



*Prosper is a place where everyone matters.*

**Agenda**  
**Prosper Town Council Meeting**  
Prosper Town Hall, Council Chambers  
250 W. First Street, Prosper, Texas  
Tuesday, November 08, 2022  
**6:15 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/87189889684>

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

Enter Meeting ID: 871 8988 9684

### **Addressing the Town Council:**

Those wishing to address the Town Council must complete the 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 4:00 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. Proclamation recognizing November 18, 2022, as National Injury Prevention Day. (MLS)
2. Receive an update from the Public Works Department. (FJ)

### **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.

- [3.](#) Consider and act upon the minutes of the October 25, 2022, Town Council meeting. (MLS)
- [4.](#) Consider and act upon the minutes of the October 27, 2022, Town Council Work Session meeting. (MLS)
- [5.](#) Consider and act upon authorizing the Interim Town Manager to execute a Park Dedication and Park Maintenance Agreement between Hunt Wandering Creek Land, LLC, and the Town of Prosper, Texas, related to the dedication of public park property within the Wandering Creek development. (HW/DB)
- [6.](#) Consider and act upon an ordinance establishing a no parking zone on Ridgewood Drive from Hays Road to Crown Colony Drive. (HW)
- [7.](#) Consider and act upon approval of a Services Agreement between Strategies 360 Texas, LLC, The Town of Prosper, and the Prosper Economic Development Corporation for government relations and strategic advocacy services, and authorize the Interim Town Manager to execute the same. (RB)

### **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:**

- [8.](#) Consider and act upon awarding RFP No. 2022-58-A for Medical Administrative Services Only effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same. (JE)
- [9.](#) Consider and act upon awarding RFP No. 2022-59-A for fully insured dental benefits insurance effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same. (JE)
- [10.](#) Consider and act upon awarding RFP No. 2022-61-A for pharmacy benefits management services effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same. (JE)
- [11.](#) Consider and act upon awarding RFP No. 2022-60-A for group critical illness with cancer, group accident and group hospital indemnity insurance effective January 1, 2023, and authorizing the Interim Town Manager to execute all documents for the same. (JE)

- [12.](#) Conduct a public hearing and consider and act upon an ordinance amending the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park. (CA22-0002). (HW)
- [13.](#) Consider and act upon authorizing the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Electric, related to Construction Manager-At-Risk services for Raymond Community Park Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk. (PN)
- [14.](#) Consider and act upon adopting an ordinance amending fees in the Town's Code of Ordinances, specifically Sections 113.2 and 113.3 of the International Fire Code, contained in Section 5.03.002 "Amendments" of Article 5.03, "Fire Code", of Chapter 3, "Fire Prevention and Protection," and amending various fees contained in Appendix A, "Fee Schedule," relating to Construction Permits and Fees, Sign-related Fees, Development Fees, Miscellaneous Fees, Health and Sanitation Fees, Public Works Fees, and Backflow Prevention Plan and Enforcement Fees; and repealing Section II, "Mechanical/Plumbing Permit Fees," and Section III, "Electrical Permit Fees," contained in Appendix A, "Fee Schedule." (RBS)

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

**EXECUTIVE SESSION:**

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

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

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

*Section 551.074 – To discuss and consider personnel matters, including Town Manager search and selection process, and all matters incident and related thereto.*

*Section 551.089 - Deliberation of security information collected, assembled or maintained by or for a governmental entity to prevent, detect or investigate criminal activity, pursuant to Section 2059.055 of the Texas Government Code, and all matters incident and related thereto.*

*Section 551.074 - To discuss appointments to the Board of Adjustment/Construction Board of Appeals, Parks & Recreation Board, Library Board, Prosper Economic Development Corporation Board, Planning & Zoning Commission, and the Community Engagement Committee, and all matters incident and related thereto.*

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

**Adjourn.**

## CERTIFICATION

I, the undersigned authority, do hereby certify that 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 4, 2022, 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, October 25, 2022

### **Call to Order/ Roll Call.**

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

### **Council Members Present:**

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

### **Staff Members Present:**

Ron K. Patterson, Interim Town Manager  
Terry Welch, Town Attorney  
Michelle Lewis Sirianni, Town Secretary  
Robyn Battle, Executive Director of Community Services  
Bob Scott, Executive Director of Administrative Services  
Hulon Webb, Interim Executive Director of Development and Infrastructure Services  
David Soto, Planning Manager  
Dan Baker, Parks and Recreation Director  
Frank Jaromin, Public Works Director  
James Edwards, Human Resources Director  
Jessika Hotchkin, Help Desk Technician I  
Wilson Haynes, Senior Communications Specialist  
Whitney Rehm, Grants Administrator  
Celia O'Dell, Court Administrator  
Judith Jacinto, Court Supervisor  
Doug Kowalski, Police Chief  
Scott Brewer, Assistant Police Chief  
Stuart Blasingame, Fire Chief

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

John Fowler with First Presbyterian Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were presented and recited by Boy Scouts Pack 1902.

### **Announcements of recent and upcoming events.**

Councilmember Kern made the following announcements:

Early Voting for the November 8 General Election is now taking place and runs through Friday, November 4. Please visit the Town's website or the Collin County and Denton County Elections websites for additional information regarding Early Voting and Election Day voting locations.

On Saturday, October 29 residents may dispose of prescription drugs during the Drug Take-Back event being held at the Central Fire Station located at 1500 E. First Street from 10:00 a.m. until

2:00 p.m. To learn what items you may dispose of and how to prepare them, visit [www.dea.gov/takebackday](http://www.dea.gov/takebackday).

The Parks and Recreation Department will host a bus trip to Dallas on Wednesday, November 2 from 8:30 a.m. to 5:30 p.m. Enjoy a trip to the George W. Bush Presidential Library and Sixth Floor Museum, as well a drive through other areas of Dallas with lunch at El Ranchito. Sign up today at [www.prosperparksandrec.org](http://www.prosperparksandrec.org). The deadline to register is Wednesday, October 26.

The Town will host its first annual pickleball tournament on Saturday, November 5. Games will be played at the Reynolds Middle School tennis courts in Prosper beginning at 8:30 a.m. with courts open at 8:00 a.m. Visit the Upcoming Events page on the Town website for more information including how to register.

Join the Town for its annual Arbor Day Celebration on Saturday, November 5 at Hackberry Park (corner of Goldenrod Land and Freeman Way within Windsong Ranch) at 9:00 a.m. for a fun morning of planting and learning about trees.

On Friday, November 11, join the Town for the Honor Walls Dedication Ceremony at 10:00 a.m. on the north side of Town Hall to honor all those who have served and continue to serve. Then on Saturday, November 12 at Frontier Park, participate in Prosper's first annual Veterans Day 5K and Fun Run. Festivities begin at 8:00 a.m. Register today by visiting the Upcoming Events page on the Town's website. Proceeds from the event to benefit the future Veteran's Memorial.

### **Presentations.**

1. **Proclamation recognizing the week of November 7-11, 2022, as Municipal Court week. (CO)**

Mayor Bristol read and presented a Proclamation to Celia O'Dell, Court Administrator and Judith Jacinto, Court Supervisor.

### **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 of the October 11, 2022, Town Council Work Session meeting. (MLS)**
3. **Consider and act upon the minutes of the October 11, 2022, Town Council meeting. (MLS)**
4. **Consider and act upon minutes of the October 18, 2022, Town Council Special meeting. (MLS)**
5. **Consider and act upon approving amendments to Administrative Regulation Chapter 13 - Fund Balance. (RBS)**
6. **Consider and act upon Resolution 2022-69 accepting and approving the 2022 Tax Roll. (SM)**
7. **Consider and act upon Resolution 2022-70 authorizing the Interim Town Manager, and/or his/her designee, to apply for the Office of the Governor, Homeland Security Grants Division, 2022 SHSP – Town of Prosper SWAT Communication Headsets Project Grant and consider and act upon accepting**

- the Office of the Governor, Homeland Security Grants Division, 2022 SHSP – Town of Prosper SWAT Communication Headsets Project Grant. (DK)
8. Consider and act upon approving the purchase of a 2022 John Deere 135G Mini Excavator from RDO Equipment Co., through the Sourcewell Purchasing Cooperative; and authorizing the Interim Town Manager to execute documents for the same. (FJ)
  9. Consider and act upon approving the purchase of water meters between Core & Main, a sole source provider, and the Town of Prosper, Texas; and authorizing the Interim Town Manager to execute documents for the same. (FJ)
  10. Consider and act upon approving the lease agreement for an Elgin RegenX Regenerative Air Street Sweeper from Kinloch Equipment & Supply, Inc., through the Sourcewell Purchasing Cooperative; and authorizing the Town Manager to execute documents for the same. (FJ)
  11. Consider and act upon renewing Bid No. 2019-53-A for one year to Wopac Construction, Inc., as the primary vendor, and HQS Construction, LLC, as the secondary vendor, at the unit prices bid, to establish an annual fixed-price contract for Miscellaneous Concrete Replacement Services; and authorizing the Interim Town Manager to execute same. (FJ)
  12. Consider and act upon the purchase of office furniture for the new Central Fire Station and Fire Administration Building from Wilson-Bauhaus Interiors using the ESI NCPA, AIS NCPA, Sitmatic NCPA, Kimball Omnia, and JSI Omnia contracts; and authorizing the Interim Town Manager to execute the Proposal and the Terms and Conditions of Purchase for same. (SB)
  13. Consider and act upon approving the purchase of Fire Station Emergency Station Alerting for the new Central Fire Station and Fire Administration Building from US Digital Designs, through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program; and authorizing the Interim Town Manager to execute documents for the same. (SB)
  14. Consider and act upon approving the purchase of a 2023 Ram 1500 Pickup Truck from Enterprise Fleet Management utilizing The Interlocal Purchasing System (TIPS); and authorizing the Interim Town Manager to execute the same. (SB)
  15. Consider and act upon approving the purchase of Bunker Gear and Wildland Gear from NAFECO INC., utilizing the Texas Local Government Purchasing Cooperative; and authorizing the Interim Town Manager to execute documents for the same. (SB)
  16. Consider and act upon the purchase of twenty-one (21) TASER 7 devices from Axon Enterprise, through the Texas Local Government Purchasing Cooperative. (BM)
  17. Consider an act upon approval of a contract with The Christmas Light Company for Christmas Display Services. (DB)
  18. 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 Plans and Preliminary Site Plans, including Windmill Hill, 7 Brew, and Lighthouse Church. (DS)**

Deputy Mayor Pro-Tem Andres requested to pull item #10.

Councilmember Kern requested to pull item #5.

Councilmember Cotten made a motion to approve consent agenda items 2 through 18 excluding items 5 and 10. Mayor Pro-Tem Hodges seconded that motion, and the motion was unanimously approved.

Deputy Mayor Pro-Tem Andres asked regarding item #10 if there was a process in choosing the street sweeper. Mr. Jaromin noted that there were options, but this company provides maintenance to the equipment, and that was an important factor in their decision.

Deputy Mayor Pro-Tem Andres made a motion to approve the lease agreement for an Elgin RegenX Regenerative Air Street Sweeper from Kinloch Equipment & Supply, Inc., through the Sourcewell Purchasing Cooperative; and authorizing the Town Manager to execute documents for the same. Councilmember Ray seconded that motion, and the motion was unanimously approved.

Councilmember Kern stated regarding item #5, he wanted to publicly announce that the amendments to this item that were debated during the budget and included having a Fund Balance policy of 25%, a level fleet replacement fund (VERF), a capital dedicated levy, and to reduce the additional fund balance target to one percent for a total General Fund target of 21%.

Councilmember Kern made a motion to approve amendments to the Administrative Regulation Chapter 13 - Fund Balance. Councilmember Cotten seconded that motion, and the motion was unanimously approved.

**CITIZEN COMMENTS**

No comments were made.

**Items for Individual Consideration:**

- 19. Consider appointment of Weaver and Tidwell, L.L.P. for a five-year term as external auditors for the Town's annual audited financial statements for the fiscal year ending September 30, 2022, through 2026, and authorizing the Interim Town Manager to approve the annual engagement letter. (RBS)**

Mr. Scott stated that requests for proposals were distributed with the Town receiving four. The Finance Sub-Committee interviewed the two finalists and are recommending the appointment of Weaver & Tidwell L.L.P.

Councilmember Ray stated he felt both finalists were qualified and would help the Town with the next steps. Councilmember Cotten voiced his support for the recommendation.

Councilmember Ray made a motion to approve the appointment of Weaver and Tidwell, L.L.P. for a five-year term as external auditors for the Town's annual audited financial statements for the fiscal year ending September 30, 2022, through 2026, and authorizing the Interim Town Manager to approve the annual engagement letter.



Councilmember Cotten seconded that motion, and the motion was unanimously approved.

- 20. Consider the appointment of Burns & McDonnell as the solid waste services consultant to assist the Town in the writing and issuance of a Solid Waste Services Request for Proposal (RFP), and an RFP for the purchase and distribution of Town-owned solid waste containers and authorizing the Interim Town Manager to approve the related contract for services for an amount not to exceed \$50,000. (RBS)**

Mr. Scott stated the Town's current solid waste contract expires January 31, 2024. It has been determined that the Town desires certain changes that will require a new contract rather than renewal. If a new provider is chosen, transition could require a year given supply chain issues and nature of these services. Burns & McDonnell has successfully assisted many metroplex cities and is being recommended by staff to assist the Town.

Mayor Pro-Tem Hodges made a motion to approve the appointment of Burns & McDonnell as the solid waste services consultant to assist the Town in the writing and issuance of a Solid Waste Services Request for Proposal (RFP), and an RFP for the purchase and distribution of Town-owned solid waste containers and authorizing the Interim Town Manager to approve the related contract for services for an amount not to exceed \$50,000. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

- 21. Consider and act upon the appointment of members to an ad hoc select committee to consider and address the continuation of the Fire Control, Prevention and Emergency Medical Services District and the Crime Control and Prevention District, and to make recommendations to the Town Council regarding the term of continuation of said Districts, and all matters incident and related thereto. (MLS)**

Ms. Lewis Sirianni stated in September 2022, staff received notification that the districts will be dissolved on September 30, 2023, unless the district holds a continuation or dissolution referendum prior to said end date. At the October 11, Council Work Session, the Council expressed their desire to appoint an Ad Hoc Committee to provide a recommendation/charge for the continuation of both Special Purpose Districts.

The Town Council recessed into Executive Session at 6:42 p.m. in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act regarding Section §551.074 to discuss appointments to the Fire Control Prevention and Emergency Medical Services District and the Crime Control and Prevention Districts select committee.

The Town Council reconvened back into regular session at 6:53 p.m.

Councilmember Bartley made a motion to appoint the following individuals to the Special Purpose Districts Committee: Jeff Hodges as Chair, Marcus Ray as Vice-Chair, Stacy Cate, John Hamilton, Ian Giatti, Brent Kirby, and Kimberly Shamsy.

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

No topics were discussed.

**EXECUTIVE SESSION:**

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

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

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

*Section 551.074 - To discuss appointments to the Fire Control, Prevention and Emergency Medical Services District and the Crime Control and Prevention District select committee.*

*Section 551.074 – To discuss and consider personnel matters, including Town Manager search and selection process, and all matters incident and related thereto.*

The Town Council recessed into Executive Session at 6:55 p.m.

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

The Town Council reconvened into Regular Session at 7:57 p.m.

No action was taken.

**Adjourn.**

The meeting was adjourned at 7:57 p.m.

These minutes approved on the 8<sup>th</sup> day of November 2022.

**APPROVED:**

\_\_\_\_\_  
David F. Bristol, Mayor

**ATTEST:**

\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary



## MINUTES

**Prosper Town Council Work Session**  
Prosper Town Hall – Executive Conference Room  
250 W. First Street, Prosper, Texas  
Thursday, October 27, 2022

*Prosper is a place where everyone matters.*

### **Call to Order/ Roll Call.**

The meeting was called to order at 5:30 p.m.

### **Council Members Present:**

Mayor David F. Bristol  
Mayor Pro-Tem Jeff Hodges  
Deputy Mayor Pro-Tem Craig Andres (arrived at 5:45 p.m.)  
Councilmember Marcus E. Ray  
Councilmember Amy Bartley  
Councilmember Chris Kern  
Councilmember Charles Cotten

### **Staff Members Present:**

Ron K. Patterson, Interim Town Manager  
Robyn Battle, Executive Director of Community Services

### **Items for Individual Consideration**

#### **1. Discuss the Strategic Planning process.**

The Council discussed their goals, objectives, and expectations for the annual Strategic Planning process, which is typically held in January or February of each year. They agreed that the focus for the next annual session will be to create a short and long-term vision for the community and identify 6-10 priority action items for the next 1-2 years that support the long-term vision. The Town Manager will continue to provide quarterly work sessions to update the Council on the progress of the strategic plan. Mr. Patterson and Ms. Battle will begin searching for a consultant to facilitate the next strategic planning session. Mr. Patterson recommended holding the next session in February, to accommodate the new Town Manager.

### **Adjourn.**

The meeting was adjourned at 6:58 p.m.

These minutes approved on the 8<sup>th</sup> day of November 2022.

**APPROVED:**

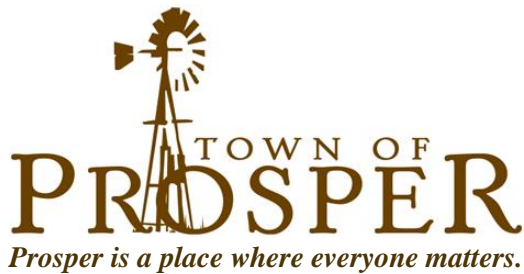
\_\_\_\_\_  
**David F. Bristol, Mayor**

Robyn Battle, Executive Director of Community Services

ATTEST:

Michelle Lewis Sirianni, Town Secretary

DRAFT



## PARKS AND RECREATION

**To:** Mayor and Town Council

**From:** Hulon T. Webb, Jr., Interim Executive Director of Development and Infrastructure Services  
Dan Baker, Parks and Recreation Director

**Through:** Ron K. Patterson, Interim Town Manager  
Robyn Battle, Executive Director of Community Services

**Re:** Park Dedication and Park Maintenance Agreement – Wandering Creek  
Town Council Meeting – November 8, 2022

**Agenda Item:**

Consider and act upon authorizing the Interim Town Manager to execute a Park Dedication and Park Maintenance Agreement between Hunt Wandering Creek Land, LLC, and the Town of Prosper, Texas, related to the dedication of public park property within the Wandering Creek development.

**Description of Agenda Item:**

The Wandering Creek development is proposing to dedicate 4.841 acres of public park property along the southeastern edge of their development to be used for park and recreation purposes. While the Town will be responsible for the maintenance obligations for any construction of a hike and bike trail by the developer, the construction of the hike and bike trail and maintenance obligations for any other improvements, as well as the park property, are to be the responsibility of Hunt Wandering Creek Land, LLC.

**Budget Impact:**

The public park property is being dedicated to the Town at no cost and Hunt Wandering Creek Land, LLC, has agreed to be responsible for the perpetual maintenance of the park property and all other proposed improvements besides the hike and bike trail.

**Legal Obligations and Review:**

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

**Attachments:**

1. Park Dedication and Park Maintenance Agreement

**Town Staff Recommendation:**

Town staff recommends that the Town Council authorize the Interim Town Manager to execute a Park Dedication and Park Maintenance Agreement between Hunt Wandering Creek Land, LLC, and the Town of Prosper, Texas, related to the dedication of public park property within the Wandering Creek development.

**Proposed Motion:**

I move to authorize the Interim Town Manager to execute a Park Dedication and Park Maintenance Agreement between Hunt Wandering Creek Land, LLC, and the Town of Prosper, Texas, related to the dedication of public park property within the Wandering Creek development.

## PARK DEDICATION AND PARK MAINTENANCE AGREEMENT

**THIS PARK DEDICATION AND PARK MAINTENANCE AGREEMENT** (“Agreement”) is made and entered into as of this 8th day of November, 2022 (“Effective Date”), by and between **Hunt Wandering Creek Land, LLC** (“Owner”) and the **TOWN OF PROSPER, TEXAS**, a Texas home-rule municipality (“Town”), on the terms and conditions hereinafter set forth.

**WHEREAS**, Owner owns approximately 74.969 acres of land in the Town, as more particularly described in and depicted on Exhibit A, attached hereto and incorporated herein by reference (the “Property”); and

**WHEREAS**, Owner has obtained zoning approval from the Town and is developing the Property for residential purposes and wishes to dedicate to the Town 4.841 acres for park and recreation purposes (“Park Property”), which Park Property is more particularly described in and depicted on Exhibit B, attached hereto and incorporated by reference; and

**WHEREAS**, Owner has agreed to perpetually maintain the Park Property, to the extent referenced in this Agreement; and

**WHEREAS**, the Town and Owner agree that the Park Property benefits residents of Owner’s development as well as residents of the Town, as a whole; and

**WHEREAS**, the Town and Owner hereby agree to the following terms and conditions relative to the Park Property.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained in this Agreement, the Town and Owner agree as follows:

1.1 **Park Property Conveyance and Dedication.** Owner shall, at its sole cost and expense, dedicate and convey to Town the Park Property, by conveyance plat or separate instrument, as of the Effective Date of this Agreement. The Town shall receive fee simple title to the Park Property.

2.1 **Hike and Bike Trail.** As part of the development of the Property, the Owner may be required to construct a Hike and Bike Trail (“Trail”) on the Park Property in accordance with the Town’s Hike and Bike Trail Master Plan. If required, the location shall be as agreed to by the Owner and the Town. The Town will credit the Owner Park Improvement Fees owed by the Property for the construction in accordance with the Town’s Trail Standards, which shall be five inches (5”) thick, poured with 3500 PSI at 28 days concrete, #4 rebar spaced at 16” O.C. both ways, expansion joints every forty feet (40’) (or every 4 panels) with dowels at 18” O.C. and sealed with a urethane sealant to be flush with the concrete surface. The Trail shall have a medium broom finish and shall not exceed 5% longitudinal slope or a 2% cross slope. Town hereby grants to the Owner a temporary construction easement over and across the Property during the construction of the Trail on the Park Property.

3. **Trail Maintenance Obligations of the Town.** The Town agrees to maintain the hard surface of the Trail on the Park Property at its expense, utilizing Town employees or if the Town determines that it is in the best interests of Town, the Town may utilize third party contractors to perform all or a portion of its Trail maintenance obligations. Owner further grants to the Town an access easement over such portion of the Property as necessary so the Town may fulfill its maintenance obligations under this Agreement, but not over individual single family platted lots.

4. **Owner’s Park Property Maintenance Obligations.** Except to the extent referenced in Paragraph 3, above, Owner shall be responsible in perpetuity for all maintenance, repairs, upkeep, renovation, and replacement costs and expenses of the Park Property together with any active and passive amenity improvements thereto. The obligation to perform maintenance obligations referenced herein may be assigned by Owner to any homeowners association created for or on behalf of Owner’s residential development on the Property.

5. **Town Approval of Amenities.** Owner agrees that the Town shall approve the installation or construction of any active and/or passive amenity improvements on the Park Property by Owner prior to such installation or construction of same. Any such amenity improvements so installed and/or constructed on the Park Property shall be consistent with any applicable Town standards, guidelines and specifications for such amenity improvements.

6. **Covenant Running with Land.** Subject to assignment in Section 22, the obligations set forth in this Agreement and the covenants, rights, privileges, benefits, duties, liabilities and encumbrances created by this Agreement shall run with the land, shall burden the Property, and shall be binding upon Owner and the Town, as applicable, and their respective successors, assignees, and grantees but not individual Homeowners. In addition, the Parties shall cause this Agreement to be filed in the Real Property Records of Collin County, Texas.

7. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt or refusal at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

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



If to Owner: Toll Bros., Inc.  
2555 S W Grapevine Parkway  
Grapevine, Texas 76051  
Attention: Robert G. Paul, Division President

8. **Captions and Headings.** The captions and headings of any section of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement, nor shall they be employed to interpret or aid in the construction of this Agreement.

9. **Application of Texas Laws and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in Collin County, Texas.

10. **Prevailing Party in Event of Legal Action.** In the event any 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 attorneys' fees (including its reasonable costs and attorneys' fees of any appeal) from the unsuccessful Party or Parties.

11. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

12. **Invalidation and Severability.** Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

13. **Electronic Copy.** An electronic copy of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms herein.

14. **Mayor Authorized to Execute.** The Town represents and warrants that the Mayor of the Town of Prosper is authorized to execute this Agreement on behalf of the Town.

15. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town and Owner each warrant and represents to the other Party that the individual executing this Agreement on behalf of such warranting Party has full authority to execute this Agreement and bind such warranting Party to the same.

16. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement that cannot be resolved by the Parties hereto, the Parties agree to submit such disagreement to non-binding mediation, whether or not an action or proceeding has been commenced.

17. **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

18. **Amendment.** This Agreement may only be amended by a written agreement executed by the Parties.

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

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

21. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

22. **Assignment.** This Agreement may not be assigned by Owner, in whole or in part, without the prior written consent of the Town. Notwithstanding anything to the contrary, without the consent of the Town, Owner may assign its right, title, and interest in and to this Agreement to a homeowners association created for the residential development on the Property, in accordance with those requirements referenced in applicable Town ordinances for such homeowners association.

23. **Default.** If Owner fails to comply with the provisions of this Agreement and does not cure such failure following the expiration of thirty (30) days from the date the Town provides Owner with notice of such failure<sup>7</sup>, the Town shall have any remedy at law, including specific performance, in addition to any other rights and remedies.

24. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

25. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

26. **Conveyances.** All conveyances required herein shall be made in a form acceptable to Town and free and clear of any and all liens and encumbrances.

27. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

**THE TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_

Name: Ron K. Patterson

Title: Interim Town Manager, Town of Prosper

STATE OF TEXAS )

)

COUNTY OF COLLIN )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2022, by Ron K. Patterson, Interim Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper.

\_\_\_\_\_  
Notary Public, State of Texas

OWNER:

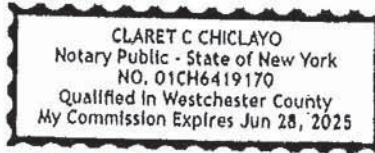
Hunt Wandering Creek Land, LLC  
a Delaware limited liability company

By: *Thomas Duda*  
Name: Thomas Duda  
Title: Senior Managing Director

STATE OF New York )  
COUNTY OF New York )

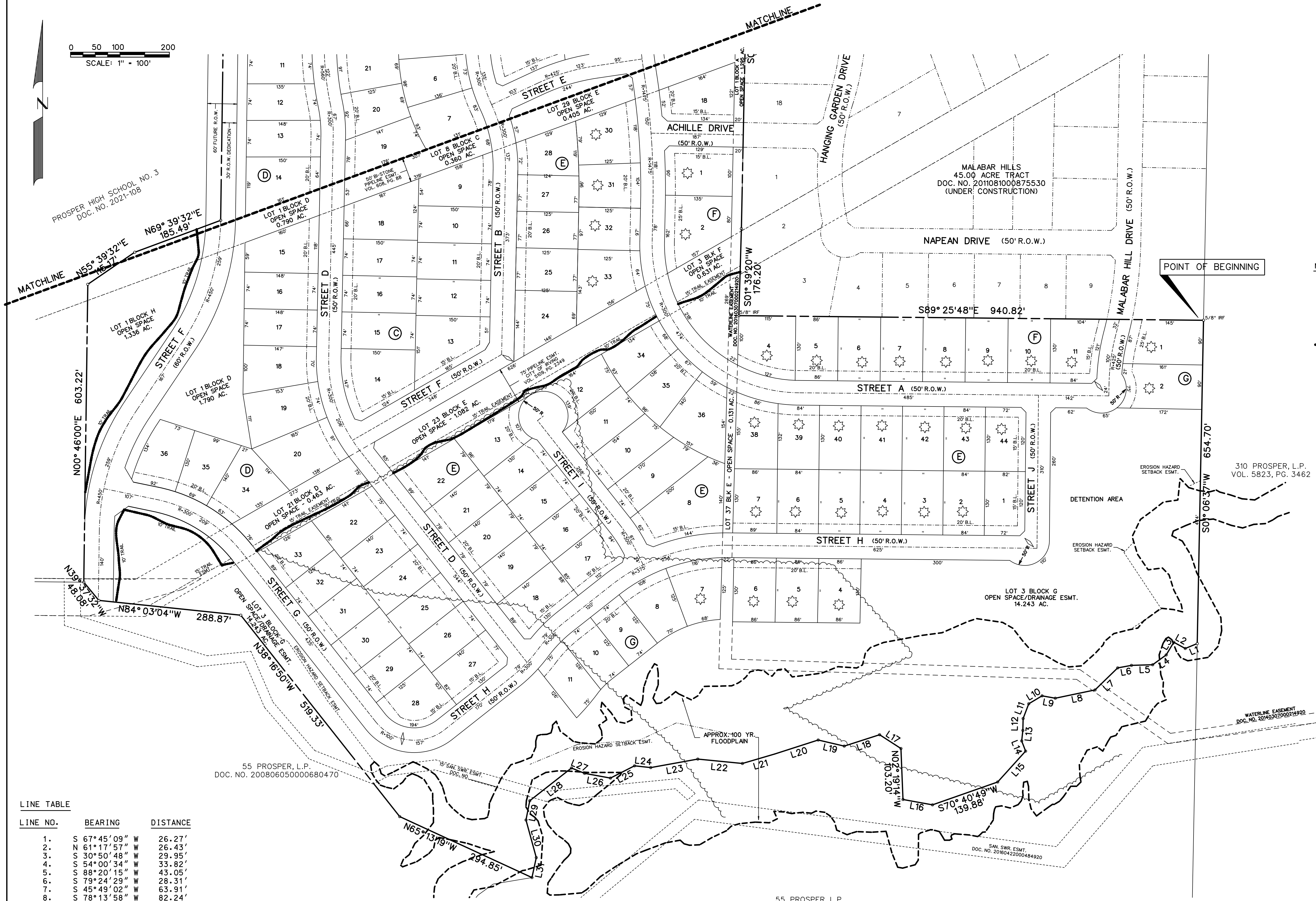
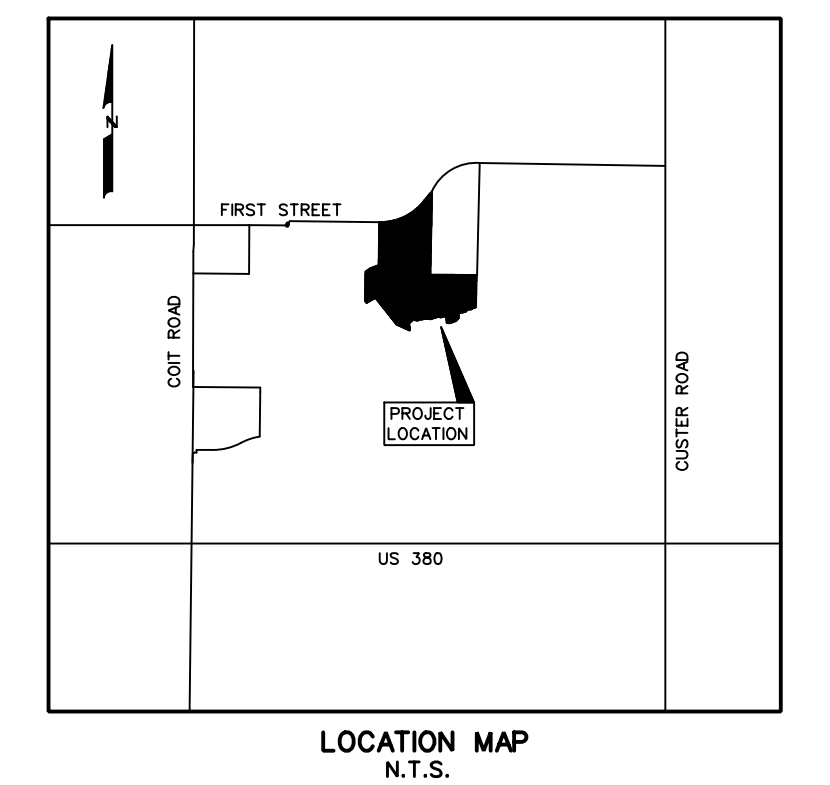
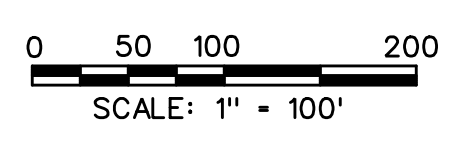
This instrument was acknowledged before me on the \_\_\_ day of September, 2022, by Thomas Duda in his capacity as Senior Managing Director of Hunt Wandering Creek Land, LLC, a Delaware limited liability company, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Owner.

*Claret C. Chiclayo*  
Notary Public, State of New York  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**  
**(Property Description)**

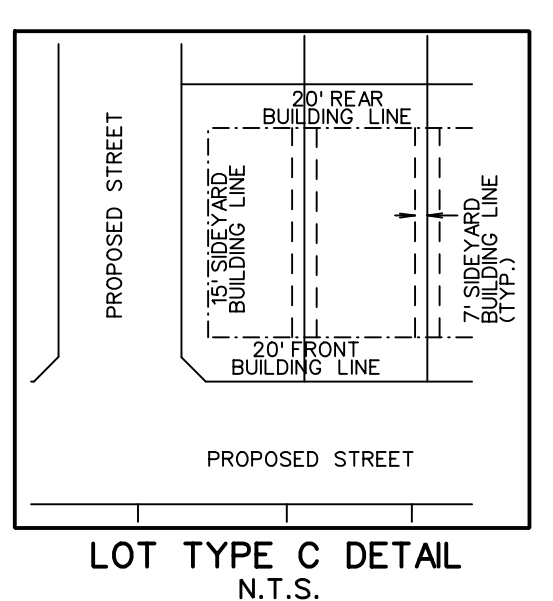
**NEXT 3 PAGES**



- NOTES:**
- Bearings are referenced to Malabar Hills, as described in Doc. No. , in the Plat Records of Collin County, Texas.
  - LEGEND  
 B.L. - Building Line  
 C.M. - Controlling Monuments  
 H.O.A. - Homeowners Association  
 - TRAIL  
 - Street Name Change  
 - Indicates front yard  
 - Existing Tree Line (Detailed tree survey required with Final Plat)
  - "Notice: Selling a portion of this addition by metes and bounds is a violation of city ordinance and state law and is subject to fines and withholding of utility and building permits".
  - All fences adjacent to parks or open spaces shall be ornamental metal. To include offsite open space lots.
  - Landscape easements shall remain exclusive of all other types of easements unless approved by Town Council.

