial units such as single-member districts, the state laws governing the election of unopposed candidates apply if each candidate for an office that is to appear on the ballot in that territorial unit is unopposed and no opposed at-large race is to appear on the ballot; (2) requires the notice of a general or special election to state the internet website of the authority conducting the election; (3) provides that an election services contract may not change a political subdivision's requirement to keep an election officer's office open for election duties for at least three hours each day, during regular office hours, on regular business days during a specified period of time prior to election day and beginning not later than the 50th day before the date of each general election of the political subdivision or the third day after the date a special election is ordered by an authority of the political subdivision and ending not earlier than the 40th day after election day; (4) expands the methods of notice that an election authority conducting the drawing to order names of candidates on the ballot may use to notify candidates of the date, hour, and place of the drawing to include telephone, email, and personal written notice; (5) requires an election officer at the polling place to maintain a registration omissions list; (6) provides that if the name of a voter who is offering to vote is not on the precinct list of registered voters, an election officer may contact the voter registrar regarding the voter's registration status; (7) provides that provisional voting records are not available for public inspection until the first business day after the date the early voting ballot board completes the verification and counting of provisional ballots and delivers the provisional ballots and other provisional voting records to the general custodian of election records; (8) provides that a voter's defective ballot that is timely returned to the clerk as a marked ballot must be treated as a marked ballot not timely returned if the corrected ballot is timely returned as a marked ballot by the close of the polls on election day or as the voter's ballot for the election if the corrected ballot is not timely returned by the close of the polls on election day; (9) requires the authority with whom an application for a place on the ballot must be filed to designate an email address in the notice of deadlines for filing an application for a place on the

ballot; (10) provides that for cities conducting recall elections, a vacancy in an officer's office occurs on the date of the final canvass of a successful recall election; (11) provides that for an election in which the territory served by the early voting clerk is situated in a county with a population of 100,000 or more, or in an election in which the territory served by the clerk is situated in more than one county and the sum of the populations of the counties is 100,000 or more, must conduct early voting by personal appearance at each temporary branch polling place on the days that voting is required to be conducted at the main early voting polling place and remain open for at least: (a) eight hours each day; or (b) three hours each day if the city or county clerk does not serve as the early voting clerk for the territory holding the election and the territory has fewer than 1,000 registered voters; and (12) provides that for an election in which the territory served by the early voting clerk is situated in a county with a population under 100,000, or in an election in which the territory served by the clerk is situated in more than one county and the sum of the populations of the counties is under 100,000, voting at a temporary branch may be on any days and during any hours of the period for early voting by personal appearance, as determined by the authority establishing the temporary voting branch, and may also order early voting to be conducted on a Saturday or Sunday at any one or more of the temporary branch polling places. (Effective September 1, 2021.)

H.B. 4555 (Guillen/Hinojosa) – **Eligibility for Public Office:** this bill: (1) requires a candidate's application for a place on the ballot to include an indication that the candidate has either not been finally convicted of a felony or, if so convicted, has been pardoned or otherwise released from the resulting disabilities; (2) requires a candidate who has been convicted of a felony to include in the candidate's application for a place on the ballot proof that the candidate is eligible for public office; and (3) creates a Class B misdemeanor offense for a person to knowingly provide false information in an application for a place on the ballot regarding whether the person has been finally convicted of a felony or has been pardoned or otherwise released from the resulting disabilities. (Effective September 1, 2021.)

S.B. 598 (Kolkhorst/Jetton) – **Auditable Voting Systems:** provides, among other things, that: (1) a voting system that consists of direct recording electronic voting machines may not be used in an election unless the system is considered an "auditable voting system" that uses, creates, or displays a paper record that may be read by the voter and is not capable of being connected to the Internet or any other computer network or electronic device; (2) an authority that purchased a voting system other than an auditable voting system after September 1, 2014, and before September 1, 2021, may use available federal funding, and if federal funding is not available, available state funding to convert the purchased voting system into an auditable voting system in accordance with a specific schedule; (3) the requirement to use an auditable voting system in (1), above, does not apply to an election held before September 1, 2026; (4) beginning September 1, 2026, a voting system may not be capable of being connected to any external or internal communications network, including the Internet; (5) beginning September 1, 2026, a voting system may not have the capability of permitting wireless communication; and (6) the secretary of state may not waive certain requirements in the bill. (Effective September 1, 2021.)

S.B. 1111 (Bettencourt/Paul) – **Residency:** this bill, among other things, modifies the definition of "residence" for purposes of elections to provide that: (1) a person may not establish residence for the purpose of influencing the outcome of a certain election; (2) a person may not establish a

residence at any place the person has not inhabited; and (3) a person may not designate a previous residence as a home and fixed place of habitation unless the person inhabits the place at the time of designation and intends to remain. (Effective September 1, 2021.)

S.B. 1116 (Bettencourt/Bucy) – Posting Election Information: requires, among other things, that: (1) a city that holds an election and maintains an Internet website shall post on its public website the following as soon as practicable after the election: (a) the results of each election; (b) the total number of votes cast; (c) the total number of votes cast for each candidate or for or against each measure; (d) the total number of votes cast by personal appearance on election day; (e) the total number of votes cast by personal appearance or mail during the early voting period; and (f) the total number of counted and uncounted provisional ballots cast; (2) information required to be posted under (1), above, must be accessible without having to make more than two selections or view more than two network locations after accessing the city’s Internet website home page; and (3) not later than the 21st day before election day, a city that holds an election and maintains an Internet website shall post on the public Internet website: (a) the date of the next election; (b) the location of each polling place; (c) each candidate for an elected office on the ballot; and (d) each measure on the ballot. (Effective September 1, 2021.)

S.B. 1387 (Creighton/Clardy) – Voting System: this bill provides that: (1) for a voting system or voting system equipment to be approved for use in an election, the voting system must have been manufactured, stored, and held in the United States and sold by a company whose: (a) headquarters are located in the United States; and (b) parent company’s headquarters, if applicable, are located in the United States; and (2) for a voting system or voting system equipment to be considered manufactured in the United States as required in (1), above, final assembly of the voting system or voting system equipment must have occurred in the United States and all firmware and software must have been installed and tested in the United States. (Effective September 1, 2021.)

S.B. 1418 (Schwertner/Wilson) – Presiding Election Judge: provides that the presiding election judge of the early voting ballot board may, at the discretion of the appropriate authority, be compensated at a higher rate than presiding election judges. (Effective September 1, 2021.)

Emergency Management

H.B. 2211 (Metcalf/Perry) – In Person Hospital Visits: provides, among other things, that: (1) during a qualifying period of disaster, a hospital may not prohibit in-person visitation with a patient receiving care or treatment at the hospital unless federal law or a federal agency requires the hospital to prohibit in-person visitation during that period; (2) a hospital may not prohibit in-person visitation by a religious counselor with a patient who is receiving care or treatment at the hospital and who is seriously ill or dying for a reason other than the religious counselor’s failure to comply with a requirement by the hospital for the counselor to complete a health screening before entering the hospital and wear personal protective equipment at all times while visiting a patient at the hospital; and (3) in the event of a conflict between the provisions of the bill and any provision of a qualifying official disaster order, the provisions of the bill prevail. (Effective September 1, 2021.)

S.B. 6 (Hancock/Leach) – Pandemic Liability: this bill, among other things, provides that:

1. except in a case of reckless conduct or intentional, willful, or wanton misconduct, and subject to other limited exceptions, a physician, health care provider, or first responder is not liable for an injury, including economic and noneconomic damages, or death arising from care, treatment, or failure to provide care or treatment relating to or impacted by a pandemic disease or a disaster declaration issued by the president or governor related to a pandemic disease, if the physician, health care provider, or first responder proves by a preponderance of the evidence that:
 - a. a pandemic disease or disaster declaration related to a pandemic disease was a producing cause of the care, treatment, or failure to provide care or treatment that allegedly caused the injury or death; or
 - b. the individual who suffered injury or death was diagnosed or reasonably suspected to be infected with a pandemic disease at the time of the care, treatment, or failure to provide care or treatment;
2. the statutory provisions relating to liability of physicians, health care providers, and first responders during a pandemic described in Number 1, above, do not constitute a waiver of sovereign immunity of the state or governmental immunity of a political subdivision and do not create a civil cause of action;
3. a person (including a governmental entity) is not liable for injury or death caused by exposing an individual to a pandemic disease during a pandemic emergency unless the claimant establishes that:
 - a. the person who exposed the individual:
 - i. knowingly failed to warn the individual of or remediate a condition that the person knew was likely to result in the exposure of an individual to the disease, provided that the person:
 1. had control over the condition;
 2. knew that the individual was more likely than not to come into contact with the condition; and
 3. had a reasonable opportunity and ability to remediate the condition or warn the individual of the condition before the individual came into contact with the condition; or
 - ii. knowingly failed to implement or comply with government-promulgated standards, guidance, or protocols intended to lower the likelihood of exposure to the disease that were applicable to the person or the person's business, provided that:
 1. the person had a reasonable opportunity and ability to implement or comply with the standards, guidance, or protocols; and
 2. the person refused to implement or comply with or acted with flagrant disregard of the standards, guidance, or protocols; and
 3. the government-promulgated standards, guidance, or protocols that the person failed to implement or comply with did not, on the date that the individual was exposed to the disease, conflict with government-promulgated standards, guidance, or protocols that the person implemented or complied with; and
 - b. reliable scientific evidence shows that the failure to warn the individual of the condition, remediate the condition, or implement or comply with the government-

promulgated standards, guidance, or protocols was the cause in fact of the individual contracting the disease;

4. a claimant must serve on the defendant, not later than the 120th day after the date a defendant files an answer to a claim to which Number 3, above, applies:
 - a. a report authored by at least one qualified expert that provides a factual and scientific basis for the assertion that the defendant's failure to act caused the individual to contract a pandemic disease; and
 - b. a curriculum vitae for each expert whose opinion is included in the report.

(Effective immediately.)

S.B. 239 (Powell/Collier) – Disaster Educational Materials: the bill: (1) requires the Department of State Health Services (DSHS) to develop and implement a disease prevention information system for dissemination of immunization information during a declared state of disaster or local state of disaster; and (2) provides that during a declared state of disaster or local state of disaster, DSHS shall ensure that educational materials regarding immunizations are available to local health authorities for distribution to specified organizations. (Effective September 1, 2021.)

S.B. 863 (Blanco/Hull) – Residential Child Care Facilities: provides that, to the extent necessary to comply with a state or local order during a state of disaster, the Health and Human Services Commission may authorize a residential child-care facility to temporarily: (1) relocate to a new location that is not stated in the facility's license; or (2) provide care to one or more children at an additional location that is not stated in the facility's license. (Effective immediately.)

S.B. 967 (Kolkhorst/Klick) – Expiration of Public Health Orders: provides that a public health order issued by a health authority that is imposed on more than one individual, animal, place, or object expires on the fifteenth day following the date the order is issued unless, before the fifteenth day: (1) the governing body of a city or the commissioners court of a county that appointed the health authority by majority vote extends the order for a longer period; or (2) if the health authority is jointly appointed by a city and county, the commissioner's court of the county extends the order for a longer period. (Effective September 1, 2021.)

S.B. 968 (Kolkhorst/Klick) – Public Health Disaster Preparedness: this bill, among other things:

1. provides that the presiding officer of the governing body of a political subdivision may not issue an order during a declared state of disaster or local disaster to address a pandemic disaster that would limit or prohibit: (a) housing and commercial construction activities, including related activities involving the sale, transportation, and installation of manufactured homes; (b) the provision of governmental services for title searches, notary services, and recording services in support of mortgages and real estate services and transactions; (c) residential and commercial real estate services, including settlement services; or (d) essential maintenance, manufacturing, design, operation, inspection, security, and construction services for essential products, services, and supply chain relief efforts;

2. requires the Texas Department of Emergency Management (TDEM) to establish a process for designating individuals who are included in the emergency assistance registry as medically fragile, and collaborate with first responders, local governments, and local health departments to conduct wellness checks on those individuals during certain events (e.g., a disaster or power outage), as determined by TDEM;
3. provides that a wellness check under (2), above, must include an automated phone call, a personalized call and, if the person is unresponsive to calls, an in-person check, and requires each city to adopt procedures to conduct wellness checks in compliance with minimum standards adopted by TDEM;
4. makes various changes to the Communicable Disease Prevention and Control Act, including providing that: (a) the Department of State Health Services is the “preemptive authority” for purposes of the Act, and shall collaborate with local elected officials to prevent the spread of disease and protect the public health; and (b) a regional public health disaster declaration or order must be filed with the county clerk or city secretary in each area to which it applies, unless the circumstances prevent or impede the filing; and
5. provides that a governmental entity may not issue a vaccine passport, vaccine pass, or other standardized documentation to certify an individual’s COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual’s COVID-19 immunization record or similar health information for a purpose other than health care.

(Effective immediately.)

Municipal Courts

H.B. 80 (J. Johnson/Whitmire) – **Municipal Court:** provides, when fines and costs are being imposed on a defendant under the conservatorship of the Department of Family and Protective Services or in extended foster care, that a municipal judge: (1) may not require a defendant to pay any amount of fines and costs; and (2) may require the defendant to perform community services to discharge fines and costs if the fines and costs are not waived. (Effective September 1, 2021.)

H.B. 569 (Sanford/West) – **Misdemeanor Fines:** provides, among other things, that in imposing a fine and costs in a case involving a misdemeanor punishable by a fine only, the justice or judge shall credit the defendant for any time the defendant was confined in jail or prison while serving a sentence for another offense at a rate of \$150 for each day of confinement if that confinement occurred after the commission of the misdemeanor. (Effective September 1, 2021.)

H.B. 788 (Geren/Zaffirini) – **Court Program:** expands the definition of a public safety employee, for the purpose of participating in a public safety employee treatment court program, to include an emergency service dispatcher. (Effective September 1, 2021.)

H.B. 1071 (Harris/Whitmire) – **Animals in Court:** allows a qualified facility dog or qualified therapy animal in certain court proceedings. (Effective September 1, 2021.)

H.B. 1693 (Shaheen/Miles) – Financial Responsibility: this bill: (1) authorizes a justice or municipal court to access the financial responsibility verification program to verify financial responsibility for the purpose of court proceedings; and (2) requires the costs associated with accessing the verification program to be paid out of the county treasury by order of the commissioners' court or the municipal treasury by order of the governing body of the municipality, as applicable. (Effective immediately.)

H.B. 3774 (Leach/Huffman) – Municipal Court Pleas: provides, among many other things, that: (1) a judge may not accept a plea of guilty or plea of nolo contendere from a defendant in open court unless it appears to the judge that the defendant is mentally competent and the plea is free and voluntary; (2) the Texas Forensic Science Commission (commission) must adopt a code of professional responsibility and rules establishing sanctions for code violations to regulate the conduct of persons, laboratories, facilities, and other entities regulated by the state; (3) the commission is authorized to initiate an investigation of a forensic analysis or a forensic examination or test not subject to accreditation without receiving a complaint (former state law allowed for educational purposes); (4) a "forensic analyst" or "forensic science expert" is a professional service subject to the Professional Services Procurement Act; and (5) a "protective order" is defined to include an order issued by a court in this state to prevent sexual assault or abuse, stalking, trafficking, or other harm to an applicant. (Effective September 1, 2021, except that certain provisions creating new judicial district or statutory county courts have special effective dates.)

