



Prosper is a place where everyone matters.

Agenda
Prosper Town Council Meeting
Council Chambers
Prosper Town Hall
250 W. First Street, Prosper, Texas
Tuesday, February 25, 2020
5:45 PM

Call to Order/ Roll Call.

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

Announcements of recent and upcoming events.

Discussion Items.

1. Coronavirus (COVID-19) Update. **(JW)**

CONSENT AGENDA:

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

2. Consider and act upon the minutes from the February 11, 2020, Town Council meeting. **(RB)**
3. Consider and act upon an ordinance repealing Article 1.06, "Records Management," of Chapter 1, "General Provisions," of the Town's Code of Ordinances and replacing it with a new Article 1.06, "Records Management." **(RB)**
4. Consider and act upon repealing Resolution No. 13-51 and replacing with a resolution delegating authority to the Town's Purchasing Manager to determine the best method of procurement for the purchase of goods and services. **(JC)**
5. Consider and act upon a resolution supporting and authorizing a grant application to the Office of the Governor for a FY 2020-2021 Justice Assistance Grant (JAG). **(KB)**
6. Consider and act upon an ordinance repealing existing Subsection (c) of Section 1.04.032, "Number of Members," of Division 1, "Library Board," of Article 1.04, "Boards, Commissions and Committees," of Chapter 1, "General Provisions," of the Code of Ordinances of the Town of Prosper, Texas, by removing a Prosper Independent School District non-voting member from the Library Board. **(LS)**
7. Consider and act upon amendments to Section 1.05, "Meetings," of the Library Board's Bylaws to (1) change the Board's meetings to quarterly meetings, or as needed, and (2) to provide for the duties of a Board Secretary. **(LS)**
8. Consider and act upon awarding CSP No. 2020-42-A to Zayo Group, LLC, as submitted by Sandler Partners, an internet provider distributor, related to dedicated fiber internet services at Town Hall, and authorizing the Town Manager to execute a Service Order for same. **(LJ)**

- [9.](#) Consider and act upon approving an annual fixed-price agreement for the purchase of Neptune water meters and related items, at the unit prices guaranteed, from Core & Main, a sole source provider. **(FJ)**
- [10.](#) Consider and act upon awarding CSP No. 2020-25-B to Pavecon Public Works, LP, related to construction services for the Cook Lane Phase 2 Improvement project; and authorizing the Town Manager to execute a construction agreement for same. **(PA)**
- [11.](#) Consider and act upon authorizing the Town Manager to execute a Water Impact Fee Reimbursement Agreement between 1385 & 380 Investments LP, Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the extension of water lines to serve the Westside development. **(HW)**
- [12.](#) Consider and act upon authorizing the Town Manager to execute a Development Agreement between 1385 & 380 Investments LP and Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the Westside development. **(AG)**
- [13.](#) Consider and act upon an ordinance rezoning 1.6± acres from Single Family-15 (SF-15) to Planned Development-Downtown Office (PD-DTO), located on the north side of Broadway Street, west of Craig Road. (Z19-0023). **(AG)**
- [14.](#) Consider and act upon authorizing the Town Manager to execute a Development Agreement between Dugan P. Kelley and Matthew Clarke, and the Town of Prosper, Texas, related to the Downtown Office development, located at 603 E. Broadway Street. **(AG)**
- [15.](#) Consider and act upon an ordinance amending the Future Land Use Plan from Low Density Residential to Tollway District, generally located on the north side of Prosper Trail, west of Shawnee Trail. (CA19-0005). *[Companion Case Z19-0024]* **(AG)**
- [16.](#) Consider and act upon an ordinance to rezone 3.4± acres from Agricultural (A) to Office (O) and 5.6± acres from Agricultural (A) to Single Family-15 (SF-15), located on the north side of Prosper Trail, west of Shawnee Trail. (Z19-0024). *[Companion Case CA19-0005]* **(AG)**
- [17.](#) Consider and act upon authorizing the Town Manager to execute a Development Agreement between The Carnegie Holding Company, LLC, and the Town of Prosper, Texas, related to the CHC Prosper Trail Office development. **(AG)**
- [18.](#) Conduct a Public Hearing, and consider and act upon an ordinance rezoning 0.4± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street). (Z20-0001). **(AG)**
- [19.](#) Consider and act upon authorizing the Town Manager to execute a Development Agreement between Lifelong Properties, LLC, and the Town of Prosper, Texas, related to a downtown office located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street). **(AG)**

CITIZEN COMMENTS

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a "Public Meeting Appearance Card" 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 Meeting Appearance Card" 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:

20. Conduct a Public Hearing, and consider and act upon a request for a Sign Waiver for Gates of Prosper, Phase 2, located on the southwest corner of Preston Road and Lovers Lane, generally to allow for signage consistent with the signage located in Gates of Prosper, Phase 1. (MD20-0001). **(AG)**
21. Conduct a Public Hearing, and consider and act upon an ordinance amending Planned Development-99 (PD-99), on 19.4± acres, located on the northwest corner of Mahard Parkway and US 380, generally to allow for the rental of cargo trucks as an incidental use at Longo Toyota. (Z20-0002). **(AG)**
22. Consider and act upon a resolution creating a Special Citizens Bond Advisory Committee for the proposed 2020 bond election and establishing a charge for the Committee; and the appointment of Committee members. **(HJ)**

EXECUTIVE SESSION:

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

Section 551.087 – To discuss and consider economic development incentives.

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

Section 551.071 - Consultation with the Town Attorney regarding legal issues associated with the Town's sign ordinance, and all matters incident and related thereto.

Section 551-074 - To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.074 - To discuss and review the Town Manager's performance evaluation.

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

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

26. Reynolds Middle School Parking. **(HJ)**
27. Proposed Changes to the Rotary Flag Program. **(HJ)**

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, February 21, 2020, and remained so posted at least 72 hours before said meeting was convened.

Robyn Battle, 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, February 11, 2020
5:45 PM

Call to Order/ Roll Call.

The meeting was called to order at 5:46 p.m.

Council Members Present:

Mayor Ray Smith
Mayor Pro-Tem Curry Vogelsang, Jr.
Deputy Mayor Pro-Tem Jason Dixon
Councilmember Marcus E. Ray
Councilmember Craig Andres
Councilmember Meigs Miller
Councilmember Jeff Hodges

Staff Members Present:

Harlan Jefferson, Town Manager
Terry Welch, Town Attorney
Robyn Battle, Town Secretary/Public Information Officer
Chuck Springer, Executive Director of Administrative Services
Betty Pamplin, Finance Director
Hulon Webb, Engineering Services Director
Pete Anaya, Assistant Director of Engineering Services – Capital Projects
Dan Heischman, Assistant Director of Engineering Services - Development
John Webb, Development Services Director
Alex Glushko, Planning Manager

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

Councilmember Miller led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

Announcements of recent and upcoming events.

The Town Council invites residents to participate The Mayor's Fitness Challenge now through April 15. Join fellow Prosper residents in the challenge to walk or run 100 miles, or bike 500 miles in just over 100 days. To register, please visit the Parks and Recreation page on the Town website.

The Make 380 Safe Task Force has scheduled a town hall meeting on Wednesday, February 12, at 6:00 p.m. at Braswell High School. Representatives from Denton County, State Representative Jared Patterson, and TxDOT will provide updates on what is coming for the 380 corridor as well as present the task force's achievements.

The Annual Prosper Fishing Derby will take place on Saturday, February 22, from 9:00-11:00 a.m. at Frontier Park. The pond will be stocked, and no fishing license is necessary. Prizes will be awarded in various categories to kids under the age of 14. More information is available on the Town website.

The Town's Water Conservation Division will host a DIY Drip Irrigation course on March 19 from 6:00-8:00 p.m. in the Town Hall Community Room. Residents can learn how to install, convert and maintain a drip irrigation system. Registration for this free event is available on the Town website.

The Town Council wished everyone a very Happy Valentine's Day.

CONSENT AGENDA:

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

1. Consider and act upon the minutes from the January 28, 2020, Town Council meeting. (RB)
2. Consider and act upon the minutes from the January 31, 2020, Town Council Strategic Planning Session. (RB)
3. Consider and act upon Ordinance No. 2020-07 ordering a General Election to be held on May 2, 2020, and authorizing the Town Manager to execute contracts with the Collin County Election Administration, the Denton County Election Administration, and the Prosper Independent School District for joint election services. (RB)
4. Receive the December Financial Report. (BP)
5. Receive the Quarterly Investment Report. (BP)
6. Consider and act upon approving the renewal of insurance policies with Mutual of Omaha for Group and Voluntary Life, Accidental Death and Dismemberment, Short-term Disability, and Long-term Disability coverages for employees and their eligible dependents. (CS)
7. Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Site Plan or Preliminary Site Plan. (AG)

Councilmember Hodges made a motion and Councilmember Ray seconded the motion to approve all items on the Consent Agenda. The motion was approved by a vote of 7-0.

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 Meeting Appearance Card" and present it to the Town Secretary prior to the meeting.

There were no Citizen Comments.

REGULAR AGENDA:

If you wish to address the Council, please fill out a “Public Meeting Appearance Card” 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. **Conduct a Public Hearing, and consider and act upon a request to amend the Future Land Use Plan from Low Density Single Family to Tollway District, generally located on the north side of Prosper Trail, west of Shawnee Trail. (CA19-0005). [Companion Case Z19-0024] (AG)**
9. **Conduct a Public Hearing, and consider and act upon a request to rezone 3.4± acres from Agricultural (A) to Office (O) and 5.6± acres from Agricultural (A) to Single Family-15 (SF-15), located on the north side of Prosper Trail, west of Shawnee Trail. (Z19-0024). [Companion Case CA19-0005] (AG)**

Mayor Smith opened Items 8 and 9 concurrently.

Planning Manager Alex Glushko presented both items before the Town Council concurrently. Town staff received a request to rezone 5.6± acres of the subject property from Agricultural (A) to Single Family-15 (SF-15) and to rezone 3.4± acres from Agricultural (A) to Office (O). While the request to rezone to residential is in conformance with the Future Land Use Plan, the request to rezone to office is not in conformance with the Future Land Use Plan. The proposed amendment extends a narrow area of the Tollway District west of Shawnee Trail.

The purpose of the zoning request is to rezone the northern portion of the property to Single Family-15 (SF-15), where an existing house is currently located, and to zone the southern portion of the property to Office (O) District, to allow for an office development in the future. The applicant has been advised of the standards necessary for development. Matt Moore of Claymoore Engineering spoke on behalf of the applicant, and confirmed that mutual access to the existing home on the northern section of the property will remain. The current owner plans to sell the existing residential portion of the property, while the acreage fronting Prosper Trail will be developed for office uses.

Mayor Smith opened the Public Hearings for Items 8 and 9 concurrently.

With no one speaking, Mayor Smith closed the Public Hearings.

Mr. Glushko confirmed that while the property is within the Tollway District on the Comprehensive Plan, the Office (O) zoning district governs development of the property, including building height. Mr. Moore confirmed that while it is possible to provide enough parking for a two-story building on the property, he is only planning to develop a one-story building at this time.

After discussion, Councilmember Ray made a motion and Councilmember Hodges seconded the motion to approve the request to amend the Future Land Use Plan from Low Density Single Family to Tollway District, generally located on the north side of Prosper Trail, west of Shawnee Trail. The motion was approved by a vote of 7-0.

Councilmember Miller made a motion and Councilmember Andres seconded the motion to approve the request to rezone 3.4± acres from Agricultural (A) to Office (O) and 5.6± acres from Agricultural (A) to Single Family-15 (SF-15), located on the north side of Prosper Trail, west of Shawnee Trail, subject to approval of a Development Agreement regarding architecture and building materials. The motion was approved by a vote of 7-0.

10. Consider and act upon a request to waive the Town's Drainage System Design Requirements for a wet or underground detention pond for the regional pond on the original Worldwide Rock tract for the All Storage development. (DH)

Dan Heischman, Assistant Director of Engineering Services – Development, presented this item before the Town Council. On August 14, 2018, the Town Council approved a waiver from the wet detention pond requirement for the Worldwide Rock development. The proposed pond would be behind a screening wall and include evergreen screening to block the pond from being visible from public right-of-way.

The Worldwide Rock development is not proceeding at this time; however, an agreement to provide regional detention still exists between the Worldwide Rock development and the All Storage development to the south. The applicant for All Storage is requesting to amend the waiver request to provide evergreen screening in lieu of the original screening wall plan proposed with the Worldwide Rock development. Matt Moore with Claymoore Engineering, representing the applicant, spoke in favor of the request, stating that he believes the request is appropriate for the property, since it is zoned for industrial/commercial uses.