**LINE TABLE**

LINE NO.	BEARING	DISTANCE
1.	S 67°45'09" W	26.27'
2.	N 61°17'57" W	26.43'
3.	S 30°50'48" W	29.95'
4.	S 54°00'34" W	33.82'
5.	S 88°20'15" W	43.05'
6.	S 79°24'29" W	28.31'
7.	S 45°49'02" W	63.91'
8.	S 78°13'58" W	82.24'
9.	N 79°43'00" W	27.16'
10.	S 59°09'56" W	31.51'
11.	S 20°52'18" W	31.91'
12.	S 01°06'55" W	24.02'
13.	S 06°19'53" W	21.59'
14.	S 21°05'52" E	21.98'
15.	S 42°07'51" W	84.32'
16.	N 79°38'38" W	60.66'
17.	N 57°03'11" W	51.44'
18.	S 72°07'04" W	75.19'
19.	N 76°44'25" W	54.20'
20.	S 72°06'16" W	92.62'
21.	S 73°43'45" W	67.95'
22.	N 84°26'40" W	90.84'
23.	S 79°47'16" W	96.95'
24.	N 83°45'07" W	32.95'
25.	S 62°57'59" W	54.72'
26.	N 79°36'21" W	53.18'
27.	N 67°45'22" W	28.74'
28.	S 51°52'42" W	107.35'
29.	S 11°01'03" W	39.71'
30.	S 15°16'40" E	78.92'
31.	S 12°15'03" W	41.50'



CASE# D21-0127  
 PRELIMINARY PLAT  
 OF  
**WANDERING CREEK**  
 LOTS 1-18 BLOCK A  
 LOTS 1-13 BLOCK B  
 LOTS 1-25 BLOCK C  
 LOTS 1-36 BLOCK D  
 LOTS 1-44 BLOCK E  
 LOTS 1-11 BLOCK F  
 LOTS 1-11 BLOCK G  
 LOT 1 BLOCK H  
 TOTAL RESIDENTIAL LOTS 150  
 TOTAL OPEN SPACE LOTS 8  
 TOTAL GROSS ACRES 74.969

OUT OF THE  
 LARKIN McCARTY SURVEY, ABSTRACT NO. 600  
 JEREMIAH HORN SURVEY, ABSTRACT NO. 411

IN THE  
 TOWN OF PROSPER  
 COLLIN COUNTY, TEXAS

OWNER/APPLICANT  
**55 PROSPER, L.P.**  
 3794 W. HIGHWAY 67, UNIT C  
 GLEN ROSE, TX 76043

PREPARED BY  
**CORWIN ENGINEERING, INC.**  
 200 W. BELMONT, SUITE E  
 ALLEN, TEXAS 75013  
 972-396-1200  
 WARREN CORWIN

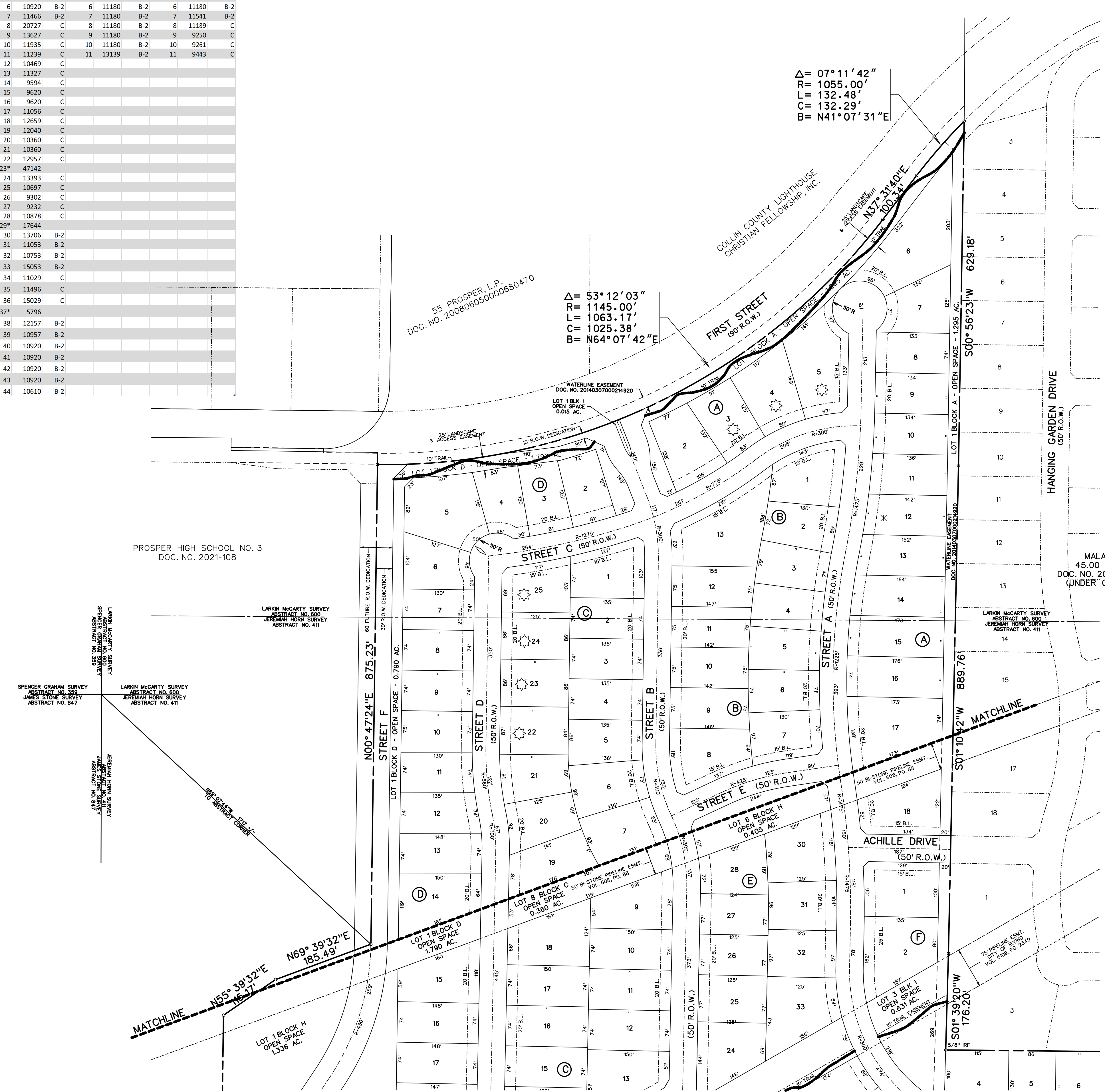
**TOWN OF PROSPER**  
 P&Z Conditional Approval  
**April 19, 2022**  
 109 TYPE C LOTS (9,000 SF MIN.)  
 41 TYPE B-2 LOTS (10,000 SF MIN.)

OVERALL DENSITY 2.011

SCALE 1" = 100' MARCH 2022

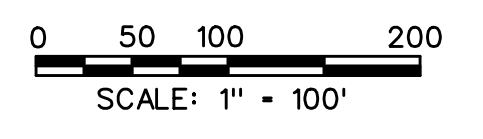
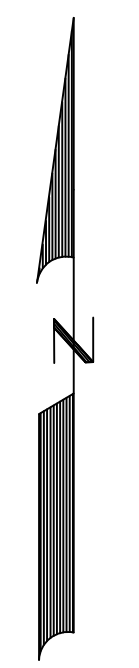
Block A	Block B	Block C	Block D	Block E	Block F	Block G	
Lot	SF Lot Type	Lot	SF Lot Type	Lot	SF Lot Type	Lot	SF Lot Type
1*	56393	1	13267	1	12666	1*	77985
2	12450	2	10247	2	9990	2	9675
3	11194	B-2	3	9807	C	3	9990
4	13025	B-2	4	9807	C	4	9638
5	17821	B-2	5	9807	C	5	10608
6	21656	C	6	9807	C	6	11486
7	11442	C	7	11326	C	7	12043
8	9923	C	8	14164	C	8*	15709
9	9946	C	9	10632	C	9	12614
10	10022	C	10	10501	C	10	11100
11	10326	C	11	10664	C	11	11100
12	10888	C	12	11123	C	12	11100
13	11710	C	13	20824	C	13	15959
14	12481	C	14	17126	C	14	17126
15	12918	C	15	11100	C	15	13232
16	13015	C	16	11100	C	16	10983
17	18274	C	17	11100	C	17	10946
18	13682	C	18	14330	C	18	12659
			19	11647	C	19	14614
			20	10446	C	20	14995
			21	10047	C	21	20192
			22	10876	B-2	22	11993
			23	10750	B-2	23	10360
			24	10750	B-2	24	10360
			25	11295	B-2	25	11295
						26	10360
						27	11424
						28	11790
						29	9250
						30	9250
						31	9250
						32	9250
						33	10401
						34	13621
						35	11221
						36	11494
						37*	5796
						38	12157
						39	10957
						40	10920
						41	10920
						42	10920
						43	10920
						44	10610

\* Indicates open space lot



$\Delta = 07^{\circ}11'42''$   
 $R = 1055.00'$   
 $L = 132.48'$   
 $C = 132.29'$   
 $B = N41^{\circ}07'31''E$

$\Delta = 53^{\circ}12'03''$   
 $R = 1145.00'$   
 $L = 1063.17'$   
 $C = 1025.38'$   
 $B = N64^{\circ}07'42''E$



April 19, 2022

CASE # D21-0127 PRELIMINARY PLAT OF

### WANDERING CREEK

- LOTS 1-18 BLOCK A
- LOTS 1-13 BLOCK B
- LOTS 1-25 BLOCK C
- LOTS 1-36 BLOCK D
- LOTS 1-44 BLOCK E
- LOTS 1-11 BLOCK F
- LOTS 1-11 BLOCK G
- LOT 1 BLOCK H
- TOTAL RESIDENTIAL LOTS 150
- TOTAL OPEN SPACE LOTS 8
- TOTAL GROSS ACRES 74.969

OUT OF THE  
 LARKIN McCARTY SURVEY, ABSTRACT NO. 600  
 JEREMIAH HORN SURVEY, ABSTRACT NO. 411  
 IN THE

TOWN OF PROSPER  
 COLLIN COUNTY, TEXAS

OWNER/APPLICANT  
 55 PROSPER, L.P.  
 3794 W. HIGHWAY 67, UNIT C  
 GLEN ROSE, TX 76043

PREPARED BY  
 CORWIN ENGINEERING, INC.  
 200 W. BELMONT, SUITE E  
 ALLEN, TEXAS 75013  
 972-396-1200  
 WARREN CORWIN

LEGAL DESCRIPTION

BEING, a tract of land situated in the Larkin McCarty Survey, Abstract Number 600, in the Town of Prosper, Collin County, Texas, being part of a tract of land in Deed to 55 Prosper, L.P., as described in Doc. No. 200806050000680470, in the Deed Records of Collin County, Texas, and being more particularly described as follows:

BEGINNING, at a 5/8 inch iron rod found at the southeast corner of a 45,000 acre tract, as described in Doc. No. 201081000875530, in said Deed Records and being in the west line of said 310 Prosper tract:

THENCE, South 01°06'37" West, along the west line of said 310 Prosper tract, for a distance of 654.70 feet, point the center of a creek:

THENCE, along said creek for the following thirty three (33) calls:

- South 67°45'09" West, for a distance of 26.27 feet;
North 61°17'57" West, for a distance of 26.43 feet;
South 30°50'48" West, for a distance of 29.95 feet;
South 54°00'34" West, for a distance of 33.85 feet;
South 88°20'15" West, for a distance of 43.05 feet;
South 79°24'29" West, for a distance of 28.31 feet;
South 45°49'02" West, for a distance of 63.91 feet;
South 78°43'00" West, for a distance of 92.24 feet;
North 79°43'00" West, for a distance of 27.16 feet;
South 59°09'56" West, for a distance of 31.51 feet;
South 20°52'18" West, for a distance of 24.02 feet;
South 01°06'55" West, for a distance of 21.59 feet;
South 06°19'53" West, for a distance of 21.98 feet;
South 21°05'52" East, for a distance of 84.32 feet;
South 70°40'49" West, for a distance of 139.88 feet;
North 79°38'38" West, for a distance of 60.66 feet;
North 02°19'14" West, for a distance of 103.20 feet;
North 57°03'11" West, for a distance of 51.44 feet;
South 72°07'04" West, for a distance of 75.19 feet;
North 76°44'23" West, for a distance of 54.20 feet;
South 72°06'16" West, for a distance of 92.62 feet;
South 73°43'45" West, for a distance of 67.95 feet;
North 84°28'40" West, for a distance of 90.84 feet;
South 79°47'16" West, for a distance of 86.95 feet;
North 83°45'07" West, for a distance of 32.95 feet;
South 62°57'59" West, for a distance of 54.72 feet;
North 79°36'21" West, for a distance of 53.18 feet;
North 67°45'22" West, for a distance of 28.74 feet;
South 51°52'42" West, for a distance of 107.35 feet;
South 11°01'03" West, for a distance of 39.71 feet;
South 15°16'40" East, for a distance of 78.92 feet;
South 12°15'03" West, for a distance of 41.50 feet;

THENCE, North 65°13'19" West, departing said creek, for a distance of 294.85 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.;"

THENCE, North 38°16'50" West, for a distance of 519.33 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.;"

THENCE, South 84°03'04" West, for a distance of 288.87 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.;"

THENCE, North 39°37'32" West, for a distance of 48.08 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.;"

THENCE, North 00°46'00" East, for a distance of 603.22 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.;"

THENCE, North 55°39'32" East, for a distance of 115.17 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.;"

THENCE, North 69°39'32" East, for a distance of 185.49 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.," in the south line of First Street (80' R.O.W.), and being on a curve to the left, having a radius of 1145.00 feet, central angle of 53°12'03";

THENCE, along the south line of said First Street and with said curve to the left for an arc distance of 1063.17 feet (Chord Bearing North 64°07'42" East 1025.38 feet), to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", at the point of tangency;

THENCE, North 37°31'40" East, continuing along said south line, for a distance of 100.34 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", at the point of curvature of a curve to the right, for an arc distance of 1055.00 feet, a central angle of 07°11'42";

THENCE, continuing along said south line and with said curve to the right for an arc distance of 132.48 feet (Chord Bearing North 41°07'31" East 132.29 feet), to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", in the west line of said 45,000 acre tract;

THENCE, South 00°56'32" West, departing said south line and along the west line of said 45,000 acre tract, for a distance of 629.18 feet, to a 1/2 inch iron rod found;

THENCE, South 01°10'42" West, continuing along said west line, for a distance of 889.76 feet, to a 1/2 inch iron rod found;

THENCE, South 01°39'20" West, continuing along said west line, for a distance of 176.20 feet, to a 5/8 inch iron rod found at the southwest corner of said 45,000 acre tract;

THENCE, South 89°25'48" East, along the south line of said 45,000 acre tract, for a distance of 940.82 feet, to the POINT OF BEGINNING and containing 74.869 acres of land.

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS that I, WARREN L. CORWIN, do hereby certify that I prepared this Plat and the field notes made a part thereof from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision regulations of the Town of Prosper, Texas.

WARREN L. CORWIN
R.P.L.S. No. 4621

THE STATE OF TEXAS
COUNTY OF COLLIN

Before me, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared WARREN L. CORWIN, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for the purpose and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office, this \_\_\_ day of \_\_\_, 2022.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
COUNTY OF COLLIN

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: THAT, 55 PROSPER, L.P., acting herein by and through its duly authorized officers, does hereby certify and adopt this plat designating the herein above described property as WANDERING CREEK, an addition to the Town of Prosper, and does hereby dedicate to the public use forever, the streets and alleys shown thereon. The 55 PROSPER, L.P., INC. does herein certify the following:

- 1. The streets and alleys are dedicated for street and alley purposes.
2. All public improvements and dedications shall be free and clear of all debt, liens, and/or encumbrances.
3. The easements and public use areas, as shown, are dedicated for the public use forever for the purposes indicated on this plat.
4. No buildings, fences, trees, shrubs or other improvements or growths shall be constructed or placed upon, over or across the easements as shown, except that landscape improvements may be placed in landscape easements if approved by the Town of Prosper.
5. The Town of Prosper is not responsible for replacing any improvements in, under, or over any easements caused by maintenance or repair.
6. Utility easements may also be used for the mutual use and accommodation of all public utilities desiring to use or using the same unless the easement limits the use to particular utilities, said use by public utilities being subordinate to the public's and Town of Prosper's use thereof.
7. The Town of Prosper and public utilities shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs or other improvements or growths which may in any way endanger or interfere with the construction, maintenance, or efficiency of their respective systems in the easements.
8. The Town of Prosper and public utilities shall at all times have the full right of ingress and egress to or from their respective easements for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, reading meters, and adding to or removing all or parts of their respective systems without the necessity of any time procuring permission from anyone.
9. All modifications to this document shall be by means of plat and approved by the Town of Prosper.

DRAINAGE AND DETENTION EASEMENT

This plat is hereby adopted by the Owners and approved by the Town of Prosper (Called "Town") subject to the following conditions which shall be binding upon the Owners, their heirs, grantees, successors and assigns: The Portion of Block H, as shown on the plat is called "Drainage and Detention Easement". The Drainage and Detention Easement within the limits of this addition, will remain open at all times and will be maintained in a safe and sanitary condition by the owners of the lot or lots that are traversed by or adjacent to the Drainage and Detention Easement. The Town will not be responsible for the maintenance and operation of said Easement or for any damage to private property or person that results from conditions in the Easement, or for the control of erosion. No obstructions to the natural flow or storm water run-off shall be permitted by construction of any type of building, fence or any other structure within the Drainage and Detention Easement, as herein above defined, unless approved by the Town Engineer. Provided, however, it is understood that in the event it becomes necessary for the Town to erect or consider erecting any type of drainage structure in order to improve the storm drainage that may be occasioned by drainage in or adjacent to the subdivision, then in such event, the Town shall have the right to enter upon the Drainage and Detention Easement at any point, or points, to investigate, survey or to erect, construct and maintain any drainage facility deemed necessary for drainage purposes. Each property owner shall keep the Drainage and Detention Easement clean and free of debris, silt, and any substance which would result in unsanitary conditions or obstruct the flow of water, and the Town shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owner to alleviate any undesirable conditions which may occur. The natural drainage through the Drainage and Detention Easement is subject to storm water overflow and natural bank erosion to an extent which cannot be definitely defined. The Town shall not be held liable for any such damages of any nature resulting from the occurrence of these natural phenomena, or resulting from the failure of any structure or structures, within the Easement.

LANDSCAPE EASEMENT

The undersigned covenants and agrees that the landscape easement and restrictions herein set forth shall run with the land and be binding on the owner(s) of the property in this subdivision, their successors and assigns, and all parties claiming by, through and under them. In the event a replant is requested on all or part of this property, the Town may require any similar or additional restrictions at its sole discretion. The sole responsibility for maintenance and replacement of landscape materials thereof shall be borne by any "homeowners" association hereafter established for the owners of lots in this subdivision and/or the owners of the individual lots within this subdivision. Such maintenance and replacement shall be in conformance with the requirements, standards, and specifications of the Town of Prosper, as presently in effect or as may be hereafter amended. This provision may be enforced by specific performance or by any other remedy allowed by law. This Landscape Easement shall be void of utilities and drainage and other elements unless otherwise approved on the plat.

This plat approved subject to all platting ordinances, rules, regulations and resolutions of the Town of Prosper, Texas.

WITNESS, my hand, this the \_\_\_ day of \_\_\_, 2022.

By:
55 PROSPER, L.P.

Bruce Smith

STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned, a Notary Public in and for The State of Texas, on this day personally appeared BRUCE SMITH known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_ day of \_\_\_, 2022.

Notary Public, State of Texas

CERTIFICATE OF APPROVAL

Approved this \_\_\_ day of \_\_\_, 2022 by the Planning & Zoning Commission of the Town of Prosper, Texas.

- Town Secretary
Engineering Department
Planning Department



P&Z Conditional Approval
April 19, 2022

CASE# D21-0127

PRELIMINARY PLAT
OF

WANDERING CREEK

- LOTS 1-24 BLOCK A
LOTS 1-15 BLOCK B
LOTS 1-17 BLOCK C
LOTS 1-17 BLOCK D
LOTS 1-9 BLOCK E
LOTS 1-9 BLOCK F
LOTS 1-5 BLOCK G
LOTS 1-56 BLOCK H
LOTS 1-12 BLOCK I
LOTS 1-11 BLOCK J

TOTAL RESIDENTIAL LOTS 164
TOTAL OPEN SPACE LOTS 11
TOTAL GROSS ACRES 74.562

OUT OF THE

LARKIN McCARTY SURVEY, ABSTRACT NO. 600
JEREMIAH HORN SURVEY, ABSTRACT NO. 411
IN THE

TOWN OF PROSPER
COLLIN COUNTY, TEXAS

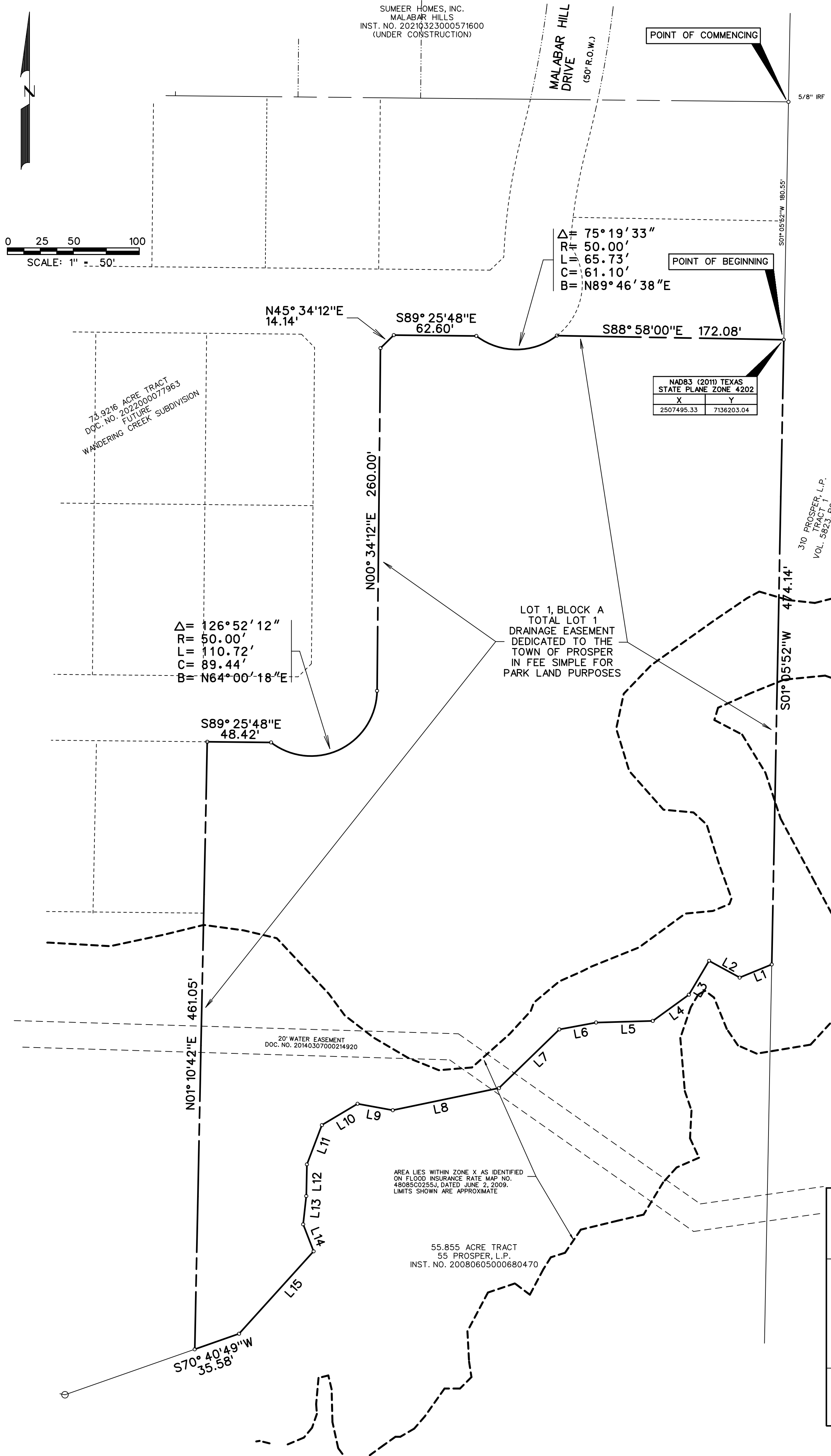
OWNER/APPLICANT
55 PROSPER, L.P.
3794 W. HIGHWAY 67, UNIT C
GLEN ROSE, TX 76043

PREPARED BY
CORWIN ENGINEERING, INC.
200 W. BELMONT, SUITE E
ALLEN, TEXAS 75013
972-396-1200
WARREN CORWIN



**EXHIBIT B**  
**(Park Property Description)**

**NEXT 1 PAGE**



LEGAL DESCRIPTION

BEING, a tract of land situated in the Jeremiah Horn Survey, Abstract Number 411, in the Town of Prosper, Collin County, Texas, being all of 73.9216 acre tract, as described in Doc. No. 202200077963 in the Deed Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING, at a 5/8 inch iron rod found at the southwest corner of a 45.00 acre tract, as described in Doc. No. 20210323000571600 in said Deed Records and being the northeast corner of said 73.9216 acre tract, same being in the west line of a tract of land in deed to 310 Prosper, L.P., as described in in Vol. 5823, Pg 3462 in said Deed Records;

THENCE, South 01°05'52" West, along the east line of said 73.9216 acre tract and with the west line of said 310 Prosper, L.P., for a distance of 180.55 feet, to the POINT OF BEGINNING;

THENCE, South 01°05'52" West, continuing along said east and west lines, for a distance of 474.14 feet, to a point in the center of a creek;

THENCE, along the south line of said 73.9216 acre tract and along the centerline of said creek for the following sixteen (16) calls: South 67°45'09" West, for a distance of 26.27 feet; North 61°17'57" West, for a distance of 26.43 feet; South 30°50'48" West, for a distance of 29.95 feet; South 54°00'34" West, for a distance of 33.82 feet; South 88°20'15" West, for a distance of 43.05 feet; South 79°24'29" West, for a distance of 28.31 feet; South 45°49'02" West, for a distance of 63.91 feet; South 78°13'58" West, for a distance of 82.24 feet; North 79°43'00" West, for a distance of 27.16 feet; South 59°06'56" West, for a distance of 31.51 feet; South 20°52'18" West, for a distance of 31.91 feet; South 01°06'55" West, for a distance of 24.02 feet; South 06°19'53" West, for a distance of 21.59 feet; South 21°05'52" East, for a distance of 21.98 feet; South 42°07'51" West, for a distance of 84.32 feet; South 70°40'49" West, for a distance of 35.58 feet;

THENCE, North 01°10'42" East, departing said creek and said south line, for a distance of 461.05 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.";

THENCE, South 89°25'48" East, for a distance of 48.42 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", on a curve to the left, having a radius of 50.00 feet, a central angle of 126°52'12";

THENCE, along said curve to the left for an arc distance of 110.72 feet (Chord Bearing North 64°00'18" East 89.44 feet), to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", at the point of tangency;

THENCE, North 00°34'12" East, for a distance of 260.00 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.";

THENCE, North 45°34'12" East, for a distance of 14.14 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.";

THENCE, South 89°25'48" East, for a distance of 62.60 feet, to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.", on a non-tangent curve to the left, having a radius of 50.00 feet, a central angle of 75°19'33";

THENCE, along said curve to the left for an arc distance of 65.73 feet (Chord Bearing North 89°46'38" East 61.10 feet), to a 1/2 inch iron rod set with a yellow cap stamped "Corwin Eng. Inc.";

THENCE, South 88°58'00" East, for a distance of 172.08 feet, to the POINT OF BEGINNING and containing 4.841 acres of land.

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS that I, WARREN L. CORWIN, do hereby certify that I prepared this Plat and the field notes made a part thereof from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision regulations of the Town of Prosper, Texas.

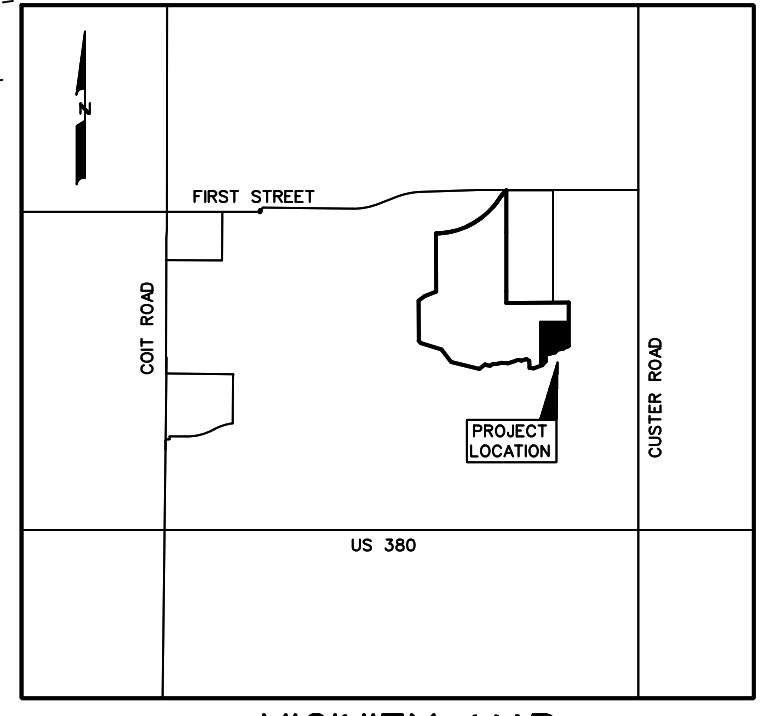
WARREN L. CORWIN  
R.P.L.S. No. 4621

THE STATE OF TEXAS §  
COUNTY OF COLLIN §

Before me, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared WARREN L. CORWIN, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for the purpose and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

NOTARY PUBLIC, STATE OF TEXAS



NOTICE:  
A conveyance plat is a record of property approved by the Town of Prosper, Texas, for the purpose of sale or conveyance in its entirety or interest thereon defined. No building permit shall be issued nor public utility service provided until a Final Plat is approved and public improvements approved in accordance with the provisions of the Subdivision Ordinance of the Town of Prosper.

STATE OF TEXAS §  
COUNTY OF COLLIN §

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: THAT, HUNT WANDERING CREEK LAND, LLC., acting herein by and through its duly authorized officers, does hereby certify and adopt this plat designating the herein above described property as WANDERING CREEK, an addition to the Town of Prosper, and does hereby dedicate to the public use forever, the streets and alleys shown thereon. The HUNT WANDERING CREEK LAND, LLC. does herein certify the following:

- The streets and alleys are dedicated for street and alley purposes.
- All public improvements and dedications shall be free and clear of all debt, liens, and/or encumbrances.
- The easements and public use areas, as shown, are dedicated for the public use forever for the purposes indicated on this plat.
- No buildings, fences, trees, shrubs or other improvements or growths shall be constructed or placed upon, over or across the easements if approved by the Town of Prosper.
- The Town of Prosper is not responsible for replacing any improvements in, under, or over any easements caused by maintenance or repair.
- Utility easements may also be used for the mutual use and accommodation of all public utilities desiring to use or using the same unless the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, readjusting other improvements or growths which may in any way endanger or interfere with the use of particular utilities, said use by public utilities being easements as shown, except that landscape improvements may be placed in landscape subordinate to the public's and Town of Prosper's use thereof.
- The Town of Prosper and public utilities shall have the right to remove and keep removed all or parts of any buildings, fences, trees, shrubs with the construction, maintenance, or efficiency of their respective systems in the easements.
- The Town of Prosper and public utilities shall at all times have the full right of ingress and egress to or from their respective easements for the meters, and adding to or removing all or parts of their respective systems without the necessity at any time procuring permission from anyone.
- All modifications to this document shall be by means of plat and approved by the Town of Prosper.

This plat approved subject to all platting ordinances, rules, regulations and resolutions of the Town of Prosper, Texas.

WITNESS, my hand, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BY:

HUNT WANDERING CREEK LAND, LLC.

STATE OF TEXAS  
COUNTY OF COLLIN

BEFORE ME, the undersigned, a Notary Public in and for The State of Texas, on this day personally appeared \_\_\_\_\_ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Notary Public, State of Texas

CERTIFICATE OF APPROVAL

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by the Planning & Zoning Commission of the Town of Prosper, Texas.

\_\_\_\_\_  
Town Secretary

\_\_\_\_\_  
Engineering Department

\_\_\_\_\_  
Planning Department

CASE\* D22-0082  
CONVEYANCE PLAT  
OF  
**WANDERING CREEK**  
LOT 1, BLOCK A  
TOTAL LOT 1  
TOTAL ACRES 4.841  
OUT OF THE  
JEREMIAH HORN SURVEY, ABSTRACT NO. 411  
IN THE  
TOWN OF PROSPER  
COLLIN COUNTY, TEXAS  
OWNER/APPLICANT  
HUNT WANDERING CREEK LAND, LLC.  
1330 AVENUE OF THE AMERICAS, 28TH FLOOR  
NEW YORK, NY 10019  
817-329-7973  
PREPARED BY  
CORWIN ENGINEERING, INC.  
200 W. BELMONT, SUITE E  
ALLEN, TEXAS 75013  
972-396-1200  
WARREN CORWIN



## ENGINEERING SERVICES

**To:** Mayor and Town Council

**From:** Hulon T. Webb, Jr., P.E., Interim Executive Director of Development and Infrastructure Services

**Through:** Ron K. Patterson, Interim Town Manager

**Re:** No Parking – Ridgewood Drive

**Town Council Meeting – November 8, 2022**

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**Agenda Item:**

Consider and act upon an ordinance establishing a no parking zone on Ridgewood Drive from Hays Road to Crown Colony Drive.

**Description of Agenda Item:**

At the February 10, 1998, Town Council meeting, the Town Council discussed the concern with Ridgewood Drive in Northchase Estates being too narrow (25’ wide), making it extremely hard for large emergency vehicles to pass with vehicles parked in the street. Based on the discussions, Council agreed to put signs up on Ridgewood Drive to forbid parking to address the concern. Due to the homes facing the south side of Ridgewood Drive, parking was allowed to remain in front of the homes and no parking signs were placed on the north side of Ridgewood Drive.

Recent discovery of there not being an ordinance in place to enforce the parking restriction on the north side of Ridgewood Drive, led to the removal of the no parking signs. The residents contacted Town staff requesting re-installation of the no parking signs, and Town staff agreed that there is a need to legally re-establish the parking restriction on the north side of Ridgewood Drive from Hays Road to Crown Colony Drive.

The attached ordinance is necessary to establish the no parking zone agreed to on February 10, 1998, so that it can be legally enforced.

**Budget Impact:**

The estimated cost for new signs and poles is \$600 and will be purchased from the Streets Department FY2023 Adopted Budget (Account Number 100-5640-50-01).