H.B. 4293 (Hinojosa/Zaffirini) – Court Reminder Program: this bill: (1) authorizes the Office of Court Administration of the Texas Judicial System, or the judges of the county courts, statutory county courts, and district courts with jurisdiction over criminal cases in each county, to partner with cities and local law enforcement agencies to allow: (a) individuals to whom a peace officer issues a citation and releases to receive text message reminders of scheduled court appearances; and (b) criminal defendants in municipal court to receive text message reminders of scheduled court appearances; and (2) requires any city that partners with the Office of Court Administration of the Texas Judicial System to pay all costs of sending reminders to municipal criminal defendants, including the costs of linking the municipal court database with the state court administrator database. (Effective September 1, 2021.)

S.B. 41 (Zaffirini/Leach) – Court Costs: this bill consolidates, allocates and increases certain state civil court costs to be used for the following: (1) to support a statewide electronic filing technology project for courts in this state; (2) to provide grants to counties to implement components of the project; or (3) to support court technology projects that have a statewide impact as determined by the office of court administration. (Effective January 1, 2022.)

S.B. 49 (Zaffirini/Murr) – Defendants with Mental Illness or Intellectual Disability: provides revisions to criminal trial and sentencing procedures, including procedures for magistrates, relating to a defendant who may have a mental illness or who may be a person with an intellectual disability, makes revisions to competency restoration programs, and sets out provisions relating to outpatient treatment program participation for civilly committed individuals. (Effective September 1, 2021.)

S.B. 1373 (Zaffirini/White) – Municipal Courts: provides that: (1) any officer authorized to collect a fine, reimbursement or other fee, or item of cost may request the trial court in which a criminal action or proceeding was held to make a finding that a fine, reimbursement or other fee, or item of cost imposed in the action or proceeding is uncollectible if the officer believes: (a) the defendant is deceased; (b) the defendant is serving a sentence for imprisonment for life or life without parole; (c) the fine, reimbursement or other fee, or item of cost has been unpaid for at least 15 years; or (d) the fine, reimbursement or other fee, or item of cost is otherwise uncollectible; and (2) a court may order the officer described in (1), above, to designate a fine, reimbursement or other fee, or item of cost as uncollectible in the fee record. (Effective September 1, 2021.)

Open Government

H.B. 872 (Bernal/Menéndez) – Confidentiality of Government-Operated Utility Customer Information: this bill provides that: (1) information is excepted from disclosure under the Public Information Act if it is information maintained by a government-operated utility that: (a) discloses whether services have been discontinued, or reveals whether an account is delinquent or eligible for disconnection by the government-operated utility; or (b) is collected as part of an advanced metering system for usage, services, and billing, including amounts billed or collected for utility usage, except that all such information is to be made available to that customer or their designated representative if the information directly relates to utility services provided to the customer and is not confidential under law; (2) a government-operated utility may not disclose personal and utility usage information for government operated utility customers unless the customer requests that the government-operated utility disclose such information on an appropriately marked form or other written request for disclosure (Note: former law made personal information and utility usage information confidential only if the customer elected to keep the information confidential on a form provided by the government-operated utility); and (3) a government-operated utility must provide notice of the customer's right to request disclosure of personal and utility usage information, along with the form to elect for disclosure, in each customer's utility bill or on the government-operated utility's website. (Effective immediately.)

H.B. 1082 (P. King/Zaffirini) – Public Information: provides that: (1) with regard to information a city holds as an employer, the home address, home telephone number, emergency contact information, social security number, and personal family information of an elected public officer, is excepted from the Public Information Act, regardless of whether the elected officer complies with certain requirements to elect the information be kept confidential; (2) with regard to information contained in records maintained by the city in any capacity, an elected public officer's home address, home telephone number, emergency contact information, date of birth, social security number, and family member information is excepted from the Public Information Act if the elected officer elects to keep the information confidential; and (3) elected public officers are added to the list of individuals who may choose to restrict public access to certain information in appraisal records. (Effective immediately.)

S.B. 244 (Bettencourt/Campos) – Tax Increment Reinvestment Zone: makes the board of directors of a tax reinvestment zone subject to the Open Meetings Act. (Effective September 1, 2021.)

S.B. 841 (Hughes/Schaefer) – Public Information: adds certain honorably retired law enforcement positions to the personal information exceptions of the Public Information Act and the confidentiality of home address section in the tax appraisal statute. (Effective immediately.)

S.B. 858 (Johnson/Davis) – Public Information: provides: (1) that the following personal identifying information collected by a metropolitan rapid transit authority, regional transportation authority, municipal transit department, or coordinated county transportation authority is confidential and not subject to public disclosure: (a) trip data, including the time, date, origin, and destination of a trip, and demographic information collected when the person purchases a ticket or schedules a trip; and (b) other personal information, including financial information; and (2) personal identifying information described in (1), above, may be disclosed to a governmental agency or institution of higher education if the requestor confirms in writing that the use of the information will be strictly limited to use in research or in producing statistical reports, but only if the information is not published, redisclosed, sold, or used to contact any individual. (Effective Immediately.)

S.B. 1225 (Huffman/Paddie) – Temporary Suspension of TPIA: this bill, among other things, provides that: (1) for purposes of suspending the requirements of the Texas Public Information Act (TPIA), during a catastrophe, the term “catastrophe” does not mean a period when staff is required to work remotely and can access information responsive to an application for information electronically, but the physical office of the governmental body is closed; (2) a governmental body may suspend the requirements of the TPIA only once for each catastrophe; (3) a governmental body may suspend the requirements of the TPIA if the governmental body is currently significantly impacted by a catastrophe such that the catastrophe directly causes the inability of a governmental body to comply with the TPIA; (4) a governmental body that initiates a suspension period may not initiate another suspension period related to the same catastrophe, except for a single extension period, and that the combined suspension period for a governmental body may not exceed a total of 14 consecutive calendar days with respect to any single catastrophe; (5) if a governmental body closes its physical offices, but requires staff to work, including remotely, then the governmental body shall make a good faith effort to continue responding to applications for public information, to the extent staff have access to public information responsive to an application, while its administrative offices are closed; and (6) failure to respond to requests in accordance with (5), above, may constitute a refusal to request an attorney general's decision or a refusal to supply public information or information that the attorney general has determined is public information that is not excepted from required disclosure. (Effective September 1, 2021.)

Other Finance and Administration Bills

H.B. 29 (Swanson/Hughes) – Temporary Weapon Storage: this bill: (1) allows a political subdivision to provide a person temporary secure weapon storage when entering a building or portion of a building used by the political subdivision that is generally open to the public and in which carrying a firearm, knife, club or other weapon is prohibited by state law or the political subdivision; (2) allows weapon storage to be provided via self-service weapon lockers or other temporary secure weapon storage operated at all times by a designated employee of the political

subdivision; (3) allows a political subdivision to collect a fee of not more than \$5 for the use of a self-service weapon locker or other temporary secure weapon storage; and (4) addresses how a political subdivision must handle an unclaimed weapon. (Effective September 1, 2021.)

H.B. 525 (Shaheen/Hall) – **Religious Organizations**: this bill: (1) provides that a religious organization is an essential business at all times, including during a declared state of disaster, and the organization’s religious and other related activities are essential activities, even if the activities are not listed as essential in an order issued during the disaster; (2) provides that a governmental entity may not: (a) at any time, including during a declared state of disaster, prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization’s foundational faith-based mission and purpose; or (b) during a declared state of disaster order a religious organization to close or otherwise alter the organization’s purposes or activities; and (3) authorizes a person and the attorney general to seek certain relief for a violation of the prohibition in (2). (Effective immediately.)

H.B. 604 (Noble/Zaffirini) – **Animal Shelter**: requires that, as soon as practicable after an animal is placed in the custody of an animal shelter, the shelter scan the animal to determine whether a microchip is implanted in the animal. (Effective September 1, 2021.)

H.B. 624 (Shine/Campbell) – **Offense Against Public Servant**: increases the criminal penalty for certain offenses committed in retaliation for, or on account of, a person’s service or status as a public servant. (Effective September 1, 2021.)

H.B. 636 (S. Thompson/Whitmire) – **Texas State Board of Plumbing Examiners**: this is the Texas State Board of Plumbing Examiners sunset bill. The bill, among other things, continues the functions of the Texas State Board of Plumbing Examiners through September 1, 2027. (Effective immediately.)

H.B. 957 (Oliverson/Springer) – **Firearm Suppressors (Silencers)**: this bill: (1) prohibits a city council or an officer, employee, or other body that is part of a city (including a police department) from: (a) adopting a rule, order, ordinance, or policy under which the city enforces, or by consistent action allows the enforcement of, a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under Texas law; and (b) enforcing or attempting to enforce any federal statute, order, rule, or regulation described in (1)(a); (2) provides that a violation of the prohibition in (1) may be enforced by denying certain state grant funds to the city; (3) authorizes any citizen residing in the jurisdiction of a city to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the city violated the prohibition in (1); (4) authorizes the attorney general, upon receipt of a valid citizen complaint, to file a writ of mandamus or seek other equitable relief to compel a city to comply with the requirements in the bill, and allows the attorney general to recover reasonable expenses in obtaining such relief; and (5) removes the prohibition in state law against possessing a firearm suppressor, and provides that any pending criminal action for that offense is dismissed on the effective date of the bill. (Effective September 1, 2021.)

H.B. 1118 (Capriglione/Paxton) – Cybersecurity: provides that: (1) a local government employee or official that uses a computer to complete at least 25 percent of the employee or official's required duties shall complete a cybersecurity training certified by the state cybersecurity coordinator and the state's cybersecurity council; (2) the governing body of a local government or the governing body's designee may deny access to the local government's computer system or database to an individual identified as one that is required to take cybersecurity training and is noncompliant with that requirement; (3) to apply for certain state grants (submitted on or after September 1, 2021), a local government must submit with its grant application proof of compliance with the cybersecurity training requirements; and (4) a local government that has not complied with the cybersecurity training requirements must repay the grant and will be ineligible for another grant for two years. (Effective immediately.)

H.B. 1239 (Sanford/Paxton) – Religious Freedom: this bill provides that: (1) for purposes of a disaster declared under Texas Disaster Act of 1975, the Texas Religious Freedom Restoration Act is not considered a regulatory statute and may not be suspended; and (2) a government agency or public official may not issue an order that closes or has the effect of closing places of worship. (Effective immediately.)

H.B. 1256 (Ashby/Huffman) – Specialty Court Funding: requires the comptroller to deposit one percent of both the mixed beverage gross receipts tax and the mixed beverage sales tax to the credit of the specialty court account. (Effective September 1, 2021.)

H.B. 1276 (Parker/Springer) – Food Service Establishments: this bill: (1) allows a food service establishment that holds a permit to sell food other than prepared food directly to consumers if the food: (a) is labeled with any information required by the Health and Human Services Commission; (b) is appropriately inspected and bears an official mark of USDA inspection, if the food is meat or poultry; and (c) is properly refrigerated, if applicable; and (2) prohibits a city or public health district from requiring a food service establishment that sells food directly to an individual consumer to obtain a food manufacturer license or permit if the establishment complies with the requirements in (1) and is not required to hold a food manufacturer license or permit under other state law. (Effective immediately.)

H.B. 1322 (Shaheen/Zaffirini) – Proposed State Agency Rules: requires that a state agency required to file notice of a proposed rule with the secretary of state must also publish on the agency's Internet website a summary of the proposed rule written in plain language, in both English and Spanish, that the general public, including individuals with limited English proficiency, can readily understand because the language is concise and well-organized. (Effective September 1, 2023.)

H.B. 1410 (Murphy/Creighton) – Water Districts: among other things, provides that: (1) when a city consents to the inclusion of land in a water district it may restrict the purposes for which a district may issue bonds to those purposes authorized by law for the district; and (2) the outstanding principal amount of debt obligations issued to finance a recreational facility in a water district may not exceed three percent of: (a) the value of the taxable property in the district; or (b) under certain circumstances, the value of the taxable property in the district making payments to a political subdivision under a contract. (Effective immediately.)

H.B. 1493 (Herrero/Hinojosa) – Falsely Implying Governmental Affiliation: provides: (1) that a governmental unit, including a city, is entitled to enjoin another person's use of an entity name that falsely implies governmental affiliation with the governmental unit; (2) that in an action brought under (1), the governmental unit is entitled to injunctive relief throughout the state, and in the court's discretion, reasonable attorney's fees and court costs if a court finds that the person against whom injunctive relief is sought willfully intended to imply governmental affiliation with the governmental unit; and (3) procedures that the Secretary of State shall follow when a filing entity or foreign filing entity uses a name that falsely implies an affiliation with a governmental entity. (Effective September 1, 2021.)

H.B. 1500 (Hefner/Creighton) – Firearm Regulation: this bill: (1) provides that the Texas Disaster Act of 1975 does not authorize any person to prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range, in connection with a disaster; (2) provides that the governor may not, during a state of disaster, suspend or limit the sale, dispensing, or transportation of explosives or combustibles that are components of firearm ammunition; (3) provides that a directive issued during a state of emergency may not prohibit or restrict the business or operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range; and (4) removes certain express statutory authority of a city to regulate the use of firearms, air guns, or knives in the case of an insurrection, riot, or natural disaster. (Effective September 1, 2021.)

H.B. 1540 (S. Thompson/Huffman) – Offenses: this bill: (1) adds drink solicitation to the list of acts or offenses that can trigger an automatic denial of certain alcoholic beverage permits or licenses if specific circumstances occurred and the application was made within a specified time period; (2) provides that if a law enforcement agency has reason to believe an activity related to prostitution or illegal massage services has occurred at property that is leased to a person operating a massage establishment, the law enforcement agency may provide written notice of the alleged activity, instead of an arrest, to each person maintaining the property; (3) provides that in an action brought to abate certain common nuisances, a court may award a prevailing party reasonable attorney's fees in addition to costs incurred in bringing the action; (4) provides that proof in the form of an arrest or testimony from a law enforcement agent of activities relating to prostitution at a massage establishment taking place after the notice described in (2) is provided serves as prima facie evidence that a defendant did not make a reasonable attempt to abate activities relating to prostitution; (5) provides that proof that illegal massage services are committed at a place maintained by the defendant after notice described in (2) is provided to the defendant is prima facie evidence that the defendant knowingly tolerated the activity and did not make a reasonable attempt to abate the activity; (6) provides that, for purposes of (4) and (5), notice is considered to be provided to the defendant on the earlier of: (a) seven days after the postmark date of the notice; or (b) the date the defendant actually received notice; (7) provides that a person or enterprise commits racketeering if, for financial gain, the person or enterprise commits an offense related to trafficking of persons; (8) provides that a sex offender who is placed under community supervision may not go in, on, or within 1,000 feet, of certain child-care facilities operating as residential treatment centers; (9) provides that the penalty for certain offenses related to controlled substances is enhanced to a felony of the third degree if it shown that the offense was committed by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned,

rented, or leased by certain child-care facilities operating as residential treatment center; and (10) provides that the commissioners court of a county or governing body of a city may establish a first offender solicitation of prostitution prevention program for defendants charged with the offense of solicitation of prostitution. (Effective September 1, 2021.)