After discussion, Councilmember Andres made a motion and Councilmember Hodges seconded the motion to approve the request to allow a dry detention pond to serve the Worldwide Rock tract for the All Storage development, with six-foot shrubbing at the time of planting, along the north and west sides of the easement, as depicted in the exhibit. The motion was approved by a vote of 7-0.

EXECUTIVE SESSION:

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

Section 551.087 – To discuss and consider economic development incentives.

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

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

Section 551.074 – To discuss and review the Town Manager's performance evaluation.

The Town Council recessed into Executive Session at 6:37 p.m.

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

The Town Council reconvened the Regular Session at 10:03 p.m.

Councilmember Miller made a motion and Councilmember Hodges seconded the motion to authorize the Town Manager to execute the following:

1. Second Amendment to Economic Development Incentive Agreement with Northeast 423/380 Limited and Northwest 423/380 LP.
2. Second Amendment to Economic Development Incentive Agreement with the Prosper Economic Development Corporation, Home Depot USA, Inc., and Northeast 423/380 Limited.

The motion was approved by a vote of 7-0.

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

The Council directed staff to provide an update on the local response to the Coronavirus at the next Council meeting.

Adjourn.

The meeting was adjourned at 10:06 p.m. on Tuesday, February 11, 2020.

These minutes approved on the 25th day of February 2020.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

**TOWN
SECRETARY**

To: Mayor and Town Council

From: Robyn Battle, Town Secretary/PIO

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon an ordinance repealing Article 1.06, "Records Management," of Chapter 1, "General Provisions," of the Town's Code of Ordinances and replacing it with a new Article 1.06, "Records Management."

Description of Agenda Item:

The current Article 1.06 of the Town's Code of Ordinances regarding Records Management was last updated in June 2005. The proposed ordinance updates Article 1.06 of the Code of Ordinances. It is intended to simplify the language within the Code, and remove details that are better suited to the Town's Administrative Regulations. The proposed ordinance ensures compliance with state regulations and establishes the authority and roles within the Town necessary to implement a records management program.

The accompanying document, Chapter 20 of the Town's Administrative Regulations, is intended to complement the proposed ordinance by providing detailed policies and procedures for staff regarding ongoing records management practices. Many of the details previously contained in the Code of Ordinances are now located within the Administrative Regulations. While the ordinance ensures compliance with state regulations for municipal records management programs, Chapter 20 of the Administrative Regulations provides operational guidance for staff, and memorializes the current records management practices of the Town. Upon approval of the proposed ordinance, Chapter 20 of the Town's Administrative Regulations will be submitted to the Town Manager for approval.

Legal Obligations and Review:

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

Attached Documents:

1. Ordinance
2. Current Article 1.06 - Redline Version
3. Chapter 20 – Administrative Regulations

Town Staff Recommendation:

Town staff recommends the Town Council approve an ordinance repealing Article 1.06, "Records Management," of Chapter 1, "General Provisions," of the Town's Code of Ordinances and replacing it with a new Article 1.06, "Records Management."

Proposed Motion:

I move to approve an ordinance repealing Article 1.06, "Records Management," of Chapter 1, "General Provisions," of the Town's Code of Ordinances and replacing it with a new Article 1.06, "Records Management."

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, REPEALING ARTICLE 1.06, "RECORDS MANAGEMENT," OF CHAPTER 1, "GENERAL PROVISIONS," OF THE TOWN'S CODE OF ORDINANCES AND REPLACING IT WITH A NEW ARTICLE 1.06, "RECORDS MANAGEMENT"; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Title 6, Subtitle C, of the Local Government Code (Local Government Records Act) provides that a municipality must establish by ordinance an active and continuing records management program to be administered by a Records Management Officer; and

WHEREAS, the Town Council of the Town of Prosper, Texas, ("Town Council") desires to adopt updated records management policies and procedures consistent with the Local Government Records Act; and

WHEREAS, the Town Council hereby finds and determines that it will be advantageous, beneficial, and in the best interests of the citizens of the Town to revise the Town's records management policies and procedures, as hereinafter referenced.

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, existing Article 1.06, "Records Management," of Chapter 1, "General Provisions," to the Town's Code of Ordinances is hereby amended by repealing existing Article 1.06 "Records Management," and replacing it with a new Article 1.06, "Records Management," to read as follows:

"ARTICLE 1.06 RECORDS MANAGEMENT

Sec. 1.06.001 Definitions

Department head - the officer who by ordinance or administrative policy is in charge of an office of the Town that creates or receives records.

Permanent record - any record of the Town for which the retention period on a records control schedule is given as permanent.

Record retention schedule - a document prepared by or under the authority of the Records Management Officer listing the records maintained by the Town, their retention periods, and other records disposition information that the records management program may require.

Records management - the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of vital and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

Records management officer - the person designated in Section 1.06.005 of this ordinance.

Records management plan - the plan developed under Section 1.06.006 of this ordinance.

Retention period - the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Town record - any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the Town or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business is hereby declared to be a record of the Town, and such record shall be created, maintained, and disposed of in accordance with provisions of this article and procedures authorized by it.

Vital record - any record of the Town necessary to the resumption or continuation of its operations in an emergency or disaster, to the re-creation of its legal and financial status, or to the protection and fulfillment of obligations to the people of the state.

Sec. 1.06.002 Town records declared public property

All Town records as defined in this ordinance are hereby declared to be property of the Town. No Town official or employee has, by virtue of his/her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

Sec. 1.06.003 Policy

It is hereby declared to be the policy of the Town to provide for a records management program that will provide efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all Town records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act and accepted records management practices.

Sec. 1.06.004 Adoption of records retention schedules

The Texas State Library and Archives Commission Local Government Retention Schedules, as they exist or may be amended, are hereby adopted as the records retention schedules of the Town. All records of the Town shall be maintained and kept in accordance with this article and the adopted records retention schedules.

Sec. 1.06.005 Designation of Records Management Officer

The Town Secretary, and the successive holders of said office, or his/her designee, shall serve as Records Management Officer for the Town. As provided by state law, each successive holder

of the office shall file his/her name with the director and librarian of the Texas State Library within thirty days of the initial designation, or of taking up the office, as applicable.

Sec. 1.06.006 Records Management Plan to be Developed; Approval of Plan; Authority of Plan

- (a) The Records Management Officer shall develop and implement a Records Management Plan for the Town for approval by the Town Manager. The plan must contain administrative policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the vital records of the Town, and to properly preserve those records of the Town that are of historical value. The plan must be designed to enable the Records Management Officer to carry out his/her duties prescribed by state law and this ordinance effectively.
- (b) Once approved by the Town Manager, the Records Management Plan shall be binding on all offices, departments, divisions, programs, commissions, boards, commissions, committees, or similar entities of the Town, and records shall be created, maintained, stored, scanned, or disposed of in accordance with the plan.

Sec. 1.06.007 Duties of Records Management Officer

In addition to other duties assigned in this ordinance, the Records Management Officer shall have the following duties:

- (a) Administer the Records Management Plan and provide assistance to department heads in its implementation.
- (b) Plan, formulate, and prescribe basic records management and records disposition policies, systems, standards, and procedures.
- (c) In cooperation with Town officials and department heads, identify vital and permanent records and establish a disaster plan for each Town office and department to ensure maximum availability of records for reestablishing operations quickly and with minimum disruption and expense.
- (d) Develop procedures to ensure the permanent preservation of the historically valuable records of the Town.
- (e) Monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program is in compliance with state regulations.
- (f) Disseminate to Town officials and department heads information concerning state laws and administrative rules relating to local government records.
- (g) Ensure that the maintenance, preservation, destruction, or other disposition of the records of the Town are carried out in accordance with the policies and procedures of the records management program and the requirements of state law.
- (h) Maintain records on the volume of records destroyed under approved record retention schedules.

Sec. 1.06.008 Duties of Town officials and Department Heads

- a) Cooperate with the Records Management Officer in carrying out the policies and procedures established by the Town for the efficient and economical management of records and in carrying out the requirements of this article;
- b) Adequately document the transaction of government business and the services, programs, and duties for which the department head and his/her staff are responsible;
- c) Maintain the records in his/her care and carry out their preservation, destruction, or other disposition of records only in accordance with the policies and procedures of the Records Management Plan of the Town and the requirements of this article.
- d) Designate at least one qualified staff member in his/her Department to serve as Records Liaison Officer for the implementation of this article and other applicable Town policies.

Sec. 1.06.009 Public access to records

All requests received for records, and any fees or charges made therefor (including fees for research and all other fees authorized by state law), shall be handled by the Town Secretary or his/her designee in accordance with the Texas Public Information Act, Chapter 552 of the Texas Government Code, as it exists or may be amended. Any fees shall be collected by the Town Secretary, or his/her designee, prior to or upon the distribution of said records to members of the public.

Sec. 1.06.010 Destruction of Records Under Record Retention Schedules

A record whose retention period has expired on a record retention schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department head requests in writing to the Records Management Officer that the record be retained for an additional period.”

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 hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 5

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY 2020.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1.06 RECORDS MANAGEMENT

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.001 **Definitions of town records**

Department head - the officer who by ordinance or administrative policy is in charge of an office of the Town that creates or receives records.

Permanent record - any record of the Town for which the retention period on a records control schedule is given as permanent.

Record retention schedule - a document prepared by or under the authority of the Records Management Officer listing the records maintained by the Town, their retention periods, and other records disposition information that the records management program may require.

Records management - the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of vital and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

Records management officer - the person designated in Section 1.06.005 of this ordinance.

Records management plan - the plan developed under Section 1.06.006 of this ordinance.

Retention period - the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Town record - any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the Town or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business is hereby declared to be a record of the Town, and such record shall be created, maintained, and disposed of in accordance with provisions of this article and procedures authorized by it.

Vital record - any record of the Town necessary to the resumption or continuation of its operations in an emergency or disaster, to the re-creation of its legal and financial status, or to the protection and fulfillment of obligations to the people of the state.

Any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the town or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business is hereby declared to be a record of the town, and such record shall be created, maintained, and disposed of in accordance with provisions of this article and procedures authorized by it. The term "town record" does not include:

- (1) — Extra identical copies of documents created only for convenience of reference or research by officers or employees of the town;

- ~~(2) — Notes, journals, diaries, and similar documents created by an officer or employee of the officer's or employee's personal convenience;~~
- ~~(3) — Blank forms;~~
- ~~(4) — Stocks of publications;~~
- ~~(5) — Library and museum materials acquired solely for the purposes of reference or display;~~
- ~~(6) — Copies of documents in any media furnished to members of the public to which they are entitled under chapter 552, Government Code, or other state law; or~~
- ~~(7) — Any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by section 2009.054(c), Government Code, associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.~~

~~(Ordinance adopting Code)~~

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.002 Town records declared public property

All records as defined in this ordinance are hereby declared to be property of the town. No town official or employee has, by virtue of his/

~~or~~ her position, any personal or property right to such records even though he or she may have developed them. The unauthorized destruction, removal from files, or use of such records is prohibited. (Ordinance 04, adopted 6/14/05)

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.003 Policy

It is hereby declared to be the policy of the town to provide for a records management program that will provide efficient, economical, and effective controls over creation, distribution, organization, maintenance, use, and disposition of all Town records through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Texas Local Government Records Act and accepted records management practices. (Ordinance 05-47, sec. 5, adopted 6/14/05)

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.004 Adoption of records retention schedules; adoption of policies

~~The Texas State Library and Archives eCommission Local Government records rRetention sSchedules for local governments,~~ as they exist or may be amended, are hereby adopted as the records retention schedules of the town. ~~The town secretary, or his/her designee, is hereby authorized to adopt any policies necessary to aid in complying with this article and the records retention schedules.~~ All records of the town shall be maintained and kept in accordance with this article, and the adopted records retention schedules. ~~and said policies.~~ (Ordinance 05-47, sec. 6, adopted 6/14/05)

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.005 ~~Duties of town secretary~~ Designation of Records Management Officer

The Town Secretary, and the successive holders of said office, or his/her designee, shall serve as Records Management Officer for the Town. As provided by state law, each successive holder of the office shall file his/her name with the director and librarian of the Texas State Library within thirty days of the initial designation, or of taking up the office, as applicable.

The town secretary, or his/her designee, shall have the following duties:

- ~~(1) — Planning, formulating, and prescribing basic files management and records disposition policies, systems, standards, and procedures.~~
- ~~(2) — Identifying vital and permanent records, and providing the records retention schedules for all records to each town department. Retention periods may be altered, but shall be no shorter than the time set forth in the records retention schedule, if deemed necessary by either the town administrator, the town attorney, or the town secretary.~~
- ~~(3) — Reviewing this article and related~~ - Page 19 - ~~ly and update or change as needed.~~
- ~~(4) — Coordinating the town-wide files management and records disposition programs and evaluating~~

~~program effectiveness in an annual report to the town administrator.~~

Item No. 3.