**Legal Obligations and Review:**

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

**Attachments:**

1. Location Map
2. No Parking Ordinance

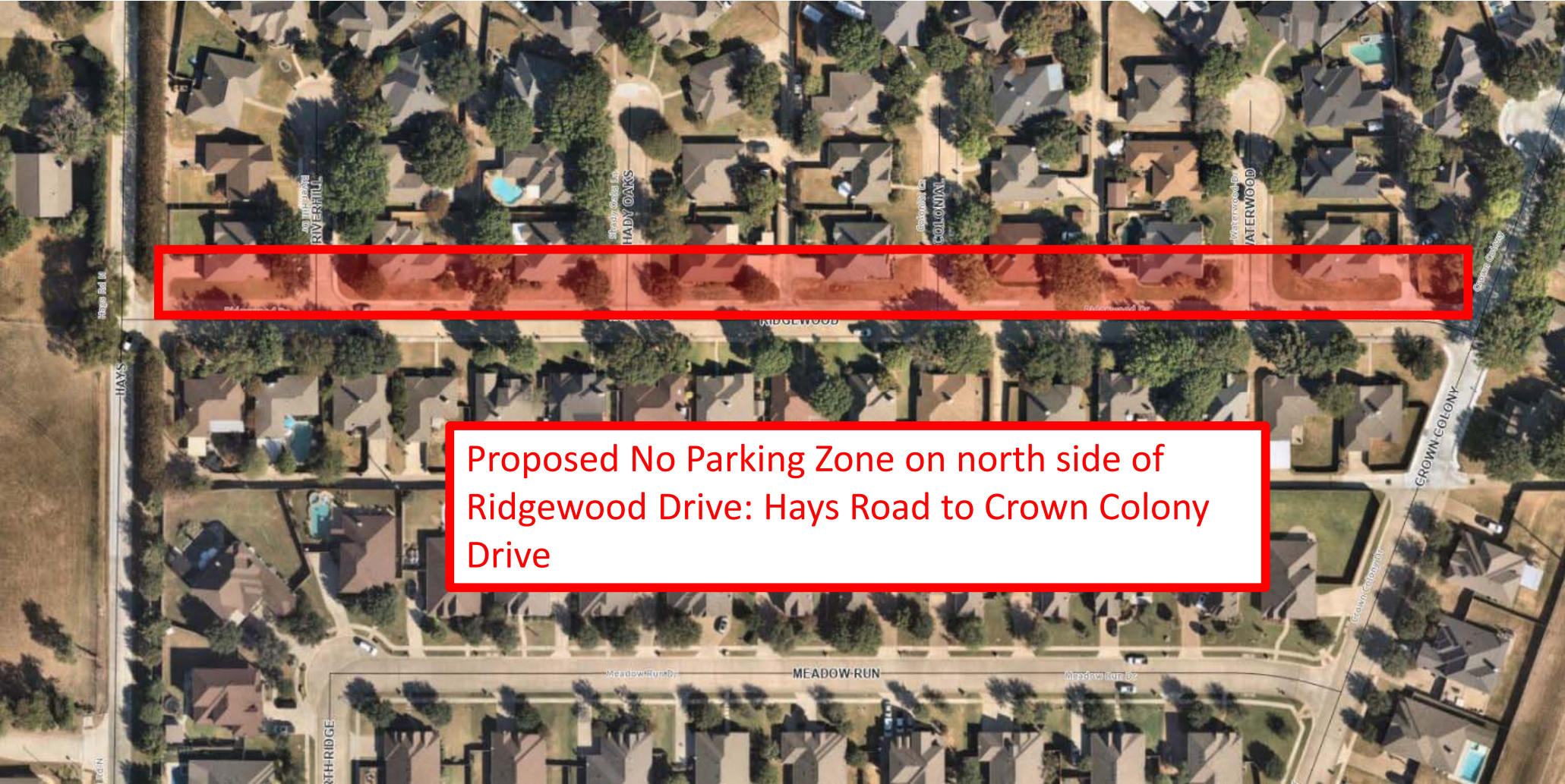
**Town Staff Recommendation:**

Town staff recommends that the Town Council adopt ordinance establishing a no parking zone on Ridgewood Drive from Hays Road to Crown Colony Drive.

**Proposed Motion:**

I move to adopt an ordinance establishing a no parking zone on Ridgewood Drive from Hays Road to Crown Colony Drive.

# Location Map



TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2022-\_\_

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING DIVISION 2, "NO-PARKING ZONES," OF ARTICLE 12.05, "PARKING, STOPPING AND STANDING," OF CHAPTER 12, "TRAFFIC AND VEHICLES," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY ADDING A NEW SECTION 12.05.037, "RIDGEWOOD DRIVE," TO PROHIBIT PARKING ON A PORTION OF RIDGEWOOD DRIVE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Texas Transportation Code, as amended, provides that the governing body of a municipality may adopt parking regulations; and

WHEREAS, the Town has investigated and determined that a no-parking zone on Ridgewood Drive, as more fully described herein, is both warranted and prudent, and it is the desire of the Town to adopt the following regulations related thereto.

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 Division 2, "No-Parking Zones," of Article 12.05, "Parking, Stopping and Standing," of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances is hereby amended by adding a new Section 12.05.037, "Ridgewood Drive," to read as follows:

**"ARTICLE 12.05      PARKING, STOPPING AND STANDING**

\* \* \*

**Division 2.      No-Parking Zones**

\* \* \*

**Sec. 12.05.037      Ridgewood Drive**

There shall be no parking on the north side of Ridgewood Drive from Hays Road to Crown Colony Drive. A person commits an offense by violating any provision of this section."

**SECTION 3**

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

**SECTION 4**

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

**SECTION 5**

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine not to exceed the sum of five hundred dollars (\$500.00) for each offense.

**SECTION 6**

This Ordinance shall become effective after its passage and publication, as required by law.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 8TH DAY OF NOVEMBER, 2022.**

**APPROVED:**

\_\_\_\_\_  
**David F. Bristol, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Michell Lewis Sirianni, Town Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
**Terrence S. Welch, Town Attorney**



## COMMUNITY SERVICES

**To: Mayor and Town Council**

**From: Robyn Battle, Executive Director of Community Services**

**Through: Ron K. Patterson, Interim Town Manager**

**Re: Services Agreement – Strategies 360**

**Town Council Meeting – November 8, 2022**

### **Agenda Item:**

Consider and act upon approval of a Services Agreement between Strategies 360 Texas, LLC, The Town of Prosper, and the Prosper Economic Development Corporation for government relations and strategic advocacy services, and authorize the Interim Town Manager to execute the same.

### **Description of Agenda Item:**

Strategies 360 is proposing to provide government relations and strategic advocacy services for the Town of Prosper and the Prosper Economic Development Corporation (PEDC) for the upcoming 88<sup>th</sup> Texas Legislative Session. The scope of services includes assistance in the support or opposition of specific legislative measures, coordinating meetings with legislators and legislative staff, and monitoring, tracking and reporting on relevant legislation on behalf of the Town and the PEDC. The term of the agreement is for one year.

### **Budget Impact:**

The monthly retainer fee for services is \$4,000 per month (\$48,000 per year), to be split evenly between the Town of Prosper and the PEDC. Funds for the Town's portion of the agreement are available in the Non-Departmental Professional Services account 100-5410-10-99.

### **Legal Obligations and Review:**

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the Services Agreement as to form and legality. The Purchasing Department has confirmed that selection of this vendor complies with the Town's Procurement Policy.

### **Attached Documents:**

1. Services Agreement



**Town Staff Recommendation:**

Town staff recommends approval of a Services Agreement between Strategies 360 Texas, LLC, The Town of Prosper, and the Prosper Economic Development Corporation for government relations and strategic advocacy services, and authorizing the Interim Town Manager to execute the same.

**Proposed Motion:**

I move to approve a Services Agreement between Strategies 360 Texas, LLC, The Town of Prosper, and the Prosper Economic Development Corporation for government relations and strategic advocacy services, and authorize the Interim Town Manager to execute the same.



## SERVICES AGREEMENT

This services agreement (“Agreement”) is entered into by and between Strategies 360 Texas, LLC (“Consultant”) with its principal offices at 919 Congress, Suite 1100, Austin, Texas 78701, and the Town of Prosper, with its principal address at 250 W. First Street, Prosper, Texas 75078, together with the Prosper Economic Development Corporation, with its principal address at 121 W. Broadway Street, Prosper, Texas 75078 (“Clients”), hereinafter sometimes referred to collectively as the (“Parties”).

### RECITALS

- A. Clients wish to contract with Consultant to provide services in the field of government relations and strategic advocacy on the terms and conditions set forth herein.
- B. Consultant is willing to perform such services in accordance with this Agreement.

In consideration of the mutual promises and agreements contained herein, the Parties agree as follows:

1. Scope of Services. Consultant is retained and appointed to implement the services outlined in the attached Appendix A (“Services”), which are designed to accomplish the objectives of the Clients. Consultant shall use Consultant’s best efforts to perform the Services such that the results are satisfactory to Clients.
2. Contract Administration; Communications. Consultant's employees will be responsible for performing the Services under this Agreement. Clients and Consultant shall identify and maintain a mutually agreeable communication process to keep Clients fully and currently informed about activities of Consultant on behalf of Clients. Consultant will work closely with other consultants, team members, and related organizations and individuals as designated by Clients, and as necessary to accomplish the objectives of the Clients.
  - Primary Strategies 360 Contact: **Jake Posey** ([jakep@strategies360.com](mailto:jakep@strategies360.com))
  - Primary Clients Contact: **Robyn Battle** ([rbattle@prospertx.gov](mailto:rbattle@prospertx.gov))
3. Compensation. Consultant will perform the Services described in this Agreement on a monthly retainer basis. Clients agree to pay a monthly retainer of \$4,000.00 per month beginning November 1, 2022 (“Effective Date”) through December 31, 2023 (“Termination Date”). It is agreed and understood that the above fee will be split evenly between the Town of Prosper and the Prosper Economic Development Corporation for the combined services rendered on behalf of Clients.

Except as otherwise provided, Consultant's fees for service do not include additional costs deemed necessary by Clients such as creating and printing materials, conducting public opinion research (e.g. polling), and providing other strategic and/or support services as requested by the Clients. Clients shall be responsible for applicable state or local sales or excise taxes associated with the Services, if any.

4. Expenses. In addition to compensation payable to Consultant pursuant to this Agreement, Clients will reimburse Consultant for costs and disbursements incurred in performing the Agreement including, but not limited to, transportation and travel costs, food, lodging and automobile mileage at the applicable federal rate per business mile, and for necessary entertainment. Consultant shall include an accounting of costs and disbursements and the amount owed on the periodic statements rendered to Clients. Total monthly charges to Clients under this section of the Agreement will not exceed 10% of monthly service retainer without advance approval from Clients.
5. Payment. Consultant shall send monthly invoices to the Clients on the first day of each month of service for the fees jointly agreed by the Parties. Clients shall pay Consultant's fees in full within 30 days of receipt ("Due Date").
  - Strategies 360 Billing Contact: Janice Leevin ([janicel@strategies360.com](mailto:janicel@strategies360.com))
  - Town of Prosper Billing Contact: Ivonne Ruiz ([ap@prospertx.gov](mailto:ap@prospertx.gov))

Payment terms are Net 30. If any invoiced amount is not received by Consultant by the Due Date, those charges may accrue late interest at the rate of 2% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. Consultant will not exercise these rights if Clients disagree with the applicable charges reasonably and in good faith and is cooperating diligently to resolve the disagreement.

6. Terms of Service and Termination. This Agreement will commence on the Effective Date. Either Party may terminate this Agreement without cause by providing the other Party 30 days' notice in writing. Upon termination, Consultant will render Clients an invoice and within 30 days after receipt of said invoice, Clients shall pay Consultant in full whatever sums may be due for work performed.
7. Confidential Matters and Proprietary Information. The Consultant shall keep in confidence all information that may be acquired in connection with or as a result of the Agreement. The Consultant shall not publish, communicate, divulge, disclose or use any of such information, which has been designated by Clients as proprietary or confidential or which from the surrounding circumstances in good conscience ought to be treated by the Consultant as proprietary or confidential, without the prior written consent of Clients. Upon termination or expiration of the Agreement, the Consultant shall deliver all relevant records, data, information, and other documents and all copies thereof requested by Clients, which shall remain the property of Clients.
8. Conflict of Interest. The Consultant has performed an internal conflict of interest check and determined that there is not a conflict of interest under Consultant policy as between the work

to be performed under this Agreement and that work performed for other Clients of the Consultant's state or local branch office which is managing this Agreement. Consultant shall advise if such a conflict arises in the future. Furthermore, Clients shall have a right of first refusal on any additional municipal clients that may approach (or attempt to retain) Consultant for similar services as those being performed on behalf of Clients.

9. Intellectual Property. To the extent Consultant's work includes the creation or modification of any intellectual property in any medium including print, design, video, audio, digital or otherwise, upon completion of the work and expressly conditioned upon full payment of all fees and costs due, Consultant grants to Clients usage rights of the final content as provided to Clients. These rights shall include the right for Clients to modify such work. All other rights, including copyrights, are reserved by Consultant. In the event the Consultant's work is for creation or modification of Clients' trademark content, conditioned upon full payment of all fees and costs due, Consultant assigns to Clients all rights to such trademarks except that Consultant may utilize such trademark in its own marketing and educational materials. Consultant shall cooperate with Clients and shall execute any additional documents reasonably requested by Clients to evidence such assignment. Clients shall be solely responsible for ensuring any trademarks or domain names do not conflict with the rights of any third party. Clients shall also be solely responsible for registering all such trademark or domain names and for any other steps necessary to protect such trademark or domain name along with any related regulatory compliance. The costs of such screening of trademarks or domain names, registration, and other measures shall be born solely by Clients. Clients shall have sole responsibility for ensuring that trademarks, intellectual property or other content provided by Clients to Consultant do not infringe the rights of third parties, and Clients shall indemnify, save and hold harmless Consultant from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party alleging such infringement.
10. Independent Contractor. In all matters relating to this Agreement, the Consultant shall be acting as an independent contractor. The Consultant is not an employee of Clients under the meaning or application of any federal or state unemployment insurance or workers' compensation laws, and the Consultant shall assume all liabilities and obligations imposed by any one or more of such laws. Consultant will work with the Clients to determine the time, the place and the manner in which it will accomplish its services.
11. Entire Agreement. This Agreement constitutes the entire agreement between Clients and the Consultant in regard to the subject matter hereof and supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect thereto. No agreements hereafter made between the parties shall be binding on either party unless reduced to writing and signed by authorized representatives of the parties.
12. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and to be entirely performed within the State of Texas, without resort to its conflict of law provisions. The state or federal court in Travis County, Texas will be the jurisdiction in which any suits should be filed if they relate to this Agreement.

- 13. Non-Solicitation of Consultant Employees. During the Term of this Agreement and for a period of one (1) year after the termination of this Agreement, Clients will not solicit, induce, recruit or encourage directly or indirectly (nor will Clients direct, encourage or assist anyone else to solicit, induce, recruit or encourage) any of the Consultant’s employees to terminate their employment with Consultant or to work elsewhere.
- 14. Indemnification and Insurance. To the extent authorized by Texas law, clients shall indemnify, defend, and hold harmless Consultant and its directors, officers, and employees from any and all claims arising from or in connection with the performance of services including but not limited to statutory violations, Contractor's independent contractor status, or for injury or death of any and all persons whatsoever and from any and all damage to property. Clients and Consultant warrant that they each carry workers' compensation, comprehensive liability, automobile, and other insurance with reasonable coverage and in reasonable amounts sufficient to insure against anticipated risks in connection with services under this Agreement.
- 15. Warranty and Limitation of Damages. Consultant shall seek to carry out the Services in accordance with good industry practice and in a professional manner. **However, the Services and other work is provided “AS IS” and no express or implied warranty or guarantee is made and all such warranties, including merchantability and fitness for a particular purpose, are specifically disclaimed.** Consultant’s liability of any nature to Clients shall be limited to the amount of the net profits of Consultant in performing services under this Agreement. Consultant shall not liable for any indirect, special, incidental, punitive, or consequential damages of any kind including, but not limited to lost profits, lost data, loss of goodwill or business interruption.
- 16. Counterparts. This Agreement may be executed in counterparts by exchange of signature pages by mail, facsimile, email or other electronic means, each of which will be deemed an original and all of which will together constitute the same instrument.

By executing this Agreement each signatory affirms that they have read, understand and agree with its terms, and that each has the full power and authority to enter this Agreement on behalf of the entity for which they have signed.

Executed in the County of Travis, Texas:

For: **STRATEGIES 360 TEXAS, LLC**  
 919 Congress, Suite 1100  
 Austin, Texas 78701  
 TEL: 817/320-4587

By: C. Jake Posey  
 Jake Posey, SVP - Texas

Date: 11/04/22

For: **The Town of Prosper**  
250 W. First Street  
Prosper, TX 75078

By: \_\_\_\_\_  
Ron K. Patterson – Interim Town Manager

For: **Prosper Economic Development Corporation**  
121 W. Broadway Street  
Prosper, TX 75078

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jordan Simms – President

## Appendix A Scope of Work

You are engaging Strategies 360 to provide the following types of services:

1. Assist the Town of Prosper and the Prosper Economic Development Corporation teams in the development, submission, negotiation, and/or modification of specific legislative measures to be filed during the 88<sup>th</sup> Texas Legislative Session;
2. Assist the Town of Prosper and the Prosper Economic Development Corporation teams in the support/passage or opposition/defeat of certain legislative measures being filed during the 88<sup>th</sup> Texas Legislative Session, including the preparation of written comments and correspondence and providing assistance in the preparation of public testimony.
3. Coordinate meetings involving elected and appointed officials and staff of the Town of Prosper and the Prosper Economic Development Corporation to promote positive branding and discuss legislative and executive elements with the following, as appropriate: relevant legislative committee members, legislators, legislative staff members, and stakeholders in the offices of the Speaker, Lt. Governor, Governor, Office of the Attorney General, and the Texas Comptroller;
4. Monitor relevant Texas legislation that may impact the Town of Prosper and the Prosper Economic Development Corporations' interests; provide regular reports on the status of relevant legislation, seeking guidance and/or making recommendations on the Town's or EDC's position.
5. Attend relevant legislative committee hearings and appropriate agency meetings where topics of interest and impact may arise;
6. Support or oppose administrative action and legislation through contacts with legislators and staff, as well as stakeholders in the offices of the Governor, Lt. Governor, Speaker of the House of Representatives, and the Comptroller of Public Accounts;
7. Conduct requested research regarding legislative history, policy, and budget considerations, as appropriate, to assist the Town and EDC in assessing the impact of proposed legislation;
8. Services shall include coverage of any special legislative sessions.



**To: Mayor and Town Council**

**From: James Edwards, Director of Human Resources**

**Through: Ron K. Patterson, Interim Town Manager**  
**Bob Scott, Executive Director of Administrative Services**

**Re: United Medical Resources (UMR)**

**Town Council Meeting – November 8, 2022**

---

**Agenda Item:**

Consider and act upon awarding RFP No. 2022-58-A for Medical Administrative Services Only effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same.

**Description of Agenda Item:**

The Town has partnered with United Medical Resources, (UMR) to manage the health and medical plan for employees. McGriff, Seibels and Williams, Inc. marketed this coverage on the Town’s behalf. Attached is the RFP Analysis. UMR provided the best scope of services and cost savings for the Town and our employees.

**Budget Impact:**

UMR medical administrative fees have a 2.62% reduction over last year for an annual cost of \$177,652.80 with a three year rate guarantee to account #730-5160-10-00.

**Legal Obligations and Review:**

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

**Attached Documents:**

- 1. RFP Analysis

**Town Staff Recommendation:**

Town staff recommends awarding RFP No. 2022-58-A to United Medical Resources (UMR) and authorizing the Interim Town Manager to execute all documents for the same.

**Proposed Motion:**

I move to award RFP No. 2022-58-A pharmacy benefit management services to United Medical Resources (UMR) and authorize the Interim Town Manager to execute all documents for the same.



# RFP Analysis Review –

RFP #2022-58-A (Medical)

RFP #2022-61-A (Pharmacy Benefit Manager)

RFP #2022-59-A (Dental)

RFP #2022-60-A (Worksite)

Item 8.

Presented By:

Lance Pendley, Senior Vice President  
Cristina Palacios, Account Executive



# Agenda

- RFP – Goals and Objectives
- RFP Finalists – Analysis
- RFP Recommendations



# RFP – Goals and Objectives

# RFP Goals & Objectives

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Item 8.

- Determine if the costs associated with managing our plan are competitive
- Maintain a competitive Employee Benefits Program for our Employees
- Practice fiscal responsibility to maintain a sustainable self-funded health plan
- Seek innovative solutions to improve Employee experience and reduce overall cost

# RFP Finalists – Analysis

# RFP #2022-58-A (Medical & Captive) – Best and Final Offers

Item 8.

	UMR (Carve Out) Current Plan + ProAct RX	UMR (Carve Out) BAFO Renewal Plan + ProAct RX	Trinity Captive Group (Web TPA) BAFO Proposed Plan + Sabine Health/Epic RX
Network	UHC Choice Plus Network	UHC Choice Plus Network	Aetna Network
Stop Loss Carrier	QBE	QBE (Firm)	Berkley Captive (Firm)
Total Admin Fees	\$58.47	\$56.94	\$93.19
Rate Guarantee	---	3 years - Until 12/31/2025	1 year- Until 12/31/2023
Total Monthly Admin Fee	\$15,202.20	\$14,804.40	\$24,229.40
Annual Admin Fee	\$182,426.40	\$177,652.80	\$396,343.68
Annual Difference	-	(\$4,773.60)	\$213,917.28
% Difference	-	-2.62%	117.26%

# 2023 - Plan Design Offerings

Item 8.

Benefits	Town of Prosper Self Funded UMR	Town of Prosper Self Funded UMR	Town of Prosper Proposed Captive Trinity Captive Group		Patient Navigator	Town of Prosper Proposed Captive Trinity Captive Group	
	HSA (EPO) Choice Network In-Network Only	PPO (EPO) Choice Network In-Network Only	In-Network	Out of Network		PPO Aetna Network	In-Network
Coinsurance	100%	80%	100%	60%	100%	80%	60%
Deductible	\$3,000/\$6,000	\$1,500/\$4,500	\$1,500/\$3,000**	\$3,000/\$6,000**	\$0	\$750/\$2,250	\$1,500/\$4,500
Out-of-Pocket Maximum	\$3,000/\$6,000	\$5,500/\$10,200	\$1,500/\$3,000	\$3,000/\$6,000	\$0	\$4,000/\$8,000	\$5,500/\$10,200
Lifetime Maximum	Unlimited	Unlimited	Unlimited	Unlimited		Unlimited	Unlimited
Preventive Care	100%	100%	100%	100%		100%	100%
Physician Office Copay	100% after ded.	\$30 copay	100% after ded.	60% after ded.		\$25 copay	\$30 copay
Specialist Copay	100% after ded.	\$60 copay	100% after ded.	60% after ded.		\$50 copay	\$60 copay
Emergency	100% after ded.	Fac: \$200 copay, then 20% after ded. Phys: 80% after ded.	100% after ded.	60% after ded.	Free - If True Emergency \$750 Penalty + Co-insurance		
Urgent Care Center	100% after ded.	\$75 copay	100% after ded.	60% after ded.		\$60 copay	\$75 copay
Hospital							
Inpatient	100% after ded.	20% after ded.	100% after ded.	60% after ded.	Centers of Excellence	20% after ded.	60% after ded.
Outpatient	100% after ded.	20% after ded.	100% after ded.	60% after ded.		20% after ded.	60% after ded.
Other Services							
Telemedicine	Free	Free	Free	Free	Free	Free	Free
Diagnostic Test (Office Visit In-net)	100% after ded.	20% after ded.*	100% after ded.	60% after ded.	Free	100%	60% after ded.
Diagnostic Test (Out of Net)	N/A	N/A	100% after ded.	60% after ded.	Free	20% after ded.	60% after ded.
Imaging (MRI/PET)	100% after ded.	20% after ded.*	100% after ded.	60% after ded.	Free	20% after ded.	60% after ded.
Surgery Centers	100% after ded.	20% after ded.*	100% after ded.	60% after ded.	Free	20% after ded.	60% after ded.
Prescription Drugs		Individual - \$1,000 ded. Family - \$3,000 ded.					
Retail - 30 day							
Generic	100% after ded.	\$10 copay	100% after ded.	60% after ded.		\$10 copay	\$10 copay
Preferred Brand	100% after ded.	\$40 copay	100% after ded.	60% after ded.		\$25 copay	\$40 copay
Non Preferred	100% after ded.	\$60 copay	100% after ded.	60% after ded.		\$50 copay	\$60 copay
Specialty	100% after ded.	up to \$250 copay	100% after ded.	60% after ded.		20% not to exceed \$250	up to \$250 copay
Mail Order - 90 day							
Generic		\$25 copay				\$25 copay	\$25 copay
Preferred Brand	100% after ded.	\$100 copay	100% after ded.	60% after ded.		\$62.5 copay	\$100 copay
Non Preferred		\$150 copay				\$125 copay	\$150 copay

Actuarial Value

0.784

0.787

0.869

0.826

\*If use Kempton Group the benefit is free  
Current Town HSA Contributions: \$750/\$1,500

\*\*HDHP will require an aggregate family  
deductible

**Comments:**

Other RFP responders are matching current plan designs.

# RFP Recommendations



# Comparison – RFP # 2022-58-A / 2022-61-A

## (ASO Medical & Captive Benefits)

Item 8.

### ■ UMR/ProAct (Recommended)

#### √ Scope of Services

- Easy renewal process
- Disease management coordination with ancillary products

#### √ Cost of Services / Network Discounts

- 2.6% savings over current administration cost
- Better Network Discounts

#### √ Plan Designs

- Within Industry Benchmarks
- Health Savings Account Contributions

#### √ References & Experiences with similar clients

- Public Sector references

### ■ Trinity Captives Group

#### ✗ Scope of Services

- Loss of direct Pharmacy Benefit Contract
- Loss of direct Stop Loss Contract

#### ✗ Cost of Services / Network Discounts

- 117% more expensive than current administration cost
- Lower Network Discounts

#### √ Plan Designs

- Lower Deductibles

#### ✗ References & Experiences with similar clients

- No Public Sector references

# Comparison – RFP # 2022-59-A

## (Fully Insured Dental Benefits)

Item 8.

### ■ UHC (Recommended)

#### ✓ Scope of Services

- National carrier

#### ✓ Cost of Services / Network Discounts

- 71.73% in network providers
- 8.34% savings over current cost

#### ✓ Plan Designs

- Matching current plan designs
- Increased percentage for out of network claims

#### ✓ References & Experiences with similar clients

- Public Sector references

### ■ Principal

#### ✓ Scope of Services

- Easy renewal process

#### ✗ Cost of Services / Network Discounts

- 65.45% in network providers
- 2% increase over current cost

#### ✓ Plan Designs

- Matching current plan designs

#### ✓ References & Experiences with similar clients

- Public Sector references

# Comparison – RFP # 2022-60-A

Item 8.

## (Group Critical Illness with Cancer, Accident & Hospital Indemnity Insurance Plans)

### ▪ UHC (Recommended)

#### ✓ Scope of Services

- Easy implementation process
- Easy claims reimbursement process
- Automatic wellness credit payment once a preventive visit has been processed in UMR claims systems

#### ✓ Cost of Services

- 27% to 48% savings over current cost

#### ✓ Plan Designs

- Matching or richer benefits

#### ✓ References & Experiences with similar clients

- Public Sector references

### ▪ Allstate

#### ✗ Scope of Services

- Issues with billing
- Lack of continuation of service due to the consistent changes with the service team

#### ✗ Cost of Services

- No offer on the critical illness product
- 3% to 32% savings over current cost

#### ✗ Plan Designs

- Plan designs are not on par with the market

#### ✓ References & Experiences with similar clients

- Public Sector references

# RFP Awards Recommendations Summary

Item 8.

Product	Vendor	Cost
Medical ASO	UMR	\$177,652.80
Pharmacy Benefit Manager	ProAct RX and ShaRX	\$381,811
Dental	UHC	\$207,636
Voluntary Products (Critical Illness, Accident, Hospital Indemnity)	UHC	Funded by Participant

# Thank You!





## HUMAN RESOURCES

**To:** Mayor and Town Council

**From:** James Edwards, Director of Human Resources

**Through:** Ron K. Patterson, Interim Town Manager  
Bob Scott, Executive Director of Administrative Services

**Re:** Dental Benefits

**Town Council Meeting – November 8, 2022**

**Agenda Item:**

Consider and act upon awarding RFP No. 2022-59-A for fully insured dental benefits insurance effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same.

**Description of Agenda Item:**

The Town provides dental insurance benefits to employees. McGriff, Seibels and Williams, Inc. marketed this coverage on the Town's behalf. United Healthcare offered competitive pricing to bundle health, dental and voluntary products. The best and final offer from United Health Care provides an 8.34% reduction in rates over the incumbent dental provider Principal resulting in a \$18,888 savings. The annual total projected cost is \$207,636 versus \$231,057 to remain with the incumbent dental carrier Principal Dental.

**Budget Impact:**

United Healthcare provided a 8.34% rate reduction from our current provider that equates to approximately \$18,888 less than last year's cost, total annual cost of \$207,636 to #730-5165-10-00.

**Legal Obligations and Review:**

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

**Attached Documents:**

1. United Healthcare Dental Application

**Town Staff Recommendation:**

Town staff recommends awarding RFP No. 2022-59-A to United Health Care and authorizing the Interim Town Manager to execute all documents for the same.

**Proposed Motion:**

I move to award RFP No. 2022-59-A for dental insurance to United Health Care and authorize the Interim Town Manager to execute all documents for the same.

# Employer Application for Large Group

## Texas



UnitedHealthcare Insurance Company  
UnitedHealthcare of Texas, Inc.  
National Pacific Dental, Inc.

To avoid processing delays, please make sure you:

1. Answer all questions completely and accurately.
2. **DO NOT CANCEL YOUR EXISTING COVERAGE UNTIL YOU RECEIVE WRITTEN NOTIFICATION OF APPROVAL.**
3. Include a deposit check in the amount of any required premiums; such amount will be returned in the event coverage does not become effective and will be applied against the first month's premium if coverage does become effective.

**Notice for Employers who select a Consumer Choice plan: You have the option to choose this Consumer Choice of Benefits Health Insurance Plan or Health Maintenance Organization health care plan that, either in whole or in part, does not provide state-mandated health benefits normally required in evidences of coverage or accident and sickness policies in Texas. This standard health benefit plan may provide a more affordable health plan for you although, at the same time, it may provide you with fewer health plan benefits than those normally included as state-mandated health benefits in Texas. If you choose this standard health benefit plan, please consult with your insurance agent to discover which state-mandated health benefits are excluded in this evidence of coverage or policy.**

Requested Effective Date 1/1/2023

### General Information

Group's/Company's Legal Name Town of Prosper				
Group name to appear on ID card (maximum 30 characters)				
Street Address 250 W. First Street			Tax ID 756000642	
City Prosper	State TX	Zip Code 75078	Names of Owners/Partners (if applicable)	Internet Access? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Contact Person James Edwards		Email Address JEdwards@prospertx.gov		# of Years in Business
Billing Address (If different) Cindy Slate			Telephone 972-569-1020	Fax
Multi-location group/company?*	# of Locations	Address(es) (or list on additional sheet of paper)		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Organization Type <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> LLP <input type="checkbox"/> Sole Proprietor <input checked="" type="checkbox"/> Other Public Entity	Nature of Business Government		Industry Code 9111	
Waiting Period for new hires (Waiting period for medical coverage cannot exceed 90 days)			Waiting Period waived for initial enrollees	Medical Benefit Plan Option
<input checked="" type="checkbox"/> 1st of Policy Month following Date of Hire <input type="checkbox"/> 1st of Policy Month following ___ months <input type="checkbox"/> days of employment <input type="checkbox"/> Date of Hire (no waiting period) <input type="checkbox"/> ___ months <input type="checkbox"/> days of employment following Date of Hire			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Calendar Year <input type="checkbox"/> Policy Year
Number of Persons currently on COBRA/Continuation and/or Short/Long Term Disability (employees/dependents)		Number of Employees Termed in last 12 Months		
Have Workers' Comp? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Name of Workers' Compensation Carrier		Domestic Partner Coverage? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Names of Owners/Partners not covered by Workers' Compensation

\*If the majority of your employees are not located in your state of application, UnitedHealthcare policies and/or state law may require that your policy be written out of a different state and/or that your benefit plans vary.

Participation	# Employees Applying for:		# Employees Waiving for:		Contribution	Employer %	Employer % for Dep
# Eligible Employees	280	Medical		Medical	Medical		
# Ineligible Employees	0	Dental		Dental	Dental	53%	47
Total # Employees	280	Vision		Vision	Vision		
# Hours per week to be eligible <sup>1</sup>	30	Basic EE Life/AD&D		Basic EE Life/AD&D	Basic EE Life/AD&D		
# Hours per week to be eligible for Disability coverage if different from above <sup>2</sup>		Basic Dep Life		Basic Dep Life	Basic Dep Life		
		Supp EE Life/AD&D		Supp EE Life/AD&D	Supp EE Life/AD&D		
<sup>1</sup> A person is considered an eligible employee if the employee usually works at least 30 hours per week.		Supp Dep Life/AD&D		Supp Dep Life/AD&D	Supp Dep Life/AD&D		
		STD		STD	STD		
<sup>2</sup> For Disability products the minimum # of work hours per week to be eligible is 30 hours.		STD Buy Up <sup>3</sup>		STD Buy Up <sup>3</sup>	STD Buy Up <sup>3</sup>		
		LTD		LTD	LTD		
<sup>3</sup> Only available to Groups with 100+ Eligible Employees		LTD Buy Up <sup>3</sup>		LTD Buy Up <sup>3</sup>	LTD Buy Up <sup>3</sup>		
		Voluntary AD&D <sup>3</sup>		Voluntary AD&D <sup>3</sup>	Voluntary AD&D <sup>3</sup>		
		Other		Other	Other		



**General Information (continued)**

Enter the Prior Calendar Year Average Total Number of Employees  Under Health Care Reform law, the number of employees means the average number of employees employed by the company during the preceding calendar year. An employee is typically any person for which the company issues a W-2, regardless of full-time, part-time or seasonal status or whether or not they have medical coverage.  
To calculate the annual average, add all the monthly employee totals together, then divide by the number of months you were in business last year (usually 12 months). When calculating the average, consider all months of the previous calendar year regardless of whether you had coverage with us, had coverage with a previous carrier or were in business but did not offer coverage. Use the number of employees at the end of the month as the "monthly value" to calculate the year average. If you are a newly formed business, calculate your prior year average using only those months that you were in business. Use whole numbers only (no decimals, fractions or ranges).

Enter the Prior Calendar Year Total Number of Eligible Employees  For purposes of determining your number of eligible employees, Eligible employees are those who are eligible to enroll in any medical plan you offer, even if they aren't eligible to enroll in a UnitedHealthcare plan. Here you may add COBRA and retirees.  
Calculate your number of eligible employees from the preceding calendar year: (1) Count the total number of eligible employees at the end of each month (2) Add all the monthly eligible totals from line (1) and divide by 12. Use whole numbers only (no decimals, fractions or ranges and round down).

Enter the Prior Calendar Year Full Time Equivalent Total Number of Employees  For purposes of determining your number of full-time equivalent employee count, the number of employees means the average number of employees employed full-time (at least 30 hours/week in any given month), by the company on business days during the preceding calendar year.  
In addition to the number of full-time employees noted above, for any month otherwise determined, include for such month the number of full-time employees divided by the aggregate number of hours of service of all employees who are not full-time employees for the month by 120. Employers should exclude employees who were seasonal workers who worked 120 days or fewer in the preceding calendar year.

Yes  No Subject to ERISA? (Most private sector plans are ERISA plans)  
If No, please indicate appropriate category:  
 Church (Additional information needed)  Federal Government  
 Indian Tribe – Commercial Business  Non-Federal Government (State, Local or Tribal Gov.)  
 Foreign Government/Foreign Embassy  Non-ERISA Other \_\_\_\_\_

Yes  No In the past 36 months, has the Group/Company or any affiliated entity filed for protection or operated under federal/state bankruptcy laws? (Chapter 7 or 11)

Yes  No In the past 36 months, has any creditor filed or threatened to file a petition requesting the Group/Company or any affiliated entity be placed voluntarily into bankruptcy?

Yes  No Does your group sponsor a plan that covers employees of more than one employer?  
If you answered Yes, then indicate which of the following most closely describes your plan:  
 Professional Employer Organization (PEO)  Multiple Employer Welfare Arrangement (MEWA)  
 Taft Hartley Union  Governmental  
 Church  Employer Association

Yes  No Is your group a Professional Employer Organization (PEO) or Employee Leasing Company (ELC), or other such entity that is a co-employer with your client(s) or client-site employee(s)?  
If you answered Yes, then by signing this application you agree with the certification in this section.  
I hereby certify that my company is a PEO, ELC or other such entity and that only those employees that are the corporate employees of my company, and not my co-employees, are permitted to enroll in this group policy. If my group at any point after I sign this application determines that the group will provide coverage to the co-employees under the group's plan, I understand that UnitedHealthcare will not cover the co-employees under this group policy.

Yes  No Do you currently utilize the services of a Professional Employer Organization (PEO) or Employee Leasing Company (ELC), Staff Leasing Company, HR Outsourcing Organization (HRO), or Administrative Services Organization (ASO)?

Yes  No Do you have common ownership with any other businesses? If you own multiple companies, or a parent-subsidiary relationship exists between your company and another, this may indicate common ownership of businesses.