H.B. 1560 (Goldman/Buckingham) – **Texas Department of Licensing and Regulation:** provides for the continuation and functions of the Texas Department of Licensing and Regulation and, among other things: (1) deregulates (no longer licenses) polygraph examiners; and (2) eliminates certain court-ordered driver education programs. (Effective September 1, 2021, except as otherwise provided.)

H.B. 1920 (Capriglione/Springer) – **Weapons at Airport:** this bill: (1) provides that it is a defense to prosecution for the offense of carrying a weapon in a prohibited place that the actor was authorized by a federal agency or an airport operator to possess a firearm in a secured area; and (2) includes in the definition of “secured area” of an airport terminal building an aircraft parking area that is used by common carriers in air transportation, but not by general aviation, and to which access is controlled under federal law (the term does not include a baggage claim area, a motor vehicle parking area used by passengers, employees, or persons awaiting an arrival, or an area used by the public to pick up or drop off passengers or employees). (Effective September 1, 2021.)

H.B. 1925 (Capriglione/Buckingham) – **Camping in Public:** this bill:

1. creates a Class C misdemeanor criminal offense for a person who intentionally or knowingly camps in a public place without the effective consent of the officer or agency having the legal duty or authority to manage the public place;
2. provides that consent given by an officer or agency of a political subdivision is not effective for the purposes of (1), unless given to authorize the person to camp for certain recreational, homeless shelter, beach access, and emergency shelter purposes;
3. provides that an ordinance, order, rule, or other regulation adopted by a state agency or political subdivision relating to prohibiting camping in a public place or affecting the authority of a state agency or political subdivision to adopt or enforce an ordinance, order, rule, or other regulation relating to prohibiting camping in a public place is not preempted if the ordinance, order, rule, or other regulation: (a) is compatible with and equal to or more stringent than the offense in (1); or (b) relates to an issue not specifically addressed by the offense created in (1);
4. requires that, before or at the time a peace officer issues a camping in public citation, the peace officer make a reasonable effort to: (a) advise the person of an alternative place at which the person may lawfully camp; and (b) contact, if reasonable and appropriate, an appropriate official of the political subdivision in which the public place is located, or an appropriate nonprofit organization operating within that political subdivision, and request the official or organization to provide the person with: (i) information regarding the prevention of human trafficking; or (ii) any other services that would reduce the likelihood of the person suspected of committing the offense continuing to camp in the public place;
5. provides that the requirement in (4), above, does not apply when a peace officer determines there is an imminent threat to the health or safety of a person and compliance is impracticable;

6. provides that if a person is arrested or detained solely for a public camping offense, the peace officer must ensure that all of the person's personal property not designated as contraband under other law is preserved by: (a) permitting the person to remove all the property from the public place at the time of the person's departure; or (b) taking custody of the property and allowing the person to retrieve the property after the person is released from custody;
7. prohibits a political subdivision from designating a property to be used by homeless individuals to camp unless the Department of Housing and Community Affairs approves a plan to do so, and provides that the Department may not approve a plan if the property is a public park;
8. prohibits a local entity from adopting or enforcing a policy under which the entity prohibits or discourages the enforcement of any public camping ban;
9. provides that, in compliance with (8), a local entity may not prohibit or discourage a peace officer or prosecuting attorney who is employed by or otherwise under the direction or control of the entity from enforcing a public camping ban;
10. authorizes the attorney general to bring an action in a district court in Travis County or in a county in which the principal office of the entity is located to enjoin a violation of (8), and provides the attorney general may recover reasonable expenses, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs;
11. provides that a local entity may not receive state grant funds for the state fiscal year following the year in which a final judicial determination in an action brought under (10) is made that the entity has intentionally violated (8);
and
12. provides that a local entity that has not violated (8) may not be denied state grant funds, regardless of whether the entity is a part of another entity that is in violation of (8).

(Effective September 1, 2021.)

H.B. 2025 (Hunter/Huffman) – **Federal Census**: this bill, among other things, provides that, until September 1, 2023, a statute that applies to a political subdivision having a certain population according to the most recent federal census: (1) continues to apply to the same political subdivisions to which the statute applied under the 2010 federal census, regardless of whether the political subdivisions continue to have the populations prescribed by the statute according to the 2020 federal census; and (2) does not apply to a political subdivision to which the statute did not apply under the 2010 federal census, regardless of whether the political subdivision has the population prescribed by the statute according to the 2020 federal census. (Effective immediately.)

H.B. 2205 (Romero/Schwertner) – **Swimming Pools**: this bill, among other things, provides that: (1) pool safety standards adopted by rule by the Department of State Health Services must comply with a version of the International Swimming Pool and Spa Code that is not older than the version in effect on May 1, 2019; (2) a person may use, maintain, and repair a pool or spa that was in compliance with the laws of this state on August 31, 2021, and related mechanical, electrical, and plumbing systems in accordance with the laws applicable to the pool or system on that date; (3) a municipality may adopt a more recent version of the International Swimming Pool and Spa Code than in (1) to apply in the municipality; and (3) to the extent a provision of a code adopted by a municipality under (2) conflicts with a law of this state or a regulation on pool operation and

management, water quality, safety standards unrelated to design and construction, signage, or enclosures, the law or regulation controls. (Effective September 1, 2021.)

H.B. 2622 (Holland/Hall) – Firearm Regulation: this bill provides that: (1) notwithstanding any other law, an agency of this state, a political subdivision of this state, or a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation that: (a) imposes a prohibition, restriction, or other regulation that does not exist under the laws of Texas; and (b) relates to: (i) a registry requirement for a firearm, a firearm accessory, or ammunition; (ii) a requirement that an owner of a firearm, a firearm accessory, or ammunition possess a license as a condition of owning, possessing, or carrying the firearm, firearm accessory, or ammunition; (iii) a requirement that a background check be conducted for the private sale or transfer of a firearm, a firearm accessory, or ammunition; (iv) a program for confiscating a firearm, a firearm accessory, or ammunition from a person who is not otherwise prohibited by the laws of Texas from possessing the firearm, firearm accessory, or ammunition; or (v) a program that requires an owner of a firearm, a firearm accessory, or ammunition to sell the firearm, firearm accessory, or ammunition; (2) the prohibition in (1) does not apply to a federal statute, order, rule or regulation in effect on January 19, 2021; and (3) a violation of the prohibition in (1) may be enforced: (a) by denying certain state grant funds to the political subdivision; and (b) through certain court action by the attorney general that is initiated by citizen complaint. (Effective September 1, 2021.)

H.B. 2730 (Deshotel/Kolkhorst) – Eminent Domain: makes several changes to the eminent domain process. Of primary importance to cities, the bill:

1. requires the attorney general, at least once every two years, to evaluate the landowner's bill of rights statement and make any change to the landowner's bill of rights statement that the attorney general determines necessary, including making a change to the writing style of the statement to ensure the statement is written in plain language designed to be easily understood by the average property owner;
2. provides that a person may not receive state certification to buy, sell, lease, or transfer an easement or right-of-way for another for compensation in connection with telecommunication, utility, railroad, or pipeline service unless the person successfully completes at least 16 classroom hours of coursework approved by the Texas Real Estate Commission in:
 - a. the law of eminent domain, including the rights of property owners;
 - b. appropriate standards of professionalism in contacting and conducting negotiations with property owners; and
 - c. ethical considerations in the performance of right-of-way acquisition services;
3. provides that an entity with eminent domain authority makes a bona fide offer when the entity's initial offer to a property owner is made in writing and includes:
 - a. a copy of the landowner's bill of rights statement;
 - b. a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:
 - i. damages to the remainder, if any, of the property owner's remaining property; or

- ii. an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser;
- c. an instrument of conveyance; and
- d. the name and telephone number of a representative of the entity who is:
 - i. an employee of the entity;
 - ii. an employee of an affiliate providing services on behalf of the entity;
 - iii. a legal representative of the entity; or
 - iv. if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity;
- 4. requires that an entity that files a condemnation petition must concurrently provide a copy of the petition to the property owner by certified mail, return receipt requested, and first class mail;
- 5. provides that if an entity has received written notice that the property owner is represented by counsel, the entity must also concurrently provide a copy of the condemnation petition to the property owner's attorney by first class mail, commercial delivery service, fax, or email;
- 6. requires the judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned to, not later than the 30th calendar day after the date the petition is filed, appoint three disinterested real property owners who reside in the county as special commissioners, and appoint two disinterested real property owners who reside in the county as alternate special commissioners;
- 7. provides that each party shall have until the later of ten calendar days after the date of the order appointing the special commissioners, or 20 days after the date the petition was filed to strike one of the three special commissioners, in which case an alternate special commissioner shall serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment;
- 8. provides that if a party exercises a strike under Number 7, above, the other party may, by the later of the third day after the date of filing the initial strike or the date of the initial strike deadline, strike a special commissioner from the resulting panel, provided the other party has not earlier exercised a strike;
- 9. entitles each party in an eminent domain proceeding to a copy of the court's order appointing special commissioners; and
- 10. requires the court to promptly provide the signed order appointing special commissioners to the party initiating the condemnation proceeding, and that party must: (a) provide a copy of the signed order to the property owner and each other party by certified mail, return receipt requested; and (b) if the entity has received written notice that the property owner is represented by counsel, concurrently provide a copy of the signed order to the property owner's attorney by first class mail, commercial delivery service, fax, or email.

(Effective January 1, 2022.)

H.B. 3069 (Holland/Hughes) – Statute of Limitations on Claims: this bill: (1) requires a governmental entity to bring suit for damages for certain claims against: (a) a registered or licensed architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than eight years after the substantial completion of the improvement or the

beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment; and (b) a person who constructs or repairs an improvement to real property not later than eight years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement; and (2) excepts from (1): (a) a contract entered into by the Texas Department of Transportation; (b) a project that receives money from the state highway fund or a federal fund designated for highway and mass transit spending; and (c) a civil works project. (Effective immediately.)

H.B. 3340 (Swanson/Bettencourt) – **Dangerous Dogs**: this bill provides that: (1) any order to destroy a dog is stayed for a period of ten calendar days from the date the order is issued, during which period the dog’s owner may file a notice of appeal; and (2) a court, including a justice court, may not order the destruction of a dog during the pendency of an appeal related to a dangerous dog, including an order to destroy a dangerous dog and an order determining that a dog is a dangerous dog. (Effective September 1, 2021.)

H.B. 3583 (Paddie/Hinojosa) – **Energy Savings Performance Contracts**: this bill: (1) limits the scope of an energy savings performance contract by, among other things, excluding from the term “energy savings performance contract” the design or new construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project; (2) prohibits modifying the scope of an energy savings performance contract for a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project through a change order, contract addendum, or other method: (a) to perform work that is not related to, connected with, or otherwise ancillary to the measures identified in the original scope of an energy savings performance contract; or (b) in a way that increases the price of the original awarded contract by more than 25 percent of the original contract value; and (3) provides that a contract entered into or an arrangement made in violation of certain state law governing energy savings performance contracts is voidable as against public policy, and that the state law may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded. (Effective immediately.)

H.B. 3584 (Murr/Buckingham) – **Historical Monuments**: provides: (1) notwithstanding any other law, a monument, marker, or medallion installed by the Texas Historical Commission is state property solely under the commission’s custody and control and may not be altered, removed, relocated, covered, obscured, or concealed without the express written permission of the commission; (2) that the attorney general may file suit in district court to seek civil penalties in of not less than \$50 nor more than \$1,000 for each day of violation and equitable relief in accordance with current state law against a person who violates this amendment; (3) a presumption that if a person commits a violation on more than one day, that the person committed a violation on each intervening day between the days of violation; and (4) a waiver of governmental immunity for any county, city, or other political subdivision to the extent liability is created under (1). (Effective September 1, 2021.)

H.B. 3786 (Holland/Nelson) – **Electronic Submission to Comptroller**: among other things, this bill authorizes the comptroller, after providing notice, to require a document, payment, notice,

report, or other item required to be submitted to the comptroller to be submitted electronically. (Effective September 1, 2021.)

H.B. 3807 (Hunter/Hinojosa) – Lifeguards: among other things, provides that as part of the duty to clean and maintain the condition of public beaches, a city shall: (1) during reasonable daylight hours from Memorial Day to Labor Day, provide: (a) occupied lifeguard towers or mobile lifeguard units on each side of each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within the corporate boundaries; or (b) a single occupied lifeguard tower or mobile lifeguard unity at each pier, jetty, or other structure that protrudes into the Gulf of Mexico that tis located within the corporate boundaries if the single tower provides and unobstructed view of both sides of the structure;(2) post within 100 yards of each side of each structure described by (1) signs clearly describing the dangerous water conditions that may occur near the structure; and (3) the city may suspend or alter these duties during dangerous weather conditions or emergency operations. (Effective September 1, 2021.)

H.B. 3897 (S. Thompson/Birdwell) – Local Alcohol Permit Fees: provides that the fee that a city may levy and collect for a brewer's license or a brewer's self-distribution license may not exceed 50 percent of the fee set by rule for the license. (Effective September 1, 2021.)

H.B. 3898 (Anchia/Huffman) – Public Retirement Systems Funding: provides, among other things, that: (1) an evaluation of the appropriateness, adequacy, and effectiveness of a public retirement system's investment practices and performance that is required to be conducted by an independent firm must include: (a) a summary of the firm's experience in evaluating institutional investment practices and performance and a statement that the firm's experience meets the required experience; (b) a statement indicating the nature of any existing relationship between the independent firm and the public retirement system and confirming that the firm and any related entity are not involved in directly or indirectly managing the investments of the system; (c) a list of the types of remuneration received by the independent firm from sources other than the public retirement system for services provided to the system; (d) a statement identifying any potential conflict of interest or any appearance of a conflict of interest that could impact the analysis included in the evaluation due to an existing relationship between the independent firm and: (i) the public retirement system; or (ii) any current or former member of the governing body of the system; and (e) an explanation of the firm's determination regarding whether to include a recommendation for specific evaluation matters; (2) a public retirement system shall conduct the evaluation described by (1): (a) once every three years, if the total assets of the retirement system as of the last day of the preceding fiscal year were at least \$100 million; or (b) once every six years, if the total assets of the retirement system as of the last day of the preceding fiscal year were at least \$30 million and less than \$100 million; (3) a public retirement system is not required to conduct the evaluation described by (1) if the total assets of the retirement system as of the last day of the preceding fiscal year were less than \$30 million; (4) a governmental entity that is the employer of active members of a public retirement system evaluated under (1) may pay all or part of the costs of the evaluation, and the public retirement system shall pay any remaining unpaid costs of the evaluation; (5) the governing body of a public retirement system and, if the system is not a statewide retirement system, its associated governmental entity shall: (a) jointly, if applicable: (i) develop and adopt a written funding policy that details a plan for achieving a funded ratio of the system that is equal to or greater than 100 percent; and (ii) timely revise the policy to

reflect any significant changes to the policy, including changes required as a result of formulating and implementing a funding soundness restoration plan; (b) post a copy of the most recent edition of the policy on a publicly available Internet website; (6) a public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years; and (7) instances in which the governing body of a public retirement system and the governing body of the associated governmental entity shall jointly formulate a funding soundness restoration plan, including a revised funding soundness restoration plan. (Effective September 1, 2021.)