~~(5) — Providing records management advice and assistance to all town offices and departments;~~

~~by preparation of manuals of procedures and policies and by on-site consultation, as needed.~~

~~(6) — Developing, analyzing, and coordinating files maintenance and records disposition procedures, including but not limited to those prescribed by this article, to meet the current and long-term information needs of the town.~~

~~(7) — Carry out at the proper time actions such as microfilming, destruction and/or transfers that are required by the records retention schedule.~~

~~(8) — Establish and monitor compliance with standards for filing and storage equipment and supplies in all town offices and departments, and report to the town administrator failure of any office or department to comply with standards.~~

~~(9) — Develop a town-wide forms design and control system.~~

~~(10) — Establish in cooperation with other responsible town officials a disaster plan for each town office and department to ensure maximum availability of records for reestablishing operations quickly and with minimum disruption and expense.~~

~~(Ordinance 05-47, sec. 7, adopted 6/14/05)~~

Sec. 1.06.006 Records Management Plan to be Developed; Approval of Plan; Authority of Plan

~~(a) The Records Management Officer shall develop and implement a Records Management Plan for the Town for approval by the Town Manager. The plan must contain administrative policies and procedures designed to reduce the costs and improve the efficiency of recordkeeping, to adequately protect the vital records of the Town, and to properly preserve those records of the Town that are of historical value. The plan must be designed to enable the Records Management Officer to carry out his/her duties prescribed by state law and this ordinance effectively.~~

~~(b) Once approved by the Town Manager, the Records Management Plan shall be binding on all offices, departments, divisions, programs, commissions, boards, commissions, committees, or similar entities of the Town, and records shall be created, maintained, stored, scanned, or disposed of in accordance with the plan.~~

Sec. 1.06.007 Duties of Records Management Officer

~~In addition to other duties assigned in this ordinance, the Records Management Officer shall have the following duties:~~

~~(a) Administer the Records Management Plan and provide assistance to department heads in its implementation.~~

~~(b) Plan, formulate, and prescribe basic records management and records disposition policies, systems, standards, and procedures.~~

~~(c) In cooperation with Town officials and department heads, identify vital and permanent records and establish a disaster plan for each Town office and department to ensure maximum availability of records for reestablishing operations quickly and with minimum disruption and expense.~~

~~(d) Develop procedures to ensure the permanent preservation of the historically valuable records of the Town.~~

~~(e) Monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the records management program is in compliance with state regulations.~~

~~(f) Disseminate to Town officials and department heads information concerning state laws and administrative rules relating to local government records.~~

~~(g) Ensure that the maintenance, preservation, destruction, or other disposition of the records of the Town are carried~~

out in accordance with the policies and procedures of the records management pr
requirements of state law.

(h) Maintain records on the volume of records destroyed under approved record retention schedules.

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.0086 Duties of Town Officials and Responsibilities of town dDepartment hHeads

~~(a) All town officers and department heads are responsible for implementation and operation of effective files operations, records transfers and dispositions and other activities in accordance with the provisions of this article, within their departments and areas of responsibility, including all boards and commissions related to the functions of the department. Department heads shall:~~

(a) Cooperate with the Records Management Officer town secretary in carrying out the policies and procedures established by the town for the efficient and economical management of records and in carrying out the requirements of this article;

(b) Adequately document the transaction of government business and the services, programs, and duties for which the department head and his/her staff are responsible;

~~(a)~~

~~(b) Identify vital and permanent records of their departments;~~

(c) Maintain the records in his/her care and carry out their preservation, ~~or destruction,~~ or other disposition of records only in accordance with the ~~ordinances,~~ policies and procedures of the Records Management Plan of the Town and the requirements of this town, including this article;

~~(c) Review this article and related policies annually and make suggestions to the town secretary regarding needed updates or changes;~~

~~(d) Implement and enforce the files management and records disposition programs, including but not limited to those prescribed by this article, within their departments and monitor compliance therewith within their departments and report to the town secretary any failure to comply with standards; and~~

~~(e) Act as the custodian of records for his/her department and ensure the integrity and safety of the records of his/her department.~~

- (d) ~~Designate at least one qualified staff member in his/her Department to serve as Records Liaison Officer for the implementation of this article and other applicable Town policies.~~
- (e) ~~Department heads shall also designate at least one (1) qualified member of his/her staff to serve as records liaison officer within their departments for the implementation of this article and other applicable laws. Persons designated as records liaison officers shall assist the department head with his/her duties set forth herein, as requested to do so by the department head, and be thoroughly familiar with all records created and maintained by their department. Each department's records liaison officer may act as the department head's agent in the issuance and certification of copies of records of the department. In the event of the resignation, retirement, dismissal or removal of the employee designated as the records liaison officer, the department head shall promptly designate another person to fill the vacancy. A department head may serve as the records liaison officer. Each department head shall provide the town secretary the name of such designee(s) under their supervision.~~
- (f) ~~(Ordinance 05-47, sec. 8, adopted 6/14/05)~~

ARTICLE 1.06 RECORDS MANAGEMENT*

Sec. 1.06.00~~97~~ Public access to records

All requests received for records, and any fees or charges made therefor (including fees for research and all other fees authorized by state law), shall be handled by the Town Secretary or his/her designee ~~custodian of said records~~ in accordance with the Texas Public Information Act, chapter 552 of the Texas Government Code, as it exists or may be amended. Any fees shall be collected by the Town Secretary, custodian of the records, or his/her designee, prior to or upon the distribution of said records to members of the public. (Ordinance 05-47, sec. 9, adopted 6/14/05)

Sec. 1.06.010 Destruction of Records Under Record Retention Schedules

A record whose retention period has expired on a record retention schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or the department head requests in writing to the Records Management Officer that the record be retained for an additional period.

Chapter 20: Records Management

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Town of Prosper
ADMINISTRATIVE REGULATIONS

CHAPTER 20: RECORDS MANAGEMENT PLAN

SECTION 20.01 PURPOSE AND OVERVIEW

Records management is an essential component to local government. A successful records management program ensures the safety and security of the Town's records, provides for the timely response to inquiries for information, allows for the regular and systematic disposition and destruction of records, and ensures that all legal requirements regarding records are met. This Records Management Plan outlines policies intended to ensure compliance with Article 1.06 – Records Management of the Code of Ordinances, to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, retention, and disposition of all records of the Town of Prosper. The policy will be implemented through a system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Local Government Records Act, the Texas Public Information Act, the Town Charter, the Code of Ordinances, and accepted records management practices.

A comprehensive Records Management policy accomplishes the following objectives:

- Ensures compliance with Texas State Library and Archives Commission (TSLAC) guidelines and standards
- Provides a system for the efficient and secure storage and retrieval of records for internal and public use
- Preserves vital and historical Town records
- Maximizes the efficiency and minimizes the cost of records management and storage
- Provides for the timely disposition and destruction of eligible records
- Minimizes litigation risks

This policy will provide a framework for developing and implementing a comprehensive and sustainable records management program.

SECTION 20.02 AUTHORITY AND GOVERNANCE

The Town of Prosper records management program is governed by the Local Government Records Act (Local Government Code Chapters 201-205), Texas Government Code Section 441, Article 1.06 of the Town's Code of Ordinances, the Town Charter, and the standards set by the Texas State Library and Archives Commission (TSLAC).

SECTION 20.03 ROLES AND RESPONSIBILITIES

A. Records Management Officer

Section 1.06.005 of the Town's Code of Ordinances designates the Town Secretary as the Records Management Officer of the Town. In addition to the responsibilities specified in the Code of Ordinances, the Town Secretary (RMO) shall have the following duties:

1. Develop and maintain the Town's Administrative Regulations regarding records management, establishing basic records management and records disposition policies,

systems, standards, and procedures.

2. Identify and preserve the Town's vital and permanent records, and those that have historical value to the Town.
3. Provide the records retention schedules for all records to each Town department. Retention periods may be altered, but shall be no shorter than the time set forth in the records retention schedule, if deemed necessary by either the Town Manager, Town Secretary and/or a Department Head/Director.
4. Monitor records retention schedules and administrative rules issued by the Texas State Library and Archives Commission to determine if the Records Management Plan is in compliance with state regulations.
5. Disseminate to Town officials and Department Heads/Directors information concerning state laws and administrative rules relating to local government records.
6. Consult and assist Town departments in all areas of records management as needed, including records maintenance, storage, retrieval, disposition, and developments in technology that would benefit operations.
7. Maintain a secure, off-site records center to store and preserve vital, permanent, historical, and inactive records prior to disposition.
8. Establish a disaster recovery plan for the Town detailing the procedures to be followed by Town employees in the event of a disaster, to ensure maximum availability of records for reestablishing operations quickly, and with minimum disruption and expense.
9. Ensure that the maintenance, preservation, destruction, or other disposition of the records of the Town are carried out in accordance with guidelines set by the Texas State Library and Archives Commission, state law, and this policy.

B. Town Officials and Department Heads/Directors

All Town officials and Department Heads/Directors are responsible for the implementation of effective records management activities in accordance with the provisions of the Code of Ordinances and this policy within their departments and areas of responsibility, including all boards and commissions related to the functions of the department. Town officials and Department Heads/Directors shall:

1. Cooperate with the Town Secretary in carrying out the policies and procedures established by the Town for the efficient and economical management of records, and in carrying out the requirements of this policy.
2. Adequately document the transaction of government business and the services, programs, and duties for which the Department Head/Director and his/her staff are responsible.
3. Ensure that all records in his/her department are stored and maintained in compliance with the standards set by this policy.

4. Carry out the disposition or destruction of records only in accordance with the standards set by this policy.
5. Designate at least one qualified staff member in his/her Department to serve as Records Liaison Officer.

C. Record Liaison Officers

Persons designated as Records Liaison Officers shall assist the Department Head/Director with his/her duties set forth herein, as requested to do so by the Department Head/Director, and be thoroughly familiar with all records created and maintained by his/her department. Each department's Records Liaison Officer may act as the Department Head/Director's agent in the issuance of copies of departmental records. Records Liaison Officers shall:

1. Ensure all inactive records are properly boxed, labeled, indexed, transferred, and stored according to the standards set by this policy.
2. Maintain an accurate departmental filing system to keep track of all active and inactive paper and electronic departmental records and their locations.
3. Review departmental records regularly to purge and transfer inactive records to the off-site facility, or to process for destruction.
5. Review active records periodically to ensure they are properly protected and to ensure that vital and historical records are so classified.
7. Consult with the RMO to resolve any questions or problems related to records management.
8. Notify the Department Head/Director and the RMO of pending litigation to ensure the safe keeping of all records pertaining to the litigation.
9. Acquire knowledge of the department's electronic storage applications in order to communicate desired changes or additional needs to the Department Head/Director and/or RMO.

SECTION 20.04 RECORD RETENTION SCHEDULES

The Town of Prosper has submitted a Declaration of Compliance in accordance with the Local Government Records Act, and has adopted records retention schedules in compliance with the Texas State Library and Archives Commission (TSLAC). The retention period of a record established by the TSLAC retention schedules determines the minimum length of time that a record must be retained. The TSLAC Retention Schedules may be obtained by the Town Secretary, or on the TSLAC website: <https://www.tsl.texas.gov/slr/localretention#PW>

Before records can be stored off-site, in Laserfiche, or destroyed, a retention code (record series) must be assigned to each record category. The assigned code will designate the amount of time the Town record is to be retained before it is eligible for destruction. If departments wish to retain records beyond the mandatory retention period, the Department Head/Director may do so upon notifying the Town Secretary in writing. All records must be retained for at least the minimum

amount of time stipulated by the retention schedule. Records may be kept for longer than the minimum amount of time established by the TSLAC if determined to be necessary by the Town Manager, Town Secretary and/or a Department Head/Director.

A. Definition of a Record

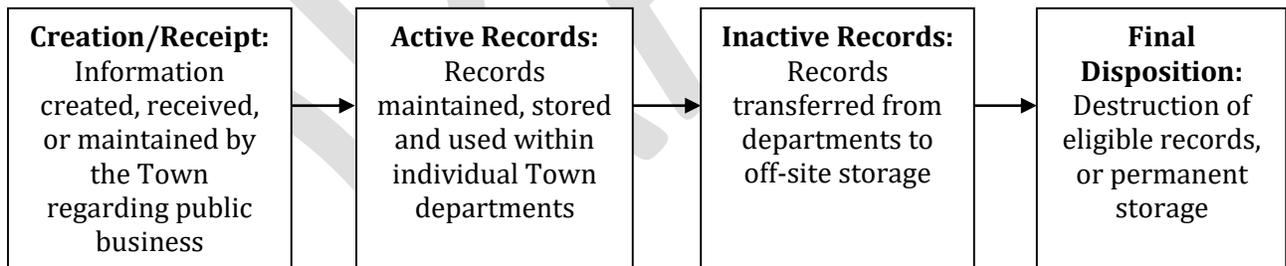
A “Town record” refers to any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by the Town or any of its officers or employee pursuant to law, including an ordinance, or in the transaction of public business.