**UnitedHealthcare's Leave of Absence (LOA) Policy; Eligibility for Medical Coverage**

If the employee is on an employer approved leave of absence and the employer continues to pay required medical premiums, the coverage will remain in force for: (1) No longer than 13 consecutive weeks for non-medical leaves (i.e. temporarily laid-off). (2) No longer than 26 consecutive weeks for a medical leave. Coverage may be extended for a longer period of time, if required by local, state or federal rules.

If the employee's medical coverage terminates under this LOA policy, the employee may exercise the rights under any applicable Continuation of Medical Coverage provision or the Conversion of Medical Benefits provision described in the Certificate of Coverage.

**Do you continue medical coverage during a leave of absence (not including state continuation or COBRA coverage)?**

Yes, we continue medical coverage during an approved leave of absence for full time employees (as defined on page 1).  
 No, we do not offer medical coverage during a leave of absence.

**HRA and Supplemental Insurance Information**

**Health Savings Account (if selected):** Which bank will be used:  OptumBank  Other

**Do you currently offer or intend to offer a Health Reimbursement Account (HRA) plan and/or comprehensive supplemental insurance policy or funding arrangement in addition to this UnitedHealthcare medical plan?**

Answers must be accurate whether purchased from UnitedHealthcare or any other insurer or third party administrator.

HRA  Yes  No

If yes, please identify type:  UnitedHealthcare HRA (any HRA design offered through UnitedHealthcare)  Other Administrator HRA

HRA plans administered by other insurers or third party administrators must comply with UnitedHealthcare HRA design standards.

Comprehensive Supplemental Insurance Policy or Funding Arrangement  Yes  No

If you answered "Yes" to either question above, you must choose from the list of UnitedHealthcare HRA-eligible medical plans as shown to you by or agent. Other plans are not eligible for pairing with these arrangements. Purchase of such arrangements at any point during the duration of this require you to notify UnitedHealthcare.

**HRA/HSA Employer Premium Contribution**

	Option #1	Option #2	Option #3
Medical Plan			
Employee			
Employee + Spouse			
Employee + Child(ren)			
Family			

**HRA/HSA Employer Account Funding Amount**

Employee			
Employee + Spouse			
Employee + Child(ren)			
Family			

HRA / HSA Account Administrator:

Are there any other contributions or benefit reimbursements allowed?  Yes  No

Who will provide account balances to UnitedHealthcare?

**Current Carrier Information**

Does the group currently have any coverage with UnitedHealthcare or has the group had any UnitedHealthcare coverage in the last 12 months?  
 Yes  No If Yes, please provide policy number \_\_\_\_\_ and Coverage Begin Date \_\_\_/\_\_\_/\_\_\_ End Date \_\_\_/\_\_\_/\_\_\_  
 Has this group been covered for major dental services for the previous 12 consecutive months?  Yes  No

		Name of Carrier	Initial Coverage Begin Date	Coverage End Date
Current Medical Carrier	<input type="checkbox"/> None			
Current Dental Carrier	<input type="checkbox"/> None	Principal	01/01/21	12/31/22
Current Life Carrier	<input type="checkbox"/> None			
Current Disability Carrier	<input type="checkbox"/> None			
Current Vision Carrier	<input type="checkbox"/> None			

**Disclosures**

**If you are applying for medical coverage, please answer the following questions to the best of your knowledge by referencing available employee records and other personnel documents for all eligible employees and dependents (proprietors, partners, corporate officers, employees, spouses, and dependent children) to the extent permitted by applicable law. UnitedHealthcare is only seeking to collect information about the current health status of those employees and their dependents who are applying for coverage. In answering these questions, do not include any genetic information about your employees or their dependents, including requests for genetic services, genetic diseases for which they may be at risk or family medical history information.**

**Please provide details to "Yes" answers in the space provided.**

**IMPORTANT: Your answers to these questions must include all COBRA and State Continued individuals covered by your present plan.**

- Yes  No 1. Within the past 3 years, has any employee or dependent filed a claim for short-term disability, long term disability, social security disability income, workers' compensation, Medicare, or Medicaid benefits or any other type of disability benefits on any policy?
- Yes  No 2. During the past 3 years, has any employee or dependent had life, disability or health insurance declined, postponed, changed, cancelled or withdrawn?
- Yes  No 3. Except for a maternity or paternity leave, within the past 3 years, has any employee applied for a family or medical leave of more than 2 weeks due to injury, disability or illness of the employee or dependent?
- Yes  No 4. Within the past 3 years, has any employee been absent from work for more than 2 consecutive weeks due to injury, disability or illness?
- Yes  No 5. Except for a mental health admission, during the past 3 years, has any employee or dependent had a hospital stay lasting more than 5 days or is any employee or dependent contemplating treatment that would require hospitalization for more than 5 days?
- Yes  No 6. Is any employee or dependent currently hospitalized?
- Yes  No 7. Within the past 3 years has any employee or dependent been diagnosed, treated for, or received prescription medication for one of the following conditions?
  - Cancer (any type)
  - Lung disease or respiratory problem (any type)
  - Heart disease or disorder (any type)
  - Organ, tissue or cell transplant
  - Liver disease (any type)
  - Kidney disease (any type)
  - Pancreatic disorder (any type)
  - Diabetes
  - Hepatitis
  - Morbid obesity
  - Congenital abnormality
  - Vascular disease (any type)
  - Neurological disorder (any type)
  - Immunological disorder (reportable types)
  - Alcohol or drug addiction or abuse
  - Hemophilia or Blood disorder (any type)

**If you have answered "Yes" to any of the questions above, please provide the requested information on the next page for each individual. If necessary, use additional sheets of paper.**

**Disclosures (continued)**

Question Number	Check One Employee	Dependent	Age	Date of Recovery	Date of Treatment/ Condition	Nature of Medication	Name of Condition	\$ Amount of Claims	Current Treatment

**Texas Mandatory Disclosure Statement**

Dental indemnity benefits are provided through UnitedHealthcare Insurance Company and Dental HMO (DHMO) benefits are offered through National Pacific Dental, Inc. In order to receive benefits from the DHMO plan, an enrollee must utilize only network providers, except for emergency dental care, and pay the copayments specified in the evidence of coverage or certificate. To receive benefits under the dental indemnity plan, the enrollee may utilize any provider but prior to receiving reimbursement, the enrollee must meet the required deductible and is responsible for the coinsurance amount specified in the evidence of coverage or certificate.

**Important Information**

The Group/Company certifies that the information provided above is complete and accurate. The Group/Company shall notify UnitedHealthcare and Affiliates promptly of any changes in this information that may affect the eligibility of employees or their dependents, including the addition of any newly eligible employees or dependents. Prior to receiving notification of approval, the Group/Company shall notify UnitedHealthcare and Affiliates promptly of any significant changes in the health status of an eligible employee or dependent including any inpatient hospital admissions. UnitedHealthcare and Affiliates shall be entitled to rely on the most current information in its possession regarding the eligibility and health status of employees and their dependents in providing coverage under the policy/policies for which application is being made.

I represent to the best of my knowledge the information I have furnished is accurate, and includes any employees and dependents who have elected continuation of insurance benefits. I understand that intentional misstatement or misrepresentations of a material fact, or omissions that constitute fraud, in the information requested on this form can result in the adjustment of rating or voiding of insurance.

Knowingly or willfully presenting a false or fraudulent claim for payment of a loss or benefit or knowingly or willfully presenting false information, or concealing information for the purpose of misleading, in an application for insurance, is a crime punishable by fines and confinement in prison.

Upon receipt by UnitedHealthcare and Affiliates of this signed employer application and payment of the required policy charges, the group policy is deemed executed. The deposit check in the estimated amount of the first month’s premium is not considered payment of the required policy charges.

UnitedHealthcare disclosure regarding producer compensation:

In some instances, we pay brokers and agents (referred to collectively as “producers”) compensation for their services in connection with the sale of our products, in compliance with applicable law. In certain states, we may pay “base commissions” based on factors such as product type, amount of premium, group/company size and number of employees. These commissions, if applicable, are reflected in the premium rate. In addition, we may pay bonuses pursuant to programs established to encourage the introduction of new products and provide incentives to achieve production targets, persistency levels, growth goals or other objectives. Bonus expenses are not directly reflected in the premium rate but are included as part of the general administrative expenses. Please note we also make payments from time to time to producers for services other than those relating to the sale of policies (for example, compensation for services as a general agent or as a consultant).

Producer compensation may be subject to disclosure on Schedule A of the ERISA Form 5500 for customers governed by ERISA. We provide Schedule A reports to our customers as required by applicable federal law. For specific information about the compensation payable with respect to your particular policy, please contact your producer.

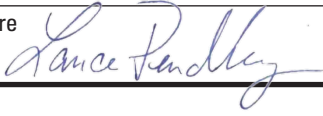
Please note, that to the extent permitted by applicable State law, an employer’s failure to pay any past-due premium amounts owed for coverage to this health insurer to whom you are applying for coverage, or any other health insurance company within this health insurer’s control group, within the past 12 months preceding the requested effective date of any new coverage, will be assigned to the employer’s initial premium payment and the prior premium debt owed will be considered paid first in line before the new policy premium amount in order to effectuate new coverage.

Group/Company Signature \_\_\_\_\_ Date \_\_\_\_\_ Title \_\_\_\_\_

**DO NOT CANCEL YOUR EXISTING COVERAGE UNTIL YOU RECEIVE WRITTEN NOTIFICATION OF APPROVAL.**

Group Name Town of Prosper

**Producer Information (if applicable)**

Producer Name Lance Pendley		Agency McGriff Insurnace		Agent Code/Tax ID Number 20-0468966	
Email Address lpendley@mcgriff.com			Social Security #		Phone Number 469-232-6612
All Payments to: McGriff Insurance			Producer Commission Schedule (if applicable) <u>n/a</u> Std Scale of _____ %		
Street Address 5080 Spectrum Drive, Ste 900E		City Addison		State TX	Zip Code 75001
Producer Signature 			Date 11.1.22		
Rep Name			Rep #		

**General Agent Information (if applicable)**

General Agent		Phone #		Franchise Code	
Street Address		City		State	ZIP Code

Coverage provided by "UnitedHealthcare and Affiliates":  
Medical coverage provided by UnitedHealthcare Insurance Company (PPO, Indemnity) or UnitedHealthcare, Texas, Inc. (HMO)  
Dental coverage provided by UnitedHealthcare Insurance Company (Indemnity), National Pacific Dental, Inc. (HMO)  
Life, Short-Term Disability (STD) and Long-Term Disability (LTD) Insurance coverage provided by UnitedHealthcare Insurance Company  
Vision coverage provided by UnitedHealthcare Insurance Company



## HUMAN RESOURCES

**To:** Mayor and Town Council

**From:** James Edwards, Director of Human Resources

**Through:** Ron K. Patterson, Interim Town Manager  
Bob Scott, Executive Director of Administrative Services

**Re:** Pharmacy Benefits

Town Council Meeting – November 8, 2022

**Agenda Item:**

Consider and act upon awarding RFP No. 2022-61-A for pharmacy benefits management services effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same.

**Description of Agenda Item:**

The Town has partnered with ProAct Inc. to manage the health and medical plan's pharmacy benefit for employees. McGriff, Seibels and Williams, Inc. marketed this coverage on the Town's behalf. ProAct Inc. provided the most competitive bid with an estimated \$184,000 in savings over last year with implementation of the SHARX cost containment strategy.

**Budget Impact:**

ProAct Inc. provided an estimated cost \$184,000 reduction from our current contract. Estimated annual cost for pharmacy benefits is \$381,811 to account #730-5160-10-00.

**Legal Obligations and Review:**

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

**Attached Documents:**

1. ProAct Inc. Pharmacy Benefit Management Renewal
2. SHARX services agreement

**Town Staff Recommendation:**

Town staff recommends awarding RFP No. 2022-61-A to ProAct Inc. and authorizing the Interim Town Manager to execute all documents for the same.

**Proposed Motion:**

I move to award RFP No. 2022-61-A pharmacy benefit management services to ProAct Inc. and authorize the Interim Town Manager to execute all documents for the same.

**ADDENDUM**

**ADDENDUM** made this October 25, 2022, by and between PROACT INC. ("ProAct") and TOWN OF PROSPER, TX ("Plan Sponsor").

**WITNESSETH:**

**WHEREAS**, the parties entered into a Service Agreement dated January 1, 2020 (the "Agreement");

**WHEREAS**, the parties desire to further modify and supplement the terms of the Agreement.

**NOW, THEREFORE**, the parties agree as follows:

1. Section 12.1 of the Agreement is hereby modified to read in full as follows:

"12.1 Term. The term of the Agreement shall be extended to continue in effect until December 31, 2023, and thereafter shall continue in effect for additional one (1) year terms unless terminated on its anniversary date by either party by certified mail, mailed at least ninety (90) days prior to such date. Termination shall have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination."

2. Effective January 1, 2023, Exhibit A (Administrative Fee Schedule) shall be amended to read in full as set forth on Exhibit A to this Addendum.

3. Except as expressly modified herein, all terms and provisions of the Agreement are and remain in full force and effect and are hereby ratified and affirmed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Addendum as of the date first above written.

**PROACT INC.**

**TOWN OF PROSPER, TX**

\_\_\_\_\_  
BY

\_\_\_\_\_  
BY

David J. Schryver  
NAME

\_\_\_\_\_  
NAME

President  
TITLE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\*Effective date of addendum will be on the effective date listed above or within 30 days of fully executed agreement if this addendum is executed after the effective date

**EXHIBIT A – Pricing Proposal**  
**ADMINISTRATIVE FEE SCHEDULE**

**CLAIMS PROCESSING FEE:** **\$0.00**  
**PER PAID CLAIM**

**REBATE SHARE TO PLAN SPONSOR** **90%**

<b>Minimum Rebate Guarantee (Advantage Formulary)</b>	
Retail 30 Brand	\$223.42
Retail 90 Brand	\$604.29
Mail Order Brand	\$664.72
Specialty Brand	\$2,842.18

**PHARMACY RATES**

(Aggregate Pharmacy Guarantees)

Retail Pharmacy Rate:

**Retail 30:**

Brand: The lesser of AWP -19.0% + \$0.80 dispensing fee, or U&C

Generic: The lesser of MAC or AWP -19.0% +\$0.80 dispensing fee, or U&C  
 (Generic Aggregate of AWP -82.50%)

**Retail 90:**

Brand: The lesser of AWP -22.0% + \$0.00 dispensing fee, or U&C

Generic: The lesser of MAC or AWP -22.0% +\$0.00 dispensing fee, or U&C  
 (Generic Aggregate of AWP -85.0%)

Mail Order Service Pharmacy:

Brand: AWP less 26.0% + no dispensing fee

Generic: AWP less 86.0% + no dispensing fee

Specialty Drug Pricing:

AWP less 19.0% + \$0.00 dispensing fee

\*Effective date of addendum will be on the effective date listed above or within 30 days of fully executed agreement if this addendum is executed after the effective date

1. Electronic Magnetic Media	No Charge
2. Input and maintenance from hard copy	No Charge
3. Clinical Prior Authorizations	\$50.00 per Rx
a. Internal Appeals	\$150.00 per Review
b. External Appeals	\$550.00 per Review
4. Direct Member Reimbursements	\$2.00 per paid claim
5. Member identification cards	No charge
6. Ad Hoc Reports	\$150.00 per programming hour
7. Drug Utilization Review (DUR) services	No Charge
8. Out-of-pocket expenses	
a. Mailing Expenses/postage	At meter cost
b. Air freight/overnight letters	At meter cost
9. Shipping and handling charges	At cost
10. Standard Clinical Programs	
a. Step therapy	No Charge
b. Concurrent DUR Edits	No Charge
c. Plan Design Changes	No Charge
d. Physician Profiling	No Charge
e. Administrative Overrides	No Charge
f. Formulary management	No Charge
g. Therapeutic Alternative Programs	No Charge
h. On-site Member Education Programs	No Charge
i. Over the Counter Drug Programs	No Charge
j. Half Tablet Program	No Charge
k. Direct Mail Utilization Program	No Charge
11. Optional Programs	
a. On-line eligibility access	\$1,500 (3-year licensing fee)
b. Customized On-site wellness programs	\$75 per program hour
c. RDS Basic services	No Charge
d. RDS setup; <500 RDS members	\$5,000 admin setup fee
e. RDS Notices of credible coverage	\$1.25/letter + Postage
f. RDS Additional services	\$1.00 PMPM per medicare-qualified member with a minimum annual fee of \$7,500
g. Actuarial certification & attestation	\$350/hour

12. Drug Rebates. ProAct shall remit to Plan Sponsor that portion of the Rebates as set forth above (“Plan Sponsor Rebates”), with the excess, if any, of actual Rebates over Plan Sponsor Rebates to be retained by ProAct as an additional service fee for the services provided under this Agreement. In lieu of billing Plan Sponsor for this fee, ProAct may retain the amount due from the Rebates collected by ProAct. Rebate guarantees require alignment with ProAct formulary with recommended utilization management programs. No Rebate shall be credited for any generic Claim, whether such Claim is filled with a generic drug or by a brand-name drug dispensed in lieu of a generic drug reimbursement rate. No rebate will be credited for 340b claims, compounds, Coordination of Benefit claims, Limited distribution medications,

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biosimilars, OTCs, vaccines, Multi-source brands, re-packaged NDC claims, stale dated claims over 180 days or HIV medications. No Rebate will be credited for any claim whereas the member cost share exceeds 50% of the total drug cost. No rebate will be credited for brand medications in any therapeutic category, disease state or channel through which the Plan Sponsor has adopted or implemented any vendor to source copay assistance or alternate funding. Rebate guarantees are quoted at a 30-day supply for retail claims, 90-day supply for retail 90 and mail order. All rebate guarantees will be reconciled in the aggregate. Quarterly Rebate payment shall be made within sixty (60) days following the quarter collected. ProAct may adjust the Plan Sponsor Rebate payments in an equitable manner if: (i) a generic version of a branded product is introduced in the market; or (ii) a branded product is unexpectedly recalled or withdrawn from the market. If Client makes any change to its formulary, not initiated by ProAct, changes the Benefit Plan, or adopts any formulary or utilization management program other than one of the options offered by ProAct under its formulary or utilization management programs, ProAct may adjust the Rebate guarantees in this pricing summary, effective the date of the change.

13. Pricing details. Pricing guarantees at retail and mail exclude claims for compounds, DMRs, COB, LDD, 340b, OTCs, vaccines, LTC pharmacies, tribal claims, Most Favored Nation States, U&C, In-House pharmacy, and Veteran Administration, Military claims, and specialty claims.

14. AWP discounts are guaranteed and will be reconciled according to the corresponding dispensing channel; Retail Brands, Retail Generics, Mail Brands, Mail Generics and Specialty. If ProAct fails to meet the guaranteed discounts the guarantees will be trued-up. Guarantees are trued-up annually, 90 days after the end of the plan year. The shortfall, if any, will be returned to Plan Sponsor in the form of a check or as a credit on the Plan Sponsor's invoice, whichever the Plan Sponsor prefers.

\*Effective date of addendum will be on the effective date listed above or within 30 days of fully executed agreement if this addendum is executed after the effective date

## **SHARx SERVICES AGREEMENT**

(Percentage of Savings Model)

This SHARx Services Agreement (Percentage of Savings Model) (this “Agreement”), entered into as of January, 1st 2023 (the “Effective Date”), is by and between SHARx, LLC (“SHARx”), and Town of Prosper (“Client”), with an address of 200 S. Main Street, 3<sup>rd</sup> Floor. Prosper, TX 75078, as the plan sponsor and/or administrator of a group health plan (the “Plan”).

### **RECITALS**

A. Client provides certain group health benefits, including without limitation prescription drug benefits, for certain current and former employees (“Eligible Employees”) and their dependents who are enrolled in the Plan (collectively with Eligible Employees, “Eligible Participants”).

B. SHARx offers, and Client desires to implement, a prescription advocacy savings program to provide Eligible Employees who elect to participate with alternative sourcing for medications (the “SHARx Program”).

### **ARTICLE I. SERVICES AND TERM**

1.1 Provision of Services. Subject to the terms and conditions of this Agreement, SHARx shall provide to Client, and Client shall purchase from SHARx, the services (collectively, the “Services”) more particularly described in Article II of this Agreement. Client will complete and execute a Scope of Work to enroll in the SHARx Program, which is hereby incorporated into and made a part of this Agreement (the “Scope of Work”). If there are any conflicts between this Agreement and the Scope of Work, this Agreement shall control.

1.2 Term. The term of this Agreement shall begin on the Effective Date and continue for twelve (12) months thereafter (the “Initial Term”), unless earlier terminated pursuant to Article VI. This Agreement shall automatically renew thereafter on a year-to-year basis (each a “Renewal Term” and collectively with the Initial Term, the “Term”) upon the same terms and conditions.

1.3 Scope of Undertaking. SHARx provides only the Services expressly set forth in this Agreement and the Scope of Work and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Plan or any stop-loss policy. Nothing herein shall be deemed to constitute SHARx as a party to the Plan or to confer upon SHARx any authority or control respecting management of the Plan, authority or responsibility in connection with administration of the Plan, or responsibility for the terms or validity of the Plan. Client has the sole and final authority to control and manage operation of Client’s Plan. SHARx is and shall remain an independent contractor with respect to the Services being performed hereunder and shall not for any purpose be deemed an employee of Client. SHARx and Client shall not be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractors. SHARx shall not in any way be deemed to be an insurer, stop-loss carrier, underwriter, or guarantor with respect to any benefits payable under the SHARx Program, Plan or any stop-loss policy.

### **ARTICLE II. SHARx OBLIGATIONS**

2.1 SHARx Obligations. SHARx shall provide the following Services to Client:

(a) SHARx will consult with Client to develop and implement the SHARx Program for its Eligible Participants, including without limitation, identifying and sourcing the high cost maintenance medications, specialty medicines and medications through medical (injections and infusions) required by Eligible Participants (collectively, “Target Medications”) and negotiating patient assistance programs (“PAP”) for such Target Medications. Target Medications will be sourced by SHARx only when the savings exceed the Plan’s previous cost of the Target Medication and the Target Medications are otherwise excluded from coverage by the Plan due to cost or other factors. Client acknowledges and agrees that SHARx partners with certain pharmacy benefits managers (“PPBMs”) for Target Medications and that SHARx recommends that Client utilize one of its PPBMs. If Client elects to use a pharmacy benefits manager for the SHARx Program other than a PPBM (“Non-Approved PBM” and collectively with PPBM, a “PBM”), SHARx will provide the Services on a stand-alone, non-integrated basis and will have no responsibility for the Non-Approved PBM’s processes, formulary or customer service. If SHARx is unable to source Target Medications without cost, the cost of Target Medications sourced through SHARx will be billed to the Client or the appropriate Eligible Employee, at the election of the Client, without mark-up.

(b) SHARx will work collaboratively with Client's human resources department, benefits consultants, insurance companies, the PBM and other Client resources (collectively, "Client Representatives") to design and implement the SHARx Program.

(c) SHARx will provide Client with introductory and ongoing educational and promotional programs and materials for the SHARx Program for Client to distribute or make available to Eligible Participants. After Client makes such materials available and introduces the SHARx Program to its Eligible Participants, SHARx will contact and offer enrollment to Eligible Participants and will enroll Eligible Participants who elect to participate in the SHARx Program ("Enrollees"). The parties acknowledge and agree that Eligible Participants are not required to enroll in the SHARx Program and will do so on a voluntary basis.

(d) SHARx will work with drug manufacturers, available patient assistance programs, funds, foundations, discount programs and international medication sources, as applicable, to source Target Medications.

(e) SHARx will provide an online registration and tracking portal for fulfillment of Target Medications.

(f) SHARx will provide Client with the following administrative Services in connection with the SHARx Program:

- (i) Tracking and reporting to Client on Enrollees, including Enrollee satisfaction with the SHARx Program.
- (ii) Monitoring and tracking Target Medication orders, fulfillment and claims.
- (iii) Providing monthly Target Medication savings analysis.
- (iv) Providing introductory and ongoing educational materials for Client and Client Representatives.
- (v) Maintaining books and records of all transactions subject to this Agreement and between Client and Enrollees in accordance with standards of record keeping customary in the health and welfare benefits administration industry.
- (vi) Maintaining compliance with all relevant statutes and regulations to carry out its obligations under this Agreement.

2.2 Reliance on Instructions and Plan Documents. SHARx may rely upon any written instructions or information relating to SHARx's performance of Services provided to SHARx by Client or Client Representatives, and reasonably believed by SHARx to be genuine and authorized by Client. SHARx may rely on, and is under no obligation to investigate the accuracy or completeness of the information in, the Plan documents and insurance policies (including, if applicable, any stop-loss policies) provided to SHARx by Client or Client Representatives. SHARx shall incur no liability resulting from SHARx's reasonable reliance on such instructions or information.

2.3 Standard of Care. SHARx shall use reasonable care and due diligence in the exercise of its powers under the performance of its duties under this Agreement.

2.4 Non-Discretionary Duties. SHARx and Client agree that the duties to be performed by SHARx hereunder are non-discretionary duties.

2.5 Limits on Services. Client acknowledges and agrees that not all Target Medications can be sourced through, and that SHARx does not and cannot control the cost of Target Medications that are sourced through, the SHARx Program. Certain Target Medications may be available to Enrollees at no cost, but other Target Medications will require Client or, if elected by Client, Enrollees to pay a portion of the cost of such Target Medications. SHARx DOES NOT GUARANTEE THAT TARGET MEDICATIONS WILL BE AVAILABLE AT NO COST OR A REDUCED COST TO ENROLLEES, CLIENT OR THE PLAN, AND SHARx HEREBY DISCLAIMS ANY WARRANTIES REGARDING THE FINANCIAL BENEFITS OF THE SHARx PROGRAM FOR OR ANY COST SAVINGS TO ENROLLEES, CLIENT OR THE PLAN.

2.6 Subcontractors. Client agrees that SHARx may subcontract with other qualified entities for various purposes, as determined by SHARx in its reasonable discretion, for the provision of the Services. SHARx will be responsible for the performance of subcontractors hereunder.

### ARTICLE III. CLIENT OBLIGATIONS

3.1 Client Obligations. To enable SHARx to perform its obligations under this Agreement, Client agrees to the following:

(a) Information to SHARx. Client shall furnish to SHARx all information necessary for SHARx to perform its functions hereunder as reasonably determined by SHARx, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits. SHARx shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update any information required to be furnished pursuant to this Section.

(b) Banking Arrangements.

(i) Client shall provide sufficient funds to cover all of its obligations under the SHARx Program and the Plan, and SHARx has no duty or obligation, legal or otherwise, to make payments or provide Services under this Agreement should Client fail to provide such funding. At an interval to be mutually agreed upon, SHARx shall notify Client of the amount needed to pay approved payments, and Client shall transfer or authorize payment from its designated bank account for such payments ("Payment Account"). Client shall enter into such agreements and provide instructions to its bank, if necessary, in order to grant SHARx viewing access to Client's Payment Account and to facilitate payments under this Agreement through a Payment Facilitator (as hereinafter defined).

(ii) In order for SHARx to pull funds from Client's Payment Account, Client acknowledges and agrees that as of the Effective Date, SHARx utilizes Bill.com, Inc. to facilitate payments under the SHARx Program. Client will authorize Bill.com, Inc. or another payment portal or facilitator designated by SHARx ("Payment Facilitator"), to initiate entries to the Payment Account on behalf of SHARx, or to enable SHARx to initiate such entries directly to such Payment Account, in order to pay amounts that Client owes to SHARx under this Agreement and to initiate adjustments for any transactions credited to or debited from such Payment Account in error.

(c) Plan Responsibilities. Client has the sole authority and responsibility for the Plan and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Plan and making all determinations thereunder. The Client gives SHARx the authority to act on behalf of Client, but only as expressly stated in this Agreement or as mutually agreed upon in writing between Client and SHARx. All final determinations as to an Enrollee's entitlement to Plan benefits are to be made by Client, including any determination upon appeal of a denied claim for Plan benefits. The Client is considered the plan administrator and named fiduciary of the Plan benefits for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended. Client shall operate the SHARx Program in compliance with and as required by applicable federal, state, and local statutes and regulations.

3.2 No Solicitation. Client acknowledges and agrees that SHARx has invested and will continue to invest substantial time and money in its development of its employees and its relationship with its PPBM service partners. Client agrees that during the Term of this Agreement and for a period of one (1) year thereafter, Client will not, directly or indirectly, whether by Client's own action or by assisting others, either individually or as a stockholder, director, officer, consultant, independent contractor, employee, agent, member, or otherwise of or through any entity, joint venture or person, or in any other capacity: (a) employ or offer to employ in any capacity, solicit or attempt to solicit, divert or entice away, or otherwise interfere with the employment of, any employee of SHARx who has provided Services to Client under this Agreement, or (b) solicit or attempt to solicit, or otherwise interfere with the business relationship between SHARx and its PPBMs. Client further agrees that: (1) it would be difficult to measure precisely the damages to SHARx from any breach by Client of this Section 3.2; (2) injury to SHARx from any such breach would be incalculable and irremediable; and (3) money damages would therefore be an inadequate remedy for any such breach. Accordingly, in addition to any other remedy SHARx may have at law or in equity, SHARx shall have the right, without posting a bond or other security, to seek injunctive relief or enforcement of this Section by specific performance.

### ARTICLE IV. FEES; PAYMENTS

4.1 SHARx Program Fees; Medication Costs; Payments.

(a) Fees. In consideration of provision of the SHARx Program, Client will pay to SHARx fees for the SHARx Program (“Fees”) in an amount equal to twenty-five percent (25%) of the Savings (as defined below). The Fees shall be paid on a monthly basis in arrears based on the Savings realized during the immediately preceding month. Unless otherwise set forth in the Scope of Work, Payments shall be due on receipt of SHARx’ invoice and shall bear interest at the Default Rate (as defined in subsection (d) below) if not paid within ten (10) days after the date set forth in the invoice. As used herein, “Savings” means the difference between the cost of the Target Medication (whether \$0.00 or a reduced rate) paid by Client or an Enrollee (or reimbursed by Client or the Plan to an Enrollee) for the Target Medication under the SHARx Program (the “SHARx Cost”) and the Standard Cost (as hereinafter defined) for the Target Medication. “Standard Cost” means (i) the cost actually paid by Client or an Enrollee or reimbursed by Client or the Plan for the Target Medication prior to participation in the SHARx Program, or (ii) the cost that the Client, an Enrollee or the Plan would pay or reimburse for the Target Medication in the absence of the SHARx Program, or (iii) if neither (i) nor (ii) are applicable, the cost of the Target Medication as published by a third party website such as www.WellRx.com. For clarity, amounts paid by SHARx to third parties for the Target Medications are not counted in SHARx Cost, and loss of rebates by the Client, an Enrollee or the Plan are not counted in the Standard Cost. Notwithstanding anything to the contrary herein, in no event shall the Fees exceed Seventy Thousand Dollars (\$70,000) per Target Medication per Enrollee per calendar year.

(b) Balance Due. Client acknowledges and agrees that during the Term of this Agreement, SHARx may negotiate for PAPs with respect to certain Target Medications. The term of each PAP is set by the manufacturer or distributor of the Target Medication and typically is a 12-month period or a calendar year (January 1 – December 31) period (each, the “PAP Term”). Client further acknowledges and agrees that because the benefits under a PAP will be provided for the duration of the PAP Term regardless of whether this Agreement remains in force, the Fees due in connection with each PAP are deemed earned and due to SHARx for the entire PAP Term at the time that each PAP is established. If this Agreement is terminated prior to the end of any PAP Term for any reason other than SHARx’s uncured default, the balance of the Fees that would otherwise be due and payable to SHARx for the remainder of the applicable PAP Term (the “Balance Due”), will be accelerated and automatically will be due and payable in full on the date of termination. The Balance Due shall be calculated by determining the amount of the Savings that will be realized on all Target Medication refills that will occur over the remainder of the PAP Term.

(c) Target Medication Costs. Unless Client has elected to have the Enrollee pay directly for the Target Medication (in which case the Target Medication cost is charged to the Enrollee’s credit card at the time the order is placed) Client shall pay SHARx for all Target Medication costs in two rounds of invoices each month. Unless another billing schedule is set forth in the Scope of Work, the first invoice will be sent on the fifth (5<sup>th</sup>) of the month and due on the tenth (10<sup>th</sup>) of the month, and the second invoice will be sent on the twentieth (20<sup>th</sup>) of the month and due on the twenty-fifth (25<sup>th</sup>) of the month. Each invoice will include the Target Medication name, the SHARx Cost and the total shipping cost (collectively, the “Medication Cost”), and the Fees due for such Target Medication.

(d) Payments. Client agrees to pay or allow SHARx to draft payment of the invoiced amount in full and any subsequent adjustments shall be reflected in the next billing cycle.

(e) Payment Defaults. Should Client fail to make payment or authorize SHARx to draft payment for any Medication Costs or Fees (including any Balance Due) within the time periods specified herein, SHARx may suspend all Services hereunder until all past due amounts are received by SHARx. Notwithstanding any other remedies provided herein, any amount due hereunder that is not timely paid shall thereafter bear interest until paid at a rate of interest equal to the prime rate per annum set forth in the money rates section of *The New York Times*, plus three percent (3%) per annum, or the maximum rate permitted by law, whichever is less (the “Default Rate”). If Client elects to have the Plan, its third party administrator or another third party (each, a “Third Party”) handle payments under this Agreement on its behalf, Client acknowledges and agrees that it will remain responsible to SHARx for late payments hereunder by any such Third Party.

## ARTICLE V. CONFIDENTIALITY; OWNERSHIP AND USE OF DATA

### 5.1 Confidentiality.

(a) As used in this Agreement, “Confidential Information” means all non-public data and information, in any form, that is disclosed by a party or its affiliates (a “Disclosing Party”) under the terms and for

purposes of this Agreement, except for information that a party receiving such information (a "Receiving Party") can demonstrate: (i) became generally available to the public other than as a result of a disclosure by the Receiving Party or its Representatives (as hereinafter defined) in violation of this Agreement; (ii) was independently developed or conceived by the Receiving Party without use of Confidential Information; (iii) became available to the Receiving Party by a third party who had the right to make the disclosure; or (iv) was known to the Receiving Party without an obligation of confidentiality prior to disclosure by the Disclosing Party.

(b) The Receiving Party shall not, and shall cause its affiliates and each of its and its affiliates' officers, directors, employees, agents, advisors, contractors (including any subcontractors) and representatives (collectively, "Representatives") not to disclose to any other person or use, except for purposes of this Agreement (and only in accordance with applicable law), any information that is the Disclosing Party's Confidential Information; provided, however, that the Receiving Party may disclose Confidential Information disclosed to it: (i) to its Representatives who, in the reasonable judgment of the Receiving Party, need to know such Confidential Information in connection with this Agreement; (ii) upon the order of any court or administrative agency; (iii) upon the request or demand of any regulatory agency or authority having jurisdiction over the Disclosing Party and its Representatives; or (iv) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; provided, that in the case of clauses (ii), (iii) or (iv), the Receiving Party shall notify the Disclosing Party of the proposed disclosure as far in advance of such disclosure as practicable and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Disclosing Party, when and if available.

(c) The Receiving Party shall, and shall cause its Representatives to, protect Confidential Information disclosed to it using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure of such Confidential Information, as such Receiving Party uses to protect its own confidential information of a like nature.

(d) The Receiving Party and its Representatives shall not reproduce, disclose or disseminate the Confidential Information of the Disclosing Party to third parties without the prior written consent of the Disclosing Party. Upon termination of this Agreement for any reason, the Receiving Party shall return all Confidential Information of the Disclosing Party, including any copies thereof, to the Disclosing Party upon the Disclosing Party's written request. Notwithstanding the communication and dissemination of Confidential Information necessary to provide the Services required by this Agreement, all records and other information pertaining to the SHARx Program shall be treated as the Confidential Information of Client.