H.B. 4107 (Burrows/Kolkhorst) – **Eminent Domain by a Common Carrier Pipeline:** this bill: (1) requires a common carrier or its employees, contractors, agents, or assigns to, before entering property for the purpose of making a preliminary survey to be used in the exercise of the power of eminent domain, provide the property owner with: (a) written notice of the carrier's intent to enter the property; and (b) an indemnification provision in favor of the property owner with respect to damages, if any, resulting from the survey; (2) provides that notice and indemnification provided under (1), above: (a) must be provided to the property owner not later than the second day before the date of entry to the property; (b) must include the phone number of a person whom the property owner may contact regarding any questions or objections the property owner has relating to the survey, and (c) may be provided by first class mail, e-mail, personal delivery to an adult living on the property, or by any other method of service authorized by the Texas Rules of Civil Procedure; and (3) imposes various restrictions on access to the property for which notice is required under (1), above. (Effective September 1, 2021.)

H.B. 4346 (Leman/Springer) – **Firearm Regulation:** this bill: (1) prohibits an instrument granting an access easement from restricting or prohibiting an easement holder or an easement holder's guest from possessing, carrying, or transporting a firearm or an alcoholic beverage over the servient estate while using the easement for the easement's purpose; (2) prohibits the owner of a servient estate from enforcing a restrictive covenant in an instrument granting an access easement over the servient estate that restricts or prohibits the easement holder or the easement holder's guest from possessing, carrying, or transporting a firearm or an alcoholic beverage over the servient estate while using the easement for the easement's purpose; and (3) provides that the prohibitions in (1) and (2) do not apply to a right-of-way easement for a pipeline, electric transmission line, or other utility. (Effective September 1, 2021.)

S.B. 73 (Miles/Klick) – **Local Health Departments:** this bill: (1) defines a local public health entity as including a local health unit, a local health department, and a public health district; and (2) requires the executive commissioner of Health and Human Services Commission to establish a separate provider type for a local public health entity for purposes of enrollment as a provider for and reimbursement under the medical assistance program. (Effective September 1, 2021.)

S.B. 149 (Powell/Goldman) – **Unmanned Aircraft:** in relation to the prosecution of the offense of operating an unmanned aircraft over certain facilities, this bill adds to the definition of the term "critical infrastructure facility" a: (1) public or private airport depicted in a current aeronautical chart published by the Federal Aviation Administration; and (2) military installation owned or

operated by the federal government, the state, or another governmental entity. (Effective September 1, 2021.)

S.B. 157 (Perry/Craddick) – Eminent Domain Reporting Requirements: this bill: (1) exempts a city with a population of less than 25,000 from eminent domain reporting requirements if the city's eminent domain authority information has not changed from the information reported in the city's most recently filed report; and (2) provides that for a city described by (1), above, if the city's eminent domain authority information is the same as the information in the eminent domain database from the previous reporting period, the city, not later than February 1 of the current reporting period, shall confirm the accuracy of the information by electronically updating the city's previously filed report with the comptroller. (Effective September 1, 2021.)

S.B. 454 (Kolkhorst/Lambert) – Local Mental Health Authority: this bill, among other things, requires the Health and Human Services Commission to require each local mental health authority group to meet at least quarterly to collaborate on planning and implementing regional strategies to reduce: (1) costs to local governments of providing services to persons experiencing a mental health crisis; (2) transportation to mental health facilities of persons served by an authority that is a member of the group; (3) incarceration of persons with mental illness in county jails that are located in an area served by an authority that is a member of the group; and (4) visits by persons with mental illness at hospital emergency rooms located in an area served by an authority that is a member of the group. (Effective immediately.)

VETOED S.B. 474 (Lucio/Collier) – Unlawful Restraint of Dog: this bill: (1) prohibits and creates a criminal offense for the unlawful restraint of a dog; and (2) provides that the prohibition in (1) does not preempt a local regulation relating to the restraint of a dog or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the restraint of a dog if the regulation, ordinance, or requirement: (a) is compatible with and equal to, or more stringent than, the prohibition; or (b) relates to an issue not specifically addressed by the prohibition. (Effective September 1, 2021.)

S.B. 475 (Nelson/Capriglione) – Cybersecurity: this bill, among other things: (1) requires the Department of Information Resources (DIR) to establish a framework for regional cybersecurity working groups to execute mutual aid agreements that allow state agencies, local governments, and others to assist with responding to a cybersecurity event in the state; (2) requires DIR to establish the Texas volunteer incident response team to provide rapid response assistance to any participating entity (which could include a city) under DIR's direction during a cybersecurity event; (3) authorizes DIR to establish a regional network security center to assist in providing cybersecurity support and network security to certain entities (including cities) that elect to participate in and contract for services through such a center; (4) makes confidential and excepted from disclosure under the Public Information Act information written, produced, collected, assembled, or maintained by DIR, a participating entity, the cybersecurity council, or a volunteer relating to the response team if the information: (a) contains the contact information of a volunteer; (b) identifies or provides a means of identifying a person who may, as a result of disclosure of the information, become a victim of a cybersecurity event; (c) consists of a participating entity's cybersecurity plans or cybersecurity-related practices; or (d) is obtained from a participating entity or from a participating entity's computer system in the course of providing assistance through the

team; and (5) includes robotic process automation among the next generation technologies a local government must consider using in the administration of the government. (Effective September 1, 2021.)

S.B. 617 (Kolkhorst/Wilson) – Farmers’ Markets: this bill: (1) provides that a permit issued to a farmer or food producer for the sale of food directly to consumers: (a) must be valid for a term of not less than one year; (b) may impose an annual fee in an amount not to exceed \$100 for the issuance or renewal; and (c) must cover sales at all locations the holder is authorized to sell food, including farmers’ markets, farm stands, and farms; and (2) creates a cause of action for a farmer or food producer whose permit does not comply with (1) to recover: (a) the amount the farmer or food producer was charged in excess of the annual fee; and (b) reasonable and necessary attorney’s fees. (Effective September 1, 2021.)

S.B. 700 (Buckingham/Cyrier) – Texas Parks and Wildlife Department: this is the Texas Parks and Wildlife Department sunset bill. The bill, among other things, continues the functions of the Texas Parks and Wildlife Department until September 1, 2033. (Effective September 1, 2021.)

S.B. 703 (Buckingham/Canales) – Texas Department of Agriculture: this is the Texas Department of Agriculture sunset bill. The bill, among other things: (1) continues the department until 2033; and (2) repeals: (a) the Rural Foundation; (b) the Rural Health & Economic Development Advisory Council; and (c) the Early Childhood Health and Nutrition Interagency Council. (Effective September 1, 2021.)

S.B. 705 (Lucio/Cyrier) – Animal Health Commission: this is the Texas Animal Health Commission sunset bill. The bill continues the commission until 2033. (Effective September 1, 2021.)

S.B. 721 (Schwertner/Leman) – Eminent Domain: provides that an entity seeking to acquire property through the use of eminent domain shall, not later than the third business day before the date of a special commissioner’s hearing, disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner’s property and used in determining the entity’s opinion of value, if an appraisal report is to be used at the hearing. (Effective September 1, 2021.)

S.B. 725 (Schwertner/Leman) – Eminent Domain: provides that: (1) land qualifies for appraisal for property tax purposes as agricultural land if a portion or parcel of the land is subject to a right of way that is less than 200 feet wide and that was taken by condemnation if the remainder of the parcel of land qualifies for appraisal as agricultural land; and (2) if additional taxes are due because the land is diverted to a nonagricultural use as a result of a condemnation, the additional taxes and interest are the personal obligation of the condemning entity and not the property owner from whom the property was taken. (Effective September 1, 2021.)

S.B. 726 (Schwertner/Leman) – Eminent Domain: this bill, among other things, in relation to a property owner’s right to repurchase property from a condemning entity: (1) eliminates as available elements to establish “actual progress” on a project: (a) the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner’s

property was acquired; and (b) for a governmental entity, the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one tolling action before the tenth anniversary of the date of acquisition of the property; and (2) requires three of five remaining elements to be met to establish actual progress. (Effective September 1, 2021.)

S.B. 780 (Hinojosa/Raymond) – Intergovernmental Agreements: allows a local government to enter into an intergovernmental support agreement with a branch of the armed forces of the United States under the National Defense Authorization Act to provide installation-support services to a military installation located in Texas. (Effective immediately.)

S.B. 790 (Zaffirini/Howard) – Ambulance Balance Billing: provides that: (1) a county or city may elect to consider a health benefit plan payment towards a claim for air or ground ambulance services provided by the county or city as payment in full for those services regardless of the amount the county or city charged for those services; (2) a county or city may not practice balance billing for a claim for which the county or city makes an election described in (1); and (3) the Texas Department of Insurance shall conduct a study on the balance billing practices of ground ambulance service providers, the variations in prices for ground ambulance services, the proportion of ground ambulances that are in-network, trends in network inclusion, and factors contributing to the network status of ground ambulances. (Effective September 1, 2021.)

S.B. 798 (Nelson/Neave) – Family Violence: this bill, among other things, allows a victim of dating violence, a victim of family violence, or a child of a victim of dating or family violence, to request, without payment of a fee, a certified copy of the individual's birth record. (Effective September 1, 2021.)

S.B. 911 (Hancock/Burrows) – Third-Party Food Delivery Service: this bill, among other things: (1) defines "third-party food delivery service" as a website, mobile application, or other service that acts as an intermediary between consumers and multiple restaurants not owned or operated by the service to arrange for the delivery or pickup of food or beverages from those restaurants; (2) preempts a city or county from adopting or enforcing an ordinance or regulation that affects the terms of an agreement that meets the requirements of (3) between a third-party food delivery service and a restaurant; and (3) provides that an agreement between a third-party food delivery service and a restaurant must: (a) be in writing; (b) expressly authorize the service to arrange for the delivery or pickup of food or beverages from that restaurant; and (c) clearly state each fee, including a commission or other charge, that the restaurant will be required to pay to the service or absorb in connection with an order arranged through the service. (Effective January 1, 2022.)

S.B. 1122 (Zaffirini/Holland) – Comptroller Contracts for Travel Services: this bill, among other things, prohibits the comptroller from charging a city a fee if a city officer or employee who is engaged in official city business participates in the comptroller's contract for travel services for the purpose of obtaining reduced airline fares and reduced travel agent fees. (Effective immediately.)

S.B. 1642 (Creighton/Canales) – **Navigation Districts:** this bill, among other things, authorizes a navigation district to respond to and fight a fire or explosion or hazardous material incident that occurs on, or adjacent to, a waterway, channel, or turning basin that is located in the district's territory, regardless of whether the waterway, channel, or turning basin is located in the corporate limits of a city. (Effective immediately.)

S.B. 1827 (Huffman/Holland) – **Opioid Abatement Account:** this bill, among other things: (1) defines "statewide opioid settlement agreement" as all settlement agreements and related documents entered into by Texas through the attorney general, political subdivisions that have brought a civil action for an opioid-related harm claim against an opioid manufacturer, distributor, or retailer, and opioid manufacturers, distributors, or retailers relating to illegal conduct in the marketing, promotion, sale, distribution, and dispensation of opioids that provide relief for Texas and political subdivisions of Texas; (2) requires the attorney general and comptroller to maintain a copy of a statewide opioid settlement agreement, including any amendments to the agreement, and make the copy available on the attorney general's and comptroller's Internet websites; (3) establishes the Texas Opioid Abatement Fund Council to ensure that money recovered by Texas through a statewide opioid settlement agreement is allocated fairly and spent to remediate the opioid crisis in Texas by using efficient and cost-effective methods that are directed to regions of Texas experiencing opioid-related harms; (4) provides that the executive commissioner of the Health and Human Services Commission shall appoint the regional members for the council in (3) from a list of two qualified candidates provided by the governing bodies of counties and cities that: (a) brought a civil action for an opioid-related harm against a released entity; (b) released an opioid-related harm claim in a statewide opioid settlement agreement; and (c) are located within the regions for which the member is being appointed; (5) creates the opioid abatement account as a dedicated account in the general revenue fund administered by the comptroller, which may be appropriated only to a state agency for the abatement of opioid-related harms; and (6) establishes the opioid abatement trust fund as a trust fund established outside of the state treasury that is administered by the Texas Treasury Safekeeping Trust Company. (Effective immediately.)

S.B. 1955 (Taylor/Burrows) – **Learning Pods:** this bill, among other things: (1) exempts any "learning pod" (defined as group of children who, based on the voluntary association of the children's parents, meet together at various times and places to participate in or enhance the children's primary or secondary academic studies, including participation in an activity or service provided to the children in exchange for payment) from any ordinance, rule, regulation, policy, or guideline adopted by a local governmental entity that applies to a school district campus or child-care facility, including any requirements regarding staff-to-child ratios, staff certification, background checks, physical accommodations, or building or fire codes; (2) exempts any group, building, or facility associated with or used by a learning pod from any ordinance, rule, regulation, policy, or guideline adopted by a local governmental entity that would not apply to the group, building, or facility if it was not associated with or used by a learning pod; (3) provides that an employee, contractor, or agent of a school district or other local governmental entity may not initiate or conduct a site inspection of, investigation of, or visit to a location in which a learning pod meets if the district or entity would not have initiated or conducted the inspection, investigation, or visit if the learning pod did not meet at that location; and (4) prohibits a school district or other local governmental entity from requiring: (a) a learning pod to be registered with

the district or entity; or (b) a person participating in a learning pod to report to the district or entity information regarding the learning pod's existence or operation. (Effective immediately.)

S.J.R. 27 (Hancock/Leach) – **Religious Services:** amends the Texas Constitution to prohibit the state or a political subdivision of the state from enacting, adopting, or issuing a statute, order, proclamation, decision, or rule that prohibits or limits religious services by a religious organization established to support and serve the propagation of a sincerely held religious belief. (Effective if approved at the election on November 2, 2021.)

Personnel

H.B. 7 (Button/Nelson) – **Unemployment Compensation:** provides that for purposes of calculating the replenishment ratio, the amount of benefits charged or paid shall not include the amount of benefits paid and not effectively charged to an employer's account as a result of an order or proclamation by the governor declaring at least 50 percent of the counties in this state to be in a state of disaster or emergency. (Effective immediately.)