Not all documents that are created or received by the Town are considered records. Documents or information may be considered non-records when they are not the original or official copies of a document and do not furnish information on the organization’s function, policy, procedure, operation, or other activities, and/or are retained in addition to the official copy. Some examples are:

- Periodicals, advertisements, or unsolicited marketing materials received in the mail
- Convenience copies (duplicate copies of memos, letters, emails, invoices, etc., created for an employee’s convenience or reference)
- Blank forms
- Surplus copies of publications, circulars, or bulletins created by the Town (one record copy must be retained)

B. The Life Cycle of a Record:

The diagram below describes the life cycle of a record, and a more detailed description of Town records.



1. Creation/Receipt

Information becomes a Town record if it is created, maintained or received by a Town official or employee in the transaction of Town business, regardless of format. Paper, electronic, audio, or video information may be considered a Town record. The Retention Schedules are used to determine whether a piece of information is a record, and how long the record must be retained.

2. Active Records

Records in Active Storage refers to those records that are retained and/or stored in an employee’s work area or within the department’s files. These are records created or maintained in the day-to-day operations of the department. Records that are in Active Storage are those that have been recently created or received (for example, within the last fiscal year or two), or those that the department needs to reference on a regular basis.

3. Inactive Records

Records that are no longer referenced by the department on a regular basis are considered Inactive Records. It is recommended that these records be stored off-site until they have met their minimum retention period. It is advisable that departments purge their files regularly of inactive records to minimize the amount of file storage equipment needed within the department, and to decrease the amount of time necessary to search for records.

4. Final Disposition

Once records have met their minimum retention, they may be scheduled for destruction. Records that have a Permanent retention will be stored permanently.

C. Determining the Appropriate Retention Schedule

The Town of Prosper has adopted the following TSLAC Retention Schedules:

- EL – Records of Elections and Voter Registration
- GR – Records Common to All Local Governments
- HR – Records of Public Health Agencies
- LC – Records of Justice and Municipal Courts
- PS – Records of Public Safety Agencies (Police, Fire, EMS)
- PW – Records of Public Works and other Government Services
- TX – Records of Property Taxation
- UT – Records of Utility Services

Contact the Town Secretary’s Office for assistance in determining the appropriate retention schedule for a particular record.

D. Establishing a Retention Period

Once the appropriate schedule is established, the next step is to identify the correct record series. Below is a sample of a common Town record.

Record Number	Record Title	Record Description	Retention Period	Remarks
*GR1000-26b	CORRESPONDENCE, INTERNAL MEMORANDA, AND SUBJECT FILES	General – Incoming/outgoing and internal correspondence pertaining to the regular operation of the policies, programs, services, or projects of a local government. May also include subject files, which are collections of correspondence, memos and printed materials on various individuals, activities, and topics.	2 years.	Retention Note: Records management officers should use caution before disposal of these records to ensure the records should not be classified under administrative correspondence (GR100-26a).

The above example is from the GR Retention Schedule (Records Common to All Local Governments). The retention code (or Record Number) for this particular type of record is GR1000-26b. The Record Title indicates the category of record (Correspondence, Internal Memoranda, and Subject Files). The Record Description provides additional information to the user to ensure the Town record meets the criteria for the selected retention code. This particular retention code would apply to most Town-related correspondence, including mail or email correspondence. The Retention Period indicates the minimum amount of time the record must be retained before it is eligible for destruction, which is 2 years from the creation or receipt of the correspondence. The Remarks section advises users of important considerations that may need to be made before destroying a record.

The following codes are helpful when trying to determine a retention period:

AV=administratively valuable (the record should be retained for as long as it is useful to the individual or department, at which time it may be destroyed at any time)

CE=calendar year end (must be retained through December 31 of the year in which the retention period is met)

FE = fiscal year end (must be retained through September 30 of the year in which the retention period is met)

US = until superseded (when a new version is created/submitted, the outdated version may be destroyed at any time)

Contact the Town Secretary's Office for assistance in determining the appropriate record series or retention code for a particular record.

SECTION 20.05 BOXING INSTRUCTIONS

A. General Guidelines

1. Use only the labels provided by the Town Secretary's Office.
2. Use only heavy duty record storage boxes with lids, 10"x12"x15," such as Staples Item #23490.
3. Box items of the same type together, based on the Records Retention Schedule; use only one retention code per box.
4. Box items using a logical system; alphabetical, chronological, by case number, etc.
5. Use a standard permanent marker, (not the ultra-fine point) to fill out the box labels. The ink does not fade over time and it is easier to read at a distance.
6. Do not tape the box lids on.
7. Remove any binder clips, three-ring binders, or any thick metal, as they will not go through the shredder when it's time to destroy the documents. Paper clips, staples, and rubber bands are acceptable.
8. Full boxes are preferred, but leave 1-2 inches of space in the box so records can be retrieved if needed.
9. The box lid must fit securely for stacking purposes; do not overfill.
10. Contact the Town Secretary with any questions.

B. Labeling Instructions:

Record Retention Code: Use the Record Number found in the Retention Schedule. Example: PS4125-05b. Using the appropriate code is important, since the Retention Period is driven by the code that is used.

Record Title: Use the appropriate Record Title that corresponds to the code used from the Retention Schedule. Example: Offense Investigation Records

Description of Contents: Provide a brief description of the contents. You may either repeat the Record Title, or use terminology to further describe the contents. Example: Class A misdemeanors

Department: Use your department or division name. Example: Police

Dept. Box ID: Leave this blank; the Town Secretary's Office will create a numbering system later

Start Range and End Range: Use the first and last file in the box to determine the range.

Example: If you are filing alphabetically, and the first record starts with “A,” (Adams) and the last file starts with “J,” (Johnson) then the Start Range would be “A” and the End Range would be “J,” or you could use “Adams” – “Johnson”

If filing chronologically: (Example: March 1, 2015 through July 31, 2015)

Start Range: 3-1-2015

End Range: 7-31-2015

If filing by Case Number: (Example: Case Number 15004100 through 15005200)

Start Range: 15004100

End Range: 15005200

Start Date and End Date: Use the date of the oldest record in the box and the date of the most recent record in the box. For example, if the records are from March 2015 through July 2015, the Start Date would be 3-1-2015 and the End Date would be 7-31-2015. **Entering the correct dates is very important.** You will use the end date, and then add the appropriate retention time to determine the correct the Destroy Date.

Packing Date: Use the date you put the label on the box

Destroy Date: This is the date that the records in the box are eligible for destruction. **It is very important to calculate this correctly to ensure the retention period is met.** Start with the End Date on the label, and then add the appropriate retention time, plus one day. This is the Destroy Date.

Example: You have a box full of Offense Investigation Records, Class A misdemeanors, (PS4125-05b). The Start Range is “Adams” and the End Range is “Johnson.” The End Date on the label is July 31, 2015. The retention for Class A misdemeanors, according to the Retention Schedule, is 2 years. If you add 2 years to July 31, 2015, you get July 31, 2017. The records may be destroyed on the following day, so the Destroy Date is August 1, 2017.

- C. Paper Records Converted to Digital Images:** Paper records that have been scanned or otherwise saved as a digital image on the Town’s servers, Town-provided cloud storage, or in Laserfiche, are considered convenience copies and may be destroyed at the discretion of the Department Head/Director.

The Department Head/Director is responsible for ensuring that all paper records that have been converted to digital images have been checked for image quality, can be easily located through a search function, and are stored in a logical electronic folder structure established by the department.

Paper records with a retention of ten years or longer that have been converted to digital images shall be forwarded to the Town Secretary’s Office for destruction. Complete the box label according to the above instructions to identify the records in the box, leaving the Destroy Date blank. In the “Description” section, indicate that the records have been scanned to digital images. The Town Secretary’s Office will document the destruction of these records. Paper records with a retention of less than ten years that have been converted to digital images may also be forwarded to the Town Secretary’s Office for destruction.

D. Convenience Copies: Extra copies of records may be destroyed at any time, as long as one source document is retained for the minimum retention period. Copies of records for which the Department is not the custodian may also be destroyed when they are no longer valuable to the Department. Examples of Convenience Copies would be extra copies of the following:

- P-Card statements – source documents are retained by Purchasing Division
- Invoices – source documents are retained by Finance Department
- Timesheets – source documents are retained by Finance Department
- Contracts and Agreements – source documents are retained by Town Secretary
- Town Council, Board and Commission Meeting Agendas and Minutes – source documents are retained by Town Secretary

Contact the Town Secretary’s Office with questions about the custodianship of any record.

Paper records that are Convenience Copies may be forwarded to the Town Secretary’s Office for destruction. Place the items in a standard records box and write “Convenience Copies” on the label. Convenience Copies will be stored until the next scheduled destruction date.

SECTION 20.06 STORAGE STANDARDS

Appropriate steps should be taken to protect Town records from damage or destruction due to improper storage or exposure to the elements. The TSLAC has established recommended standards for the proper care and storage of local government records. Town Departments shall ensure that records with a permanent retention are stored in a manner that complies with the following:

1. Protection from fire, water, steam, structural collapse, unauthorized access, theft, and other similar hazards
2. Protection from exposure to direct sunlight
3. Records or storage boxes shall not be stored in contact with the floor
4. Records shall be protected by an operational fire detection system, or the facility must be in compliance with local fire codes
5. Records shall not be stored in an area or building located in a 100-year flood plain area

Records with a non-permanent retention shall be stored in accordance with the above standards to the extent that is practical. At a minimum, paper records with a non-permanent retention shall not be stored on the floor, and shall be stored in a climate controlled environment with consistent temperature and humidity controls. Access to records of a confidential nature shall be limited only to authorized personnel, as determined by the Town Secretary and Department Head/Directors.

SECTION 20.07 RECORDS DISPOSITION AND DESTRUCTION

In accordance with TSLAC guidelines, the following procedures should be followed when destroying records of any kind.

A. Disposition of non-records

Non-records may be recycled, shredded, or boxed as “Convenience Copies” at any time without consulting with the Town Secretary. See Section 20.04 for more information on determining whether a document is a record or a non-record.

B. Destruction of Records

1. All records that are to be destroyed are to be processed through the Town Secretary's Office and destroyed according to the Records Management Policy. Simply throwing away or recycling records that have reached their retention period is not permitted. The TSLAC requires that the destruction of records be documented.
2. Inactive records that have been appropriately boxed, and transferred to the custody of the Town Secretary's Office will be retained until their retention period expires. Records with a permanent retention will be retained permanently.
3. The Town Secretary's Office will coordinate a destruction of all eligible records on a regular basis, approximately once per year. The Town Secretary will provide a list of all boxed records that have met their retention period and are eligible for destruction to each Department Head/Director. The Department Head/Director will be required to approve all records to be destroyed.
4. The Town Secretary will coordinate the records destruction with a reputable document shredding service to ensure that documents are destroyed in accordance with TSLAC guidelines, and will maintain a record of all documents that are destroyed.

SECTION 20.08 ELECTRONIC STORAGE

The Town is utilizing Laserfiche software and each department is responsible for scanning its records into Laserfiche. Request the assistance of the Town Secretary's Office if assistance is needed to set up folder structures.

The Town of Prosper has authorization from the TSLAC to store records with a retention of 10 years or longer electronically, as long as the Town complies with TSLAC Local Government Bulletin B – Electronic Records Standards and Procedures. Department Heads/Directors may authorize these records to be stored electronically, and the paper records to be destroyed, as long as the Town complies with storage, security, and retrieval requirements in Bulletin B.

Records Liaison Officers and/or those persons responsible for scanning records should take steps to ensure that scanned records are legible, complete, in color if necessary, and include all pages of the document. Quality control is critical to ensure that scanned records have the same image quality as paper records, especially if the department intends to destroy the paper records and keep the scanned document as the source document.

SECTION 20.09 RECORDS RETRIEVAL

Records Liaison Officers will be provided with a list of their boxes in storage by the Town Secretary's Office. If a box, or a file within a box, is needed by a department, please contact the Town Secretary's Office and provide the appropriate box number and/or file information, and a member of the Town Secretary's staff will retrieve the box or file. When the department is finished with the records, the Town Secretary's Office will return the file or box to inactive storage.