(e) Both parties agree to comply with terms and conditions of the Business Associate Agreement set forth in Exhibit A attached hereto and incorporated herein by reference (the "Business Associate Agreement").

## 5.2 Ownership and Use of Data.

(a) SHARx agrees that all books, records, lists of names, journals, ledgers and other recorded information developed specifically in connection with the Services shall always be and remain the property of Client. Client shall be entitled to reasonable access to said records for purposes of fulfilling its obligations to Enrollees. Upon termination of this Agreement, SHARx may deliver said records and SHARx Program information, in original form or on electronic media, as reasonably determined by Client and SHARx, to Client or its designated agent. Any paper records will be shipped at cost to Client. Any special turnover reports at time of termination will be provided at an additional cost to Client. SHARx shall maintain copies of any records required by law following termination of this Agreement. (This provision shall not apply to such records that have been destroyed in the ordinary course of business or must be maintained by SHARx as required by applicable laws.)

(b) Client agrees that SHARx is the sole owner of the following materials and that Client has no right to use them following termination of this Agreement, it being agreed that such materials were not prepared at the expense of or for Client: (i) educational and promotional programs and materials relating to the SHARx Programs; (ii) SHARx's online portal and tracking system; and (iii) any other documents, equipment and materials provided by SHARx to Client in connection with the provision of the Services.

## ARTICLE VI. TERMINATION

6.1 Termination for Cause. If either party materially defaults in the performance of any of its obligations under this Agreement (except for a default in payments to SHARx), which default shall not be substantially cured within thirty (30) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving notice to the defaulting party, terminate this Agreement as of a date specified in such notice of termination. Notwithstanding the foregoing, with respect to material defaults (except for a default in payments to SHARx) that cannot reasonably be cured within thirty (30) days, it shall not be a default under this Section if the defaulting party in good faith proceeds within thirty (30) days to commence curing said default and thereafter prosecutes with due diligence the curing of such default to conclusion.

6.2 Termination or Suspension for Nonpayment. In addition to any other remedies provided for in this Agreement, should Client (i) default in the payment when due of any amount due to SHARx or (ii) fail to provide sufficient funds to cover all of its obligations under this Agreement, SHARx shall have the right upon written notice to Client, to suspend all Services provided under this Agreement; provided, however, at no time shall SHARx limit or restrict Client's access to any SHARx Program information. Should Client fail to cure such payment or funding default within ten (10) business days after receipt of such notice of default (the "Cure Period"), SHARx may, in its sole discretion, continue to suspend Services or terminate this Agreement immediately and without additional notice upon expiration of the Cure Period.

6.3 Termination for Insolvency. If either party is declared insolvent or bankrupt in a legal proceeding, is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver, conservator or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, then all payment obligations under this Agreement shall be deemed to be administrative expenses of the bankrupt party. The liquidator, trustee, receiver, conservator, new owner, manager or other agent or representative shall have sixty (60) days to notify the other party that it is terminating this Agreement as of a date within such sixty (60) day period. If the other party is not so notified, this Agreement shall not be terminated, but shall continue on all of the terms and conditions stated in this Agreement, including without limitation, the payment terms specified in Article IV.

6.4 Termination without Cause. Notwithstanding anything to the contrary herein, this Agreement may be terminated by Client or by SHARx at any time, with or without cause, upon delivery of advance written notice to the other party, and neither party shall have any further obligation to the other, except for (i) payment of the Balance Due under Section 4.1(b) by Client, and (ii) performance of the termination obligations as set forth in Section 6.6.

6.5 Termination of Plan. Notwithstanding anything to the contrary, Client may terminate this Agreement at any time if Client decides in its sole discretion to cease offering group health benefits to its Eligible Employees or in the event the Plan is terminated for any reason, and neither party shall have any further obligation to the other, except as set forth in Sections 4.1(b) and Section 6.6.

### 6.6 Termination Obligations.

(a) Upon the expiration or termination of this Agreement for any reason, SHARx shall have no further obligation to provide any Services;

(b) Upon the expiration or termination of this Agreement for any reason other than SHARx's uncured default, Client shall pay to SHARx all payments due to SHARx for: (i) Services rendered through the date of expiration or termination of this Agreement, (ii) Fees, including any Balance Due, and (iii) for Medication Costs or other expenses due to SHARx. Upon the expiration or termination of this Agreement for SHARx's uncured default, Client shall pay SHARx for Fees, including any Balance Due, Medication Costs and other expenses due to SHARx as of and through the date of expiration or termination. SHARx will invoice Client for the amounts due under this Section 6.6(b) within 30 days of the date of expiration or termination.

(c) Upon the expiration or termination of this Agreement for any reason, the parties shall return the Confidential Information of the other party in accordance with Section 5.1(d).

6.7 Survival. The following Sections of this Agreement, and any other Sections which, by their terms should survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement: Section 3.1(b) (Banking Arrangements) to the extent payments due to SHARx are still outstanding; Section 3.2 (No Solicitation); Section 4.1 (SHARx Program Fees; Medication Costs; Payments); Article V (Confidentiality; Ownership and Use of Data); Section 6.6 (Termination Obligations); Article VII (Indemnities; Limitation of Liability); and Article VIII (Miscellaneous).

## **ARTICLE VII. INDEMNITIES; LIMITATION OF LIABILITY**

### 7.1 Indemnity.

(a) In performing its obligations under this Agreement, SHARx neither insures nor underwrites the liability of Client's Plan. SHARx shall have no duty or obligation to defend against any legal action or proceeding brought to recover a claim for Plan benefits or any causes of actions for expenses or liabilities incident to the Plan. Except as otherwise explicitly provided in this Agreement, Client shall retain the responsibility for all Plan benefit claims and all expenses and liabilities incidental to the Plan. To the extent authorized by Texas Law, Client agrees to defend, indemnify and hold harmless SHARx, its affiliates, and its and its affiliates directors, officers, agents and employees from and against any and all amounts, claims, suits, judgments, damages, losses and expenses and expenses, including reasonable legal fees and costs (collectively, "Losses"), to the extent arising out of Clients' (i) gross negligence, willful misconduct or fraud; (ii) failure to observe the terms of the Plan; (iii) breach of fiduciary duty (except for those items listed in Section 7.1(b)(iii) below); and (iv) material breach of this Agreement, provided in each case that such Losses did not arise in whole or in part out of SHARx's (A) failure to provide information or accurate information to Client, (B) failure to observe the terms of this Agreement, or (C) failure to cooperate with Client. Before indemnifying SHARx, Client shall have the opportunity to recover, or attempt to recover, any such Loss from the payee (where applicable) and shall be given a reasonable period of time in which to do so. SHARx shall notify Client, in writing, promptly upon incurring (or discovering or believing that it has incurred) any such Loss, such notification containing sufficient detail to enable Client to attempt to recover such Loss in a timely fashion. The parties shall reasonably consult regarding the circumstances of the Loss and shall cooperate in an attempt to recover it, if possible.

(b) SHARx agrees to defend, indemnify and hold harmless Client, its trustees, directors, officers, agents and employees from and against any and all Losses to the extent arising out of SHARx's (i) gross negligence, willful misconduct or fraud; (ii) material breach of this Agreement, and (iii) receipt or payment of financial incentives if such receipt or payment is alleged or found to be a prohibited transaction, provided in each case that such Losses did not arise in whole or in part out of Client's (A) failure to provide information or accurate information to SHARx, (B) failure to observe the terms of this Agreement, or (C) failure to cooperate with SHARx. Before indemnifying Client, SHARx shall have the opportunity to recover, or attempt to recover, any such Loss from the payee (where applicable) and shall be given a reasonable period of time in which to do so. Client shall notify SHARx, in writing, promptly upon incurring (or discovering or believing that it has incurred) any such Loss, such notification containing sufficient detail to enable SHARx to attempt to recover such Loss in a timely fashion. The parties shall reasonably consult regarding the circumstances of the Loss and shall cooperate in an attempt to recover it, if possible.

7.2 Limitation of Liability. The duties of each party to this Agreement are limited to those specifically set forth in this Agreement. Neither party shall be liable to the other party for any special, indirect, incidental, exemplary, or consequential damages, including without limitation lost profits, business interruption, loss of use, or loss of information, regardless of whether such party was advised of the possibility of any of the foregoing.

## **ARTICLE VIII. MISCELLANEOUS**

8.1 Binding Nature and Assignment. This Agreement shall be binding on the parties and their respective successors and assigns. Notwithstanding subcontracting arrangements disclosed in this Agreement by SHARx, neither party, whether by operation of law or otherwise, may assign its rights or delegate its rights or delegate its material obligations under this Agreement without the prior written consent of the other party.

8.2 Entire Agreement. This Agreement, including any Exhibits attached to this Agreement, each of which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement as of the date hereof and supersedes any prior agreements or arrangements



between SHARx and Client regarding the subject matter of this Agreement. This Agreement may be amended, modified or changed only by a written instrument executed by both SHARx and Client.

8.3 Trademarks and Related Provisions. The trademarks, service marks, trade names, and logos of SHARx and its affiliates are the property of SHARx and its affiliates, and Client has no right to use such marks, names, or logos unless authorized in writing by SHARx. The trademarks, service marks, trade names, and logos of Client and its affiliates are the property of Client and its affiliates, and SHARx has no right to use such marks, names, or logos unless authorized in writing by Client. Neither party shall use another party’s copyrights, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the prior written consent of such other party. During the Term of this Agreement, Client hereby provides written authorization for SHARx to use its logo in connection with services and communications provided to Client and Eligible Participants with respect to the SHARx Program.

8.4 Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is illegal, unenforceable or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefore another provision that is legal and enforceable and achieves the same objective. In addition, if such illegal, unenforceable or void provision does not relate to the payments to be made to SHARx, and if the remainder of this Agreement shall not be affected by such declaration or finding and is capable of substantial performance, then each provision not so affected shall be enforced to the maximum extent permitted by law.

8.5 Waiver. No delay or omission by either party to exercise any right or power under this Agreement shall impair such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants to be performed by the other or any breach shall not be construed to be a waiver of any succeeding breach or of any other covenant. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

8.6 Force Majeure. Each party shall be excused from performance under this Agreement (except with respect to the payment of monies) for any period and to the extent that it is prevented from performing any action, in whole or in part, as a result of delays beyond its reasonable control caused by the other party or by an act of God, war, civil disturbance, court order, labor dispute, third party nonperformance, or other cause beyond its reasonable control, including without limitation, failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment. Such nonperformance shall not be a default or a ground for termination of this Agreement. Each party shall endeavor to promptly remedy the cause of any such nonperformance.

8.7 Notices. Wherever under this Agreement either party is required or permitted to give notices to the other, such notice shall be deemed given when in writing and when delivered personally in hand, by nationally-recognized independent courier service, or by certified mail, postage prepaid, to the other party at the address set forth below:

<p>Address for SHARx:</p> <p>SHARx, LLC  600 Mason Ridge Center Drive FL2  St. Louis, MO 63141  Attention: _____</p>	<p>Address for Client:</p> <p>Town of Prosper  200 S. Main Street, 3<sup>rd</sup> Floor  Prosper, TX 75078</p>
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Either party may from time to time change its address for notification purposes by giving the other prior notice of the new address and the date upon which such new address shall become effective, which will be not less than five (5) days after the date such notice is delivered to the other party.

8.8 Choice of Law; Venue. The laws of the State of Missouri (without regard to choice of law principles that might apply the law of another jurisdiction) shall govern the validity of this Agreement, the construction of its

terms, and the interpretation and enforcement of the rights and duties of the parties, and venue for any action relating to this Agreement is exclusively in the state and federal courts of St. Louis County, Missouri.

8.9 Beneficiaries. This Agreement is solely for the benefit of the parties and their successors and permitted assigns and does not confer any rights or remedies on any other person or entity.

8.10 Counterparts; Electronic Signature. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one original agreement. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

**SHARx, LLC**

**CLIENT:**

By: Paul Pruitt  
Name: Paul Pruitt  
Its: CEO  
Date: 11/3/2022

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

*(Attached hereto)*

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement"), entered into as of January 1<sup>st</sup> 2023, is between Town of Prosper (the "Covered Entity") and SHARx, LLC (the "Business Associate" and, together with Covered Entity, the "Parties") in order to address the requirements of the HIPAA Security and Privacy Rules with respect to "Business Associates."

**WHEREAS**, Business Associate and its representatives are, or will be, performing certain functions, activities and services to or on behalf of Covered Entity as defined within a separate "SHARx Services Agreement," and both Parties are subject to the requirements of HIPAA; and

**WHEREAS**, Covered Entity and Business Associate acknowledge that this Agreement required by law to comply with all applicable requirements of the HIPAA Security and Privacy Rules, and all additional security requirements of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), that are applicable to "Business Associates" (as defined in the HIPAA Security and Privacy Rules).

**NOW, THEREFORE**, in connection with the creation, receipt, maintenance, transmission, use or disclosure of "Protected Health Information" (as defined in Section V. and referred to herein as "PHI") as a Business Associate (as defined in the Section V) of the Covered Entity, the Parties hereby agree as follows:

### I. OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

Business Associate agrees to:

1. Create, receive, maintain, transmit, use, or disclose PHI only in a manner that is consistent with the Agreement or as required by law. Business Associate may only use or disclose PHI needed to perform the duties set forth in the Adoption Agreement for the treatment, payment or health care operations of the Covered Entity. Such instances include, but are not limited to: communicating with patient assistance programs on behalf of a covered member, obtaining prescriptions and other PHI from a covered member's health care provider, obtaining manufacturer coupons, and other activities needed to support the Covered Entity's obligations.
2. Use or disclose PHI as required by law or as permitted by this Agreement. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule. Business Associate shall not release or sell individual PHI to engage in marketing or fundraising activities without prior authorization from the individual.
3. Use or disclose PHI for the proper management and administration of Business Associate, or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that confidentiality of the information has been breached. Business Associate may use PHI to create de-identified information that may be used or disclosed by Business Associate for any lawful purpose, provided that the information has been de-identified in accordance with the de-identification requirements of 45 C.F.R. 164.51.
4. Use appropriate safeguards, and establish, implement and maintain administrative, physical and technical safeguards that comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI (the "Security Rule"), to prevent use or disclosure of PHI other than as provided for by the Agreement.
5. Report to the Covered Entity any use or disclosure of PHI not provided by the Agreement of which it becomes aware, including Breaches of Unsecured PHI as required by 45 CFR 164.410, and any Security Incident of which it becomes aware.

- a. In the event of a Breach by the Business Associate of Unsecured PHI, as the terms “breach” and “unsecured PHI” are defined in 45 CFR 164.402, the Business Associate shall report such Breach or potential Breach to the Covered Entity within ten (10) business days of becoming aware of such Breach.. The Business Associate’s report shall include all information available to the Business Associate as necessary to allow the Covered Entity to provide a notification of the Breach consistent with 45 CFR 164.404.
  - b. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate from an unauthorized use or disclosure of PHI in Business Associates possession or control.
  - c. Business Associate and Covered Entity acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence of, occurrence of, and attempts by third parties that constitute unsuccessful Security Incidents and no additional notice to Covered Entity with respect to such incidents shall be required. The following are illustrative of unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system: Pings on a firewall; Port scans; Attempts to log on to a system or enter a database with an invalid password or username; and Malware (e.g., worms, viruses).
4. Require each agent, including a Subcontractor, who creates, receives, maintains or transmits PHI on behalf of the Business Associate, to agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information.
  5. Make PHI available in a Designated Record Set to or on behalf of the Covered Entity as necessary to satisfy the Covered Entity’s obligations under 45 CFR 164.524 within ten (10) business days of receipt of such request. The Business Associate may deny such requests if the requested information is meant to be shared with the Employer of a Health Plan and is for more than Summary Health Information.
  6. Make any amendment(s) to PHI in a Designated Record Set as agreed to by the Covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Covered Entity’s obligations under 45 CFR 164.526.
  7. Maintain and make available the information required to provide an accounting of disclosures to or on behalf of the Covered Entity as necessary to satisfy the Covered Entity’s obligations under 45 CFR 164.528. The Business Associate shall not be required to maintain a record of disclosures of PHI (1) made for the purpose of Treatment, Payment or Healthcare Operations, (2) made to an individual who is the subject of the PHI, or (3) made pursuant to an authorization that is valid under HIPAA.
  8. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 (the “Privacy Rule”), Comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
  9. Make its internal practices, books and records available to the Secretary for purposes of determining compliance with HIPAA rules.
  10. Disclose PHI to report violations of law to appropriate Federal or State authorities.
  11. In performing its obligations under this Agreement and the Adoption Agreement, use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.
  12. Acknowledge and agree that from time to time the Department of Health and Human Services may modify the standard transactions now identified in 45 CFR 162.1101–162.1802. The Business Associate and its agents and Subcontractors agree to abide by any changes to such standard transactions that are applicable to the services defined in the Adoption Agreement.

13. Disclose to a Subcontractor or otherwise allow a Subcontractor to access PHI only if the Subcontractor enters in its own agreement with Business Associate and agrees to abide by the administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of electronic PHI in compliance with the Security Rules.

## II. OBLIGATIONS OF THE COVERED ENTITY

Covered Entity agrees to:

1. Notify Business Associate, in writing and in a timely manner, of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI and in the policies and procedures of Covered Entity under 45 C.F.R. §164.530, to the extent that such limitation may affect Business Associate's use or disclosure of PHI, and to notify Business Associate of any material changes thereof.
2. Notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Notify Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## III. TERM AND TERMINATION

1. This Agreement shall be effective as of the date first set forth above and shall terminate as provided in Section III.3 below or when all PHI previously provided by the Covered Entity to the Business Associate, or transferred by the Business Associate to any of its subcontractors, or created or received by the Business Associate or a Business Associate subcontractor on behalf of the Covered Entity, is destroyed or returned to the Covered Entity.
2. Upon either Party's knowledge or reasonable belief that the other Party is in or has committed a breach or violation of any material obligation set forth in this Agreement that is required pursuant to 45 CFR 164.314(a)(2)(i) or 45 CFR 164.504(e)(2), the non-breaching party may:
  - a. terminate this Agreement with immediate effect by delivering written notice of such termination to the breaching party regardless of whether such Breach is continuing at the time the non-breaching party delivers such notice; or
  - b. require the breaching party to demonstrate that it has taken appropriate steps that are, in the non-breaching party's sole discretion, reasonably designed to prevent a recurrence of such Breach.
3. Obligations of the Business Associate upon termination. Upon termination of this Agreement pursuant to Section III.2, the Business Associate shall promptly return to the Covered Entity, or, if agreed to by the Covered Entity, destroy, all PHI previously created, maintained or received by the Business Associate on behalf of the Covered Entity that the Business Associate maintains in any form. The Business Associate shall retain no copies of such PHI.
4. Retention of PHI. The Business Associate may retain PHI to the extent reasonably necessary to permit the Business Associate to comply with applicable laws and so long as the Business Associate extends the protections of this Agreement to all such PHI and takes all actions necessary to limit further uses and disclosures of such PHI for so long as the Business Associate retains such PHI. If the Covered Entity and the Business Associate determine in good faith that termination of this Agreement and the return or destruction of all PHI previously provided by the Covered Entity to the Business Associate would cause irreparable business interruption or harm to the Covered Entity, or if termination of this Agreement is otherwise not feasible, then (1)

the Covered Entity or the Business Associate may report such situation to the Secretary of Health and Human Services and (2) the Business Associate shall extend the protections of this Agreement to all such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. Upon termination of the condition that makes retention of PHI by the Business Associate necessary for the Business Associate's compliance with law or that makes return or destruction of PHI infeasible, the Business Associate shall return or destroy such PHI as instructed by the Covered Entity.

5. **Survival.** The obligations of the Business Associate under this Section III shall survive the termination of this Agreement.

#### IV. LEGAL PROVISIONS

1. **Indemnification.** Each Party (an "Indemnifying Party") shall, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the other Party and such other Party's employees, directors and agents (each, an "Indemnitee") from and against any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments and expenses of every kind (including reasonable attorneys' fees, including at trial and on appeal) asserted or imposed against any Indemnitee arising out of the acts or omissions of the Indemnifying Party or any Subcontractor or consultant of the Indemnifying Party or any of the Indemnifying Party's employees, directors or agents related to any material Breach of this Agreement or negligent failure to comply with HIPAA. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR IN ANY OTHER INDEMNIFICATION PROVISIONS TO THE CONTRARY, BUSINESS ASSOCIATE'S TOTAL LIABILITY UNDER THIS AGREEMENT TO ANY PERSONS INDEMNIFIED SHALL IN NO EVENT EXCEED THE LIMITS OF ITS CYBERSECURITY INSURANCE COVERAGE, AS APPLICABLE, ACTUALLY PAID FOR OR ON ACCOUNT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.
2. **Amendment.** The Covered Entity and the Business Associate may amend this Agreement by mutual written consent.
3. **Severability.** If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other portion of this Agreement. The entire Agreement will be construed as if it did not contain the particular invalid or unenforceable provision(s), and the rights and obligations of the Business Associate and the Covered Entity will be construed and enforced accordingly.
4. **Waiver.** The failure by one Party to require performance of any provision of this Agreement shall not affect such Party's right to require performance at any time thereafter, nor shall a waiver of any Breach or default of this Agreement constitute a waiver of any subsequent Breach or default or a waiver of the provision itself.
5. **Entire Agreement.** This Agreement supersedes and replaces any and all prior Business Associate Agreements between the Parties. To the extent that the Adoption Agreement addresses the rights and obligations contained in this Agreement, this Agreement supersedes and replaces all provisions in the Adoption Agreement related to the subject matter of this Agreement.

#### V. DEFINITIONS

**"Breach"** shall generally have the same meaning given to such term under 45 CFR 164.402.

**"Designated Record Set"** shall generally have the same meaning given to such term under 45 CFR 164.501.

**"HIPAA Rules"** shall generally have the same meaning as the Privacy, Security, Breach Notification, and Enforcement Rules under 45 CFR Part 160 and Part 164.

“Protected Health Information” or “PHI” shall generally have the same meaning given to such term under 45 CFR 160.103.

“Secretary” shall generally mean the Secretary of the United States Department of Health and Human Services.

“Security Incident” shall generally have the meaning given to such term under 45 CFR 164.304.

Capitalized terms used but not defined in this Agreement shall have the meaning given to such terms in the HIPAA Privacy Rule and Security Rule.

IN WITNESS WHEREOF, the parties execute this Agreement by their duly authorized representatives as the date set forth above.

SHARx, LLC  
(Business Associate)

\_\_\_\_\_  
(Covered Entity)

By: Paul Pruitt

By: \_\_\_\_\_

Name: Paul Pruitt

Name: \_\_\_\_\_

Title: Chief Executive Officer

Title: \_\_\_\_\_





**To: Mayor and Town Council**

**From: James Edwards, Director of Human Resources**

**Through: Ron K. Patterson, Interim Town Manager  
Bob Scott, Executive Director of Administrative Services**

**Re: Pharmacy Benefits**

**Town Council Meeting – November 8, 2022**

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**Agenda Item:**

Consider and act upon awarding RFP No. 2022-60-A for group critical illness with cancer, group accident and group hospital indemnity insurance effective January 1, 2023, and authorizing the Interim Town Manager to execute all documents for the same.

**Description of Agenda Item:**

The Town offers voluntary group critical illness with cancer, group accident and group hospital indemnity insurance benefits to employees. McGriff, Seibels and Williams, Inc. marketed this coverage on the Town’s behalf. United Healthcare offered competitive pricing to bundle health, dental and voluntary products. These voluntary products are fully funded by employees.

**Budget Impact:**

No budgetary impact. This voluntary product is fully funded by employees.

**Legal Obligations and Review:**

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

**Attached Documents:**

- 1. Application

**Town Staff Recommendation:**

Town staff recommends awarding RFP No. 2022-60-A to United Healthcare and authorizing the Interim Town Manager to execute all documents for the same.

**Proposed Motion:**

I move to award RFP No. 2022-60-A for critical illness with cancer, group accident and group hospital indemnity insurance to United Healthcare and authorize the Interim Town Manager to execute all documents for the same.

For use with groups installed on the  
**FACETS, ACIS/UNET PLATFORMS**

## Specialty Combined Group Application

Basic Life and Basic AD&D Insurance, Supplemental Life and Supplemental AD&D Insurance, Voluntary AD&D Insurance, Short Term Disability Insurance, Long Term Disability Insurance, Critical Illness Insurance, Accident Insurance, and Hospital Indemnity Insurance provided by:

**UNITEDHEALTHCARE INSURANCE COMPANY**  
 185 Asylum St.  
 Hartford, CT 06103-3408



**Requested Effective Date of Coverage:** 01/01/2023

### GENERAL INFORMATION

Group's Full Legal Name: <b>Town of Prosper</b>			
Street Address: <b>250 W. First Street</b>	City: <b>Prosper</b>	State: <b>TX</b>	Zip Code: <b>75078</b>
Contact Name: <b>James Edwards</b>	Phone Number: <b>972-569-1005</b>	Fax Number:	E-Mail: <b>JEdwards@prospertx.gov</b>
Billing Address (If Different):			
Billing Contact: <b>Cindy Slate</b>		Billing Contact Phone: <b>972-569-1020</b>	
Tax ID Number: <b>756000642</b>	Nature of Business/Organization: <b>Municipality</b>		
List all subsidiaries to be included:			
Organization Type:	<input type="checkbox"/> Corporation	<input type="checkbox"/> Political Subdivision	<input checked="" type="checkbox"/> Other*: <u>Public Entity</u>
	<input type="checkbox"/> Partnership		<small>*Other group types may be subject to regulatory approval.</small>
Deposit: \$ _____ Any deposit submitted with application is applied toward 1st month's premium (divided equally among all products if issued).			

### ELIGIBILITY / PARTICIPATION

Total Number of Eligible Employees:	280	Minimum # of hours worked per week to be eligible for coverage	30+
Total Number of full-time Employees:	280	Minimum # of hours worked per week to be eligible for Disability coverage if different from the above*	

\*For disability products the minimum # of hours per week to be eligible is 30 hours.

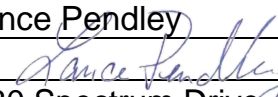
**PLAN SELECTION AND INFORMATION**

Products	Check your selection and fill in the Amount	% Premium contribution by Group		Subject to ERISA?
		Employee	Dependents	
Group Life				
• Basic Life	<input type="checkbox"/> _____	_____%	N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Basic AD&D	<input type="checkbox"/> _____	_____%	N/A	
• Supplemental Life	<input type="checkbox"/> _____	_____%	N/A	
• Supplemental AD&D	<input type="checkbox"/> _____	_____%	N/A	
• Basic Dependent Life	<input type="checkbox"/> _____	N/A	_____%	
• Basic Dependent AD&D	<input type="checkbox"/> _____	N/A	_____%	
• Supplemental Dependent Life	<input type="checkbox"/> _____	N/A	_____%	
• Supplemental Dependent AD&D	<input type="checkbox"/> _____	N/A	_____%	
Short Term Disability	<input type="checkbox"/> Core _____	_____%	N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Buy up _____	_____%	N/A	
Long Term Disability	<input type="checkbox"/> Core _____	_____%	N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Buy up _____	_____%	N/A	
Critical Illness	<input checked="" type="checkbox"/> _____	0 ____%	N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Accident Protection	<input checked="" type="checkbox"/> _____	0 ____%	N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Voluntary AD&D	<input type="checkbox"/> _____	_____%	_____%	
Hospital Indemnity	<input type="checkbox"/> Base	_____%	N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<input checked="" type="checkbox"/> Base + Enhanced	0 ____%	N/A	
	<input type="checkbox"/> Core	_____%	N/A	

**REPLACEMENT / PRIOR COVERAGE INFORMATION**

Products	Do you intend to use this policy to replace a similar plan?	Prior Carrier's Name	Prior Policy #	Termination Date
Group Life	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Short Term Disability	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Long Term Disability	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Critical Illness	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Allstate	21421	12/31/22
Accident Protection	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Allstate	21421	12/31/22
Voluntary AD&D	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Hospital Indemnity	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Allstate	21421	12/31/22

**PRODUCER INFORMATION**

Producer Name: Lance Pendley		Agency: McGriff Insurance	
Producer Signature: 		Date: 11.1.2022	
Street Address: 5080 Spectrum Drive, Ste 900E		City: Addison	State: TX
Zip Code: 75001		Email Address: lpendley@mcgriff.com	
Phone Number: 469-232-6612	Fax Number:	Tax ID Number:	
Producer Number: 20-0468966		Commission split % (if applicable):	
Commissions Payable To: McGriff Insurance Services		Name Specific Commission Schedule :	

**Note: Provide information in a separate sheet if more than one producer.**

**GENERAL AGENT INFORMATION**

General Agent Name:		Tax ID Number:	
Street Address:		City:	State:
Zip Code:		Email Address:	
Phone Number:	Fax Number:	G.A. Override:	
Commissions Payable To :			

**UNITEDHEALTHCARE INSURANCE COMPANY DISCLOSURE REGARDING PRODUCER COMPENSATION:**

In some instances, we pay brokers and agents (referred to collectively as "producers") compensation for their services in connection with the sale of our products, in compliance with applicable law. In certain states, we may pay "base commissions" based on factors such as product type, amount of premium, group/company size and number of employees. These commissions, if applicable, are reflected in the premium rate.

In addition, we may pay bonuses pursuant to programs established to encourage the introduction of new products and provide incentives to achieve production targets, persistency levels, growth goals or other objectives. Bonus expenses are not directly reflected in the premium rate but are included as part of the general administrative expenses. Please note we also make payments from time to time to producers for services other than those relating to the sale of policies (for example, compensation for services as a general agent or as a consultant).

Producer compensation may be subject to disclosure on Schedule A of the ERISA Form 5500 for customers governed by ERISA. We provide Schedule A reports to our customers as required by applicable federal law. For specific information about the compensation payable with respect to your particular policy, please contact your producer.

**AGREEMENT**

The Group and UnitedHealthcare Insurance Company ("we", "us" or "our") agree that: **THE APPLICATION** shall form the basis for and become part of any policy issued. **PREMIUM RATES** shall: (1) be subject to all provisions in that policy; and (2) be binding on both Employer and us. **LIABILITY OF THE COMPANY** – We will have no liability until this request has been approved at Our Administrative Office. **AUTHORITY OF AGENTS** – No agent can change the terms of this request or any policy we issue. No agent can waive any of our rights or requirements or extend the time for any premium payments. **CHANGES AND CORRECTIONS** – The acceptance of any policy issued on this request shall constitute ratification of any correction or amendment made by us. Changes are an amendment to and form a part of the original request and any policy issued.

**I UNDERSTAND AND AGREE:** that the first month's estimated premium and fully completed enrollment information for all eligible persons requesting insurance coverage must be submitted with this Application BEFORE action is taken on this Application. Coverage is not in effect unless and until I receive notification of acceptance from the Company. If this Application is declined, the Company will return the premium deposit submitted with the Application. If my coverage is approved, premium is payable monthly in advance.

I represent that, to the best of my knowledge, the information I have provided in this Application is accurate and truthful. I understand that the Company will rely on the information I provide in determining eligibility for coverage, setting premium rates, and other purposes, and that any misrepresentation or fraudulent statement may result in rescission of the group policy, termination of coverage, increase in premiums, or other consequences permitted by law. I agree that the Company shall be entitled to rely on the most current information in its possession regarding eligibility of employees/members and their dependents in providing coverage under this policy.

I understand and agree that I am responsible for notifying the Company promptly of any changes in this information that may affect the eligibility of employees/members or their dependents, including the addition of newly eligible employees/members or dependents. I understand and agree that the Certificate of Coverage or Summary Plan Description, and other documents, notices and communications regarding the coverage indicated on this Application may be transmitted electronically to me and to the Group's employees/members.

The Critical Illness and Accident Protection Plan coverages are NOT considered "minimum essential coverage" under the Affordable Care Act and therefore do NOT satisfy the mandate to have health insurance coverage. Failure to have other health insurance coverage may be subject to a tax penalty. Please consult a tax advisor.

**GROUP SIGNATURE (form must be signed)**

Group Authorized Person's Name (Print):	Title:
Group Authorized Person's Signature:	Date:

**FRAUD WARNING NOTICES**

Please review the notice that applies in your state.

**For residents of Alabama:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

**For residents of California (Health products):** UnitedHealthcare may terminate your coverage and/or deny any claim under the policy if it is determined that you: knowingly, and with actual intent to deceive, presented false information in this application; and such statement was the basis for UnitedHealthcare's approval of your coverage under the policy.

**For residents of California (Life products):** For your protection California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For residents of Connecticut:** Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

**For residents of District of Columbia:** WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

**For residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For residents of Hawaii:** For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.

**For residents of Kansas:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of insurance fraud as determined by a court of law.

**For residents of Kentucky:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**For residents of Maine:** It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or a denial of insurance benefits.

**For residents of Maryland:** Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**For residents of New Jersey:** Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

**For residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance, is guilty of a crime and may be subject to civil fines and criminal penalties.

**For residents of New York:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

**For residents of Ohio:** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

**For residents of Oklahoma:** WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

**For residents of Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For residents of Pennsylvania:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**For residents of Vermont:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing false, incomplete, or misleading information may be guilty of a crime.

**For residents of Virginia:** Any person who, with the intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may have violated State law.

**For residents of Tennessee and Washington:** It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

**For residents of all other states:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

# UnitedHealthcare Electronic Delivery Consent Notice

UnitedHealthcare is required to provide certain information to the Employer before the Employer agrees to receive electronic communications.

This notice applies to all Internet-based communications from UnitedHealthcare, including email, website and mobile applications.

Electronic communications include, but are not limited to:

- Group Contracts (including Policy documents, Certificate of Coverage (“Certificates”) any attached Application, and any Certificate Rider, endorsement or amendment.

## **Electronic Delivery of Communications**

By choosing electronic delivery the Employer will receive communications electronically instead of receiving a paper copy.

The types of communications available electronically are subject to change, and if additional communications become available in an electronic format, the Employer will receive those communications electronically. Occasionally, in addition to electronic communications the Employer may also receive a hard copy document.

By signing below the Employer acknowledges receipt and accepts the terms of such Notice.

This consent remains in effect until it is withdrawn. The Employer may withdraw their consent at any time.

The Employer has the option to request that UnitedHealthcare provide the printed Group Contract and/or a supply of printed Certificates for the Employer to distribute to each Employee. A request for the printed Group Contract and/or a supply of printed Certificates can be made on the New Case Information Checklist that UnitedHealthcare will send to the Employer for completion, prior to producing the Group Contract.

If UnitedHealthcare attempts to deliver information to an email address the Employer provides and the message is returned as undeliverable after several attempts, UnitedHealthcare will assume that consent for electronic delivery has been withdrawn and will begin sending the information in a paper format.

## **Requirements to Access and Retain Information**

In order to receive and retain electronic communications, the Employer must have access to a computer or other device which is capable of accessing the Internet and must have software which permits the access of Portable Document Format or “PDF” files, such as Adobe Acrobat Reader® version 6.0 or higher (available for downloading at <http://get.adobe.com/reader>). Click here for the list of supported: browsers

### **GROUP SIGNATURE (form must be signed)**

Group Authorized Person’s Name (Print):	Title:
Group Authorized Person’s Signature:	Date:



**FOR USE WITH FACETS INSTALL ONLY OF GROUPS WITH 100+ LIVES**  
**Group Life Insurance Transition Requirements**

At UnitedHealthcare we are committed to partnering with you to implement and administer your benefit plan. In order to effectively implement your plan, we need the following important information.