H.B. 786 (Oliverson/Perry) – **CPR Training:** provides that a city that employs or appoints a telecommunicator shall provide training to the telecommunicator of not less than 20 hours during each 24-month period of employment that includes: (1) telecommunicator cardiopulmonary resuscitation training; and (2) other topics selected by the Texas Commission on Law Enforcement or the employing city. (Effective September 1, 2021.)

H.B. 792 (Burns/Birdwell) – **Police Dispatchers:** provides that: (1) a city with a population of more than 10,000 may adopt an alternate work schedule for the police department dispatchers if a majority of the dispatchers vote in favor of the alternate work schedule; and (2) a dispatcher working under an alternate work schedule described in (1) is entitled to overtime pay if the dispatcher works more hours during a calendar month than the number of hours in the normal work month of the majority of the employees of the city other than fire fighters and police officers. (Effective September 1, 2021.)

H.B. 1589 (Davis/Menéndez) – **Paid Military Leave:** provides that: (1) a person who is an officer or employee of the state, a city, a county, or another political subdivision and who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to paid leave of absence for each day the person is called to state active duty by the governor or another appropriate authority in response to a disaster, not to exceed seven workdays in a fiscal year; and (2) during the leave of absence described in (1), the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time. (Effective September 1, 2021.)

H.B. 2073 (Burrows/Springer) – **Paid Quarantine Leave:** provides that: (1) the governing body of a political subdivision, including a city, shall develop and implement a paid quarantine leave policy for fire fighters, peace officers, detention officers, and emergency medical technicians who are employed by, appointed by, or elected for the political subdivision and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty; (2) a paid

quarantine leave policy must: (a) provide that a fire fighter, peace officer, detention officer, or emergency medical technician on paid quarantine leave receives: (i) all employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and (ii) reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and (b) require that the leave be ordered by the person's supervisor or the political subdivision's health authority; and (3) a political subdivision may not reduce a fire fighter's, peace officer's, detention officer's, or emergency medical technician's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with a policy adopted (1). (Effective immediately.)

S.B. 22 (Springer/Patterson) – Disease Presumption: provides, among other things, that:

1. a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician who suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that results in death or total or partial disability is presumed to have contracted the virus or disease during the course and scope of employment as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician if the detention officer, custodial officer, firefighter, peace officer, or emergency medical technician:
 - a. is employed in the area designated in a disaster declaration by the governor or another law and the disaster is related to severe acute respiratory syndrome SARS-CoV-2 or COVID-19; and
 - b. contracts the disease during the disaster declared by the governor;
2. the presumption under (1) applies only to a person who:
 - a. is employed as a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician on a full-time basis;
 - b. is diagnosed with SARS-CoV-2 or COVID-19:
 - i. using a test authorized, approved, or licensed by the United States Food and Drug Administration; or
 - ii. if the person is deceased, using a test described by (2)(b)(i) or by another means, including by a physician;
 - c. was last on duty:
 - i. not more than 15 days before the date the person is diagnosed with SARS-CoV-2 or COVID-19; or
 - ii. if the person is deceased, not more than 15 days before the date the person: (A) was diagnosed with SARS-CoV-2 or COVID-19; (B) began to show symptoms of SARS-CoV-2 or COVID-19 as determined by a licensed physician; (C) was hospitalized for symptoms related to SARS-CoV-2 or COVID-19; or (D) died if SARS-CoV-2 or COVID-19 was a contributing factor in the person's death;
3. a rebuttal to a presumption described in (1) may not be based solely on evidence relating to the risk of exposure to SARS-CoV-2 or COVID-19 of a person with whom a detention officer, custodial officer, firefighter, peace officer, or emergency medical technician resides;
4. an injured employee who is subject to the presumption described in (1) and whose claim for benefits is determined to be compensable by an insurance carrier or division of the

workers' compensation of the Texas Department of Insurance, may request reimbursement for health care paid by the employee, including copayments and partial payments, by submitting to the carrier a legible written request and documentation showing the amounts paid to the health care provider;

5. the provisions of (1)-(4) expire on September 1, 2023;
6. a person subject to the presumption described in (1) who on or after the date the governor declared a disaster relating to SARS-CoV-2 or COVID-19, but before the effective date of this bill, contracted SARS-CoV-2 or COVID-19, may file a claim for benefits related to SARS-CoV-2 or COVID-19, on or after the effective date of the bill, regardless of whether that claim is otherwise considered untimely and the provisions of the bill apply to that claim; and
7. a person who is subject to the presumption described in (1) who on or after the date the governor declared a disaster relating to SARS-CoV-2 or COVID-19, but before the effective date of this bill, filed a claim for benefits related to SARS-CoV-2 or COVID-19, and whose claim was subsequently denied may, on or after the effective date of this bill, request in writing that the insurance carrier reprocess the claim and the changes in law made by this bill shall apply to that claim, and such request to reprocess a claim shall be filed not later than one year after the effective date of this bill.

(Effective immediately.)

S.B. 24 (Huffman/Bonnen) – Police Pre-Employment Procedures: provides that:

1. a law enforcement agency hiring a police officer is entitled to view the contents of the officer's departmental civil service personnel file (commonly referred to as the "g" file);
2. before a law enforcement agency may hire a person licensed by the Texas Commission on Law Enforcement (TCOLE), the agency must, on a form and in the manner prescribed by TCOLE:
 - a. obtain the person's written consent for the agency to review the information required to be reviewed;
 - b. request from TCOLE and any other applicable person information required to be reviewed; and
 - c. submit to TCOLE confirmation that the agency, to the best of the agency's ability before hiring the person:
 - i. contacted each entity or individual necessary to obtain the information required to be reviewed under; and
 - ii. obtained and reviewed as related to the person, as applicable:
 - A. personnel files and other employee
 - B. records from each previous law enforcement agency employer, including the employment application submitted to the previous employer;
 - C. employment termination reports maintained by TCOLE;
 - D. service records maintained by TCOLE;
 - E. proof that the person meets the minimum qualifications for enrollment in a TCOLE training program;

- F. a military veteran's United States Department of Defense Form DD-214 or other military discharge record;
 - G. criminal history record information;
 - H. information on pending warrants as available through the Texas Crime Information Center and National Crime Information Center;
 - I. evidence of financial responsibility required to operate a vehicle;
 - J. driving record from the Department of Public Safety;
 - K. proof of United States citizenship; and
 - L. information on the person's background from at least three personal references and at least two professional references;
3. if an entity or individual contacted for information required to be reviewed refused to provide the information or did not respond to the request for information, the confirmation submitted to TCOLE must document the manner of the request and the refusal or lack of response;
 4. if TCOLE or a law enforcement agency receives from a law enforcement agency a request for information and the person's consent on the forms and in the manner prescribed by TCOLE, TCOLE or the agency shall provide the information to the requesting agency;
 5. the confirmation form submitted to TCOLE under (2)(c) is not confidential and is subject to disclosure under the Public Information Act;
 6. TCOLE shall:
 - a. by rule establish the required forms and procedures for making a person's employment records available;
 - b. post the forms and procedures on TCOLE's internet website; and
 - c. retain a record of each submitted confirmation form;
 7. the head of a law enforcement agency or the agency head's designee shall review and sign each required confirmation form before submission to TCOLE, and the failure of an agency head or the agency head's designee to comply shall be grounds for suspension of the agency head's TCOLE license; and
 8. a law enforcement agency, agency head, or other law enforcement official is not liable for civil damages for:
 - a. a report made by that agency or person if the report is made in good faith; or
 - b. making a person's information available to a hiring law enforcement agency under the provisions of this bill.

(Effective September 1, 2021.)

S.B. 45 (Zaffirini/Zwiener) – Sexual Harassment: provides that an employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors: (1) know or should have known that the conduct constituting sexual harassment was occurring; and (2) fail to take immediate and appropriate corrective action. (Effective September 1, 2021.)

S.B. 818 (Powell/C. Turner) - Unemployment Compensation: provides that: (1) benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year was caused by the employee being called to provide service in the

uniformed services or in the Texas military forces, provided that the employer has not been found to be in violation of federal or state reemployment provisions with respect to the employee; and (2) an individual is not disqualified for unemployment benefits if the individual's separation from employment was caused by the individual being called to provide services in the uniformed services or the Texas military forces. (Effective September 1, 2021.)

S.B. 1105 (Hughes/Anchia) – **TMRS Return To Work:** provides, among other things, that: (1) the retirement annuity of a person who is reemployed by a city in which the employee most recently performed creditable service before the person's retirement shall not be suspended, provided that the person does not become an employee of the person's reemploying city at any time during the 12 consecutive months after the effective date of the person's last retirement from the reemploying city; and (2) if the annuity payments of a person who resumed employment with the person's reemploying city before September 1, 2021, were discontinued and suspended and the person has not terminated their employment with the city, on the filing of a written application with the Texas Municipal Retirement System (TMRS), TMRS shall resume making the annuity payments to the person, provided: (a) the person's retirement that preceded the resumption of employment was based on a bona fide termination of employment; and (b) the person did not become an employee of the person's reemploying city at any time during the 12 consecutive months after the effective date of the person's retirement from the reemploying city. (Effective September 1, 2021.)

S.B. 1359 (Hughes/White) – **Mental Health Leave Policy:** provides among other things, that: (1) each law enforcement agency shall develop and adopt a policy allowing the use of mental health leave by peace officers employed by the agency who experience a traumatic event in the scope of that employment; and (2) the policy adopted under (1) must: (a) provide clear and objective guidelines establishing the circumstances under which a peace officer is granted mental health leave and may use mental health leave; (b) entitle a peace officer to mental health leave without a deduction in salary or other compensation; (c) enumerate the number of mental health leave days available to a peace officer; and (d) detail the level of anonymity for a peace officer who takes mental health leave. (Effective September 1, 2021.)

Purchasing

H.B. 692 (Shine/Creighton) – **Public Works Contracts Retainage:** this bill provides that:

1. "warranty period" means the period of time specified in a contract during which certain terms applicable to the warranting of work performed under the contract are in effect;
2. a governmental entity shall: (a) include in each public works contract a provision that establishes the circumstances under which: (i) a public works project is considered substantially complete; (ii) the governmental entity may release the retainage for substantially completed portions of the project, or fully completed and accepted portions of the project; (b) maintain an accurate record of accounting for the retainage withheld on periodic contracts payments, and the retainage released to the prime contractor for a public works contract; and (c) for certain public works contracts with a value of \$10 million or

- more, pay any remaining retainage on periodic contract payments, and the interest earned on the retainage, to the prime contractor on completion of the contract;
3. if the total value of a public works contract is less than \$5 million, a governmental entity may not withhold retainage in an amount that exceeds 10 percent of the contract price and the rate of retainage may not exceed 10 percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed;
 4. if the total value of a public works contract is \$5 million or more, a governmental entity may not withhold retainage in an amount that exceeds five percent of the contract price and the rate of retainage may not exceed five percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed;
 5. if a public works contract relates to the construction or maintenance of a dam, regardless of the total value of the contract, a governmental entity may not withhold retainage in an amount that exceeds 10 percent of the contract price and the rate of retainage may not exceed 10 percent for any item in a bid schedule or schedule of values for the project, including materials and equipment delivered on site to be installed;
 6. the limitations described in (3)-(5), above, do not apply to certain water contracts;
 7. for a competitively awarded contract with a value of \$10 million or more, and for a contract that was awarded using a method other than competitive bidding, a governmental entity and prime contractor may agree to deposit in an interest-bearing account the retainage withheld on periodic contract payments;
 8. a governmental entity may not withhold retainage: (a) after completion of the contract by the prime contractor, including during the warranty period; or (b) for the purpose of requiring the prime contractor, after completion of the contract, to perform work on manufactured goods or systems that were specified by the designer of record and properly installed by the contractor;
 9. on application to a governmental entity for final payment and release of retainage, the governmental entity may withhold retainage if the governmental entity provides written notice and there is a bona fide dispute between the governmental entity and the prime contractor and the reason for the dispute is that labor, services, or materials provided by the prime contractor, or by a person under the direction or control of the prime contractor, failed to comply with the express terms of the contract or if the surety on any outstanding surety bond executed for the contract does not agree to the release of retainage; and
 10. if there is no bona fide dispute as described (9), above, and neither party is in default, a prime contractor is entitled to: (a) cure any noncompliant labor, services, or materials; or (b) offer the governmental entity a reasonable amount of money as compensation for any noncompliant labor, services, or materials that cannot be promptly cured.

(Effective immediately.)

H.B. 1428 (Huberty/Huffman) – **Contingent Fee Contracts:** excepts the following types of contingent fee contracts for legal services from certain requirements: (1) a contract entered into by a political subdivision for the collection of certain delinquent obligations; and (2) a contract entered into by a political subdivision for certain public security services. (Effective September 1, 2021.)

H.B. 1476 (K. Bell/Nichols) – Goods and Services Payments: this bill: (1) requires a governmental entity to notify a vendor of an error or disputed amount in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice, and include in the notice a detailed statement of the amount of the invoice which is disputed; and (2) provides that a governmental entity may withhold from payments required no more than 110 percent of the disputed amount. (Effective September 1, 2021.)

VETOED H.B. 1477 (K. Bell/Nichols) – Public Work Contracts: this bill: (1) defines, for purposes of certain state laws regarding public work performance and payment bonds: (a) a “prime contractor” to include a person who leases any public property, other than a person who leases property from certain river authorities; and (b) a “public work contract” to include work performed on public property owned by a governmental entity or on property leased by a governmental entity to a nongovernmental entity, but does not include certain river authority contracts; and (2) provides that a governmental entity that makes a public work contract with a prime contractor or authorizes a nongovernmental entity leasing public property from the governmental entity to enter into a public work contract with a prime contractor to require the contractor, before beginning the work, to execute to the governmental entity in certain circumstances, a performance bond and a payment bond. (Effective September 1, 2021.)

H.B. 2116 (Krause/Powell) – Architects and Engineers: this bill provides that: (1) with certain exceptions, a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the owner, the owner’s agent, the owner’s employee, or another entity over which the owner exercises control; (2) a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property may provide for the reimbursement of an owner’s reasonable attorney’s fees in proportion to the engineer’s or architect’s liability; (3) notwithstanding (1), an owner that is a party to a contract for engineering or architectural services related to an improvement to real property may require in the contract that the engineer or architect name the owner as an additional insured under any of the engineer’s or architect’s insurance coverage to the extent additional insureds are allowed under the policy and provide any defense to the owner provided by the policy to a named insured; and (4) a construction contract for engineering or architectural services related to the construction or repair of an improvement to real property must require that the architectural or engineering services be performed with the professional skill and care ordinarily provided by competent architects or engineers under the same or similar circumstances and professional license, and a provision in a contract establishing a different standard is void and unenforceable. (Effective September 1, 2021.)

H.B. 2581 (Kacal/Hancock) – Construction and Civil Works Projects: this bill: (1) requires a the governing body of a governmental entity that considers a construction contract using a method other than competitive bidding to, among other things, publish in the request for qualifications a detailed methodology for scoring each criterion; (2) provides that: (a) an offeror who submits a bid, proposal, or response to a request for qualifications for a construction contract under certain

law may, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission; and (b) not later than the 30th day after the date a request is made, the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission; (3) provides that for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria; however, if the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria; and (4) provides that when the competitive sealed proposal procurement method is used, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors not later than the seventh business day after the date the contract is awarded. (Effective September 1, 2021.)