SECTION 20.10 PUBLIC INFORMATION REQUESTS

Public Information Requests (PIRs) are handled through the Town Secretary's Office, with the exception of requests for police records, which are handled directly through the Police Department. PIRs are considered to be received on the date they are received in writing by the Town Secretary's Office. Requests may be made using the online form on the Town website, a paper form available in the Town Secretary's Office, or emailing a request directly to the Town Secretary. All PIRs are handled in accordance with the Texas Public Information Act (TPIA).

Upon receipt of a PIR, the Town Secretary will contact the Record Liaison Officer or appropriate staff to obtain the responsive records. To ensure that the requestor receives a response within ten business days as required by the TPIA, departments are encouraged to provide responsive documents to the Town Secretary's Office in a timely manner. In some cases, the requested information may need to be reviewed by the Town Attorney, or the Attorney General's Office to determine whether the information requested is releasable. The Town may withhold or redact information that is allowed to be withheld in accordance with the TPIA.

SECTION 20.11 LITIGATION HOLDS

In the event the Town or a department is involved in any legal action, any records which may be involved must be retained and safeguarded from destruction or tampering regardless of the retention period specified in the Town's Record Retention Schedules.

SECTION 20.12 DISASTER PREVENTION AND RECOVERY

The availability of records is critical to the administration of Town operations. The Town Secretary's Office will develop and maintain a Records Disaster and Recovery Plan to preserve and restore Town records in the event of a disaster, and to assist Town departments with restoring critical Town operations in the event of a disaster. The plan will be implemented with the assistance of the Town's Emergency Management Coordinator, Town Department Heads/Directors and IT staff.

The Records Disaster and Recovery Plan will follow guidelines and industry standards approved by the TSLAC. It will include procedures and operations necessary to respond to the nature and extent of the disaster, or the disruption of normal Town operations.

SECTION 20.13 EMAIL RETENTION

The Town of Prosper maintains an electronic messaging system to provide a quick, accessible, and efficient platform for conducting business. This section of the Records Management policy covers general guidelines for purging and retaining correspondence stored on the Town's email communication system. Local government records in any format, including email communication, are to be retained in accordance with TSLAC guidelines and Article 1.06 of the Town's Code of Ordinances.

The Town of Prosper imposes space and time limits on all Town email accounts. All electronic information maintained on Town systems remains the property of the Town and employees have no right of privacy in the use of the system. Periodic purging of emails is necessary to maintain reliable performance of the email system and manage available space. Users are responsible for determining

the classification of their sent and received emails and managing them according to the guidelines and procedures of this policy. For acceptable use of the Town's email communication system, see Section 8.01 of the Town's Personnel Policies and Regulations Manual.

A. Email Retention

1. Any email that is not work-related is considered a non-record. Non-records may be deleted at any time.
2. Emails left on the messaging system will be automatically deleted after the default time limit as determined by the Town Secretary's Office and the IT Department.
3. If there is a litigation hold on email records, they must be printed or retained separately and stored until the litigation is resolved.
4. Attachments to email communications are considered to be part of the message, and must therefore be retained with the email communication.
5. The time period of the applicable retention period of email correspondence is determined by the content of the message, and must follow guidelines set by the TSLAC Retention Schedules adopted by the Town. Email correspondence generally falls into one of three categories:

Administrative correspondence – Retention Code 1000-26a – retain for 5 years
Incoming/outgoing and internal correspondence pertaining to the formulation, planning, implementation, modification, or redefinition of the policies, programs, services, or projects of the Town.

General correspondence – Retention Code 1000-26b – retain for 2 years
Incoming/outgoing and internal correspondence pertaining to the routine administration or operation of the policies, programs, services, and projects of the Town.

Transitory Information – 1000-26c – retain as long as it is useful
Records of temporary usefulness that are not an integral part of a records series, and are required for only a limited period of time for the completion of an action by an employee or official.

6. When an employee leaves the Town's employment, the Department Head/Director or the employee's Supervisor will be given access to said employee's archived email account for 90 days. All emails that need to be kept for official record purposes shall be printed and stored. After the 90 days, the email account/email of a former employee will be deleted.
7. The responsibility for determining retention of an email rests on the individual user. Please contact the Town Secretary's Office with questions about the retention of a particular email communication.

8. Email correspondence may be requested as part of a Public Information Request. Employees may be asked to compile responsive emails in response to a PIR. To determine whether an employee is the custodian of a particular message, use the following guidelines:

- Internally sent messages – sender (Town employee) is the responsible custodian.
- Externally received messages – the first Town employee in the “To:” field is the responsible owner/custodian. Employees in the “CC” or “Bcc” fields are not the custodians of the messages.

The Town Secretary’s Office and the IT Division are responsible for general enforcement of this section of the policy. Each Department Head is responsible for implementation and maintenance of this section in their area.

DRAFT

**FINANCE
DEPARTMENT**

To: Mayor and Town Council

From: January Cook, CPPO, CPPB, Purchasing Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon repealing Resolution No. 13-51 and replacing with a resolution delegating authority to the Town's Purchasing Manager to determine the best method of procurement for the purchase of goods and services.

Description of Agenda Item:

On September 24, 2013, the Town Council approved Resolution No. 13-51 delegating authority to the Town's Purchasing Agent to determine the best method of procurement for the purchase of goods and services, excluding alternative construction methods referenced in Chapter 2269 of the Texas Government Code.

Staff is proposing to set parameters and standardize the evaluation criteria for each alternative construction method to be utilized by the Town. This will streamline the procurement process and provide for consistency in how the Town evaluates and awards construction projects. Additionally, granting authority to the Purchasing Manger to determine the best method of procurement, based on these parameters, will alleviate the requirement for staff to request approval from Town Council to utilize an alternative construction method for each individual project, therefore resulting in time savings.

Staff has outlined the methods of procurement for the purchase of construction services, based on the proposed parameters listed below, and will incorporate into the Town's Purchasing Policy, contingent upon approval. Please note there is a difference between the evaluation criteria established for the Competitive Sealed Proposal (CSP) and the Construction Manager-At-Risk (CMAR) methods. The CMAR method is utilized for facilities construction, and the goal is to select a CMAR at the beginning of the facility design phase, with experience building same or similar facilities. Therefore, timeline is not a consideration during the CMAR selection process. Timeline is addressed when the Guaranteed Maximum Price (GMP) is being negotiated.

1. Competitive Bidding Method

A bid is utilized to purchase one-time construction services over \$50,000, and is subject to the competitive bid laws of the State of Texas. Solicitations at this dollar threshold are processed by the Purchasing Office.

a. Traditional Low Bid

Award is made to the lowest responsive and responsible bidder. Negotiations are not permitted. A written contract is required. Please allow 6-8 weeks at a minimum to complete the process.

b. A+B Bidding

Award is made to the lowest responsive and responsible bidder, taking into consideration the number of days bid. The number of days bid will be multiplied by the value of a calendar day as listed below, and added to each bidder's base bid. This is also sometimes referred to as 'A+B' bidding. The Town reserves the right to set a maximum value to the total number of days. Negotiations are not permitted. A written contract is required. Please allow 6-8 weeks at a minimum to complete the process.

Amount of Contract (\$)	Value of a Calendar Day (\$)
\$1,500,000 to \$1,999,999.99	\$500 per day
\$2,000,000 to \$2,999,999.99	\$1,000 per day
\$3,000,000 to \$3,999,999.99	\$1,500 per day
\$4,000,000.00 or more	\$2,000 per day

If applicable, any incentives offered by the Town will be solely at the direction of the Town Council.

2. Competitive Sealed Proposal (CSP) Method

This is an alternative construction method, as defined in Texas Government Code, Chapter 2269. A CSP can be utilized to purchase one-time construction services under \$1.5 million, and is subject to the competitive bid laws of the State of Texas. Solicitations at this dollar threshold are processed by the Purchasing Office. Award is made to the contractor that offers the best value to the Town, based on pre-determined evaluation criteria. Negotiations are permitted with the top-ranked contractor, in order to obtain the best value for the Town. A written contract is required. Please allow 8-12 weeks at a minimum to complete this process.

The standard evaluation criteria established for construction services is as follows:

- Qualifications and Experience (30%)
 - o Contractor and sub-contractor experience with similar projects.
 - o Qualifications of key personnel assigned to this project.
 - o References
- Project Timeline (20%)
- Cost Proposal (50%)

3. Construction Manager-At-Risk (CMAR) Method

This is an alternative construction method, as defined in Texas Government Code, Chapter 2269. This method can be utilized to purchase facilities construction services over \$50,000, and is subject to the competitive bid laws of the State of Texas. The Town contracts with an architect/engineer for design and construction phase services, and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility. Award is made to the contractor that offers the best value to the Town, based on pre-determined evaluation criteria. Negotiations are permitted with the top-ranked contractor, in order to obtain the best value for the Town. A written contract is required. Please allow 8-12 weeks at a minimum to complete this process.

The standard evaluation criteria established for construction manager-at-risk services is as follows:

- Overall Ability to Meet Town Objectives (10%)
- Experience with Similar Facility Construction (20%)
- Qualifications of Project Personnel (20%)
- References (10%)
- Cost Proposal (40%)

4. All Other Alternative Construction Methods

The use of other alternative construction methods, as defined in Texas Government Code, Chapter 2269, not specifically outlined above, will not be allowable until the Town sets parameters for use.

5. Liquidated Damages

In order to emphasize that time is of the essence for construction services, for each day that any work shall remain uncompleted after the time specified in the Contract or in an executed Change Order, including milestone completion dates, substantial completion, and final completion, the Town may deduct the following sum from monies due to the Contractor for each day the work remains uncompleted:

Less than \$100,000	\$100 per day
\$100,000 to \$1,000,000	\$250 per day
Greater than \$1,000,000	\$500 per day

In the case of a project where expenses are definitively quantifiable, a higher liquidated damage value can be assessed, and will be published in the Special Conditions section of the bid/proposal document for that specific project.

Legal Obligations and Review:

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

Attached Documents:

1. Resolution No. 13-51
2. Replacement Resolution

Town Staff Recommendation:

Staff recommends repealing Resolution No. 13-51 and replacing with a resolution delegating authority to the Town's Purchasing Manager to determine the best method of procurement for the purchase of goods and services.

Proposed Motion:

I move to repeal Resolution No. 13-51 and replace with a resolution delegating authority to the Town's Purchasing Manager to determine the best method of procurement for the purchase of goods and services.

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 13-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, DELEGATING AUTHORITY TO THE TOWN'S PURCHASING AGENT TO DETERMINE THE BEST METHOD OF PROCUREMENT FOR THE PURCHASE OF GOODS AND SERVICES, SUBJECT TO CERTAIN LIMITATIONS AS REFERENCED HEREIN; MAKING FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, Section 252.021(c) of the Texas Local Government Code, as amended, provides, in part, that "[t]he governing body of a municipality that is considering using a method other than competitive sealed bidding must determine before notice is given the method of purchase that provides the best value for the municipality" and "may delegate, as appropriate, its authority under this subsection to a designated representative"; and

WHEREAS, that same section of the Texas Local Government Code further provides that "[i]f the competitive sealed proposals requirement applies to the contract, the municipality shall consider the criteria described by Section 252.043(b) [of the Texas Local Government Code] and the discussions conducted under Section 252.042 [of the Texas Local Government Code] to determine the best value for the municipality"; and

WHEREAS, it is the desire of the Town Council to delegate such authority to the Town's Purchasing Agent, and to direct the Purchasing Agent to determine the best method of procurement of goods and services, excluding alternative construction methods referenced in Chapter 2269 of the Texas Government Code, for the Town.

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

SECTION 1

All of the above premises are found to be true and correct and are incorporated into the body of this Resolution as if copied in their entirety.

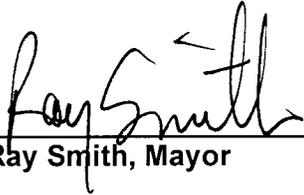
SECTION 2

The Town Council hereby delegates to and authorizes the Town's Purchasing Agent to determine the best method of procurement of goods and services, excluding alternative construction methods referenced in Chapter 2269 of the Texas Government Code, for the Town.

SECTION 3

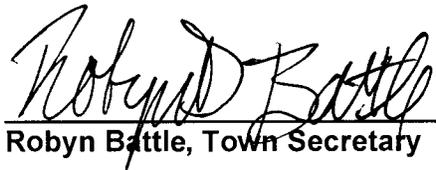
This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THIS 24TH DAY OF SEPTEMBER, 2013.