**1. Actively at Work Rules and Requirements:** Identifying employees who are not Actively at Work\* helps prevent any coverage issues before they occur. Existing coverage is transferred on a “no loss/no gain” basis on the Plan Effective Date for employees who are Actively at Work and dependents not confined in a hospital or medical facility. Employees who are not Actively at Work on the Plan Effective Date will not be covered until they have returned to work. Dependents who are confined to a hospital or medical facility on the Plan Effective Date (other than a newborn child) will not be covered until the day following discharge.  
*Payment of premium for an employee who is not Actively at Work does not guarantee coverage for that employee.*

**2. List of Employees Not Actively at Work:**

- If you do **not** intend to request that we provide coverage for Employees who are not Actively at Work, please forward a complete, up to date census indicating the status of each Employee.
- If you are requesting we provide coverage for Employees not Actively at Work, you must use the list below and fill in all information. **We will evaluate this list and indicate whether we will or will not provide coverage for each person on the list. Based on our decision, we reserve the right to make adjustments to our proposal.**

**PLEASE NOTE: REQUESTS TO WAIVE THE ACTIVELY AT WORK REQUIREMENT WILL NOT BE COMPLETE AND EMPLOYEES WHO ARE NOT ACTIVELY AT WORK ON THE PLAN EFFECTIVE DATE WILL NOT BE COVERED UNTIL WE HAVE RECEIVED AND EVALUATED THE LIST.**

**Remember, if you have waiver of premium in your current contract, all claims falling under that provision should be submitted to your prior carrier before contract cancellation or affected Employees should be offered conversion under their conversion provision.**

**To be completed by the Policyholder –**

**Are you requesting waiver of the Actively at Work requirement stated in item 1 above?**  Yes (see below)  No

Yes, for the following employees:	Yes, we will provide the list of employees by (enter date) _____. Note: this information date will not be accepted beyond 30 days after the Plan Effective Date.							To be completed by UHCSB Underwriting
Employee Name	Date of Birth	M /F	Last Day Worked	Total Amount of Group Life Insurance	Reason not Actively at Work	Anticipated Return to Work Date	Leave approved through: (date)	UHCSB to Provide coverage Premium required

(Please use separate sheet if necessary)

**3. Copy of the prior Carrier Contract or Certificates:** Please provide a copy of the prior carrier’s contract or certificates. **Special Situations:** Please let your UHCSB Representative know if there are any special agreements or amendments to the prior carrier contract such as grandfathered or retired employees. All special situations must be approved by UHCSB.

**Signature and Acknowledgement** (To be signed by authorized representative of policyholder)

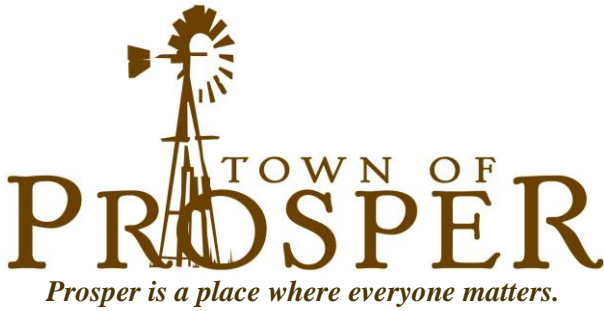
<b>Policyholder Name</b>	<b>Group Policy Number</b>	<b>Date</b>
<b>Name of person completing this form</b>	<b>Signature (on behalf of Policyholder)</b>	
<b>UHCSB Underwriter Name:</b>	<b>Date:</b>	

**Policyholder: Please keep a copy of this document for your records**

\*For the purposes of determining eligibility under the Plan, Employees will be considered Actively at Work if they report for work at their usual place of employment and are able to perform the material and substantial duties of their regular occupation for the entire normal workday. Unless disabled on the prior workday or on the day of absence, Employees will be considered Actively at Work on the following days:

- a Saturday, Sunday or holiday which is not a scheduled workday;
- a paid vacation day, or other scheduled or unscheduled non-workday; or
- an excused or emergency leave of absence (except medical leave.)

If our definition of Actively at Work conflicts with the Employer’s definition, for the purpose of determining eligibility under the Plan, our definition will prevail.



## PLANNING

**To:** Mayor and Town Council

**From:** Hulon T. Webb, Jr., Interim Executive Director of Development and Infrastructure Services  
David Soto, Planning Manager

**Through:** Ron K. Patterson, Interim Town Manager

**Re:** Thoroughfare Plan Amendment

Town Council Meeting – November 8, 2022

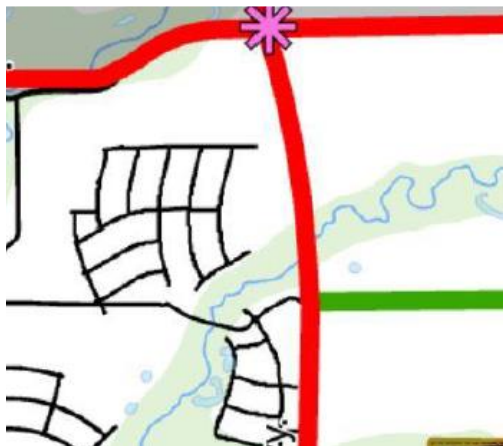
**Agenda Item:**

Conduct a public hearing and consider and act upon an ordinance amending the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park. (CA22-0002).

**Description of Agenda Item:**

The Comprehensive Plan states, "Planning for the Town's future should be a continuous process, and this Plan is designed to be a dynamic tool that can be modified and periodically updated to keep it in tune with changing conditions and trends." The Thoroughfare Plan currently depicts Teel Parkway in a conceptual alignment which has slightly changed with the construction of Teel Parkway from Ironwood Drive to Parvin Road as shown below:

**Current alignment of Teel Parkway**

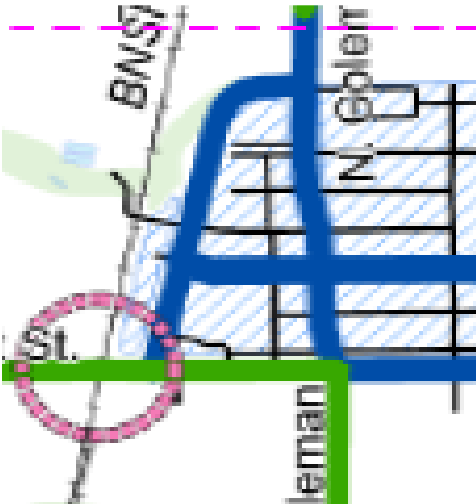


**Proposed amendment to Teel Parkway**



To accommodate the LIV Apartment and Townhome development near the heart of downtown, the anticipated alignment of McKinley Street north of Fifth Street curving into Coleman Street, is now being constructed as an intersection with Gorgeous Road being extended west of Coleman Road to intersect with McKinley Street as shown below:

**Current alignment of McKinley Street to Coleman Street**

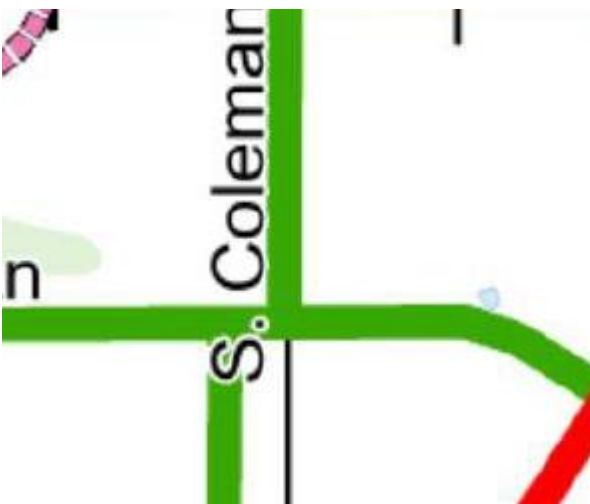


**Proposed amendment of McKinley Street and Gorgeous Road**



With the continued development of the Gates of Prosper, Coleman Street north of Lovers Lane will be realigned to the current intersection of Coleman Street south of Lovers Lane with the construction of Starview, Phase 1 to provide improved mobility as shown below:

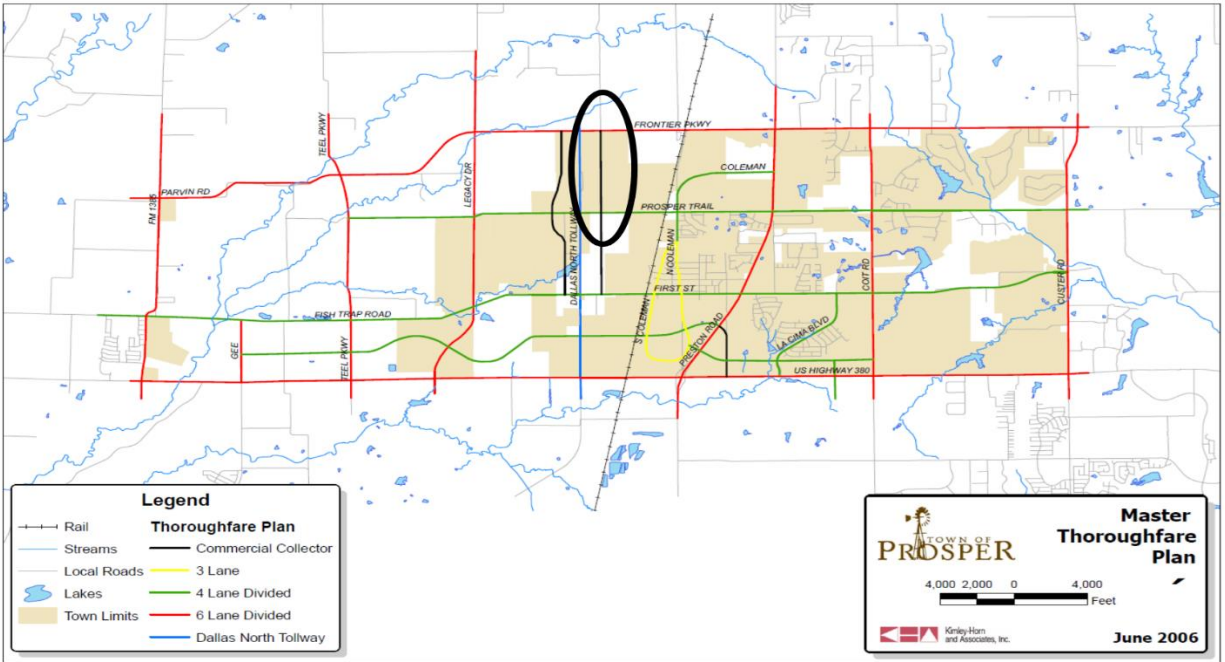
**Current alignment of Coleman Street at Lovers Lane**



**Proposed amendment to Coleman Street at Lovers Lane**



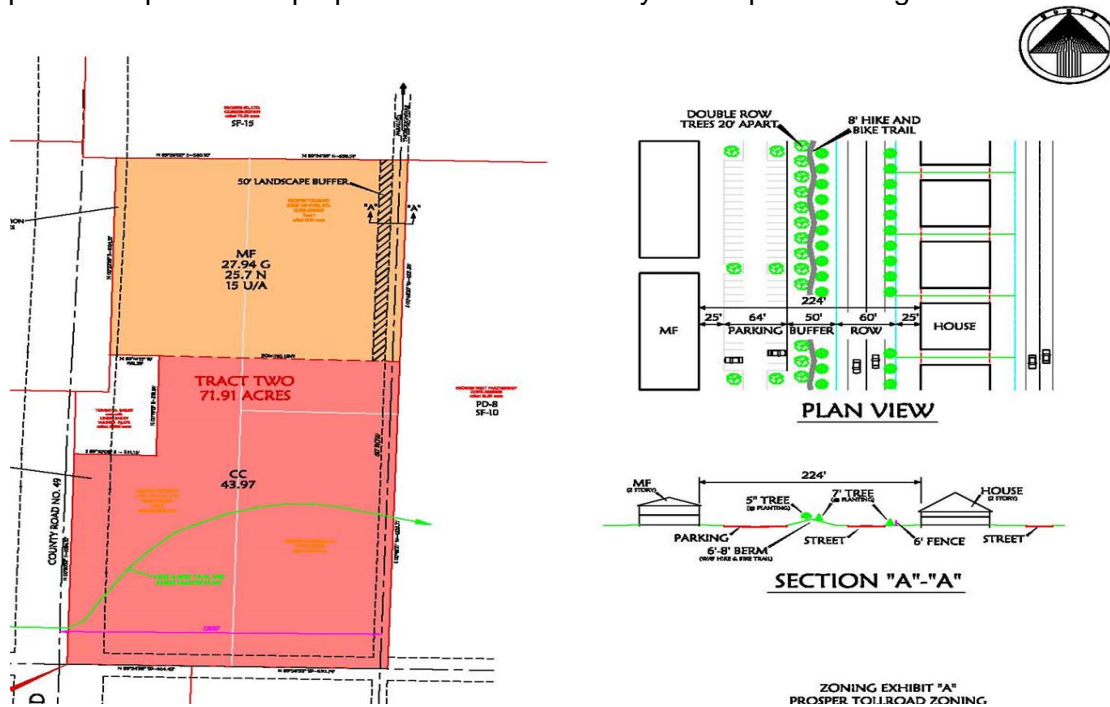
On the 2006 Town Thoroughfare Plan, the alignment of the DNT Collector north of Prosper Trail was shown paralleling the DNT just west of the Lakes of Prosper development.



On November 14, 2006, the Town Council approved Planned Development-35 which depicted the DNT Collector north of Prosper Trail per the 2006 Town Thoroughfare Plan.

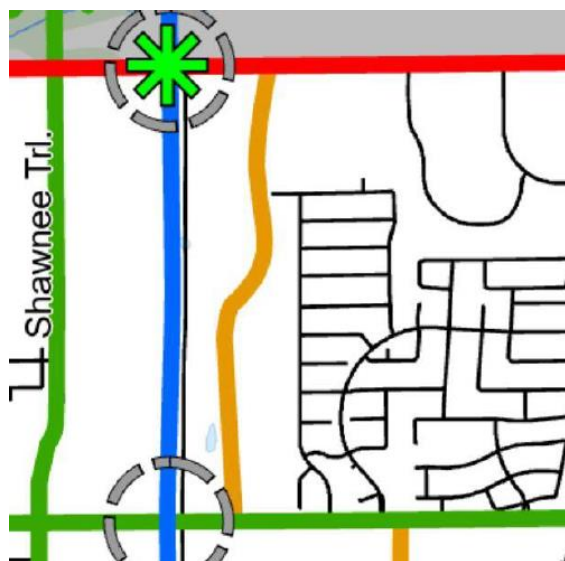


The following exhibits were included in the presentation with Planned Development-35 and provide details to the proposed location of the DNT Collector in relation to the existing Lakes of Prosper development and proposed future multi-family development along the DNT.

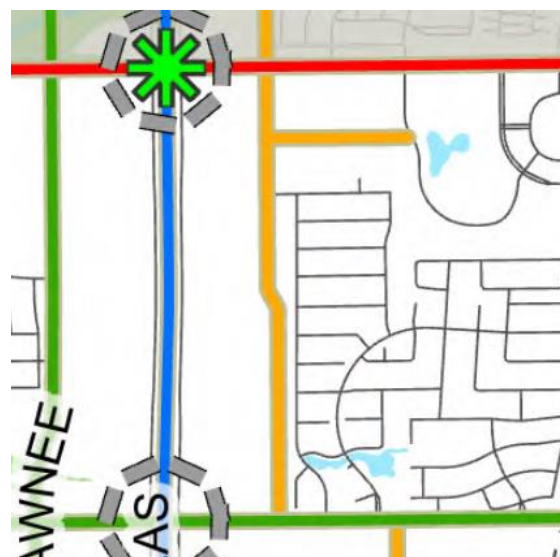


In addition to amending the current Thoroughfare Plan to adjust the alignment of the DNT Collector to comply with the approved Planned Development-35 zoning, at the September 13, 2022, Town Council meeting, the Town Council requested the addition of a collector road south and parallel to Frontier Parkway connecting Frontier Park to the DNT Collector. Both proposed changes are shown below:

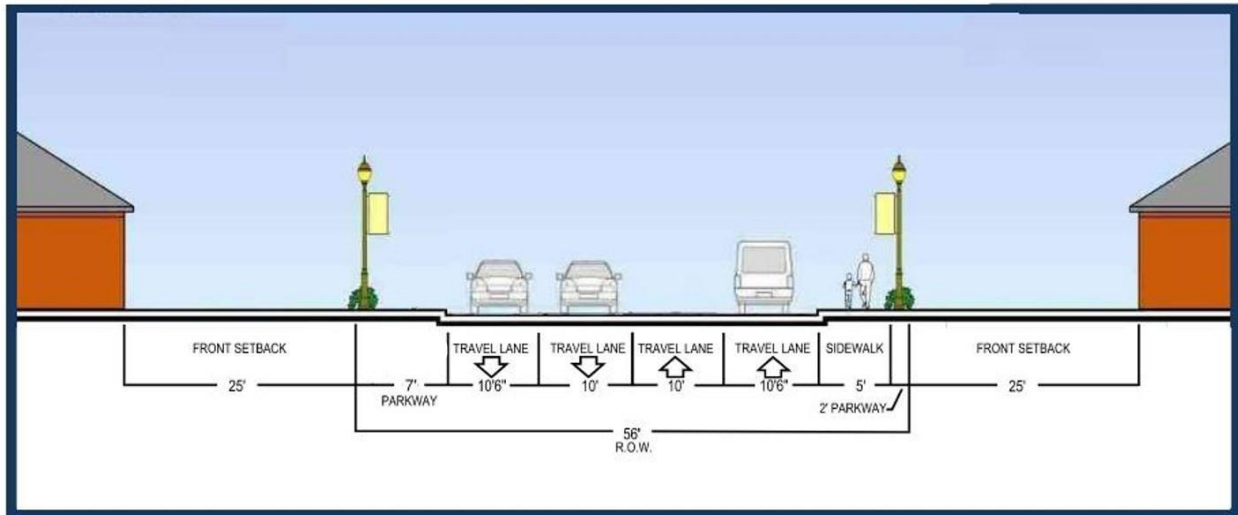
**Current alignment of DNT Collector**



**Proposed alignment of DNT Collector and additional road connection to Frontier Park**



First Street between Coleman Street and Craig Road is depicted on the Old Town Insert portion of the current Town’s Thoroughfare Plan as a 2-lane local street with parallel parking in 60’ right-of-way (ROW). In 2022, the Town Council requested Town staff evaluate options for this section of First Street due to traffic concerns with First Street being designed as a 4-lane divided roadway from Coleman Street west to the DNT, and it being a 4-lane divided roadway from Craig Road east to Preston Road. At the June 14, 2022, Town Council Work Session, based on feedback received from discussions with the Town Council, Town staff presented a 4-lane undivided roadway with reduced lane and parkway widths, and no sidewalk on the north side of the road, all to be contained within 56’ ROW as shown below:



To accommodate the proposed change in roadway classification, the proposed Thoroughfare Plan includes a new designation for First Street, between Coleman Street and Craig Road, as a 4-lane undivided roadway (4LU).

Finally, at the October 11, 2022, Town Council meeting, the Town Council approved an ordinance to rename the segment of Fishtrap Road, between Legacy Drive and Gee Road, to First Street. This change is reflected on the Proposed Thoroughfare Plan exhibit.

All approved changes to roadways included in the Old Town Insert portion of the Thoroughfare Plan (McKinley, Gorgeous, and First Street) will require updates to the Transportation chapter of the Comprehensive Plan, Old Town Insert exhibit, and Future Land Use Plan exhibit with the upcoming Comprehensive Plan amendments proposed in mid-2023.

**Legal Obligations and Review:**

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

**Attachments:**

1. Existing Thoroughfare Plan
2. Proposed Thoroughfare Plan
3. Ordinance

**Planning & Zoning Commission Recommendation:**

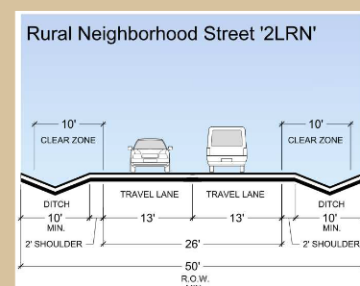
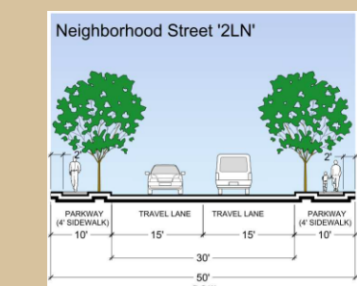
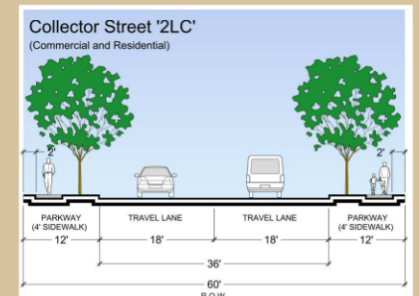
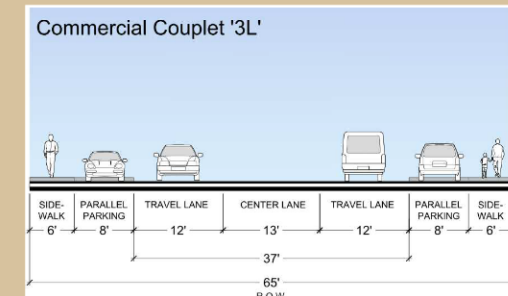
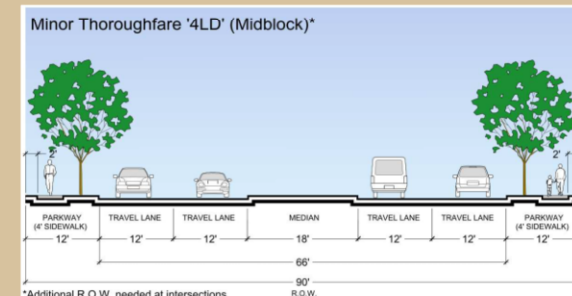
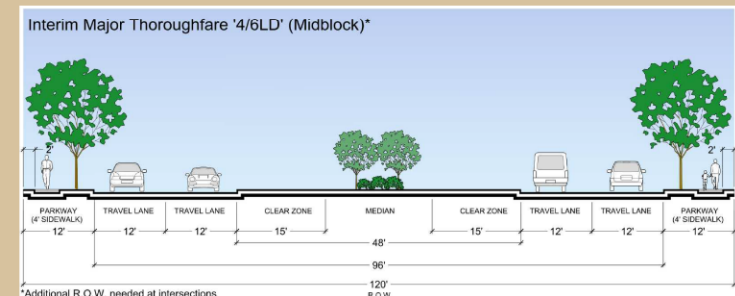
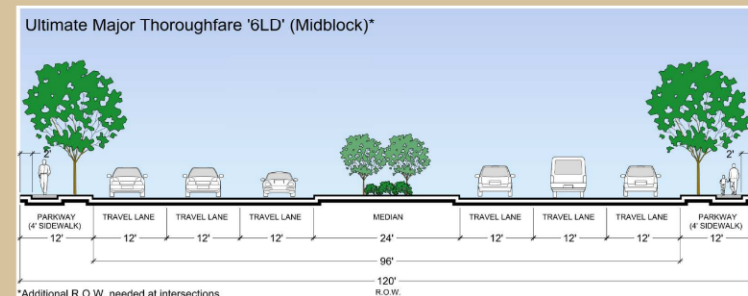
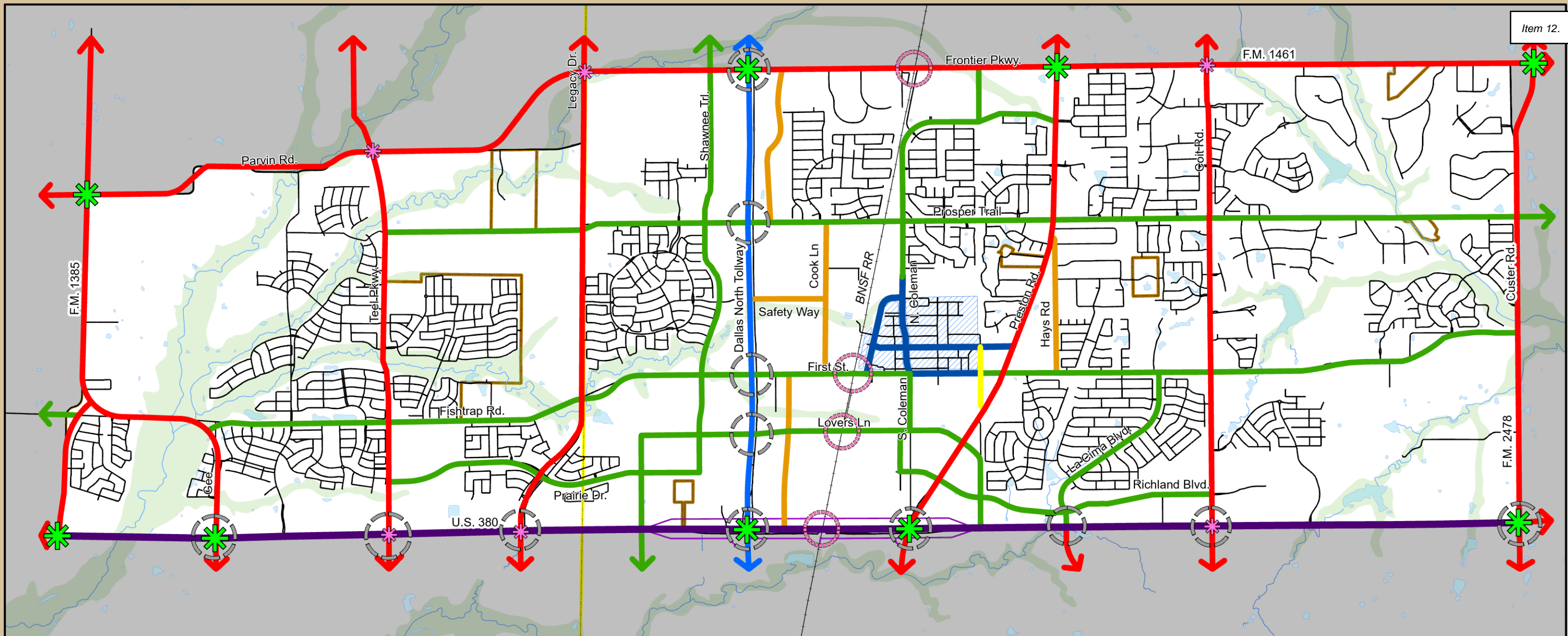
At their October 18, 2022 meeting, the Planning & Zoning Commission recommended that the Town Council approve the request to amend the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park, by a vote of 4-0.

**Town Staff Recommendation:**

Town staff recommends that the Town Council approve an ordinance amending the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park.

**Proposed Motion:**

I move to approve an ordinance amending the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park.



### Thoroughfare Description

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

- ✱ Major Gateway
- ✱ Minor Gateway
- Grade Separation
- RR Grade Separation
- Town of Prosper
- ETJ
- ✱ 100 Year Floodplain

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

## Plate 3

May 2021

# TOWN OF PROSPER

## Thoroughfare Plan



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

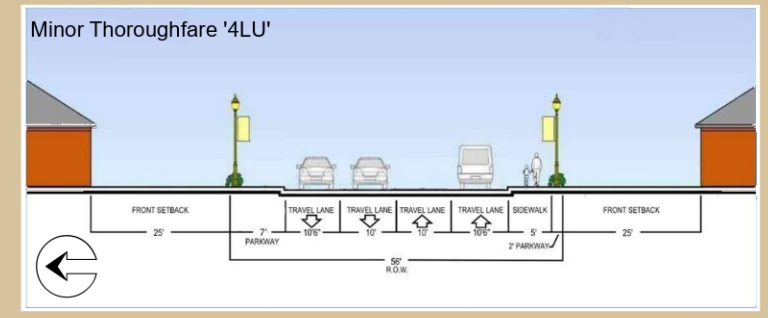
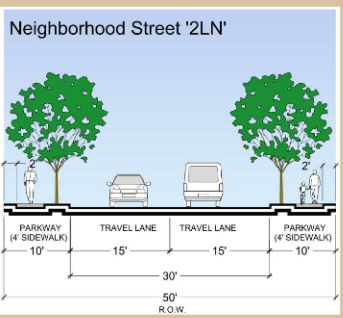
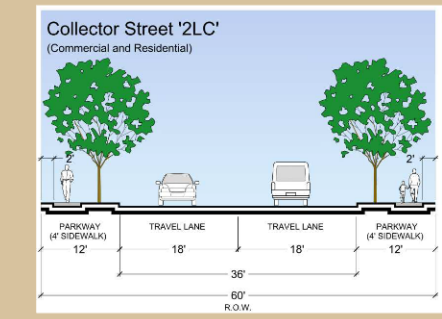
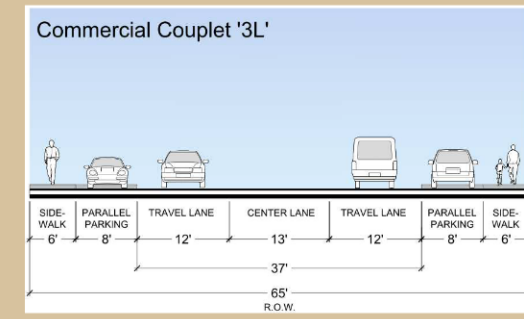
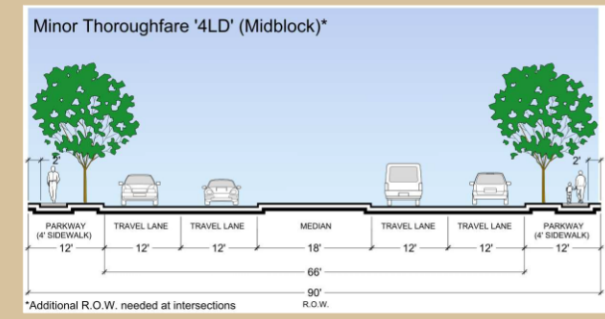
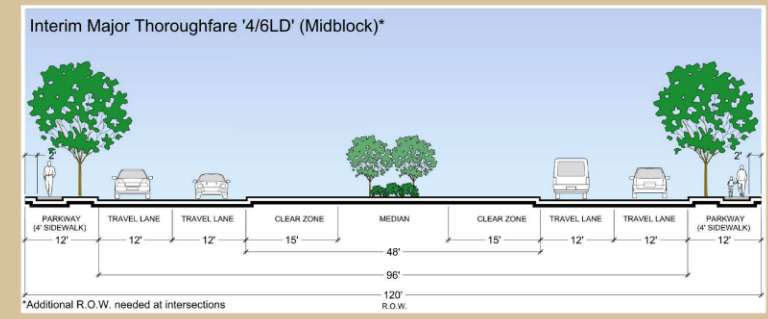
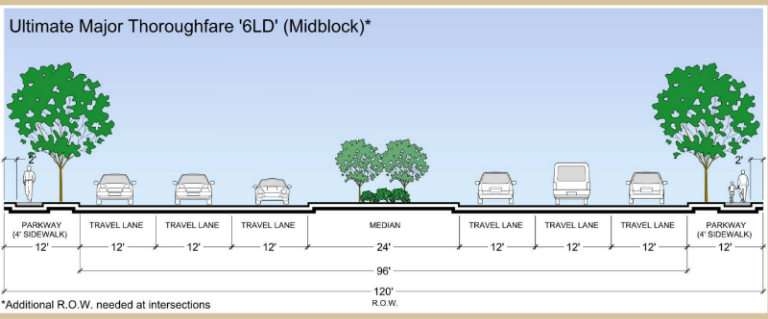
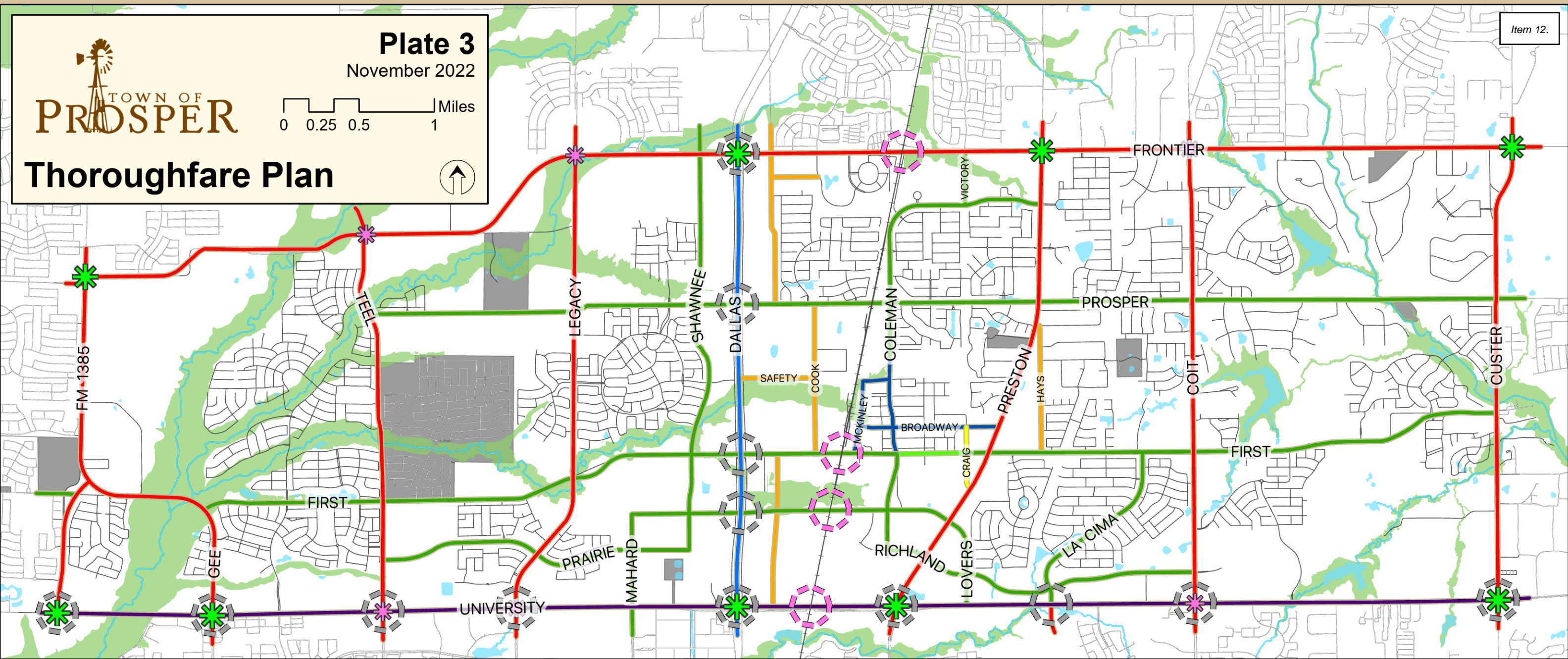




**Plate 3**  
November 2022

0 0.25 0.5 1 Miles

**Thoroughfare Plan**

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

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

- Town of Prosper
- ETJ
- 100 Year Floodplain

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

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

**TOWN OF PROSPER, TEXAS**

**ORDINANCE NO. 2022-\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE THOROUGHFARE PLAN MAP OF THE TOWN OF PROSPER’S COMPREHENSIVE PLAN; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.**

**WHEREAS**, the Town Council of the Town of Prosper, Texas (“Town Council”), has investigated and determined that the Town of Prosper’s (“Prosper”) Comprehensive Plan, adopted by Ordinance No. 12-21, as amended, should be amended; and

**WHEREAS**, Prosper has complied with all notices and public hearings as required by law; and

**WHEREAS**, the Town Council finds that it will be advantageous, beneficial and in the best interests of the citizens of Prosper to amend a portion of the Comprehensive Plan as set forth below.

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

**SECTION 1**

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

**SECTION 2**

Amendment to Prosper’s Comprehensive Plan, Ordinance No. 12-21. The Town of Prosper’s Comprehensive Plan, adopted by Ordinance No. 12-21, as amended, is hereby amended to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park, as depicted in Exhibit A, attached hereto and incorporated by reference.