S.B. 13 (Birdwell/P. King) – Energy Boycott: among other things, prohibits a city from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. (Effective September 1, 2021.)

S.B. 19 (Schwertner/Capriglione) – Firearms: among other things, (1) prohibits a governmental entity from entering into a contract with a value of \$100,000 or more that is to be paid from public funds with a company with more than 10 full-time employees for the purchase of goods or services unless the contract contains a written verification from the company that it: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and (2) provides that the prohibition in (1) does not apply to a city that (a) contracts with a sole-source provider, or (b) the city does not receive any bids from a company that is able to provide the required verification required by (1). (Effective September 1, 2021.)

S.B. 58 (Zaffirini/J. Turner) – Cloud Computing Services: adds cloud computing services to the definition of the term “personal property” for purposes of the Public Property Finance Act. (Effective September 1, 2021.)

S.B. 59 (Zaffirini/Geren) – Comptroller Purchasing Program: authorizes the Texas Comptroller's office to advertise its state purchasing program for local governments in any available media or otherwise promote the purchasing program. (Effective immediately.)

S.B. 219 (Hughes/Leach) – Real Property Construction and Repair: this bill: (1) provides that, in regard to a contract for the construction or repair of improvement to real property, a contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier; (2) requires a contractor, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications, or other design documents that is

discovered by the contractor, or that reasonably should have been discovered by the contractor using ordinary diligence, before or during construction; (3) excepts certain contracts from the new provisions regarding responsibility for defects in plans and specifications described in (1) and (2); (4) requires a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component to require that the architectural or engineering services be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license, and a provision in a contract with a different standard of care is void and unenforceable; and (5) provides that certain limitations on a contractor's responsibility for certain defects do not apply to a design-build contract. (Effective September 1, 2021, except for (5) which clarifies existing law and applies to a contract entered into before, on, or after September 1, 2021.)

S.B. 538 (Blanco/Longoria) – **Technology Purchases:** expands the Department of Information Resources' cooperative contracts purchasing program for information technology commodity items to include items in demand by political subdivisions and governmental entities of another state. (Effective September 1, 2021.)

S.B. 1821 (Huffman/Canales) – **Contingent Fee Contracts for Legal Services:** amends the definition of the term "contingent fee contract" to include an amendment to a contingent fee contract if the amendment: (1) changes the scope of representation; or (2) may result in the filing of an action or the amending of a petition in an existing action. (Effective immediately.)

S.B. 2116 (Campbell/Parker) – **Critical Infrastructure:** among other things, prohibits a city from entering into a contract or other agreement relating to "critical infrastructure" (defined to mean a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility) in this state with a company if the city knows that the company is: (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or other designated countries; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or other designated countries; or (2) headquartered in China, Iran, North Korea, Russia, or other designated countries. (Effective September 1, 2021.)

Transportation

H.B. 914 (Hernandez/Huffman) – **Parking:** allows: (1) a city to authorize a city employee to request the removal and storage of a vehicle in an area where on-street parking is regulated by an ordinance and that: (a) is parked illegally; or (b) is parked legally, but has been unattended for more than 48 hours and is reasonably believed to be abandoned; and (2) a parking facility owner or towing company to remove a vehicle from a public roadway under the direction of a city employee authorized to make a request under (1). (Effective September 1, 2021.)

H.B. 1257 (Ashby/Nichols) – **Property in Right-of-Way:** authorizes a law enforcement agency to remove an unattended manufactured home from a roadway or right-of-way without consent of

the owner if the agency determines that the home blocks the roadway or endangers public safety. (Effective September 1, 2021.)

H.B. 1281 (Wilson/Schwertner) – **Golf Carts**: this bill: (1) allows a golf cart to be operated in a master planned community: (a) that is a residential subdivision or has in place a uniform set of restrictive covenants; and (b) for which a county or city has approved one or more plats; (2) provides that a person may operate a golf cart in a master planned community described in (1) without a golf cart license plate on a highway for which the posted speed limit is not more than 35 miles per hour, including through an intersection of a highway for which the posted speed limit is more than 35 miles per hour; (3) allows a golf cart to be operated on a highway for which the posted speed limit is not more than 35 miles per hour, if the golf cart is operated during the daytime and not more than five miles from the location where the golf cart is usually parked and for transportation to or from a golf course; (4) allows a city to prohibit the operation of a golf cart on a highway in the following areas if the city council determines the prohibition is necessary in the interest of safety: (a) in a master planned community described in (1), above; (b) on a public or private beach that is open to vehicular traffic; or (c) on a highway for which the posted speed limit is not more than 35 miles per hour as described in (2), above. (Effective immediately.)

H.B. 1759 (Krause/Hancock) – **Railroad Grade Crossings**: includes “on-track equipment,” defined as any car, rolling stock, equipment, or other device that, alone or coupled to another device, is operated on a railroad track, among the equipment and devices that trigger special operational restrictions on vehicles (e.g., stop and speed restrictions). (Effective September 1, 2021.)

S.B. 763 (Powell/Cook) – **Urban Air Mobility**: requires the Texas Transportation Commission to appoint an advisory committee to assess current state law and any potential changes to state law that are needed to facilitate the development of urban air mobility operations and infrastructure in this state. (Effective September 1, 2021.)

S.B. 941 (Buckingham/E. Morales) – **Scenic Byways Program**: this bill: (1) directs the Texas Department of Transportation to establish a State Scenic Byways Program, under which a political subdivision or other community group may apply for grants for federal funding; and (2) provides that only a highway designated under certain state law as prohibited from having commercial signs may be designated as a State Scenic Byway. (Effective September 1, 2021.)

S.B. 1055 (Huffman/Reynolds) – **Crosswalk**: this bill: (1) provides that it is a criminal offense for a person, with criminal negligence, to operate a motor vehicle within the area of a crosswalk and cause bodily injury to a pedestrian or a person operating a bicycle, scooter, electronic personal assistive mobility device, neighborhood electric vehicle, or golf cart; and (2) imposes certain requirements for the operator of a vehicle to yield the right-of-way to a pedestrian. (Effective September 1, 2021.)

S.B. 1064 (Alvarado/Schofield) – **City-Owned Vehicles**: this bill: (1) allows a city that owns and operates a motor vehicle, trailer, or semitrailer that is exempt from the payment of a registration fee to apply to register the vehicle, trailer, or semitrailer for an extended registration period of not less than one year or more than eight years; and (2) provides that a vehicle registered for an

extended period under (1) is subject to inspection requirements as if the motor vehicle, trailer, or semitrailer were registered without an extended registration period. (Effective September 1, 2021.)

S.B. 1334 (Hinojosa/Canales) – **Toll Bridges**: allows a city within 15 miles of a section of the Rio Grande that forms the border between this state and the United Mexican States to donate to the United States property or a building, structure, or other facility acquired, constructed, improved, enlarged, or equipped in whole or in part with proceeds from the sale of certain toll bridge-related bonds. (Effective immediately.)

Utilities and Environment

H.B. 17 (Deshotel/Birdwell) – **Restriction on Regulation of Utility Services**: this bill: (1) prohibits a regulatory authority, planning authority, or political subdivision of this state from adopting or enforcing an ordinance, resolution, regulation, code, order, policy, or other measure that has the purpose, intent, or effect of directly or indirectly banning, limiting, restricting, discriminating against, or prohibiting the connection or reconnection of a utility service or the construction, maintenance, or installation of residential, commercial, or other public or private infrastructure for a utility service based on the type or source of energy to be delivered to the end-use customer; (2) prohibits an entity, including a regulatory authority, planning authority, political subdivision, or utility, from imposing any additional charge or pricing difference on a development or building permit applicant for utility infrastructure that: (a) encourages those constructing homes, buildings, or other structural improvements to connect to a utility service based on the type or source of energy to be delivered to the end-use customer; or (b) discourages the installation of facilities for the delivery of or use of a utility service based on the type or source of energy to be delivered to the end-use customer; and (3) provides that the law does not limit the ability of a regulatory authority or political subdivision to choose utility services for properties owned by the regulatory authority or political subdivision. (Effective immediately.)

H.B. 837 (Lucio III/Zaffirini) – **Certificates of Convenience and Necessity**: provides that the Public Utility Commission by rule shall require a city or franchised utility to submit a report to the PUC verifying that the city or franchised utility has paid all required adequate and just compensation to a retail public utility for obtaining the certificate of convenience and necessity for an annexed area previously served by the retail public utility. (Effective September 1, 2021.)

H.B. 963 (Lozano/Zaffirini) – **Natural Gas Vehicle Grant Program**: this bill: (1) adds a used natural gas vehicle as a qualifying vehicle that may be considered for a grant under the Texas natural gas vehicle grant program; and (2) provides that a used natural gas vehicle that is proposed to replace an on-road heavy-duty or medium-duty motor vehicle must be of model year 2017 or later, provided that the model year may not be more than six years older than the current model year at the time of the submission of the grant application. (Effective September 1, 2021.)

H.B. 1284 (Paddie/Hancock) – **Railroad Commission**: provides that the Railroad Commission of Texas has jurisdiction over the injection and geologic storage of carbon dioxide. (Effective immediately.)

H.B. 1510 (Metcalf/Creighton) – **Response and Resilience of Certain Electric Utilities:** this bill, among other things: (1) expands the definition of “system restoration costs” to also include: (a) reasonable and necessary weatherization and storm-hardening costs incurred; and (b) reasonable estimates of costs to be incurred, by the electric utility, but such estimates shall be subject to true-up and reconciliation after the actual costs are known; (2) creates the Texas Electric Utility System Restoration Corporation (Corporation) as a nonprofit special purpose public corporation and instrumentality of Texas for the essential public purpose of providing a lower cost financing mechanism available to the Public Utility Commission and an electric utility operating outside of ERCOT to attract low-cost capital to finance system restoration costs; (3) requires that, in approving securitization, the PUC ensure that customers are not harmed as a result of any financing through the Corporation and that any financial savings or other benefits are appropriately reflected in customer rates; (4) provides that “qualified costs” also includes all costs of establishing, maintaining, and operating the Corporation and all costs of the Corporation and an issuer in connection with the issuance and servicing of the system restoration bonds, as approved in the financing order issued by the PUC under the law; (5) provides that the Corporation shall be self-funded and the state shall not budget for or provide any general fund appropriations for the Corporation; (6) expands the definition of “other factors” the PUC may consider in issuing a certificate of convenience and necessity for an electric utility to include any potential economic or reliability benefits associated with dual fuel and fuel storage capabilities in areas outside the ERCOT power region; and (7) provides that an electric utility operating solely outside of the ERCOT power region may, but shall not be required to, obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less. (Effective immediately.)

H.B. 1520 (Paddie/Hancock) – **Gas Utilities:** this bill, among other things: (1) provides that the Texas Public Finance Authority may create an issuing financing entity for the purpose of issuing customer rate relief bonds approved by the Railroad Commission of Texas (RRC) in a financing order; (2) provides that the RRC, on application of a gas utility to recover a regulatory asset, shall determine the regulatory asset amount to be recovered by the gas utility and a gas utility may request recovery of a regulatory asset under the bill only if the regulatory asset is related to Winter Storm Uri; (3) provides that if the RRC determines that customer rate relief bond financing for extraordinary costs is the most cost-effective method of funding regulatory asset reimbursements to be made to gas utilities, the RRC, after the final resolution of all applications filed by a gas utility to recover a regulatory asset, may request the authority to direct an issuing financing entity to issue customer rate relief bonds; (4) requires the RRC, in making the determination in (3), to find that the proposed structuring, expected pricing, and proposed financing costs of the customer rate relief bonds are reasonably expected to provide benefits to customers by: (a) considering customer affordability; and (b) comparing: (i) the estimated monthly costs to customers resulting from the issuance of customer rate relief bonds; and (ii) the estimated monthly costs to customers that would result from the application of conventional recovery methods; (5) provides that customer rate relief bonds are the limited obligation solely of the issuing financing entity and are not a debt of a gas utility or a debt or a pledge of the faith and credit of Texas or any political subdivision of Texas; (6) provides that, so long as any customer rate relief bonds or related financing costs remain outstanding, uniform monthly volumetric customer rate relief charges must be paid by all current and future customers that receive service from a gas utility for which a regulatory asset determination has been made under (2); (7) exempts the sale or purchase of or revenue derived from services performed in the issuance or transfer of customer rate relief bonds

issued from taxation by Texas or a political subdivision; (8) exempts a gas utility's receipt of customer rate relief charges from state and local sales and use taxes, utility gross receipts taxes and assessments, and from revenue for purposes of franchise tax; and (9) requires the RRC to conduct a study on measures to mitigate catastrophic weather events and provide a report of the findings to the governor, lieutenant governor, and speaker of the House of Representatives. (Effective immediately.)

H.B. 1572 (Craddick/Springer) – **Lease of Electric Generation Equipment:** this bill: (1) defines “electric generation equipment lessor or operator” as a person who rents to or operates for compensation on behalf of a third party electric generation equipment that: (a) is used on a site of the third party until the third party is able to obtain sufficient electricity service; (b) produces electricity on site to be consumed by the third party and not resold; and (c) does not interconnect with the electric transmission or distribution system; (2) exempts an electric generation equipment lessor or operator from the definition of an “electric utility”; and (3) provides that a person who is an electric generation equipment lessor or operator is not for that reason considered to be a retail electric utility. (Effective September 1, 2021.)

H.B. 1905 (Harris/Taylor) – **Regional Water Planning Groups:** this bill: (1) repeals the requirement for regional water planning groups to prioritize projects in their respective regional water plans for the purposes of bond enhancement agreements under the State Water Implementation Fund for Texas; and (2) repeals the requirement for each regional planning group to examine the financing needed to implement the water management strategies and projects identified in the group's most recent approved regional plan and report to the Texas Water Development Board: (a) how local governments, regional authorities, and other political subdivisions in the region propose to pay for water infrastructure projects identified in the plan; and (b) what role the regional planning group proposes for the state in financing projects identified in the plan, giving particular attention to proposed increases in the level of state participation in funding for regional projects to meet needs beyond the reasonable financing capability of local governments, regional authorities, and other political subdivisions involved in building water infrastructure. (Effective September 1, 2021.)