Ray Smith, Mayor

ATTEST:



Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:



Terrence S. Welch, Town Attorney

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2020-_____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, DELEGATING AUTHORITY TO THE TOWN'S PURCHASING MANAGER TO DETERMINE THE BEST METHOD OF PROCUREMENT FOR THE PURCHASE OF GOODS AND SERVICES; MAKING FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, Section 252.021(c) of the Texas Local Government Code, as amended, provides, in part, that "[t]he governing body of a municipality that is considering using a method other than competitive sealed bidding must determine before notice is given the method of purchase that provides the best value for the municipality" and "may delegate, as appropriate, its authority under this subsection to a designated representative"; and

WHEREAS, that same section of the Texas Local Government Code further provides that "[i]f the competitive sealed proposals requirement applies to the contract, the municipality shall consider the criteria described by Section 252.043(b) [of the Texas Local Government Code] and the discussions conducted under Section 252.042 [of the Texas Local Government Code] to determine the best value for the municipality"; and

WHEREAS, Section 2269.056(a) of the Texas Government Code, as amended, provides, in part, that "[t]he governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive sealed bidding must, before advertising, determine which method provides the best value for the governmental entity"; and

WHEREAS, Section 2269.055(a) of the Texas Government Code, as amended, provides the criteria to consider in determining the award of a contract under this chapter; and

WHEREAS, Section 2269.053(a) of the Texas Government Code, as amended, provides that "The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person"; and

WHEREAS, Section 2269.063(b) of the Texas Government Code, as amended, provides that "The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualification or in an addendum to the request"; and

WHEREAS, it is the desire of the Town Council to delegate such authority to the Town's Purchasing Manager, and to direct the Purchasing Manager to determine the best method of procurement of goods and services for the Town.

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

SECTION 1

All of the above premises are found to be true and correct and are incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

The Town Council hereby delegates to and authorizes the Town's Purchasing Manager to determine the best method of procurement of goods and services for the Town.

SECTION 3

This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THIS 25TH DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

**POLICE
DEPARTMENT**



To: Mayor and Town Council

From: Kent Bauer, Emergency Management Coordinator

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon a resolution supporting and authorizing a grant application to the Office of the Governor for a FY 2020-2021 Justice Assistance Grant (JAG).

Description of Agenda Item:

This resolution is required by the State of Texas, Office of the Governor, to apply for funds through the Justice Assistance Grant (JAG) which will fully fund one virtual training simulator. This equipment will assist law enforcement with real-world de-escalation tactics, training, and decision making skills.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., prepared the attached resolution.

Attached Documents:

1. Resolution

Town Staff Recommendation:

Town staff recommends adopting a resolution supporting and authorizing a grant application to the Office of the Governor for a FY 2020-2021 Justice Assistance Grant (JAG).

Proposed Motion:

I move to approve a resolution supporting and authorizing a grant application to the Office of the Governor for a FY 2020-2021 Justice Assistance Grant (JAG).

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2020-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, SUPPORTING APPLICATION TO THE OFFICE OF THE GOVERNOR FOR A FY 2020-2021 JUSTICE ASSISTANCE GRANT; MAKING FINDINGS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper finds it is in the best interest of the citizens of the Town of Prosper that the police training simulator be operated at the beginning Fiscal Year 2020-2021; and

WHEREAS, the Town of Prosper agrees to provide applicable matching funds for the said project as required by the FY 2020-2021 Justice Assistance Grant application; and

WHEREAS, the Town of Prosper agrees that in the event of loss or misuse of the Office of the Governor funds, the Town of Prosper assures that the funds will be returned to the Office of the Governor; and

WHEREAS, the Town of Prosper designates the Town Manager, Harlan Jefferson, as the grantee's authorized official, who is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the Town of Prosper.

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

SECTION 1

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

SECTION 2

The Town of Prosper approves submission of the grant application for the police training simulator to the Office of the Governor, grant number 4043001, and further authorizes the Town Manager to apply for, accept, reject, alter or terminate the grant on behalf of the Town of Prosper.

SECTION 3

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



To: Mayor and Town Council
From: Leslie Scott, Director of Library Services
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon an ordinance repealing existing Subsection (c) of Section 1.04.032, “Number of Members,” of Division 1, “Library Board,” of Article 1.04, “Boards, Commissions and Committees,” of Chapter 1, “General Provisions,” of the Code of Ordinances of the Town of Prosper, Texas, by removing a Prosper Independent School District non-voting member from the Library Board.

Description of Agenda Item:

This ordinance removes the PISD liaison from the Library Board. Library Board members discussed and supported removing the PISD liaison, due to the library no longer utilizing Reynolds Middle School facility. A survey of comparison cities found that their library boards do not include an ISD representative. Melissa Surratt, the Reynolds Middle Scholl librarian is the PISD liaison. Ms. Surratt is supportive of elimination the liaison position and has not attended a Library Board meeting since the spring of 2019.

Attached Documents:

- 1. Ordinance

Town Staff Recommendation:

Town staff recommends approval of an ordinance repealing existing Subsection (c) of Section 1.04.032, “Number of Members,” of Division 1, “Library Board,” of Article 1.04, “Boards, Commissions and Committees,” of Chapter 1, “General Provisions,” of the Code of Ordinances of the Town of Prosper, Texas, by removing a Prosper Independent School District non-voting member from the Library Board.

Proposed Motion:

I move to approve an ordinance repealing existing Subsection (c) of Section 1.04.032, “Number of Members,” of Division 1, “Library Board,” of Article 1.04, “Boards, Commissions and Committees,” of Chapter 1, “General Provisions,” of the Code of Ordinances of the Town of Prosper, Texas, by removing a Prosper Independent School District non-voting member from the Library Board.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING SUBSECTION (c) OF SECTION 1.04.032, "NUMBER OF MEMBERS," OF DIVISION 1, "LIBRARY BOARD," OF ARTICLE 1.04, "BOARDS, COMMISSIONS AND COMMITTEES," OF CHAPTER 1, "GENERAL PROVISIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY REMOVING A PROSPER INDEPENDENT SCHOOL DISTRICT NON-VOTING MEMBER FROM THE LIBRARY BOARD; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the Town's Library Board includes a non-voting position for a Prosper Independent School District liaison; and

WHEREAS, the inclusion of a PISD non-voting liaison as a non-voting member of the Library Board was premised upon the Town's former library being located inside Reynolds Middle School; and

WHEREAS, with the Town having recently opened a new library at the Town Hall site, it is no longer necessary that a PISD liaison be retained as a non-voting Library Board member.

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 Subsection (c) of Section 1.04.032, "Number of members," of Division 1, "Library Board," of Article 1.04, "Boards, Commissions and Committees," of Chapter 1, "General Provisions," of the Town's Code of Ordinances is hereby repealed in its entirety, thereby eliminating a Prosper Independent School District non-voting member as a member of the Library Board.

SECTION 3

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

SECTION 4

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

SECTION 5

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

LIBRARY



To: Mayor and Town Council

From: Leslie Scott, Director of Library Services

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon amendments to Section 1.05, "Meetings," of the Library Board's Bylaws to (1) change the Board's meetings to quarterly meetings, or as needed, and (2) to provide for the duties of a Board Secretary.

Description of Agenda Item:

The proposed amendments to the Library Board Bylaws change the meeting schedule from monthly to quarterly and formally adopt a Board Secretary position and associated duties. Both of these changes were requested by the Town's Library Board at meetings in 2019. The continued success of the new library facility creates limited items for the Library Board to discuss monthly, therefore meeting quarterly or when needed is a more efficient use of Board and staff time. The Board Secretary position was not included in the original Library Bylaws and is a valuable function of a board member in creation of agendas and keeping minutes of meetings.

Legal Obligations and Review:

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

Attached Documents:

1. Library Board Bylaws

Town Staff Recommendation:

Town staff recommends approving amendments to Section 1.05, "Meetings," of the Library Board's Bylaws to (1) change the Board's meetings to quarterly meetings, or as needed, and (2) to provide for the duties of a Board Secretary.

Proposed Motion:

I move to approve amendments to Section 1.05, "Meetings," of the Library Board's Bylaws to (1) change the Board's meetings to quarterly meetings, or as needed, and (2) to provide for the duties of a Board Secretary.

LIBRARY BOARD

Bylaws

Division 1. Library Board

Sec. 1.01 Establishment

There is hereby created and established within the Town a Library Board which shall be subject to the jurisdiction of the Town Council and shall constitute an advisory board to the Town Council.

Sec. 1.02 Number of members

The Library Board shall be composed of seven (7) regular members appointed by the Town Council. Each member of the Library Board shall meet the eligibility requirements established by the Town Charter and the Board and Commission Appointment Policies and Procedures. The Library Director serves as staff liaison. The members shall serve at the pleasure of the Town Council and may be removed at the discretion of the Town Council.

Sec. 1.03 Term of office

The term of office of each Library Board regular member shall be two (2) years. Places 2, 4, and 6 shall be appointed in even-numbered years, and Places 1, 3, 5, and 7 shall be appointed in odd-numbered years.

Sec. 1.04 Officers

The Library Board shall have a Chair and a Vice-Chair, whose terms shall be one (1) year but not more than two (2) consecutive terms in one (1) office. No regular member shall serve for a total period of more than two (2) consecutive years as Chair or Vice-Chair. The Chair and Vice-Chair shall be nominated by a majority vote of the Library Board.

The Chair and Vice-chair shall be elected each year at the first regular meeting after Library Board members are appointed and have taken their oath of office.

Vacancies in office shall be handled as follows:

- a. In the event of resignation or incapacity of the Chair; the Vice-Chair shall become the Chair for the unexpired portion of the term.

- b. Vacancy of the Vice-Chair shall be filled for the unexpired term by special election.

Duties of the officers shall be as follows:

- a. Chair:
 - i. Preside at all meetings.
 - ii. Represent the Library Board at public functions of the Town of Prosper and at events such as special Library events, local, state, or national advocacy activities for the Library or for local, state, or national association activities.
 - iii. Appoint standing, special, or ad hoc committees.
 - iv. Assist Library Director in establishing the agenda for each meeting. Agenda items requested by any Library Board member will be included.
 - v. Liaison with the governing authority regarding library issues.
- b. Vice-chair:
 - i. Assist the Chair in directing the affairs of the Library Board and act in the Chair's absence.
 - ii. Serve as Chair of ad hoc or special committees or projects such as Chair of an advocacy initiative.

Sec. 1.05 Meetings

The regular meeting of the Library Board shall be held quarterly, or as needed, at a time designated by the Library Board in the Library or such other place the Library Board may determine and at such other times as the Library Board, Town Council, and/or the Library Director deem necessary and appropriate. All meetings shall be held in a public place with public notice as prescribed by law.

A simple majority of the regular members shall constitute a quorum at all meetings of the Library Board. If a quorum is not present, the meeting shall be cancelled.

All questions presented for a vote of the Library Board shall be decided by a simple majority of the quorum, including the vote of the Chair.

Robert's Rules of Order, Newly Revised, shall govern the parliamentary procedure of the Library Board in all cases to which they are applicable.

Agendas for meetings and minutes of Library Board meetings shall be prepared by a Library Board Secretary. Any meeting agenda shall be subject to the approval of the Library Director prior to posting. Draft minutes of Library Board meetings shall be subject to the approval of the Library Director before inclusion in an agenda packet. The Library Board Secretary shall be a member of the Library Board, appointed for such purpose by the Library Board. The Library Board Secretary is not an officer of the Library Board.

Sec. 1.06 Removal from office/absences

The regular members shall serve at the pleasure of the Town Council and may be removed at the discretion of the Town Council. Library Board regular members are expected to maintain regular attendance at meetings in accordance with the attendance policy established by the Town Charter and the Board and Commission Appointment Policies and Procedures.

Sec. 1.07 Powers and authority

Library Board members provide opinion, support, and expertise as needed, but do not have governing authority. Library Board members shall:

- a. Provide advice and counsel to the Library Director, Executive Director of Development and Community Services, the Town Manager, and the Town Council, as requested, in matters relating to the services rendered by the Library.
- b. Study the need for, and encourage the development of, adequate Library facilities.
- c. Recommend general policies of Library service for approval by the Town Council.
- d. Recommend to the Town Council suggested programs for the development of Library facilities and necessary financial support for those facilities.
- e. Receive, in the name of and for the Town, donations, gifts, and bequests whether of land, money, securities, books, and manuscripts, collections of historical nature or materials, or local historical relics to be devoted to Library uses or purposes.
- f. Make any recommendations to the Town Council regarding Library matters that it deems advisable.
- g. Assist in strategic planning.