**SECTION 3**

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

**SECTION 4**

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

**SECTION 5**

Effective Date. This Ordinance shall become effective from and after its adoption.

**DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 8TH DAY OF NOVEMBER, 2022.**

\_\_\_\_\_  
David F. Bristol, Mayor

ATTEST:

\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Terrence S. Welch, Town Attorney



## PARKS AND RECREATION

**To: Mayor and Town Council**

**From: Dan Baker, MBA, Director of Parks and Recreation**

**Through: Ron K. Patterson, Interim Town Manager  
Robyn Battle, Executive Director of Community Services**

**Re: RFP No. 2022-63- B CMAR for Raymond Community Park Award**

**Town Council Meeting – November 8, 2022**

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**Agenda Item:**

Consider and act upon authorizing the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Electric, related to Construction Manager-At-Risk services for Raymond Community Park Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk.

**Description of Agenda Item:**

The Town requested proposals (RFP) from qualified firms to provide construction manager-at-risk services. The Town received six responses. Firms were required to submit information, in order to facilitate evaluation based on the following criteria:

1. firm's overall ability to meet the Town's objectives;
2. experience with same or similar facility construction;
3. qualifications of individuals assigned to the project;
4. references; and
5. cost proposal.

The evaluation committee was comprised of three staff members representing Parks and Recreation and Engineering. The evaluation committee scored each submittal in accordance with the evaluation criteria as stated above, to determine the total points for each firm. Based on the results, the committee interviewed the top-ranked firm. After the interview and review of references, it is the recommendation of staff to award the agreement to Dean Electric, Inc., dba Dean Construction. Dean Construction has done work within multiple municipalities, as well as most recently the CMAR for the Frontier Park North park improvements.

The contract documents included with this item will secure the following:

- Pre-Construction Services Fee                      No Charge
- Construction Phase Services Fee                      2.5%
- Not-To-Exceed General Conditions Cost              \$880,000.00

When the construction drawings and specifications are near completion, the Construction Manager-At-Risk shall propose a Guaranteed Maximum Price (GMP), including contingencies, which shall be the sum of the estimated Cost of the Work, and the Construction Manager-At-Risk's fee. The GMP will be presented to Town Council for approval at that time.

**Budget Impact:**

There is no budget impact until a complete construction estimate is ready and construction begins. Based on a construction cost of 16,000,000, the estimated fees to be paid to the CMAR total \$1,280,000.00 (\$400,000.00 construction services fee + \$880,000.00 not-to-exceed general conditions cost).

**Legal Obligations and Review:**

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the Standard Form of Agreement, Addendum to the Standard Form of Agreement, as to form and legality.

**Attached Documents:**

1. Evaluation Matrix
2. Standard Form of Agreement
3. Addendum to Standard Form Agreement

**Town Staff Recommendation:**

Town staff recommends authorizing the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Electric, related to Construction Manager-At-Risk services for Raymond Community Park Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk.

**Proposed Motion:**

I move to authorize the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Electric, related to Construction Manager-At-Risk services for Raymond Community Park Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk.

RFP NO. 2022-63-B  
**CONSTRUCTION MANAGER-AT-RISK FOR RAYMOND COMMUNITY PARK**

<b>EVALUATION MATRIX</b>		<b>AUTHERS BUILDING GROUP</b>		<b>BALFOUR BEATTY</b>		<b>CORE CONSTRUCTION SERVICES</b>		<b>DEAN CONSTRUCTION</b>		<b>SPAWGLASS CONTRACTORS</b>		<b>TEGRITY CONTRACTORS</b>	
<b>EVALUATION CRITERIA</b>	<b>WEIGHTING</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>	<b>POINTS</b>	<b>WEIGHTED SCORE</b>
Overall Ability to Meet Town's Objectives	10%	7.33	0.73	7.83	0.78	8.50	0.85	9.42	0.94	6.83	0.68	6.83	0.68
Experience with Similar Facility Construction	20%	7.33	1.47	7.83	1.57	8.67	1.73	9.83	1.97	7.33	1.47	6.83	1.37
Qualifications of Project Personnel	20%	7.83	1.57	8.00	1.60	8.67	1.73	9.17	1.83	7.17	1.43	7.17	1.43
References	10%	10.00	1.00	9.50	0.95	8.67	0.87	9.90	0.99	9.50	0.95	9.00	0.90
Cost Proposal	40%	10.00	4.00	8.26	3.30	6.99	2.80	9.41	3.76	6.39	2.56	9.44	3.77
<b>TOTAL</b>	<b>100%</b>		<b>8.77</b>		<b>8.20</b>		<b>7.98</b>		<b>9.50</b>		<b>7.09</b>		<b>8.16</b>

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year  
*(In words, indicate day, month, and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address, and other information)*

Town of Prosper  
250 W First Street  
Prosper, TX 75078

and the Construction Manager:  
*(Name, legal status, address, and other information)*

Dean Electric, Inc. dba Dean Construction  
701 Hall Street  
Cedar Hill, TX 75104

for the following Project:  
*(Name, location, and detailed description)*

Raymond Community Park  
Prosper, TX

The Architect:  
*(Name, legal status, address, and other information)*

Dunaway  
550 Bailey Ave, #400  
Fort Worth, TX 76107

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Raymond Community Park

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

As determined by plans developed by Dunaway and Associates

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§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:  
(Provide total and, if known, a line item breakdown.)

\$16,000,000.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
  
- .2 Construction commencement date:  
October 2023
  
- .3 Substantial Completion date or dates:  
January 2025
  
- .4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:  
(List name, address, and other contact information.)

Dan P Baker  
Town of Prosper  
rpatterson@prospertx.gov  
Office: 972-569-1010

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

Dunaway - 550 Bailey Ave, #400, Fort Worth, TX 76107 - 817-335-1121  
GHLA, Inc. - 1300 W Randol Mill Rd, #3128, Arlington, TX 76012 - 817-801-7200  
Engineering Associates - PO Box 97, Emory, TX 75440 - 903-473-1977

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Alliance Geotechnical Group - 3020 Wichita Ct, Fort Worth, TX 76140 - 817-595-4565

.2 Civil Engineer:

Dunaway - 550 Bailey Ave, #400, Fort Worth, TX 76107 - 817-335-1121

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

GHLA, Inc. - 1300 W Randol Mill Rd, #3128, Arlington, TX 76012 - 817-801-7200  
Engineering Associates - Jim Weathers - PO Box 97, Emory, TX 75440 - 903-473-1977

§ 1.1.11 The Architect's representative:  
(List name, address, and other contact information.)

Philip Neeley, Project Manager- Dunaway - 550 Bailey Ave, #400, Fort Worth, TX 76107 - 817-335-1121  
Pneeley@dunaway.com

Arron Law, Team Leader - Dunaway - 550 Bailey Ave, #400, Fort Worth, TX 76107 - 817-335-1121  
Alaw@dunaway.com

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§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

Greg Firebaugh - Project Manager - 701 Hall St, Cedar Hill, TX 75104 - 214-212-6328 Greg@dean-construction.com

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

Greg Firebaugh - 25%  
Tyler Firebaugh - 25%

§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

Dean Construction will advertise with local newspapers, plan rooms and minority business councils.

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager’s services, and the Construction Manager’s compensation. The Owner shall adjust the Owner’s budget for the Guaranteed Maximum Price and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner’s nor the Construction Manager’s representative shall be changed without ten days’ prior notice to the other party.

**ARTICLE 2 GENERAL PROVISIONS**

**§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

**§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and

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supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### § 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### § 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the

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Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### § 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and

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coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
5. A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect’s scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

N/A

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

N/A

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within

N/A ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid

N/A ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

%

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**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES****§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

**§ 6.1.2 The Construction Manager's Fee:**

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The cost of work plus 2.5%.

**§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:****§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:****§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed**

One hundred and fifty percent ( 150 %) of the standard rental rate paid at the place of the Project.

**§ 6.1.6 Liquidated damages, if any:**

*(Insert terms and conditions for liquidated damages, if any.)*

**§ 6.1.7 Other:**

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

**§ 6.3 Changes in the Work**

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

§ 7.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,

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provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

**§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 7.6 Miscellaneous Costs**

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

#### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including

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the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### § 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

### ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

#### ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

#### ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

##### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

#### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

N/A



§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

Subject to the owners approval, subcontractors retainage can be released after final acceptance.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article

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9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

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ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017

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Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

#### ARTICLE 13 TERMINATION OR SUSPENSION

##### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that

would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

### § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

#### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

#### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

#### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000.00 ) for each occurrence and two million (\$ 2,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million (\$ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million (\$ 1,000,000.00 ) each accident, one million (\$ 1,000,000.00 ) each employee, and one million (\$ 1,000,000.00 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than three million (\$ 3,000,000.00 ) per claim and three million (\$ 3,000,000.00 ) in the aggregate

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Builder's Risk	\$13,000,000.00
Rented/Leased Equipment	\$200,000.00

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between

Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 14.5 Other provisions:

**ARTICLE 15 SCOPE OF THE AGREEMENT**

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

.6 Other Exhibits:  
*(Check all boxes that apply.)*

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

General conditions to be fixed at 5.5% of the cost of the work.

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Gregory Firebaugh - President  
\_\_\_\_\_  
(Printed name and title)

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# **AIA** Document A133™ – 2019 Exhibit A **Guaranteed Maximum Price Amendment**

This Amendment dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_ the year \_\_\_\_\_ (the “Agreement”)  
*(In words, indicate day, month, and year.)*

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

for the following **PROJECT**:  
*(Name and location or address)*  
Raymond Community Park  
Prosper, TX

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**THE OWNER:**  
*(Name, legal status, and address)*  
Town of Prosper  
250 W First Street  
Prosper, TX 75078

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*  
Dean Electric, Inc. dba Dean Construction  
701 Hall Street  
Cedar Hill, TX 75104

## TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.



§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed

(\$ ), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

*(Provide itemized statement below or reference an attachment.)*

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
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§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
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§ A.1.1.6 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of execution of this Amendment.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

**§ A.2.3 Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

Not later than ( ) calendar days from the date of commencement of the Work.

By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work**

**Substantial Completion Date**

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
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§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
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§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

**ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Gregory Firebaugh - President

\_\_\_\_\_  
(Printed name and title)

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# **AIA**® Document A133™ – 2019 Exhibit B **Insurance and Bonds**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

*(In words, indicate day, month and year.)*

for the following **PROJECT**:  
*(Name and location or address)*  
Raymond Community Park  
Prosper, TX

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

**THE OWNER:**  
*(Name, legal status, and address)*  
Town of Prosper  
250 W First Street  
Prosper, TX 75078

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*  
Dean Electric, Inc. dba Dean Construction  
701 Hall Street  
Cedar Hill, TX 75104

## TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

### ARTICLE B.2 OWNER'S INSURANCE

#### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ B.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Cause of Loss	Sub-Limit
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**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit
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**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

Init.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

**§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

**§ B.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

**§ B.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

**§ B.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

**§ B.2.4.5 Civil Authority Insurance,** for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

§ B.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

§ B.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

§ B.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ B.2.5.2 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits
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**ARTICLE B.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS**

**§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager’s Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

Init.



**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions during the Construction Manager’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, CG 20 32 07 04.

**§ B.3.2 Construction Manager’s Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager’s indemnity obligations under Section 3.18 of the General Conditions.

**§ B.3.2.2.2** The Construction Manager’s Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager’s Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse, and underground hazards, where the Work involves such hazards.

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than (\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

Init.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

Init.

**§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

**§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.

**§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

**§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

**§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

**§ B.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

<b>Coverage</b>	<b>Limits</b>
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**§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Init.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

**ADDENDUM to  
The Standard Form of Agreement Between  
Owner and Construction Manager as Constructor  
Where the Basis of Payment is the Cost of the Work  
Plus a Fee with a Guaranteed Maximum Price  
AIA Document A133-2019**

This Addendum to the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2019 (“Addendum”) is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between Dean Electric, Inc., (the “Construction Manager”) and the Town of Prosper, Texas, (the “Owner”). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2019 (the “Agreement”), as set forth herein below.

**WITNESSETH:**

**WHEREAS**, the Owner and Construction Manager desire to enter into the Agreement for the construction of Dudley Raymond Community Park in the Town of Prosper, Texas; and

**WHEREAS**, the Owner and Construction Manager desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

**WHEREAS**, the Owner and Construction Manager would not enter into the Agreement save and except for the clarifications and revisions contained herein;

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

**I.**

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. Section 1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1 The Owner's Initial Information on which this Agreement is based is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

2. Section 1.1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.1 The Owner's program for the Project is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.1, and modified and defined by and through the process set out in Section 4.1.1.

3. Section 1.1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.2 The Project's physical characteristics are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.2.

4. Section 1.1.3 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's budget for the Guaranteed Maximum Price may be restated and/or further detailed in this Section 1.1.3 and may be further modified and updated by and through the processes set out in the Contract Documents.

5. Section 1.1.4 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.4 The Owner's anticipated design and construction milestone dates are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if

any, and the Owner's Specifications and Drawings. The Owner's anticipated design and construction milestone dates may be restated and/or further detailed in this Section 1.1.4 and may be further modified and updated by and through the processes set out in the Contract Documents.

6. Section 1.1.5 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, may be restated and/or further detailed in this Section 1.1.5, and may be further modified and updated by and through the processes set out in the Contract Documents.

7. Section 1.1.6 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project, if any, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's anticipated Sustainable Objective for the Project, if any, may be restated and/or further detailed in this Section 1.1.6, and may be further modified and updated by and through the processes set out in the Contract Documents.

8. Section 1.1.6.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager will complete such other and additional documents as may be agreed to be necessary for a full and complete set of Contract Documents.

9. Section 1.1.7 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.7 Intentionally omitted.

10. Section 1.1.8 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.8 The Owner identifies the following person to initially represent the Town in accordance with Section 4.2, it being understood that such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority and that the Owner reserves the right to replace and/or designate, in writing, one or more persons to represent the Owner.

Dan Baker  
Director of Parks and Recreation  
Town of Prosper, Texas  
dpbaker@prospertx.gov  
(972) 569-1060 (office)

11. Section 1.1.10 and subsections .1, .2 and .3 are hereby amended by deleting said provisions in their entirety and replacing such provisions with the following provision:

§ 1.1.10 The Owner shall retain such consultants and contractors as the Owner deems necessary, which consultants or contractors may include one or more of the following:

12. Section 1.1.13 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

13. Section 1.1.14 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.



14. Section 1.1.15 is hereby amended by deleting said provision in its entirety.
15. Section 1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.2 The Owner and Construction Manager may generally rely on the Initial Information contained in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. Both parties, however, recognize that such information may materially change during the development of the Guaranteed Maximum Price.

16. Section 2.1 is hereby amended by deleting the last two sentences of this section.
17. Section 2.3 is hereby amended by deleting Sections 2.3, 2.3.1 and 2.3.2 in their entirety and replacing such provisions with a new Section 2.3, a new Section 2.3.1, and a new Section 2.3.2 to read as follows:

#### § 2.3 General Conditions

The General Conditions of the Agreement shall be as set forth in AIA Document A201™-2017, *General Conditions of the Contract for Construction*, as modified by the Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (referred to collectively as the "A201-2017 Documents"), which A201-2017 Documents are incorporated herein by reference. Whenever the Agreement or this Addendum refers to AIA Document A201-2017 such reference shall also mean and include the Owner's Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017. The term "Contractor" as used in the A201-2017 Documents shall mean the Construction Manager.

#### § 2.3.1 Professional Services

Section 3.12.10 of the A201-2017 Documents shall apply to both the Preconstruction and Construction Phases.

#### § 2.3.2 Hazardous Materials

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including

but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), lead paint, or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the project site but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

18. The opening paragraph of Article 3, "Construction Manager's Responsibilities," is hereby amended by amending the first sentence to read as follows:

The Construction Manager's Preconstruction Phase responsibilities are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, the Owner's Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents.

19. Section 3.1.1 is hereby amended in part by adding the following language to the end of that section:

The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form that is acceptable to the Owner and Architect.

20. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.4 to read as follows:

§ 3.1.3.4 During the Preconstruction Phase the Construction Manager shall review the Contract Documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing.

21. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.5 to read as follows:

§ 3.1.3.5 Notwithstanding any provision of this Agreement or the A201-2017 Documents to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence and the Owner and Architect were not informed of such conflicts as required by Section 3.1.3.4. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

22. Section 3.1.4 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.4 When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall coordinate with the Project schedule already developed by the Architect. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; the occupancy requirements of the Owner; and the proposed dates of Substantial Completion and Final Completion. Updates shall be provided with each estimate of the Cost of the Work required by Section 3.1.6, below, and whenever changes in the proposed Work or conditions may materially alter the latest schedule.

23. Section 3.1.6.2 is hereby amended in part by adding the phrase "until such time as the Owner and the Construction Manager agree on a Guaranteed Maximum Price for the Work" at the end of the first sentence of that section.

24. Section 3.1.6.2 is hereby further amended in part by adding the phrase “to reduce the cost and/or maintain the budget” at the end of the final sentence of that section.
25. Section 3.1.11.2 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.11.2 The Construction Manager shall seek to develop subcontractor and supplier interest in the Project. All subcontracts shall be awarded pursuant to the procedures set forth in Section 9.1.

26. Section 3.1.14 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

The Construction Manager’s Preconstruction Phase responsibilities are generally set forth in the Owner’s Request for Proposals together with any addenda thereto, if any, the Owner’s Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents. Notwithstanding the foregoing, such Preconstruction Phase responsibilities may be modified by and through an amendment or change order to this Agreement and/or the Contract Documents.

28. Section 3.2.1 is hereby amended by deleting section 3.2.1 in its entirety and replacing it with a new section 3.2.1 to read as follows:

§ 3.2.1 When the Construction Drawings and Specifications are one hundred percent (100%) complete, or as otherwise agreed by the Owner and Construction Manager, the Construction Manager shall propose a Guaranteed Maximum Price, including contingencies as described in Section 3.2.4, which shall be the sum of the estimated Cost of the Work and the Construction Manager’s fee. The Guaranteed Maximum Price shall be proposed no later than 30 days after approval of the Construction Drawings and Specifications by the Owner. The Guaranteed Maximum Price shall be submitted on form AIA A133-2019, Exhibit A, unless otherwise directed by the Owner.

29. Section 3.2.2 is hereby amended by deleting section 3.2.2 in its entirety and replacing it with a new section 3.2.2 to read as follows:

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development by the Architect,

the Construction Manager shall provide in, the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

30. Subsection .2 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .2 to read as follows:

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal;

31. Subsection .3 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .3 to read as follows:

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

32. Subsection .4 of section 3.2.3 is hereby amended by deleting the word "and" immediately following the semi-colon.

33. Subsection .5 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .5 to read as follows:

.5 A date by which the Owner must accept the Guaranteed Maximum Price, but in any event not less than sixty (60) days after submission of the Guaranteed Maximum Price; and

34. Section 3.2.3 is hereby amended by adding a new subsection .6 to read as follows:

.6 A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis; and

35. Section 3.2.3 is hereby amended by adding a new subsection .7 to read as follows:

.7 If Owner requests, Construction Manager shall make available for inspection the background documents and

information that form the basis of the Construction Manager's Guaranteed Maximum Price proposal.

36. Section 3.2.4 is hereby amended by deleting section 3.2.4 in its entirety and replacing it with a new section 3.2.4 to read as follows:

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order (the "Construction Manager's Contingency").

37. Section 3.2.5 is hereby amended by adding the following sentence at the end of section 3.2.5 to read as follows:

The Owner shall be allowed not less than sixty (60) days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price proposal.

38. Section 3.2.9 is hereby amended by deleting section 3.2.9 in its entirety and replacing it with a new Section 3.2.9 to read as follows:

§ 3.2.9 The Guaranteed Maximum Price shall include no amount for sales or use taxes for which Texas municipal corporations are exempt and for which the Owner has timely provided to the Construction Manager an appropriate tax exemption certificate or other required verification of the Owner's tax-exempt status. Such taxes shall not be reimbursable costs under Article 7.

39. Section 3.2 is hereby amended by adding a new Section 3.2.10, a new Section 3.2.11, and a new Section 3.2.12 to read as follows:

§ 3.2.10 Except with the Owner's prior written consent, the Construction Manager shall not include any allowances in its proposed Guaranteed Maximum Price.

§ 3.2.11 By its submission of a Guaranteed Maximum Price proposal, the Construction Manager agrees that any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings shall be returned to the Owner without sharing with the Construction Manager, unless the Owner specifically agrees

otherwise in writing. Savings shall be identified and submitted with each application for payment submitted by Construction Manager and shall be fully reconciled with the Construction Manager's submission of the final payment application.

§ 3.2.12 The Construction Manager is discouraged from seeking bidder's interest or entering into a transaction with a "related party," as that term is defined by Section 7.8.1, below. If the Construction Manager, nonetheless, concludes that it may be in the Owner's best interest to seek bidder's interest or enter into a transaction with a related party, then the Construction Manager shall comply with Section 7.8.2, below, before seeking bidder's interest or entering into a transaction with a related party.

40. Section 3.3.1.1 is hereby amended by deleting section 3.3.1.1 in its entirety and replacing it with a new section 3.3.1.1 to read as follows:

§ 3.3.1.1 The Construction Phase shall commence upon the issuance to the Construction Manager of the Notice to Proceed for all or a portion of the Work.

41. Section 3.3.1.2 is hereby amended by deleting section 3.3.1.2 in its entirety and replacing it with a new section 3.3.1.2 to read as follows:

§ 3.3.1.2 The Contract Time shall be measured from the date of commencement of the Construction Phase.

42. Section 3.3.1 is hereby amended by adding a new section 3.3.1.3 and a new section 3.3.1.4 to read as follows:

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Agreement, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.1.4 The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: One Thousand and No/One Hundredths Dollars (\$1,000.00) per day or part of a day pursuant to and in accordance section 6.1.6, below.

43. Section 3.3.2.2 is hereby amended by deleting section 3.3.2.2 in its entirety and replacing it with a new section 3.3.2.2 to read as follows:

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of the A201-2017 Documents.

44. Article 3, "Construction Manager's Responsibilities," is hereby amended by adding a new section 3.4 to read as follows:

§ 3.4 The Construction Manager shall be responsible for all construction surveys and staking. Dimensions of Work shall not be determined by scale or rule but figured dimensions shall be followed at all times. The Construction Manager shall compare all drawings and verify all dimensions and shall take any and all measurements necessary to verify the Drawing dimensions in relation to conditions already established at the Project site before laying out the Work. Any discrepancy will be immediately called to the attention of the Architect and Owner by the Construction Manager. The Construction Manager will be held responsible for subsequent errors which could have been avoided.

45. Section 4.1.2 is hereby amended by deleting section 4.1.2 in its entirety and replacing it with a new section 4.1.2 to read as follows:

§ 4.1.2 This Project is a public project governed by Chapter 2253 of the Texas Government Code. Prior to the Owner's execution of the Guaranteed Maximum Price Amendment, the Owner acting by and through the Town Council of the Town of Prosper, Texas, approved the Owner's execution of the Guaranteed Maximum Price Amendment and authorized the expenditure of funds up to, and set aside funds in an amount not to exceed the full amount of the Guaranteed Maximum Price Amendment for the Construction Manager's full and complete performance of the Project in strict accordance with the Contract Documents.

46. Section 4.1.3 is hereby deleted in its entirety.

47. Section 4.1.6 is hereby deleted in its entirety.



- 48. Section 4.2 is hereby amended by deleting section 4.2 in its entirety and replacing it with a new section 4.2 to read as follows:

§ 4.2 Owner's Designated Representative

The Owner is the Town of Prosper, Texas, acting by and through its Town Council, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

- 49. Section 4.2.1 is hereby deleted in its entirety.

- 50. Section 4.3 is hereby amended by deleting section 4.3 in its entirety and replacing it with a new section 4.3 to read as follows:

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Architect retained by the Owner. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

- 51. Article 4, "Owner's Responsibilities," is hereby amended by adding a new section 4.4 to read as follows:

§ 4.4 Inspection and Testing

The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by the Owner. Notwithstanding the foregoing, the Construction Manager shall be responsible for the performance of all energy inspections.

- 52. Section 5.1.1 is hereby amended by inserting the following language in the space, provided for such purpose, following the parenthetical at the end of section 5.1.1:

Compensation for the pre-construction services described in Sections 3.1 and 3.2 is separate from and in addition to the compensation described in Section 6.1, provided however, if

the Construction Phase does not commence for any reason, the Construction Manager's compensation for the services described in Sections 3.1 and 3.2 shall be a total amount not to exceed Fifteen Thousand and No/One Hundredths Dollars (\$15,000.00).

53. Section 5.1.2 is hereby deleted in its entirety.
54. Section 5.1.2.1 is hereby deleted in its entirety.
55. Section 5.1.3 is hereby amended by inserting the following phrase in the corresponding spaces provided for such purpose between the phrase "extend beyond" and the phrase "months of" in section 5.1.3:

"Six (6) calendar"

56. Section 5.2.2 is hereby amended by deleting section 5.2.2 in its entirety and replacing it with a new section 5.2.2 to read as follows:

§ 5.2.2 Payments are due and payable 30 days from the date the Construction Manager's application for payment, approved by the Architect, is received by the Owner. Past due payments shall bear interest in accordance with the Texas Prompt Payment Act. No interest shall ever be due on any disputed amounts.

57. Section 6.1.1 is hereby amended by deleting section 6.1.1 in its entirety and replacing it with a new section 6.1.1 to read as follows:

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

58. Section 6.1.2 is hereby amended by deleting section 6.1.2 in its entirety and replacing it with a new section 6.1.2 to read as follows:

The Construction Manager's fee shall be based on two (2) and Fifty/One Hundredths percent (2.50%) of the actual Cost of the Work as defined in Article 7 and less any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings.

59. Section 6.1.3 is hereby amended by deleting section 6.1.3 in its entirety and replacing it with a new section 6.1.3 to read as follows:

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be by formal written Change Order approved by the Owner.

60. Section 6.1.4 is hereby amended by deleting section 6.1.4 in its entirety and replacing it with a new section 6.1.4 to read as follows:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be no more than ten percent (10%) of the subcontractor's cost, for overhead, and shall be no more than five percent (5%) of the subcontractor's cost, for profit:

61. Section 6.1.5 is hereby amended by deleting section 6.1.5 in its entirety and replacing it with a new section 6.1.5 to read as follows:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred and Fifty Percent (150%) of standard rental rate paid in Prosper, Texas.

62. Section 6.1.6 is hereby amended by deleting Section 6.1.6 in its entirety and replacing it with a new Section 6.1.6 to read as follows:

§ 6.1.6 Liquidated Damages for Failure to Complete on Time.

North Central Texas Council of Governments Standard Specifications for Public Works Construction Standards ("NCTCOG Specifications") Item 108.8, Delays; Extension of Time; Liquidated Damages shall apply, except to the extent it is conflict with, or is otherwise amended by, this Section 6.1.6. The Construction Manager understands and agrees that time is of the essence in performing and completing the Work. The Owner and Construction Manager acknowledge that the actual damages the Owner may sustain if the Construction Manager fails to complete the Work on time are uncertain and will be difficult to ascertain. Consequently, the Construction Manager agrees to pay to the Owner the sum of One Thousand and No/One Hundredths Dollars (\$ 1,000.00) for each calendar day or part of a calendar day that completion of any Work required under the Contract Documents is overdue. This amount is payable as reasonable and just compensation for failure to complete the Work on time. This

amount is payable as liquidated damages and not as a penalty.

63. Section 6.1.7 is hereby amended by deleting Section 6.1.7 in its entirety and replacing it with a new Section 6.1.7 to read as follows:

**§ 6.1.7 Delays: Extension of Time: Liquidated Damages**

In addition to the requirements of NCTCOG Specifications Item 108.8 Delays; Extension of Time; Liquidated Damages, the following provisions shall be applied to Item 108.8 and be incorporated in to the NCTCOG Specifications as Item 108.8.2:

“108.8.2 Unforeseeable Cause

The term "unforeseeable cause" as it is used in Item 108.8 shall mean:

1. An act of God in the form of unusually severe weather conditions, including storms, flood, fire, or similar event, that could not have been anticipated or guarded against and which materially affects the Work site, including access or egress thereto;
2. A riot or war situation actually involving the site or actually preventing the Construction Manager from working on the site, but not including any situation involving suppliers off site other than those essential suppliers as supplied to OWNER;\* or
3. An epidemic, pandemic, or quarantine restrictions that actually involves the site and actually prevents the Construction Manager and the Construction Manager's employees and subcontractors from physically working on the site, but not including any situation involving Construction Manager's employees, subcontractors, and suppliers off site other than those essential suppliers as supplied to OWNER,\* and then only to the extent that:
  - a. Construction Manager promptly reports the epidemic, pandemic, or quarantine restrictions to the Owner in writing within five (5) business

days after the epidemic, pandemic, or quarantine restrictions first impact the site;

- b. Construction Manager identifies and tracks the work that was prevented from being performed in accordance with the Construction Manager's Gantt Chart for each day lost together with the number of Construction Manager's employees and subcontractors assigned to the performance of such work that were prevented from physically working on the site as a direct result of the epidemic, pandemic, or quarantine restrictions; and
  - c. The Construction Manager uses its best efforts to identify and hire employees and subcontractors to continue the performance of the Work and fully documents such efforts to perform the work to the extent reasonably practicable given the limitations imposed by the epidemic, pandemic, or quarantine restrictions that impact the site.
4. An unanticipated strike involving the forces actually working on the Project or involving the employees of those essential suppliers,\* but no other labor stoppage.

\* The Construction Manager must identify its essential suppliers in writing within five (5) business days of the Notice to Proceed. Any supplier that is not so identified shall not be considered an essential supplier justifying an extension of time for a delay caused by an Unforeseeable Cause.

No event shall be deemed an Unforeseeable Cause for the purposes of this Agreement unless it actually and directly necessitates a delay in the Work which could not be otherwise remedied by taking reasonably prudent steps, and the Construction Manager could not reasonably adjust the schedule of the remaining Work to deal with, make up for, or otherwise work around the delays resulting from the Unforeseeable Cause(s)."

64. Section 6.1 is hereby amended by adding a new Section 6.1.8 to read as follows:

§ 6.1.8 Claims for Additional Time.

The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. The Construction Manager shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service (Dallas / Fort Worth, TX Weather Forecast Office):

Average Weather Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
3	2	3	2	4	3	3	2	3	3	2	2

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner and no later than fourteen (14) days after the event(s) giving rise to such claim. The notice shall, in writing, specify the nature and duration of the delays or disruptions and the anticipated effect such weather days will have on the Construction Manager's abilities

to perform its obligations along with a plan to deal with the effects of such weather days and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, whether such hindrances or delays be avoidable or unavoidable, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any such delays.”

65. Section 6.3.3 is hereby amended by deleting section 6.3.3 in its entirety and replacing it with a new section 6.3.3 to read as follows:

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “costs” and “fee” as used in Article 7 of the AIA A201-2017 Documents shall have the meanings assigned to them in the AIA A201-2017 Documents and shall not be modified by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner.

66. Section 6.3.5 is hereby amended by deleting Section 6.3.5 in its entirety and replacing it with a new Section 6.3.5 to read as follows:

§ 6.3.5 In the case of changes in the Work, the fee will be adjusted as provided for in Section 6.1, if both parties agree that the scope of services has changed significantly. No

change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

67. Section 7.2.4 is hereby amended by deleting Section 7.2.4 in its entirety and replacing it with a new Section 7.2.4 to read as follows:

§ 7.2.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, and provided that such costs are directly attributable to work performed on this Project only and percentages of such wages and salaries as set forth in the staff rate sheet provided by Construction Manager for each employee of Construction Manager working on the Project.

68. Section 7.3 is hereby amended by deleting the last four (4) words “subcontracts and this Agreement” and replacing that phrase with the phrase “Guaranteed Maximum Price Amendment.”

69. Section 7.4.2 is hereby amended by deleting Section 7.4.2 in its entirety and replacing it with a new Section 7.4.2 to read as follows:

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Construction Manager’s property at the completion of the Work and the actual cost of such excess materials as was originally billed to Owner shall be credited to the Owner as a deduction from the Cost of the Work.



70. Section 7.5 is hereby amended by deleting Sections 7.5.4, 7.5.5 and 7.5.6 in their entirety, and replacing Section 7.5.4 with a new Section 7.5.4 to read as follows:

§ 7.5.4 Costs of document reproductions; facsimile transmissions to the extent only that information being transmitted via facsimile cannot be transmitted via email or some Internet protocol; long-distance telephone calls with third-parties unrelated to CMAR; postage and parcel delivery charges for bulky items that cannot be transmitted electronically via email or some Internet protocol; one hard-wired (or "landline") telephone at the site, if necessary, and a pro rata portion of wireless telephone service expenses to the extent only that such wireless telephones are required for use on this Work Site and then only to the extent actually used for the Project; and, reasonable petty cash expenses of the site office subject to Owner's approval of the basis or justification for any and all expenses having a cumulative total in excess of \$100.00 in any month.

71. Sections 7.6.1.1 and 7.6.1.2 are hereby deleted in their entirety.

72. Section 7.6.2 is hereby amended by deleting Section 7.6.2 in its entirety and replacing it with a new Section 7.6.2 to read as follows:

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work, for which the Construction Manager is liable, and that are not permanently installed in the Work.

73. Section 7.6.4 is hereby amended by deleting Section 7.6.4 in its entirety and replacing it with a new Section 7.6.4 to read as follows:

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents.

74. Sections 7.6.5 through 7.6.11 are hereby deleted in their entirety.

75. Section 7.7.1 is hereby amended by deleting Section 7.7.1 in its entirety and replacing it with a new Section 7.7.1 to read as follows:

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

76. Sections 7.7.3 and 7.7.4 are hereby deleted in their entirety.
77. Section 7.8.2 is hereby amended by adding the following sentence to the end of that Section: "Transactions with a related party based on any method of compensation other than a lump sum are prohibited."
78. Section 7.9.1 is hereby amended by deleting the phrase "The Cost of the Work shall not include the items listed below" and replacing it with the phrase "The Cost of the Work shall exclude items including, but not limited to, those items listed below."
79. Section 7.9.1 is hereby amended, in part, by deleting Section 7.9.1.6 in its entirety and replacing it with a new Section 7.9.1.6 to read as follows:

§ 7.9.1.6 Costs due to the negligence of the Construction Manager, the Construction Manager's Subcontractors or suppliers, or the failure of the Construction Manager or the Construction Manager's Subcontractors or suppliers to fulfill a specific responsibility to the Owner set forth in this Agreement.

80. Section 8.1 is hereby amended by deleting the first sentence in its entirety.
81. Article 8, "Discounts, Rebates and Refunds," is hereby amended, in part, by inserting the following provision as a new Section 8.3:

§ 8.3 Costs of inspections and testing of work ordered by the Contractor where the work was not performed or completed in accordance with the scheduling of such inspections and testing and the inspection or testing lab is not notified shall be credited to the Owner as a deduction from the Cost of the Work.

82. Section 9.1 is hereby amended by deleting section 9.1 in its entirety and replacing it with a new section 9.1 to read as follows:

§ 9.1 All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including the Construction Manager, who have been selected using competitive bids or competitive sealed proposals. With the Owner's approval, the Construction Manager shall publicly

advertise and solicit either competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and,
- .3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

Nothing herein shall prevent the Construction Manager from including other notices required or allowed by law. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors', subcontractors' and Construction Manager's bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefore is completed. All bids or proposals shall be made public within seven (7) days after the date of final selection.