H.B. 2483 (P. King/Hancock) – **Utility Facilities for Restoring Service:** this bill, among other things: (1) provides that a transmission and distribution utility may: (a) lease and operate facilities that provide temporary emergency electric energy to aid in restoring power to the utility's distribution customers during a widespread power outage in which: (i) the independent system operator has ordered the utility to shed load; or (ii) the utility's distribution facilities are not being fully served by the bulk power system under normal operations; and (b) procure, own, and operate, or enter into a cooperative agreement with other transmission and distribution utilities to procure, own, and operate jointly, transmission and distribution facilities that have a lead time of at least six months and would aid in restoring power to the utility's distribution customers following a widespread power outage; (2) provides that a transmission and distribution utility that leases and operates facilities under (1)(a): (a) may not sell electric energy or ancillary services from those facilities; (b) must be operated in isolation from the bulk power system; and (c) may not be included in independent system operator: (i) locational marginal pricing calculations; (ii) pricing; or (iii) reliability models; (3) requires the Public Utility Commission (PUC) to permit: (a) a transmission and distribution utility that leases and operates facilities under (1)(a) to recover the

reasonable and necessary costs of leasing and operating the facilities, including the present value of future payments required under the lease, using the rate of return on investment established in the PUC's final order in the utility's most recent base rate proceeding; and (b) a transmission and distribution utility that procures, owns, and operates facilities under (1)(b) to recover the reasonable and necessary costs of procuring, owning, and operating the facilities, using the rate of return on investment established in the PUC's final order in the utility's most recent base rate proceeding; (4) provides that a transmission and distribution utility may request recovery of the reasonable and necessary costs of leasing or procuring, owning, and operating facilities under the bill, including any deferred expenses, through a periodic rate adjustment proceeding or in another ratemaking proceeding; and (5) provides that the bill expires on September 1, 2029. (Effective September 1, 2021.)

H.B. 2586 (Thierry/Hall) – **ERCOT Audit**: requires the Public Utility Commission to have an independent audit of each independent organization certified for the ERCOT power region. (Effective September 1, 2021.)

H.B. 3476 (Schofield/Bettencourt) – **Certificates of Convenience and Necessity**: this bill applies only to a city with a population of 500,000 or more and : (1) prohibits a city from requiring, as a condition of consent to grant a retail public utility a certificate of public convenience and necessity for a service area within the boundaries of the extraterritorial jurisdiction of a municipality, that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities; (2) requires that the Public Utility Commission (PUC) must include, as a condition of a certificate of public convenience and necessity granted in certain circumstances for a service area within the boundaries of a municipality, that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities; and (3) provides, with certain exceptions, that the PUC must include, as a condition of a certificate of public convenience and necessity granted for a service area within the extraterritorial jurisdiction of a city, that all water and sewer facilities be designed and constructed in accordance with: (a) the Texas Commission on Environmental Quality's standards for water and sewer facilities applicable to water systems that serve greater than 250 connections; or (b) TCEQ's standards for water and sewer facilities applicable to water systems that serve 250 or fewer connections, if the PUC determines that: (i) standards for water and sewer facilities applicable to water systems that serve 250 or fewer connections are appropriate for the service area; and (ii) regionalization of the retail public utility or consolidation of the retail public utility with another retail public utility is not economically feasible. (Effective September 1, 2021.)

H.B. 3615 (P. King/Buckingham) – **District Cooling Systems**: this bill: (1) defines "chilled water program" as: (a) a program to produce chilled water at a central plant and pipe that water to buildings for air conditioning, including a district cooling system or chilled water service; or (b) any other program designed to used chilled water to provide air conditioning, reduce peak electric demand, or shift electric load; (2) defines "municipally owned utility" as, among other things, any chilled water program operated by the utility; (3) provides that information related to a chilled water program is not confidential as a public power utility competitive matter under the Public Information Act; and (4) provides that information or records of a municipally owned utility or municipality that operates a chilled water program are subject to disclosure under the Public Information Act if the information or records are reasonably related to: (a) a municipally owned

utility's rate review process; (b) the method a municipality or municipally owned utility uses to set rates for retail electric service; or (c) the method a municipality or municipally owned utility uses to set rates for a chilled water program described by (3). (Effective September 1, 2021.)

H.B. 3648 (Geren/Hancock) – Natural Gas: this bill requires: (1) the Railroad Commission (RRC) to coordinate with the Public Utility Commission (PUC) to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies; (2) the rules in (1) to: (a) establish criteria for designating persons who own or operate a facility under the jurisdiction of the RRC or engage in an activity under the jurisdiction of the RRC who must provide critical customer and critical gas supply information, as defined by the RRC, to the entities described by (4)(a); and (b) consider essential operational elements when defining critical customer designations and critical gas supply information for the purposes of (2)(a), including natural gas production, processing, and transportation, related produced water handling and disposal facilities, and the delivery of natural gas to generators of electric energy; (3) the PUC to collaborate with the RRC to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical during energy emergencies; (4) the rules in (3) to: (a) ensure that the independent organization certified for the ERCOT power region and each electric utility, municipally owned utility, and electric cooperative providing service in the ERCOT power region is provided with the information required by (1) and (2); (b) provide for prioritizing for load-shed purposes during an energy emergency the facilities and entities designated under (4)(a); and (c) provide discretion to an electric utility, municipally owned utility, or electric cooperative providing service in the ERCOT power region to prioritize power delivery and power restoration among the facilities and entities designated under (3) on the utility's or cooperative's systems, as circumstances require; and (5) the PUC to provide a report to the legislature regarding the implementation by the PUC of the designation and prioritization requirements in the bill by January 1, 2022. (Effective immediately.)

H.B. 3689 (Cortez/Gutierrez) – Water Rate Appeals: provides that the Public Utility Commission shall ensure that every appealed water rate is just and reasonable, including a municipally-owned utility's rates that are appealed by ratepayers who reside outside the corporate limits of the city. (Effective September 1, 2021.)

H.B. 3717 (Burns/Lucio) – Sale of Utility System: provides that a city is not required to hold an election to authorize the sale of a municipal retail water or sewer utility system if the Texas Commission on Environmental Quality has issued a notice of violation to the utility system and the city council finds, by official action, that the city is either financially or technically unable to restore the system to compliance with the applicable law or regulations. (Effective September 1, 2021.)

H.B. 4492 (Paddie/Hancock) – Financing for Electric Market: this bill, among other things:

1. provides that the comptroller shall invest not more than \$800 million of the economic stabilization fund balance to finance the default balance to be repaid by ERCOT market participants through default charges established by the Public Utility Commission (PUC) and that the interest rate charged in connection with the debt obligations must be calculated

by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of the independent organization plus 2.5 percent for a term not to exceed 30 years;

2. subjects electric municipally owned utilities to state law governing essential organizations and state law relating to Winter Storm Uri default balance financing and uplift financing.
3. requires the PUC to require that all market participants fully and promptly pay to the independent organization certified for the ERCOT power region all amounts owed to the independent organization, or provide for the full and prompt payment of those amounts owed, which must be calculated solely according to the protocols of the independent organization in effect during the period of emergency and subject to the jurisdiction of the commission, to qualify, or to continue to qualify, as a market participant in the ERCOT power region;
4. requires the independent organization certified for the ERCOT power region to report to the PUC that a market participant is in default for the failure to pay, or provide for the full and prompt payment of, all amounts owed to the independent organization and provides that the PUC may not allow the defaulting market participant to continue to be a market participant in the ERCOT power region for any purpose or allow the independent organization to accept the defaulting market participant's loads or generation for scheduling in the ERCOT power region until all amounts owed to the independent organization by the market participant are fully paid;
5. requires the PUC and the independent organization certified for the ERCOT power region to pursue collection in full of amounts owed to the independent organization by any market participant to reduce the costs that would otherwise be borne by other market participants or their customers;
6. provides that on application by the independent organization certified for the ERCOT power region, the PUC by order may authorize the independent organization to establish a debt financing mechanism to finance the default balance if the PUC finds that the debt obligations are needed to preserve the integrity of the wholesale market and the public interest, after considering: (a) the need to timely replenish financial revenue auction receipts used by the independent organization to reduce amounts short-paid to wholesale market participants; (b) the interests of wholesale market participants that are owed balances; and (c) the potential effects of uplifting those balances to the wholesale market without a financing vehicle;
7. provides that the financing order in (6) must include an adjustment mechanism requiring the independent organization to adjust default charges to refund, over the remaining period of the default charges, any payments made by a market participant toward unpaid obligations from the period of emergency that were included in the financed default balance;
8. provides that the PUC may contract with another state agency with expertise in public financing to establish a debt financing mechanism for the payment of the default balance under an order;
9. provides that a financing order must: (a) include terms ensuring that the imposition and collection of default charges authorized in the order shall be nonbypassable by wholesale market participants; and (b) authorize the independent organization to establish appropriate fees and other methods for pursuing amounts owed from entities exiting the wholesale market;

10. provides that the transfer and receipt of default charges are exempt from state and local sales and use, franchise, and gross receipts taxes;
11. requires the independent organization to file an application with the PUC to establish a debt financing mechanism for the payment of the uplift balance if the PUC finds that such financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale market participants and retail customers;
12. requires that an order issued under (11) must: (a) state the uplift balance to be financed; (b) state the period over which the uplift charges must be assessed to repay the debt obligations, which may not exceed 30 years; and (c) provide the process for remitting the proceeds of the financing to load-serving entities who were exposed to the costs included in the uplift balance, including a requirement for the load-serving entities to submit documentation of their exposure;
13. requires the PUC to develop a one-time process that allows municipally owned utilities, electric cooperatives, river authorities, a retail electric provider that has the same corporate parent as each of the provider's customers, a retail electric provider that is an affiliate of each of the provider's customers, and transmission-voltage customers served by a retail electric provider to opt out of the uplift charges by paying in full all invoices owed for usage during the period of emergency;
14. provides that the PUC may contract with another state agency with expertise in public financing to establish a debt financing mechanism to finance the payment of the uplift balance under an order;
15. provides that transactions involving the transfer and ownership of uplift property and the receipt of uplift charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges; and
16. requires all load-serving entities that receive offsets to specific uplift charges from the independent organization to adjust customer invoices to reflect the offsets for any charges that were or would otherwise be passed through to customers under the terms of service with the load-serving entity, including by providing a refund for any offset charges that were previously paid.

(Effective immediately.)

S.B. 2 (Hancock/Paddie) – **ERCOT Board:** this bill, among other things, amends the qualifications of the board members of the independent organization certified for the ERCOT power region to require that every member be a resident of Texas. (Effective immediately.)

S.B. 3 (Schwertner/Paddie) – **Utility Preparedness:** this bill, among other things:

1. provides that with the cooperation of the Texas Department of Transportation, the Texas Division of Emergency Management (TDEM), the office of the governor, and the Public Utility Commission of Texas (PUC), the Texas Department of Public Safety shall develop and implement a statewide alert to be activated when the power supply in Texas may be inadequate to meet demand;

2. requires TDEM to create a list of suggested actions for state agencies and the public to take to prepare for winter storms and to develop disaster preparedness educational materials and post both on its internet website and distribute them to local governments;
3. establishes the Texas Energy Reliability Council to: (a) ensure that the energy and electric industries in Texas meet high priority human needs and address critical infrastructure concerns; and (b) enhance coordination and communication in the energy and electric industries in Texas;
4. requires the Texas Energy Reliability Council to submit a report including to the legislature on the reliability and stability of the electricity supply chain in Texas;
5. requires the Railroad Commission (RRC) to collaborate with the PUC to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies;
6. requires the RRC to adopt rules to require a gas supply chain facility operator to implement measures to prepare the well to operate during a weather emergency;
7. requires a municipally owned utility to regularly provide with bills sent to retail customers of the utility information about: (a) the utility's procedure for implementing involuntary load shedding; (b) the types of customers who may be considered critical care residential customers, critical load industrial customers, or critical load according to PUC rules; (c) the procedure for a customer to apply to be considered a critical care residential customer, a critical load industrial customer, or critical load according to PUC; and (d) reducing electricity use at times when involuntary load shedding events may be implemented;
8. requires the PUC to adopt rules to require each municipally owned utility, electric cooperative, qualifying facility, power generation company, or exempt wholesale generator, that provides generation service to implement measures to prepare the provider's generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the PUC;
9. requires the independent organization for the ERCOT power region to: (a) inspect generation assets in the ERCOT power region for compliance with the reliability standards; (b) provide the owner of a generation asset with a reasonable period of time in which to remedy any violation the independent organization discovers in an inspection; and (c) report to the PUC any violation;
10. requires the PUC to adopt rules that require each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare the cooperative's or utility's facilities to maintain service quality and reliability during a weather emergency according to standards adopted by the PUC;
11. requires the independent organization for the ERCOT power region to: (a) inspect the facilities of each electric cooperative, municipally owned utility, and transmission and distribution utility providing transmission service in the ERCOT power region for compliance with the reliability standards; (b) provide the owner of facility described by (a) with a reasonable period of time in which to remedy any violation the independent organization discovers in an inspection; and (c) report to the PUC any violation that is not remedied in a reasonable period of time;
12. requires the PUC to impose an administrative penalty on an entity, including a municipally owned utility or an electric cooperative, that violates a rule adopted under (10) in an amount

- not to exceed \$1,000,000 for a violation and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty;
13. requires the PUC to adopt a system to allocate load shedding among electric cooperatives, municipally owned utilities, and transmission and distribution utilities providing transmission service in the ERCOT power region during an involuntary load shedding event initiated by an independent organization for the region during an energy emergency;
 14. requires the PUC to adopt rules to require electric cooperatives and municipally owned utilities providing transmission service in the ERCOT power region to: (a) maintain lists of customers willing to voluntarily participate in voluntary load reduction; and (b) coordinate with municipalities, businesses, and customers that consume large amounts of electricity to encourage voluntary load reduction;
 15. requires the PUC and the independent organization certified for the ERCOT power region to conduct simulated or tabletop load shedding exercises with providers of electric generation service and transmission and distribution service in the ERCOT power region;
 16. establishes the Texas Electricity Supply Chain Security and Mapping Committee to: (a) map Texas's electricity supply chain; (b) identify critical infrastructure sources in the electricity supply chain; (c) establish best practices to prepare facilities that provide electric service and natural gas service in the electricity supply chain to maintain service in an extreme weather event and recommend oversight and compliance standards for those facilities; and (d) designate priority service needs to prepare for, respond to, and recover from an extreme weather event;
 17. requires the PUC to adopt rules that: (a) establish an emergency pricing program for the wholesale market to take effect if the high system-wide offer cap has been in effect for 12 hours in a 24-hour period after initially reaching the high system-wide offer cap; and (b) establish an ancillary services cap to be in effect during the period an emergency pricing program is in effect;
 18. provides that a civil penalty for a gas utility provider who disconnects natural gas service to a residential customer during an extreme weather emergency shall be in an amount of not less than \$1,000 and not more than \$1,000,000 and the RRC shall adopt rules to establish a classification system to be used by a court for violations;
 19. requires the RRC to adopt rules regarding measures gas pipeline facility operators must implement to prepare gas pipeline facilities to maintain service quality and reliability during extreme weather conditions if the gas pipeline facility: (a) directly serves a natural gas electric generation facility operating solely to provide power to the electric grid for the ERCOT power region or for the ERCOT power region and an adjacent power region; and (b) is included on the electricity supply chain map created by the Texas Electricity Supply Chain Security and Mapping Committee under (16);
 20. defines "affected utility" as a retail public utility (including a municipally owned utility), exempt utility, or provider or conveyor of potable or raw water service that: (a) furnishes water service to more than one customer; and (b) is not in a county with a population of 3.3 million or more; or in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more;
 21. defines "emergency operations" as the operation of a water system during an extended power outage that impacts the operating affected utility;
 22. defines "extended power outage" as a power outage lasting for more than 24 hours;