- h. The Library Board shall develop for Town Council review the rules and regulations as may be prescribed by the Town Council for the conduct of its business.
- i. Encourage in every possible way the development and advancement of the public library at local, regional, state, and national levels.
- j. Participate in advocacy initiatives including, but not limited to, local issues, including funding issues and requests, state advocacy activities, and federal advocacy initiatives.

Sec. 1.08 Amendments

These bylaws may be amended by a majority vote of the Library Board regular members at any regular meeting, provided all members have been notified of the proposed amendment. Such amendment would then be subject to approval by the Town Council.

**INFORMATION
TECHNOLOGY**

To: Mayor and Town Council

From: Leigh Johnson, Director of Information Technology

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon awarding CSP No. 2020-42-A to Zayo Group, LLC, as submitted by Sandler Partners, an internet provider distributor, related to dedicated fiber internet services at Town Hall, and authorizing the Town Manager to execute a Service Order for same.

Description of Agenda Item:

On March 14, 2017, the Town Council approved a two-year agreement with AT&T for 100 megabit per second fiber internet service at Town Hall. After the expiration of that agreement, the Town issued CSP No. 2020-42-A in order to obtain proposals for a 1 gigabit fiber internet connection. The Town received four proposals. The evaluation committee, comprised of three (3) I.T. staff, evaluated the proposals based on the following criteria:

- Price (50%)
- Technical Compliance (25%)
- Project Implementation (25%)

After completion of the evaluation process, staff recommends awarding the CSP to Zayo Group, LLC, as submitted by Sandler Partners, as the best value proposal. The service term will be 60 months.

Budget Impact:

The recurring service fee is \$896.99 a month/\$10,763.88 annually, and \$53,819.40 for the 60 month term. This agreement will result in an annual savings of \$7,356.00 over the current month-to-month agreement with AT&T. Funding for this service is included in Information Technology's operating budget, and will be funded from 100-5526-10-05 (Data Network). Subsequent annual expenditures will be subject to budget appropriations granted in future fiscal years.

Legal Obligations and Review:

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

Attached Documents:

1. Evaluation Matrix
2. Zayo Service Order
3. Zayo Master Customer Agreement
4. Customer Schedule
5. IP Justification Form

Town Staff Recommendation:

Staff recommends awarding CSP No. 2020-42-A to Zayo Group, LLC, as submitted by Sandler Partners, an internet provider distributor, related to dedicated fiber internet services at Town Hall, and authorizing the Town Manager to execute a Service Order for same.

Proposed Motion:

I move to award CSP No. 2020-42-A to Zayo Group, LLC, as submitted by Sandler Partners, an internet provider distributor, related to dedicated fiber internet services at Town Hall, and authorizing the Town Manager to execute a Service Order for same.

CSP NO. 2020-42-A
DEDICATED FIBER INTERNET CONNECTIVITY

EVALUATION MATRIX - BASE SERVICES		Cequel Communications, LLC dba Suddenlink		Grayson Collin Communications (Cutter Communications, Inc.)		Sandler Partners (Zayo)		Sandler Partners (NextLink)	
Evaluation Criteria	Weighting		WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Technical Compliance	45%	5.00	2.25	5.00	2.25	5.00	2.25	5.00	2.25
Project Implementation	10%	4.33	0.43	3.67	0.37	5.00	0.50	7.00	0.70
Price	30%	7.12	2.14	1.82	0.54	10.00	3.00	7.87	2.36
TOTAL	85%		4.82		3.16		5.75		5.31

MASTER CUSTOMER AGREEMENT

This Master Customer Agreement (“**MCA**”) is made effective as of (Month) (Day), 20 (YR) (“**Effective Date**”) between Zayo Group, LLC, a Delaware limited liability company, and its Affiliates (defined below), with an address of 1821 30th Street, Unit A, Boulder, CO 80301 (collectively “**Zayo**” and each Affiliate a “**Zayo Affiliate**”) and (Insert Customer Name), a (Insert Country/State/Province/etc) (Insert corporation/limited liability company/partnership/etc.) with an address of (Insert Address) (“**Customer**”). Zayo and Customer each may be referred to herein as a “**Party**” and collectively as the “**Parties**”. “**Affiliate**” shall mean any entity controlled by, controlling or under common control with the applicable Party.

ARTICLE 1 - GENERAL

1.1 Agreement Structure. This MCA provides general terms and conditions under which Customer may from time to time purchase access to and utilization of selected portions of the Zayo fiber network and associated infrastructure (“**Access**”) and certain related telecommunications and infrastructure services (“**Services**”) from Zayo. Terms and conditions that apply to Access and to each type of Service are set forth in customer schedules (each a “**Customer Schedule**”) and in the supplemental terms and conditions (“**Supplemental Terms and Conditions**”) attached to Customer Orders (defined below). This MCA, applicable Customer Schedules, applicable Supplemental Terms and Conditions, Customer Orders and any other attachments and/or addendums are hereby incorporated herein and shall collectively be referred to as the “**Agreement**”. Customer acknowledges and accepts the applicable terms and conditions of the Agreement by signing the Agreement and/or by using Access or Services or allowing others to do so. Any part of the Agreement may be entered into and performed by any Zayo Affiliate, including a Zayo Affiliate authorized to provide Access or Services in any country or jurisdiction, and any independent contractor or other third party may perform any obligations of Zayo under the Agreement.

1.2 Orders for Access and/or Services. Customer may request that Zayo provide Access and/or Services by submitting a customer order in a form provided by Zayo (“**Customer Order**”). Customer is responsible for the accuracy of all information that it provides to Zayo. Each accepted Customer Order shall be subject to the Agreement. Customer Orders shall set forth the term, pricing, Access and Service type and location(s), monthly recurring charge (“**MRC**”), non-recurring charge (“**NRC**”) and any additional terms applicable to the Access and/or Services. All Customer Orders shall be subject to availability and acceptance by Zayo.

1.3 Term. The term of each Customer Order shall commence on the Activation Date (as defined in the applicable Customer Schedule) for such Access and/or Service and continue for the period of time specified in that Customer Order, and thereafter shall automatically renew for one (1) year periods (collectively, the “**Order Term**”) until terminated by either Party upon at least ninety (90) days written notice prior to the end of the Order Term. Customer shall continue to be responsible for payment to Zayo for the Access and Services to be terminated through the end of the ninety (90) day notice period. Following the initial Order Term, Zayo reserves the right to increase rates for any Access and Services provided thereunder upon at least thirty (30) days’ notice. The term of the Agreement is coterminous with the longest Order Term thereunder.

1.4 Order of Precedence. In the event of an express conflict between terms in the Agreement, precedence will be given, as applicable, in the following order: (a) the Customer Order, (b) the Supplemental Terms and Conditions, (c) the Customer Schedule and (d) the MCA.

ARTICLE 2 - PAYMENT TERMS

2.1 Credit Approval/Deposits. Zayo may require a deposit as a condition to accepting a Customer Order or if Customer fails to timely pay its invoices. Zayo shall refund any deposit, less any amount Customer owes to Zayo, when Access or Services are discontinued or when Zayo determines that such deposit is no longer required.

2.2 Invoicing and Payment Terms. Zayo may commence billing and Customer shall be liable for payment upon the Activation Date. Zayo will provide Customer with a monthly itemized invoice for the Access and Services together with all other charges due. Customer shall pay to Zayo all amounts due in full, without offset or reduction, within thirty (30) days from the date of the invoice (“**Due Date**”). Invoice amounts not paid on or before the Due Date shall bear interest at the rate of one and one-half percent (1.5%) per month or the highest lawful rate, whichever is lower. Unless otherwise stated in the Agreement, Zayo shall invoice Customer for any NRC upon acceptance of a Customer Order.

2.3 Invoice Disputes. Customer is responsible for all charges respecting the Access and Services, even if incurred as the result of unauthorized use. If Customer reasonably disputes any portion of an invoice, Customer shall timely pay all undisputed amounts and shall notify Zayo in writing and provide detailed documentation supporting its dispute within thirty (30) days of the invoice date or Customer’s right to any billing adjustment shall be waived. If the

dispute is resolved against Customer, Customer shall pay such amounts due plus interest, as set forth in Section 2.2 above, from the date the payment was originally due.

2.4 Taxes and Other Fees and Surcharges. Excluding taxes based on Zayo's net income, Customer shall be responsible for all Taxes (defined below) and Other Fees and Surcharges (defined below) arising in any jurisdiction imposed on or incident to the provision, sale or use of Access or Services, including but not limited to value added, consumption, sales, use, gross receipts, foreign withholding (which will be grossed up), excise, access and bypass (collectively "**Taxes**") and any property, franchise, rights of way, license or permit, regulatory or other taxes, duties, fees, charges or surcharges (collectively "**Other Fees and Surcharges**"), imposed on Zayo, Customer or a Customer's end user ("**End User(s)**"). Charges for Access and Services are exclusive of any Taxes and Other Fees and Surcharges. Taxes and Other Fees and Surcharges may be recovered through imposition of a percentage surcharge on the charges for Access and Services to Customer. Customer may present Zayo with a valid exemption certificate (in a form reasonably acceptable to Zayo) eliminating Zayo's liability to pay certain Taxes and Other Fees and Surcharges; Zayo will give effect thereto prospectively.

ARTICLE 3 - DEFAULT

If Customer fails to make any payment due under the Agreement and such failure continues for five (5) days after receiving notice thereof, or if a Party fails to cure any material breach of any term of the Agreement within thirty (30) days of receiving notice of the breach from the other Party, then the non-breaching Party may: (a) terminate the Agreement in whole or in part and (b) subject to the liability limitations stated herein, pursue any available remedies at law or in equity.

ARTICLE 4 - LIABILITIES

4.1 General Limitations. To the extent allowed by law, Zayo shall enjoy any statutory protections granted to utility and infrastructure providers and shall not be liable for injury to or death of any person and for damage to or loss of any property arising out of or attributable to its operations and performance under the Agreement. Customer's sole and exclusive remedy for any non-performance, defect or failure to deliver the Access or Service are the performance credits and/or other remedies expressly stated in the relevant Customer Schedule. Zayo's total liability for any and all causes and claims whether based in contract, warranty, tort or otherwise shall be limited to the lesser of (a) the actual direct damages sustained by Customer in connection with the affected Customer Order and affected Access or Service, or (b) an amount equivalent to the total MRC payable by Customer over the preceding three (3) months for the Access or Service affected or if the claim arises prior to the Activation Date, an amount equivalent to the total MRC payable by Customer for the first three (3) months of the Order Term.

4.2 Special Damages. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.5 OF THIS MCA, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF DATA, ANTICIPATED SAVINGS OR COST OF PURCHASING REPLACEMENT SERVICES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS MCA OR ANY CUSTOMER ORDER.

4.3 No Warranty. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, ZAYO MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF DESCRIPTION, QUALITY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF THE ACCESS OR SERVICES HEREUNDER OR ANY OTHER MATTER AND ANY SUCH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

4.4 No Liability for Certain Actions. Zayo exercises no control over and is not responsible for the content of any information transmitted or received through the use of the Access or the Services. Other than as expressly stated in the Agreement, Customer shall be solely responsible for all of the security and confidentiality of information it transmits using the Access or Service. Customer shall be solely responsible for all customer support, pricing and service plans, billing and collections with respect to its End Users, including obtaining all necessary legal or regulatory approvals to provide or terminate the provision of the access, product or service to its End Users. Use of the Access and Services is at Customer's own risk.

4.5 Indemnification. Each Party (an "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party, its directors, officers, employees, agents, contractors, successors and assigns ("**Indemnified Party**") harmless from and against all losses, damages, costs, expenses and liabilities (including reasonable attorney's fees and expenses) incurred by such Indemnified Party arising from any third party claims relating to any physical damage to

tangible property, or personal injury or death, caused by the gross negligence or willful misconduct of the Indemnifying Party, provided, however, that Zayo is not obligated to indemnify Customer, and Customer shall defend and indemnify Zayo as an Indemnified Party, for any claims or actions commenced by any third party, including End Users, arising from or in connection with goods or services provided by Customer that incorporate any of the Access or Services, including without limitation claims relating to or arising from Access or Service degradation or outage.

ARTICLE 5 – MISCELLANEOUS PROVISIONS

5.1 Confidentiality. Information or documentation exchanged between the Parties in performing this Agreement, including the terms of this Agreement, are subject to the terms of any non-disclosure agreement in effect between the Parties, and if none, the Parties agree to keep any such information which is of a confidential nature confidential and not disclose such information to third parties (other than to vendors and Affiliates).

5.2 Force Majeure. Neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure or hindrance of performance hereunder due to causes beyond its reasonable control. The Party claiming relief under this Section shall notify the other Party of the occurrence or existence of the event and of the termination of such event.