83. Section 9.1.1 is hereby amended by deleting section 9.1.1 in its entirety and replacing it with a new section 9.1.1 to read as follows:

§ 9.1.1 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) offers the best value to the Owner, but the Owner requires that another bid be accepted, then the Construction Manager may require that

a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

84. Section 9.2 is hereby amended by deleting Section 9.2 in its entirety and replacing it with a new section 9.2 to read as follows:

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, any adjustments to such a subcontract shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner. In addition, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights regarding the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

85. Section 11.1.3 is hereby amended by deleting Section 11.1.3 in its entirety and replacing it with a new Section 11.1.3 to read as follows:

§ 11.1.3 The Owner will pay an approved Application for Payment within thirty (30) days after the date such approved Application for Payment is received by the Owner from the Architect. Notwithstanding the foregoing the Owner shall not be required to pay any disputed amounts that the Owner believes were erroneously approved by the Architect. Past due payments and any disputed amounts shall bear interest in accordance with the Texas Prompt Payment Act.

86. Section 11.1.4 is hereby amended by adding the following sentence at the end of Section 11.1.4 to read as follows:

Each Application for Payment shall be accompanied by a release of claims and liens in the form acceptable to the Owner.

87. Section 11.1.5 is hereby amended by deleting Section 11.1.5 in its entirety and replacing it with a new Section 11.1.5 to read as follows:

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. The Construction Manager's Contingency and the Construction Manager's Fee shall be shown as separate individual items. Construction Manager shall use AIA Document G702 for Application and Certificate for Payments and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.

88. Section 11.1.5.1 is hereby amended in part by deleting the second sentence and replacing said sentence with a new sentence to read as follows:

The schedule of values, once approved by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

89. Section 11.1.5.3 is hereby amended by deleting Section 11.1.5.3 in its entirety and replacing it with a new Section 11.1.5.3 to read as follows:

§ 11.1.5.3 When the Construction Manager allocates costs from the Construction Manager's Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner. Similarly, when the Construction Manager shifts costs from one line item to one or more different line items in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner.

90. Section 11.1.7.1.3 is hereby deleted in its entirety.

91. Section 11.1.7.2.2 is hereby amended by deleting Section 11.1.7.2.2 in its entirety and replacing it with a new Section 11.1.7.2.2 to read as follows:

§ 11.1.7.2.2 The amount, if any, for Work that remains uncorrected and for which the Owner or Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;

92. Section 11.1.7.2.4 is hereby amended by deleting Section 11.1.7.2.4 in its entirety and replacing it with a new Section 11.1.7.2.4 to read as follows:

§ 11.1.7.2.4 For Work performed or defects discovered since the last payment application, any amount for which the Owner or Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;

93. Section 11.1.8 is hereby amended by inserting the following phrase in the corresponding spaces, provided for such purpose, immediately after the phrase “as retainage, from the payment otherwise due”:

“Retainage shall be five percent (5%).”

94. Section 11.1.8.2 is hereby deleted in its entirety.

95. Section 11.1.7.7 is hereby amended by deleting Section 11.1.7.7 in its entirety and replacing it with a new Section 11.1.7.7 to read as follows:

§ 11.1.7.7 The Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate of Payment as provided in Section 9.5 of the A201-2017 Documents;

96. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new section 11.1.11 to read as follows:

**§ 11.1.11** In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, §9.3.3 and §9.10.2 of the A201-2017 Documents.

97. Section 11.2.1.1 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents.”

98. Section 11.2.2 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents” in both the second and third sentences of said section.

99. Section 11.2.3 is hereby amended by deleting the phrase “A201-2017” at the end of the first sentence and replacing it with the phrase “A201-2017 Documents.”

100. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new Section 11.2.5 to read as follows:

**§ 11.2.5** The Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:

- .1 provision of record or as-built drawings executed or complete in both “.dwg” and “.tiff” formats;
- .2 provision of executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- .3 provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.

101. Article 12, entitled “Dispute Resolution,” including all Sections thereof is hereby deleted in its entirety and replaced with a new Article 12 also entitled “Dispute Resolution” to read as follows:

**§ 12.1** All disputes arising out of this Agreement shall be resolved in accordance with the provisions of Article 15 of the A201-2017 Documents.

102. Article 13, entitled “Termination or Suspension,” including all Sections and Subsections thereof is hereby deleted in its entirety and replaced with a new Article 13 also entitled “Termination or Suspension” to read as follows:

### **ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1** Prior to execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this agreement, with or without cause, at any time upon twenty-four hours’ notice. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for all Preconstruction Phase services actually performed prior to receipt of notice of termination, not to exceed the compensation set forth in Section 4.1.1.

**§ 13.2** Following execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this

agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

**§ 13.3** Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Construction Manager may not terminate this agreement.

**§ 13.4** The Owner or the Construction Manager may terminate this agreement for cause as provided in Article 14 of the A201-2017 Documents.

103. Section 14.2, "Successors and Assigns," is hereby deleted in its entirety and replaced with a new Section 14.2, "Successors and Assigns," to read as follows:

**§ 14.2 Successors and Assigns**

The parties' rights with respect to assignment of this Agreement shall be in accordance with Article 13.2 of the General Conditions, AIA A-201-2017.

104. Section 14.3, entitled "Insurance and Bonds," is hereby deleted in its entirety and replaced with a new Section 14.3 also entitled "Insurance and Bonds" to read as follows:

**§ 14.3 Insurance and Bonds**

For all phases of the Project, the Construction Manager shall purchase and maintain insurance and shall provide bonds in accordance with the Contract Documents and the Request for Proposals.



105. Section 14.4 is hereby deleted in its entirety and replaced with a new Section 14.4, "Conflict of Interest," to read as follows:

**§ 14.4 Conflict of Interest**

**§ 14.4.1** Construction Manager covenants and agrees that Construction Manager and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Construction Manager pursuant to this Agreement will be conducted by employees, associates or subcontractors of Construction Manager.

**§ 14.4.2** In addition, to the extent that this Agreement (a) must be approved by the Town's governing body before it may be signed or (b) has a value of \$1,000,000, or more, Construction Manager shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time Construction Manager submits this signed Agreement to Owner, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The Construction Manager must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the Construction Manager must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the Owner.

The Owner must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the Owner.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

106. Section 14.5 is hereby deleted in its entirety and replaced with a new Section 14.5, "Prohibition on Contracts with Companies Boycotting Israel," to read as follows:

**§ 14.5 Prohibition on Contracts with Companies Boycotting Israel.**

In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement 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 agreement.

Chapter 2270 does not apply to: (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 Construction Manager is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

107. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.6, "Prohibition on Contracts with Companies Boycotting Energy Companies," to read as follows:

**§ 14.6 Prohibition on Contracts with Companies Boycotting Energy Companies.**

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, 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 energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

108. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.7, "Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association," to read as follows:

**§ 14.7 Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association.**

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, 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 have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). In addition, this provision does not apply to: (1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the

Construction Manager does not boycott any firearm entity or firearm trade association and will not boycott any firearm entity or firearm trade association during the term of this Agreement.

109. Article 15, entitled "Scope of the Agreement," including all Sections and Subsections thereof is hereby deleted in its entirety.

## II.

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

## III.

This Addendum, when combined with the Agreement contains the entire agreement between Owner and Construction Manager with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions were incorporated therein word for word.

## IV.

This Addendum and the Agreement are entered into subject to the Prosper Town Charter and ordinances of Town, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Construction Manager will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Construction Manager's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

## V.

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**VI.**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

**VII.**

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Construction Manager) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Construction Manager or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Construction Manager.

**IN WITNESS WHEREOF**, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

**OWNER:**

**TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_  
Ron K. Patterson, Interim Town Manager

Date Signed: \_\_\_\_\_

**ATTEST:**

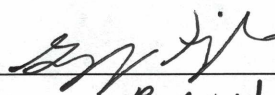
\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Terrence S. Welch, Town Attorney

**CONSTRUCTION MANAGER:**

**DEAN ELECTRIC, INC., d/b/a  
DEAN CONSTRUCTION**

By:   
Title: President

Date Signed: 10-2-22

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Ron K. Patterson, Interim Town Manager of the **TOWN OF PROSPER**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the Town's behalf.

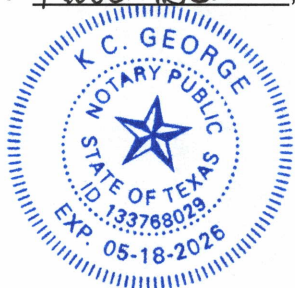
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, Collin County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF Dallas

This instrument was acknowledged before me on the 2nd day of November, 2022, by Bregory Firebaugh, in his capacity as President of **DEAN ELECTRIC, INC., d/b/a DEAN CONSTRUCTION**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **DEAN ELECTRIC, INC., d/b/a DEAN CONSTRUCTION**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 2nd DAY OF November, 2022.



K.C. George  
\_\_\_\_\_  
Notary Public, Dallas County, Texas  
My commission expires 5/18/2026



## FINANCE DEPARTMENT



**To: Mayor and Town Council**

**From: Sandy Mattick, Interim Finance Director**

**Through: Ron K. Patterson, Interim Town Manager  
Bob Scott, Executive Director of Administrative Services**

**Re: Comprehensive Fee Ordinance Amendment**

**Town Council Meeting – November 8, 2022**

**Agenda Item:**

Consider and act upon adopting an ordinance amending fees in the Town’s Code of Ordinances, specifically Sections 113.2 and 113.3 of the International Fire Code, contained in Section 5.03.002 “Amendments” of Article 5.03, “Fire Code”, of Chapter 3, “Fire Prevention and Protection,” and amending various fees contained in Appendix A, “Fee Schedule,” relating to Construction Permits and Fees, Sign-related Fees, Development Fees, Miscellaneous Fees, Health and Sanitation Fees, Public Works Fees, and Backflow Prevention Plan and Enforcement Fees; and repealing Section II, “Mechanical/Plumbing Permit Fees,” and Section III, “Electrical Permit Fees,” contained in Appendix A, “Fee Schedule.”

**Description of Agenda Item:**

At the July 26, 2022, work session, Town Council was presented proposed fee changes for the FY 2022-2023 budget. The majority of these changes were to bring Town fees more in line with those of our neighboring cities or to reflect changes in state law or other requirements. While Town Council was generally supportive of these changes, they requested that staff review the proposed changes with the Prosper Developers Council, which has been done. Staff also viewed this as an opportunity to review and make necessary housekeeping updates to the Fee ordinances. The Fire Department is planning to adopt the latest Fire Code early next year which will require an amendment for Section reference purposes; however, no fees will be changed.

**Budget Impact:**

Proposed fees have been incorporated into the budget.

**Legal Obligations and Review:**

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

**Attachments:**

1. Ordinance
2. Summary of Changes

**Town Staff Recommendation:**

Town staff recommends that the Town Council adopt the attached ordinance amending fees in the Town's Code of Ordinance as presented.

**Proposed Motion:**

I move to adopt an ordinance amending fees in the Town's Code of Ordinance as presented.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2022-\_\_

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SECTIONS 113.2 AND 113.3 OF THE INTERNATIONAL FIRE CODE, CONTAINED IN SECTION 5.03.002, "AMENDMENTS," OF ARTICLE 5.03, "FIRE CODE," OF CHAPTER 3, "FIRE PREVENTION AND PROTECTION," OF THE TOWN'S CODE OF ORDINANCES; AMENDING VARIOUS FEES CONTAINED IN APPENDIX A, "FEE SCHEDULE," TO THE TOWN'S CODE OF ORDINANCES, RELATING TO CONSTRUCTION PERMITS AND FEES, SIGN-RELATED FEES, DEVELOPMENT FEES, MISCELLANEOUS FEES, HEALTH AND SANITATION FEES, PUBLIC WORKS FEES, AND BACKFLOW PREVENTION PLAN AND ENFORCEMENT FEES; REPEALING SECTION II, "MECHANICAL/PLUMBING PERMIT FEES," AND SECTION III, "ELECTRICAL PERMIT FEES," CONTAINED IN APPENDIX A, "FEE SCHEDULE," TO THE TOWN'S CODE OF ORDINANCES; 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 ("Town Council"), has investigated and determined that certain provisions, including certain fees, contained in the Code of Ordinances as well as Appendix A to the Town's Code of Ordinances, should be revised; and

**WHEREAS**, the Town Council has reviewed the current and proposed provisions and fees in the Code of Ordinances and Appendix A to the Town's Code of Ordinances and has determined that the following revisions will be advantageous, beneficial and in the best interests of the citizens of Prosper.

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

### **SECTION 1**

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

### **SECTION 2**

From and after the effective date of this Ordinance, existing Sections 113.2 and 113.3 of the International Fire Code, 2015 edition, found in Section 5.03.002, "Amendments," of Article 5.03, "Fire Code," of Chapter 5, "Fire Prevention and Protection," of the Town's Code of Ordinances is hereby repealed in its entirety and replaced with new Sections 113.2 and 113.3, to read as follows:

**"113.2 Schedule of Permit and Inspection Fees.** A fee for each permit and inspection shall be paid as required, in accordance with this section.

**113.2.1 Inspection Fees.** The following fees shall be assessed as outlined below for the initial inspection.

1. Residential fire suppression fee \$200

2. Commercial fire sprinkler system fee	\$300 Per Riser
3. Commercial fire suppression (special hazards) fee	\$300 Per System
4. Standpipe Systems	\$300 Per Riser
5. Commercial fire alarm system	\$300 Per Panel
6. Commercial fire alarm system modification	\$300
7. Emergency responder communications system	\$300
8. Building Access Controlled Doors	\$100
9. Access Controlled Vehicular Gates	\$300
10. Fire Pump fee	\$300
11. Fire Sprinkler Underground Water Line	\$100
12. Remote FDC Underground Water Line	\$100
13. Fire Lane Repair/Modification/Alteration	\$100
14. Tent, Membrane Structures	\$50
15. Re-Inspection Fees	\$150 Per Hour (1-hour minimum)
16. Inspection fees for which no fire fee was assessed.	\$150 Per Hour (1-hour minimum)
17. Flammable Liquid Storage Tanks	\$250
18. LP Gas Stationary Tanks	\$250
19. LP Portable Container Site (retail sales)	\$100 Per Site
20. Above Ground Storage Tank Removal	\$100
21. Repair of Existing Tank	\$100
22. Underground Storage Tank New	\$250
23. Underground Storage Tank Removal	\$150
24. Mechanical Trench Burn	\$500
25. Standby/Emergency Generator	\$100 Per Generator
26. After Hour Inspections	\$150 Per Hour (1-hour minimum)
27. Fire Hydrant Flow Test	\$100

28. For use of outside consultants for inspections, actual costs.
29. Fireworks Display \$250 per event plus standby personnel as needed.
30. Standby personnel for the fireworks display and special events if deemed necessary in the interest of public safety \$65 per hour, per staff member (minimum 4 hours). The minimum number of personnel shall be set by the Fire Chief or Fire Marshal.
31. Fee of \$100 will be assessed for any inspections in which the contractor does not show up.
32. Fee of \$100 will be assessed for any inspection that is not cancelled within 24 hours prior to the scheduled inspection.
33. Unless stipulated elsewhere in this section, a minimum fee of \$100 shall be assessed for any plan review and/or permits issued.

**113.2.2 Operational and Construction Permit Fee.** Permits fees shall be assessed in accordance with this section, or as outlined in Table 106.1.

1. All operational permits listed in section 105.5 shall be assessed a minimum permit fee of \$100 annually, unless otherwise noted in this section. Maximum of \$200 per year per facility.
2. All construction permits listed in section 105.6 shall be assessed a minimum permit fee of \$100, unless otherwise noted in Section 107.2.
3. Special Amusement Buildings shall be assessed an operational permit fee of \$100 annually.

**113.2.3 Plan review fees:**

1. Plan review required by changes, additions, or revisions to plans \$100 per hour (1-hour minimum)
2. For use of outside consultants for plan review, actual costs
3. For use of outside consultants for plan review, inspections, or both: actual costs
4. Expedited plan review for projects less than 20,000 square feet shall be assessed a fee of \$500 in addition to any other inspection or permitting fees. Expedited plans shall be at the discretion of the Fire Marshal or designee on a case-by-case basis.

**113.2.4 Burn permit fees:**

1. Contractors or property owners per occurrence (one-acre minimum) \$150.00 deposit required. If the Fire Department responds, and or extinguishes the fire for failure to comply with the conditions outlined on the permit, the deposit fee is non-refundable.
2. Agricultural/contractor/property owner (over one acre), per occurrence per day \$150.00.

**113.3 Work commencing before permit issuance.** Any person, firm, partnership, corporation, association, or other entity who commences any work, activity or operation regulated by this code before obtaining the necessary permits and or approval. Shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of not more than \$2,000.00, and each day work continues shall constitute a separate and distinct violation.

**113.3.1** All applicable fees shall be doubled for the respective permit and inspection types regulated by this section in which the installation of the said system has commenced without the issuance of a permit(s).”

**SECTION 3**

From and after the effective date of this Ordinance, existing Subsection (b), “Building Permits/Inspection Fees” of Section I, “Construction Permits and Fees,” of Appendix A, “Fee Schedule,” to the Town’s Code of Ordinances is amended to read as follows:

**“Sec. I. Construction Permits and Fees.**

\* \* \*

(b) *Building permits/inspection fees.* The building permit and inspection fees as follows are hereby for various construction-type projects in conjunction with, among others, residential, commercial and industrial structures prior to the start of construction. A determination of the valuation for any enclosed structure other than residential shall be determined at the discretion of the town.

**BUILDING PERMITS/INSPECTION FEES**

\* \* \*

(2) Residential New Construction:

\* \* \*

(3) Residential accessory buildings and carports: \$0.75 per sq. ft. + \$75.00.

(4) Residential alteration or addition: \$0.75 per sq. ft. + \$75.00.

(5) Residential roof repair or replacement: \$100.00.

\* \* \*

(7) Commercial (new construction, additions, alterations, and single trade permits for mechanical, electrical or plumbing):

\* \* \*

The note following the commercial building permit fee table shall have the following language added thereto: “For shell only buildings, deduct 20% of the construction cost. For finish outs only, deduct 50% of the construction cost.”

\* \* \*

(9) Contractor registration (except where such registration is prohibited by state law): \$100.00 each. All contractors are required to register with the Town. Annual \$100.00 registration fee.

(10) After-hours inspections: \$50.00 per hour with a 2-hour minimum.

(11) Demolition: \$50.00 permit fee.

\* \* \*

(14) Fence: \$50.00 per permit. No permit needed if replacing less than 2 panels of fence totaling less than 16' in length.

\* \* \*

(16) Lawn irrigation systems: \$50.00 permit fee. Inspection must be performed by a certified backflow tester and report must be given to building inspector.

(17) Miscellaneous inspections: Backflow prevention, building, electrical, mechanical, and plumbing: \$50.00 each.

(18) Multifamily: One application is required per building: \$5.00 per \$1,000.00 valuation of project.

(19) Reinspection fee:

(A) \$50.00 for the first reinspection.

(B) \$75.00 for the second reinspection.

(C) \$100.00 for the third reinspection.

(D) Fees will increase on a basis of \$25.00 each reinspection thereafter.

(20) Concrete flatwork including sidewalks, approaches and patios: \$50.00 per permit.

(21) Temporary outdoor seasonal sale or special event permit: \$100.00 permit fee + \$1,000.00 deposit.

(23) Construction trailer: \$100.00.

(24) Residential solar and generators permit: \$150.00.

(25) Revision/Restamp Fee and fee for multiple round plan review (starting after second round): \$50.00 per hour with a 2-hour minimum.

(26) Residential single-trade permits for mechanical, electrical or plumbing: \$75.00."

\* \* \*"

**SECTION 4**

From and after the effective date of this Ordinance, Section II, "Mechanical/plumbing permit fees," of Appendix A, "Fee Schedule," to the Town's Code of Ordinances, and Section III, "Electrical permit fees," of Appendix A, "Fee Schedule," to the Town's Code of Ordinances, are repealed in their entirety and shall be replaced with the following:

**"Sec. II        Reserved.**

**Sec. III        Reserved."**

**SECTION 5**

From and after the effective date of this Ordinance, Section IV, "Sign-related Fees," of Appendix A, "Fee Schedule," to the Town's Code of Ordinances is amended to read as follows:

**"Sec. IV.        Sign-related Fees.**

(a)    Any sign permit: \$100.00.

\* \* \*

**SECTION 6**

From and after the effective date of this Ordinance, Section V, "Development Fees," of Appendix A, "Fee Schedule," to the Town's Code of Ordinances is amended to read as follows:

**"Sec. V.        Development Fees.**

The following development fees are hereby and shall be applied in accordance with the procedures established by the town's Subdivision Ordinance No. 03-05, as it exists or may be amended, and the town's Zoning Ordinance No. 05-20, as it exists or may be amended.

\* \* \*

(2)    *Other fees.*

\* \* \*

(I)    Engineering plan review fee:

(i)    Residential Development: \$500.00 + \$25.00/lot.

(ii)   Non-Residential Development: \$500.00 + \$200.00/acre.

(J)    Land Disturbance Fee:

(i)    Single Family Residential Lot: \$50.00.

(ii)   Tracts 1 acre or less: \$50.00.



- (iii) Tracts greater than 1 acre: \$200.00.
- (iv) Floodplain reclamation only: \$500.00.
- (K) Floodplain Study Review Fee: \$3,000.00 deposit (includes 2 reviews and 1 meeting) + \$150.00 nonrefundable administrative fee. After third party billing, any excess fees will be refunded.”

**SECTION 7**

From and after the effective date of this Ordinance, Section VIII, “Miscellaneous,” of Appendix A, “Fee Schedule,” to the Town’s Code of Ordinances is amended to read as follows:

**“Sec. VIII. Miscellaneous.**

The following miscellaneous fees are hereby adopted:

- (1) Copies: \$0.20 per page.

\* \* \*

**SECTION 8**

From and after the effective date of this Ordinance, Section XIV, “Public Works Fee Schedule,” of Appendix A, “Fee Schedule,” to the Town’s Code of Ordinances is amended to read as follows:

**“Sec. XIV. Public Works Fee Schedule.**

\* \* \*

- (b) *Damages to meters/equipment.* (Cost does not include water and sewer impact fees.)

5/8-inch PD	\$245.00
3/4-inch PD	\$335.00
1-inch PD	\$335.00
1-1/2-inch PD	\$638.00
2-inch PD	\$767.00
1-1/2-inch turbine (irrigation)	\$869.00
2-inch turbine (irrigation)	\$916.00

14 x 18 inch meter box	\$200.00
14 x 18 inch meter box & MTU	\$360.00
18 x 24 inch meter box	\$383.00
18 x 24 inch meter Box & MTU	\$425.00
Replace readable register	\$250.00
Replace damaged/unreadable register	\$747.00
Transmitter (MTU)	\$374.00
Transmitter (MTU) dual	\$0
3-inch turbine	\$1,636.00
4-inch turbine	\$2,136.00
6-inch turbine	\$3,627.00
3-inch compound	\$4,975.00
4-inch compound	\$5,600.00
6-inch compound	\$7,636.00
Larger meters on request	(Amount TBD)
Replace 5/8 & 1-inch meter, MTU register & box	\$711.00
Replace MTU, register & box	\$511.00
Replace 5/8 & 1-inch meter, register & box	\$596.00
Replace 5/8 & 1-inch meter, MTU & box	\$596.00
Replace 5/8 & 1-inch meter & MTU	\$458.00
Replace 5/8 & 1-inch meter & box	\$368.00

Replace MTU & box small	\$320.00
Replace register & box	\$315.00
Replace 5/8 & 1-inch meter & register	\$470.00
Replace register & MTU	\$363.00
Replace unreadable register, MTU and small box	\$840.00
Replace unreadable register & MTU	\$0

(c) *Fire hydrant meter fee.*

- (1) Deposit (based upon approved condition): \$1,819.00.
- (2) Relocate fire hydrant meter: \$84.00.
- (3) Repair hydrant meter:
  - (A) Replace fire hydrant with register: \$1,980.00.
  - (B) Repair hydrant meter RPZ: \$657.00.
  - (C) Replace backflow on hydrant: \$1,012.00.
  - (D) Repair hydrant broken collar: \$224.00.
  - (E) Repair hydrant meter valves: \$275.00.
- (4) Replace fire hydrant meter: \$924.00.

(d) *Water fee.*

- (1) Water tap size, does not include other items such as, among other things, boring, impact fees, pavement removal and replacement (lots without service):
  - (A) 1-inch water service: \$1,610.00.
  - (B) 1-½-inch water service: \$2,745.00.
  - (C) 2-inch water service: \$3,675.00.
  - (D) 4-inch water service: \$1,956.00.

(E) 6-inch water service: \$2,026.00.

(2) For total price, please contact the Town's Public Works Department at (972) 569-1050.

(e) *Meter moves.* This work does not include additional items such as, among other things, bores, impact fees, grass replacement and pavement removal. The town does not relocate customer-side service.

(1) 1-inch water service: \$675.00.

(2) 1-½-inch water service: \$998.00.

(3) 2-inch water service: \$1,157.00.

(f) *Curbstop repair.*

(1) 1-inch water service: \$426.00.

(2) 1-½-inch water service: \$770.00.

(3) 2-inch water service: \$875.00.

(g) *Callback or second time call.* \$102.00.

(h) *Accuracy testing.*

(1) Meter requested testing local: \$379.00.

(2) Meter requested testing outside: \$497.00.

\* \* \*

**SECTION 9**

From and after the effective date of this Ordinance, Section XX, "Health and Sanitation Fees," of Appendix A, "Fee Schedule," to the Town's Code of Ordinances is amended to read as follows:

**"Sec. XX. Health and Sanitation Fees.**

(a) *Food establishment permit and inspection fees.*

\* \* \*

(7) Temporary food establishment: \$75.00 for a maximum of fourteen (14) days.

\* \* \*

(b) *Certain food establishment inspection fees.*

- (1) Reinspection: \$100.00/inspection.

\* \* \*

### **SECTION 10**

From and after the effective date of this Ordinance, Subsection (a)(1)(C), "CSI Fee," of Section XVIII, "Backflow Prevention Plan and Enforcement Fees," of Appendix A, "Fee Schedule," to the Town's Code of Ordinances is amended is hereby amended to reflect a CSI Fee of \$172.00.

### **SECTION 11**

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

### **SECTION 12**

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

### **SECTION 13**

This Ordinance shall take effect and be in full force from January 1, 2023, and after its publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Prosper, Texas.

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 8TH DAY OF NOVEMBER, 2022.**

**APPROVED:**

\_\_\_\_\_  
**David F. Bristol, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Michelle Lewis Sirianni, Town Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
**Terrence S. Welch, Town Attorney**



# Summary of Fee Changes



# Development Services (Building) Fees - 1 of 2

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
Accessory Permit:	\$60 + \$30/inspection	\$.75/SF + \$75	SEE Example
Example: 12' x12' arbor w/o gas/electric	\$150	\$183	\$33
Residential Addition/Alteration:	\$.10/SF + \$30/inspection	\$.75/SF + \$75	SEE Example
Example: 800 SF Addition	\$430	\$675	\$245
After-hours Inspection:	\$30	\$50/hour with a 2-hour minimum	\$70
Demolition Permit:	\$20	\$50	\$30
Fence and Irrigation Permits:	\$30	\$50	\$20
Misc. Inspection:	\$30	\$50	\$20 <sup>2</sup>





# Development Services (Building) Fees - 2 of 2

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
Construction Trailer:	\$80	\$100	\$20
Sign Permit:	\$75	\$100	\$25
Revision:	\$0	\$50/hour with a 2-hour minimum	\$100
Multiple Round Review Fee:	\$0	\$50/hour with a 2-hour minimum	\$100
Building Minor (Residential only):	\$0	\$75	\$75
Plumbing, Electric, Mechanical Minor (Residential only):	\$30 + \$30/inspection (\$60 typical)	\$75	\$15
Solar (Residential only):	\$30 + \$30/inspection (\$120 typical)	\$150	\$30
Generator (Residential only):	\$30 + \$30/inspection (\$150 typical)	\$150	\$0
Flatwork (Residential only):	\$20	\$50	\$30 <sup>3</sup>



# Development Services (Health) Fees - 1 of 1

<b><u>Item for Consideration</u></b>	<b><u>Current Fee</u></b>	<b><u>Proposed Fee</u></b>	<b><u>Proposed Increase</u></b>
Temporary Health Permit Fee:	\$50	\$75	\$25
Reinspection Fee:	\$50	\$100	\$50



# Engineering Services Dept. Fees – 1 of 2

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Civil Plan Review Fee</b>			
Residential Development:	\$150	\$500 + \$25/lot	SEE Example
Example: (Small) 42 lots/12 acres	\$150	\$1,550	\$1,400
Example: (Large) 147 lots/42 acres	\$150	\$4,175	\$4,025
Non-Residential Development:	\$150	\$500 + \$200/acre	SEE Example
Example: (Small) 1 acre tract	\$150	\$700	\$550
Example: (Large) 15 acre tract	\$150	\$3,500	\$3,350



# Engineering Services Dept. Fees – 2 of 2

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Land Disturbance Permit Fee</b>			
Single Family Residential Lot:	\$0	\$50	\$50
Tracts <1 Acre:	\$0	\$50	\$50
Tracts >1 Acre:	\$0	\$200	\$200
Floodplain Reclamation Only:	\$0	\$500	\$500
<b>Floodplain Study Review Fee</b>			
Flood Study Review Fee (change current process to require \$3,000 deposit):	Actual Third Party No Admin Fees	Actual Third Party + \$150 Admin/Sub (2 Submittals typical)	\$300



# Fire Department Fees - 1 of 2

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Inspection and Permit Fee</b>			
Residential Fire Sprinkler System:	\$175	\$200	\$25
Fire Sprinkler System:	\$275	\$300/Riser	\$25/Riser
Fire Suppression Systems (Special Hazards):	\$275	\$300/Riser	\$25/Riser
Fire Alarm System:	\$275	\$300	\$25
Fire Alarm Modification:	\$275	\$300	\$25
Fire Pump:	\$275	\$300	\$25
Fire Sprinkler Underground:	\$275	\$100	<del>\$-175</del>
Remote FDC:	\$275	\$100	<del>\$-175</del>
Expediated Plan Review (72 HRS Small Projects Less Than 20,000 sq. ft):	\$0	\$500	\$500
Propane Exchange Site:	\$25	\$100	\$75
Controlled Access System (Gates/Doors):	\$75	\$100	\$25 <sup>7</sup>



# Fire Department Fees - 2 of 2

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Inspection and Permit Fee - continued</b>			
Compressed Gases:	\$0	\$100	\$100
Tents:	\$0	\$50	\$50
Fire Lane Repair/Modification/Alteration:	\$0	\$100	\$100
Construction Permit Not Listed in Fee Schedule:	\$0	\$100	\$100
Operational Permits:	\$0	\$100	\$100
Working Without A Permit:	\$2,000 with Citation	Double Permit Fee	Double Permit Fee
Standby Personnel for Fireworks and Special Events (4 HR Minimum):	\$55/hour	\$65/hour	\$10/hour
<b>Plan Review Fee</b>			
Plan Review Fee Revisions:	\$47/hour	\$100	\$53 <sup>8</sup>



# Library Services Department Fees - 1 of 1

<b><u>Item for Consideration</u></b>	<b><u>Current Fee</u></b>	<b><u>Proposed Fee</u></b>	<b><u>Proposed Increase</u></b>
Printing Fee:	\$.10/Page	\$.20/Page	\$.10/Page



# Public Works Department Fees - 1 of 6

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Sec. XIV – (B) Damages to meters/equipment</b>			
5/8-inch PD:	\$340	\$245	<b>-\$95</b>
3/4-inch PD:	\$340	\$335	\$5
1-inch PD:	\$412	\$335	<b>-\$77</b>
1-1/2-inch PD:	\$614	\$638	\$24
2-inch PD:	\$800	\$767	<b>-\$33</b>
1-1/2-inch turbine (irrigation):	\$625	\$869	\$244
2-inch turbine (irrigation):	\$797	\$916	\$119
14 x 18 inch meter small box:	\$ 164	\$200	\$36
14 x 18 inch meter small box & MTU:	\$279	\$360	\$81
18 x 24 inch meter large box:	\$267	\$383	\$116
18 x 24 large meter box & MTU:	\$382	\$425	\$43 <sup>10</sup>





# Public Works Department Fees - 2 of 6

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Sec. XIV – (B) Damages to meters/equipment</b>			
Replace readable register:	\$239	\$250	\$11
Replace damaged/unreadable register:	\$500	\$747	\$247
Transmitter (MTU):	\$239	\$374	\$135
Transmitter (MTU) dual:	\$269	\$0	<b>-\$269</b>
3-inch turbine meter:	\$881	\$1,636	\$755
4-inch turbine meter:	\$1,439	\$2,136	\$697
6-inch turbine meter:	\$2,463	\$3,627	\$1,164
3-inch compound meter:	\$2,206	\$4,975	\$2,769
4-inch compound meter:	\$2,911	\$5,600	\$2,689
6-inch compound meter:	\$4,711	\$7,636	\$2,925



# Public Works Department Fees - 3 of 6

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Sec. XIV – (B) Damages to meters/equipment</b>			
Replace 5/8 or 1-inch meter, MTU, register & small box:	\$559	\$711	\$152
Replace MTU, register & small box:	\$394	\$511	\$117
Replace 5/8 or 1-inch meter register & small box:	\$444	\$596	\$152
Replace 5/8 or 1-inch meter MTU & small box:	\$444	\$596	\$152
Replace 5/8 or 1-inch meter & MTU:	\$404	\$458	\$54
Replace 5/8 or 1-inch meter & small box:	\$329	\$368	\$39
Replace MTU & small box:	\$277	\$320	\$43
Replace register & small box:	\$279	\$315	\$36
Replace 5/8 or 1-inch meter & register:	\$404	\$470	\$66
Replace register & MTU:	\$354	\$363	\$9
Replace unreadable register, MTU & small box:	\$770	\$840	\$70
Replace unreadable register & MTU:	\$710	\$0	<del>\$-710</del> <sup>12</sup>



# Public Works Department Fees - 4 of 6

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Sec. XIV – (C) Fire hydrant meter fee</b>			
Deposit (based upon approved conditions):	\$1,500	\$1,819	\$319
Relocate fire hydrant meter:	\$64	\$84	\$20
Replace hydrant meter and RPZ:	\$0	\$1,980	\$1,980
Repair hydrant - meter RPZ:	\$0	\$657	\$657
Replace backflow on hydrant:	\$0	\$1,012	\$1,012
Repair hydrant - broken collar:	\$224	\$224	\$0
Repair hydrant - meter valves:	\$166	\$275	\$109
Replace hydrant meter:	\$0	\$924	\$924



# Public Works Department Fees - 5 of 6

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Sec. XIV – (D) Water/Wastewater Fee</b>			
1-inch water service:	\$1,537	\$1,610	\$73
1-1/2 inch water service:	\$1,836	\$2,745	\$909
2-inch water service:	\$1,941	\$3,675	\$1,734
4-inch sewer service:	\$1,612	\$1,956	\$344
6-inch sewer service:	\$1,840	\$2,026	\$186
<b>Sec. XIV – (E) Meter Moves</b>			
1-inch water service move:	\$554	\$675	\$121
1-1/2 inch water service move:	\$595	\$998	\$403
2-inch water service move:	\$771	\$1,157	\$386



# Public Works Department Fees - 6 of 6

<u>Item for Consideration</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Proposed Increase</u>
<b>Sec. XIV – (F) Curb Stop Repair</b>			
1-inch curb stop repair:	\$237	\$426	\$189
1-1/2 inch curb stop repair:	\$350	\$770	\$420
2-inch curb stop repair:	\$398	\$875	\$477
<b>Sec. XIV – (G) Callback or Second Time Call</b>			
Callback or second time call:	\$86	\$102	\$16
<b>Sec. XIV – (H) Accuracy Testing</b>			
Meter Test Local:	\$150	\$379	\$229
Meter Test Outside Agency:	\$220	\$497	\$277
<b>Sec. XVIII – (H) Backflow Prevention Plan and Enforcement Fees</b>			
CSI Inspection:	\$25	\$172	\$147