23. requires an affected utility to: (a) ensure the emergency operation of its water system during an extended power outage at a minimum water pressure of 20 pounds per square inch, or at a water pressure level approved by TCEQ, as soon as safe and practicable following the occurrence of a natural disaster; and (b) adopt and submit to TCEQ for its approval: (i) an emergency preparedness plan that demonstrates the utility's ability to provide the emergency operations described by-(a); and (ii) a timeline for implementing the plan;
24. provides that not later than March 1, 2022, each affected utility shall submit to TCEQ the emergency preparedness plan described by (23)(b)(i);
25. provides that in accordance with TCEQ rules, an emergency preparedness plan under (23)(b)(i) for a provider of potable water shall provide for one or more of the following: (a) the maintenance of automatically starting auxiliary generators; (b) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program; (c) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office; (d) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems; (e) the use of on-site electrical generation or distributed generation facilities; (f) hardening the electric transmission and distribution system serving the water system; (g) for existing facilities, the maintenance of direct engine or right angle drives; (h) designation of the water system as a critical load facility or redundant, isolated, or dedicated electrical feeds; (i) water storage capabilities; (j) water supplies delivered from outside the service area of the affected utility; (k) the ability to provide water through artesian flows; (l) redundant interconnectivity between pressure zones; (m) emergency water demand rules to maintain emergency operations; or (n) any other alternative determined by TCEQ to be acceptable;
26. provides that each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan under (23)(b)(i) provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility to provide raw water service to its wholesale customers during emergencies and provides that this provision does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract;
27. requires TCEQ to provide an affected utility with access to TCEQ's financial, managerial, and technical contractors to assist the utility in complying with the applicable emergency preparedness plan submission deadline and to create an emergency preparedness plan template for use by an affected utility when submitting a plan;
28. provides that an affected utility may adopt and enforce limitations on water use while the utility is providing emergency operations;
29. provides that except as specifically required by law, information provided by an affected utility is confidential and is not subject to disclosure under the Public Information Act;
30. provides that for the purposes of (31)-(33), "affected utility" means any retail public utility (including a municipally owned utility), exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer;
31. requires each affected utility to: (a) submit to the office of emergency management of each county in which the utility has more than one customer, the PUC, and the office of

- emergency management of the governor a copy of: (i) the affected utility's emergency preparedness plan; and (ii) TCEQ's notification to the affected utility that the plan is accepted; (b) submit to the PUC, each electric utility that provides transmission and distribution service to the affected utility, each retail electric provider that sells electric power to the affected utility, the office of emergency management of each county in which the utility has water and wastewater facilities that qualify for critical load status under rules adopted by the PUC, and the division of emergency management of the governor: (i) information identifying the location and providing a general description of all water and wastewater facilities that qualify for critical load status; and (ii) emergency contact information for the affected utility, including the person who will serve as a point of contact and the person's telephone number, the person who will serve as an alternative point of contact and the person's telephone number, and the affected utility's mailing address; (c) annually submit the information required by (b) to each electric utility that provides transmission and distribution service to the affected utility and to each retail electric provider that sells electric power to the affected utility; and (d) immediately update the information provided under (b) as changes to the information occur; (e) submit annually to each electric utility that provides transmission and distribution service to the affected utility and to each retail electric provider that sells electric power to the affected utility any forms reasonably required by an electric utility or retail electric provider for determining critical load status, including a critical care eligibility determination form or similar form;
32. provides that not later than May 1 of each year, each electric utility and each retail electric provider shall determine whether the facilities of the affected utility under (31) qualify for critical load status under rules adopted by the PUC;
 33. provides that if an electric utility determines that an affected utility's facilities under (31) do not qualify for critical load status, the electric utility and the retail electric provider, not later than the 30th day after the date the electric utility or retail electric provider receives the information required by (31)(b), (c), and (d), shall provide a detailed explanation of the electric utility's determination to the affected utility and the office of emergency management of each county in which the affected utility's facilities are located;
 34. provides that a retail public utility that is required to possess a certificate of public convenience and necessity or a district or affected county that furnishes retail water or sewer utility service shall not impose late fees or disconnect service for nonpayment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers that request to establish a payment schedule for unpaid bills that are due during the extreme weather emergency;
 35. provides that a retail public utility or affiliated interest that violates (34) is subject to a civil penalty of not less than \$100 nor more than \$50,000 for each violation; and
 36. creates the State Energy Plan Advisory Committee to prepare a comprehensive state energy plan to be submitted to the legislature not later than September 1, 2022.

(Effective immediately.)

S.B. 211 (Zaffirini/Landgraf) – **TCEQ Judicial Review**: this bill, among other things, creates a uniform deadline of 30 days to appeal an order, decision, or other act of the Texas Commission on Environmental Quality for both water and solid waste orders. (Effective September 1, 2021.)

S.B. 387 (Schwertner/Wilson) – Appeal of Water Service Rates in ETJ: this bill: (1) expands the circumstances where ratepayers for water or sewer service who reside outside the corporate limits of a city may appeal the rates for that service to the Public Utility Commission (PUC) to include an increase in rates when the municipally-owned utility takes over the provision of service to ratepayers previously served by another retail public utility; (2) provides that (1) does not apply to a MOU that takes over the provision of service to ratepayers previously served by another retail public utility if the MOU: (a) takes over the service at the request of the ratepayer; (b) takes over the due to a sale or merger under state law; or (c) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the PUC; and (3) provides that a ratepayer may use the appeals process in (1) to appeal increased rates charged to the ratepayer by a MOU by filing a petition for review with the PUC and the MOU not later than December 1, 2021, if the MOU began providing service to the ratepayer on or after September 1, 2016 only if the MOU has not changed rates since the MOU began providing service to the ratepayer. (Effective September 1, 2021.)

S.B. 398 (Menéndez/Deshotel) – Distributed Renewal Generation Resources: this bill, among other things:

1. preempts a city from prohibiting or restricting the installation of a solar energy device by a residential or small commercial customer except to the extent: (a) a property owner's association may prohibit the installation; or (b) the interconnection guidelines and interconnection agreement of a municipally owned utility serving the customer's service area, the rules of the Public Utility Commission of Texas, or the protocols of an independent organization, limit the installation of solar energy devices due to reliability, power quality, or safety of the distribution system;
2. provides that the preemption in (1) does not apply to: (a) transaction involving the sale or transfer of the real property on which a distributed renewable generation resource is located; (b) a person, including a person acting through the person's officers, employees, brokers, or agents, who markets, sells, solicits, negotiates, or enters into an agreement for the sale or financing of a distributed renewable generation resource as part of a transaction involving the sale or transfer of the real property on which the distributed renewable generation resource is or will be affixed; or (c) a third party that enters into an agreement for the financing of a distributed renewable generation resource;
3. provides that a person who owns or operates a distributed generation facility served by a municipally owned utility or electric cooperative in the ERCOT power region may sell electric power generated by the distributed generation facility at wholesale, including the provision of ancillary services;
4. provides that a person who owns or operates a distributed generation facility may sell electric power generated by the distributed generation facility at wholesale to a municipally owned utility or electric cooperative certificated for retail service to the area where the distributed generation facility is located or to a related generation and transmission electric cooperative;
5. requires the municipally owned utility or electric cooperative to purchase at wholesale the quantity of electric power generated by the distributed generation facility needed to satisfy the full electric requirements of the customer on whose side of the meter the distributed generation facility is installed and operated at a wholesale price agreed to by the customer and to resell that quantity of power at retail to the customer at the rate applicable to the

customer for retail service, which must at minimum include all amounts paid for the wholesale electric power, during: (a) an emergency declared by the independent organization certified for the ERCOT power region that creates the potential for interruption of service to the customer; (b) any service interruption at the customer's premises; (c) construction on the customer's premises that creates the potential for interruption of service to the customer; (d) maintenance and testing of the distributed generation facility; and (e) additional times mutually agreed on by the owner or operator of the distributed generation facility and the municipally owned utility or electric cooperative;

6. provides that in addition to a sale authorized under (9), on request by an owner or operator of a distributed generation facility, the municipally owned utility or electric cooperative shall provide wholesale transmission service to the distributed generation facility owner in the same manner as to other power generation companies for the sale of power from the distributed generation facility at wholesale, including for the provision of ancillary services, in the ERCOT market;
7. requires a municipally owned utility or electric cooperative to allow interconnection of a distributed generation facility and provide to a distributed generation facility on a nondiscriminatory basis wholesale transmission service, including at distribution voltage, in the same manner as for other power generation companies to transmit to the ERCOT power grid the electric power generated by the distributed generation facility; and
8. provides that a municipally owned utility or electric cooperative is not required to interconnect a distributed generation facility under the bill if, on the date the utility or cooperative receives an application for interconnection of the facility, the municipally owned utility or electric cooperative has interconnected distributed generation facilities with an aggregate capacity that equals the lesser amount of: (a) five percent of the municipally owned utility's or electric cooperative's average of the 15-minute summer peak load coincident with the independent system operator's 15-minute summer peak load in each of the months of June, July, August, and September; or (b) 300 megawatts, adjusted annually by the percentage of total system load growth in the ERCOT power region beginning in 2022. (Effective September 1, 2021.)

S.B. 415 (Hancock/Holland) – Electric Energy Storage Facilities: this bill, among other things, provides: (1) that a transmission and distribution utility, with prior approval of the Public Utility Commission, may contract with a power generation company to provide electric energy from an electric energy storage facility to ensure reliable service to distribution customers; and (2) in establishing the rates of a transmission and distribution utility, a regulatory authority—including a city—shall review a contract between the utility and a power generation company under (1) and the regulatory authority may authorize a transmission and distribution utility to include a reasonable return on the payments required under the contract only if the contract terms satisfy the relevant accounting standards for a capital lease or finance lease. (Effective September 1, 2021.)

S.B. 669 (Springer/Lucio III) – Texas Water Development Board Reports: this bill: (1) requires the Texas Water Development Board (TWDB) to make publicly available the most recent data relating to: (a) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and (b) the data collection and reporting program for municipalities and water utilities with more than 3,300 connections; and (2) repeals the law that requires the TWDB,

in coordination with the Texas Commission on Environmental Quality, to prepare a report of the repair and maintenance needs of all dams that: (a) are not licensed by the Federal Energy Regulatory Commission; (b) do not have flood storage; (c) are required to pass floodwaters; and (d) have failed. (Effective September 1, 2021.)

S.B. 900 (Alvarado/Paddie) – Aboveground Storage Tanks: this bill, among other things: (1) requires the Texas Commission on Environmental Quality to establish a Performance Standards for Safety at Storage Vessels Program to provide for the protection of groundwater and surface water resources from a release of substances from a storage vessel in the event of an accident or natural disaster; (2) provides that a “storage vessel”: (a) is made of nonearthen materials; (b) is located on or above the surface of the ground; (c) has a capacity of 21,000 gallons or more of a regulated substance; and (d) is located at or is part of a petrochemical plant, a petroleum refinery, or a bulk storage terminal; (3) exempts certain tanks or pipes connected to certain tanks from the definition in (2) of “storage vessel”; and (4) establishes a fee. (Effective September 1, 2021.)

S.B. 905 (Perry/Frank) – Potable Reuse of Wastewater: this bill: (1) defines “direct potable reuse” as the introduction of treated reclaimed water either directly into a potable water system or into the raw water supply entering a drinking water treatment plant; and (2) requires the Texas Commission on Environmental Quality (TCEQ) to develop and make available to the public a regulatory guidance manual to explain TCEQ rules that apply to direct potable reuse. (Effective September 1, 2021.)

S.B. 952 (Hinojosa/Walle) – Concrete Batch Plants: requires that an application for a standard permit for a concrete batch plant issued by the Texas Commission on Environmental Quality include a plot plan that clearly shows: (1) a distance scale; (2) a north arrow; (3) all property lines, emission points, buildings, tanks, and process vessels and other process equipment in the area in which the facility will be located; (4) at least two benchmark locations in the area in which the facility will be located; and (5) if the permit requires a distance, setback, or buffer from other property or structures as a condition of the permit, whether the required distance or setback will be met. (Effective September 1, 2021.)

S.B. 997 (Nichols/Harris) – Water and Sewer Rates: this bill, among other things, provides: (1) that in an appeal on the amount paid for water or sewer service under a written contract for the rates a municipally-owned utility charges if it furnishes wholesale water or sewer service to another political subdivision, the Public Utility Commission (PUC) may not hold a hearing on or otherwise prescribe just and reasonable amounts to be charged under the contract unless the PUC determines that the amount charged under the contract harms the public interest; and (2) a judicial review process to challenge a PUC decision in (1). (Effective September 1, 2021.)

S.B. 1281 (Hancock/P. King) – Electric Certificates of Convenience and Necessity: this bill, among other things, requires the independent organization certified for the ERCOT power region to conduct a biennial assessment of the ERCOT power grid to assess the grid’s reliability in extreme weather scenarios, which must: (1) consider the impact of different levels of thermal and renewable generation availability; and (2) recommend transmission projects that may increase the grid’s reliability in extreme weather scenarios. (Effective September 1, 2021.)

S.B. 1580 (Hancock/Paddie) – Electric Certificates of Convenience and Necessity: this bill, among other things: (1) provides that no default or uplift charge or repayment may be allocated to or collected from a market participant, including a municipally owned utility, that: (a) otherwise would be subject to an uplift charge solely as a result of acting as a central counterparty clearinghouse in wholesale market transactions in the ERCOT power region; and (b) is regulated as a derivatives clearing organization, as defined by the Commodity Exchange Act; (2) requires the Public Utility Commission (PUC) to require that all market participants, including a municipally owned utility, pay or make provision for the full and prompt payment of amounts owed calculated solely according to the protocols in effect during the period of emergency (defined as the period beginning 12:00 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021) to the independent organization for the ERCOT power region to qualify, or to continue to qualify, as a market participant in the ERCOT power region; (3) provides that if a market participant, including a municipally owned utility, has failed to fully repay all amounts calculated solely under the protocols in effect during the period of emergency of the independent organization certified for the ERCOT power region, the independent organization shall report the market participant as in default to the PUC and the PUC may not allow the independent organization to accept the defaulting market participant's loads or generation for scheduling in the ERCOT power region, or allow the defaulting market participant to be a market participant in the ERCOT power region for any purpose, until all amounts owed to the independent organization by the market participant as calculated under the protocols are paid in full; and (4) provides that transactions involving the transfer and ownership of securitized property and the receipt of securitized charges for financing for electric cooperatives are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges. (Effective immediately.)

S.B. 1890 (Creighton/Walle) – Texas Water Development Board Grants: provides that the law regarding uniform grant and contract management does not apply to a contract for: (1) the flood infrastructure fund; (2) the Texas infrastructure resiliency fund; and, (3) the agriculture water conservation bond program. (Effective September 1, 2021.)

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