5.3 Subject to Laws. Each Party is responsible for complying with applicable laws and regulations, including but not limited to applicable: (a) federal, state and local laws; (b) regulations, rulings and orders of government agencies; (c) data protection legislation; (d) laws, statutes, regulations and codes relating to anti-bribery and anti-corruption; and (e) import, export and economic sanction laws and regulations. Neither Party shall use the Access or Services for any unlawful purposes.

5.4 Governing Law; Venue. The Agreement shall be governed by and construed in accordance with the laws of Colorado, without giving effect to any conflict of law principles. Venue for any dispute arising under the Agreement shall be Denver, Colorado. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

5.5 Prevailing Party. If suit is brought or an attorney is retained by either party to enforce the terms of the Agreement or to collect any money as due hereunder or to collect any money damages for breach hereof, the prevailing party shall be entitled to recover its reasonable attorneys' fees and related expenses incurred in connection therewith.

5.6 Assignment. Customer shall not transfer or assign, voluntarily or by operation of law or otherwise, its obligations under the Agreement without the prior written consent of Zayo. Zayo may assign in whole or in part the Agreement or any of its rights and obligations hereunder to any Zayo Affiliate without prior notice to Customer. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

5.7 Notices. Notices under this MCA shall be in writing and delivered by certified mail, return receipt requested, or by a nationally recognized courier to the persons whose names and business addresses appear below, and such notice shall be effective on the date of receipt, or refusal of delivery, by the receiving Party. **In addition to the foregoing notice requirement, if Customer is disconnecting Access or discontinuing Service(s) of any type for any reason, Customer must submit the disconnection request through the form located at <https://www.zayo.com/disconnectservice/>**

If to Zayo:	If to Customer:
Zayo Group, LLC	[INSERT]
Attn: General Counsel, Legal	Attn: (Insert Name)
1821 30 th Street, Unit	(Address)
Boulder, CO 80301	City, St, Zip
Billing Disputes:	(if this "Customer" section is left blank, notice shall be deemed effective if delivered to Customer's registered office address or the last Customer address provided to Zayo by Customer)
Zayo Group, LLC	
Attn: Accounts Receivable	
1821 30 th Street, Unit A	
Boulder, CO 80301	
customerservice@zayo.com	

Item No. 8.

5.8 No Third Party Beneficiaries. The representations, warranties, covenants and agreements of the Parties set forth herein are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a Party hereto, including without limitation, End Users.

5.9 Entire Agreement; Amendment. The Agreement constitutes the entire and final agreement and understanding between the Parties, expressed or implied, with respect to the Access and Services and supersedes all other prior or contemporaneous representations, understandings or agreements. No alteration or variation of the terms of any provision shall be valid unless made in writing and signed by the Parties. If any provision of the Agreement shall be held to be invalid or unenforceable, the remaining provisions of the Agreement shall be unimpaired and shall remain in effect and be binding upon the Parties. No course of dealing and no failure to exercise any right hereunder shall be construed as a waiver of any provision hereof.

5.10 Relationship and Counterparts. The Agreement does not create a partnership, joint venture or agency relationship between the Parties. Neither Party shall have any authority to bind the other Party to any agreement, understanding or other instrument, in any manner whatsoever. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. The Agreement may be executed via a recognized electronic signature service (e.g., DocuSign) and/or may be delivered by facsimile transmission and/or signed, scanned and emailed to Zayo, and any such signatures shall be treated as original signatures.

ZAYO GROUP, LLC

[CUSTOMER NAME]

Signature: _____

Signature: No signature required

Name: _____

Name: _____

Title: _____

Title: _____

CUSTOMER SCHEDULE
Ethernet, IP, & WANs

This Ethernet, IP, and WANs Customer Schedule ("**Customer Schedule**") dated **MONTH DAY, 20 YR**, is subject to, and made a part of, that Master Customer Agreement or Master Service Agreement ("**MCA**" or "**Master Customer Agreement**") dated **MONTH DAY, 20 YR** entered into between the undersigned Parties. Zayo owns and operates fiber networks and other related telecommunications facilities and is in the business of providing certain Ethernet, IP, and WANs connectivity offerings (each, an "**Offering**", collectively, "**Offerings**"). Capitalized terms not defined herein will have the meaning ascribed to such terms in the MCA.

1. **DEFINITIONS.** The following additional definitions shall apply to Offerings:
 - 1.1 **95th Percentile Calculation** means the calculation method used to measure Bandwidth usage for Customer Orders which specify Burst Bandwidth. Samples of average Bandwidth utilization rates of both inbound and outbound traffic from Customer port(s) are collected in five (5) minute intervals over a calendar month. The higher of such samples (Inbound or Outbound) are placed on a list and sorted from highest to lowest in amount of Mbps. The highest five percent (5%) of samples are discarded and the next highest sample is chosen to represent the 95th percentile calculation for that month.
 - 1.2 **Allocated MRC** means, for a multipoint Offering, a portion of MRC allocated by Offering and/or each Customer location as specified on a Customer Order, and if not so specified in a Customer Order then prorated based on the number of locations associated with the Offering.
 - 1.3 **Bandwidth** means the amount of data (quantified as Mbps ("M") or Gbps ("G")) made available to Customer as specified in a Customer Order, or in the event of usage based billing, the amount of data actually transmitted by Customer's Equipment.
 - 1.4 **Bandwidth Commitment** means the Customer's commitment to pay for a certain level of Bandwidth on a monthly basis. Customer agrees to pay the MRC specified on the Customer Order as a minimum monthly charge regardless of actual usage. Any applicable Bandwidth Commitment will be specified on a Customer Order.
 - 1.5 **Burst Bandwidth** means the amount of Bandwidth usage, based on the 95th Percentile Calculation, in excess of a Bandwidth Commitment. Any usage in excess of the Bandwidth Commitment will incur additional MRC based on the 95th Percentile Calculation. Burst Bandwidth must be specified on a Customer Order to be applicable.
 - 1.6 **Demarcation Point** means the interface port where Zayo hands off service to Customer unless otherwise specified on a Customer Order.
 - 1.7 **NNI** means "Network-to-Network Interface" and is an interface used to interconnect a customer's network to Zayo's network.
 - 1.8 **Off-Net** means any Offering which does not meet the definition of On-Net in Section 1.9.
 - 1.9 **On-Net** means any Offering which connects two locations to which Zayo is already providing the same type of Offering at the time of the Customer Order and which is provisioned entirely on Zayo facilities and does not include any Third Party Offerings (as defined herein) or special construction.
 - 1.10 **Protected Offering** means an Offering which includes a protection scheme that allows traffic to be rerouted in the event of a fiber cut or equipment failure. For an Offering to be deemed a Protected Offering hereunder, the Customer Order for such Offering shall specifically state that such Offering is a Protected Offering.
 - 1.11 **Offering Element** means each Offering element set forth in Section 6 for which a Performance Level Target is prescribed (e.g. Availability and Latency).
 - 1.12 **Third Party Cloud Provider (TPCP)** means a non-Zayo entity to which Customer desires to interconnect an Offering and with which Customer has a direct commercial relationship.
 - 1.13 **UNI** means "User Network Interface" and is an interface used to interconnect a customer's network to Zayo's network.
 - 1.14 **Unprotected Offering** means Offering which does not include a protection scheme that allows traffic to be rerouted in the event of a fiber cut or equipment failure. Any Offering not expressly designated as a Protected Offering on the applicable Customer Order shall be deemed an Unprotected Offering.
2. **ACCEPTABLE USE POLICY.** All Offerings are subject to and conditioned upon Zayo's Acceptable Use Policy published at www.zayo.com, which is hereby incorporated into this Customer Schedule.

3. OFFERING DESCRIPTIONS

3.1 IP Transit/DIA Offerings

- a) **IP Transit ("IP Transit")** provides multiservice 1G, 10G and/or 100G ports (minimum 1G commit for a 10G port) available only in designated Zayo IP Points of Presence ("**POP**"). Customer provides cross-connect within POP.
- b) **Dedicated Internet Access ("DIA")** is connectivity and access to the Internet via Zayo's peering arrangements with various Internet service providers. DIA is provided from a Zayo POP to a customer location.
- c) **Additional Features:** Customer may request related services, including additional IP addresses, aggregated billing, Burst Bandwidth, primary and secondary domain name service ("**DNS**"), or border gateway protocol ("**BGP**") services.
- d) **DDoS Protection Offering.** Distributed denial of service ("**DDoS**") attacks may from time to time affect the Offering that Zayo provides to Customer by flooding Customer's system with incoming traffic. Zayo's DDoS protection Offering ("**DDoS Protection**") is an optional service which attempts to mitigate DDoS attacks in accordance with the following procedure:
 1. Prior to the Activation Date, Customer and Zayo shall agree on a list of IP addresses to which the DDoS Protection applies;
 2. Upon service activation, Zayo will perform an analysis of Customer's normal Internet traffic and use this traffic profile to identify potential anomalies that could indicate a DDoS attack;
 3. Upon detection of anomaly that is indicative of a DDoS attack, Zayo will notify pre-determined Customer contacts that traffic patterns indicate a DDoS attack;
 4. DDoS Protection includes managed re-routing of Customer's DDoS-impacted traffic to one of Zayo's global scrubbing facilities which attempts to identify and remove the offending traffic; and
 5. DDoS Protection does not include: load balancing of traffic or of the Offerings; permanent archival/storage of log files; forensics or investigations; legal case preparation or PR incident support; security consulting services; disaster recovery planning; or permanent filtering/cleaning of traffic.
 6. DDoS Unpredictability - Customer acknowledges and agrees that: (1) due to the unpredictable nature of DDoS attacks, there is no guarantee or warranty hereunder concerning the ability of the DDoS Protection to mitigate or defeat any DDoS attack; and (2) Zayo shall have no liability whatsoever for damages related to lost data, lost profits or lost revenues, even if Zayo has been advised of the possibility of such damages, or damages which result from any failure or inability of the DDoS Protection to mitigate or defeat any one or more DDoS attacks.
 7. Special Terms for Sustained DDoS Attack - Zayo may suspend or blackhole Customer's traffic without notice if Customer suffers a sustained DDoS attack whereby Customer's traffic materially impacts Zayo's network.

3.2 Ethernet LAN ("ELAN") is a layer 2 service comprised of a connection to a Zayo POP providing multipoint-to-multipoint Ethernet transport between Customer locations. ELAN Offering can support unicast traffic and a limited amount of multicast or broadcast traffic. ELAN can be provided with QoS which allows Customer to differentiate traffic within the ELAN and on the Zayo network.

3.3 Ethernet ("Ethernet") is a layer 2 service that provides dedicated or shared point-to-point or point-to-multipoint connectivity for transport of voice, data, video or other forms of communications traffic. Ethernet Offerings meet IEEE 802.3 standards and uses 802.1Q VLAN tagging and stacking to support certain configurations. Ethernet Offerings generally follow the Metro Ethernet Forum definitions of Ethernet Private Line ("**EPL**") and Ethernet Virtual Private Line ("**EVPL**") network configurations and can be purchased with the following configurations:

- a) **EPL:** Metro or intercity Offering comprised of a UNI at each Customer site connected via an Ethernet virtual circuit ("**EVC**") providing point-to-point Ethernet transport.
- b) **EVPL – UNI:** A UNI handoff which connects to an NNI via an EVC.
- c) **EVPL – NNI:** A NNI handoff which aggregates multiple EVC Offerings.

3.4 IP for Virtual Private Networks ("IP-VPN") is a layer 3 service leveraging Zayo's IP network. IP-VPN provides a virtual private network ("**VPN**") that supports the interconnection of multiple Customer locations through Zayo's multiprotocol label switching ("**MPLS**") network backbone. IP-VPN is delivered to the Customer premises over On-Net or Off-Net facilities, and distributed as a Layer 3 Internet Protocol ("**IP**") service from the Customer premises equipment ("**CPE**") router. IP-VPN can be provided with On-Net QoS which allows Customer to differentiate traffic within the IP-VPN Offering and on the Zayo network.

- a) **Management Type:** IP-VPN Offering may be available with the following managed service options on a per-location basis.
 1. **Unmanaged:** Access to utilization reporting in the Tranzact portal.
 2. **Basic Management:** Access to utilization and performance reporting in the Tranzact portal and Offering may be offered with Proactive Notification (see Section 3.7) as an optional service.
 3. **Advanced Management:** Includes Basic Management features plus router configuration, change management, and hardware support.

- b) **IP-VPN Managed Router:** Customer may request Zayo provide a CPE router to enable the following configurations. Advanced Management is required for this option.
1. Customer edge routing protocol enablement
 2. Dynamic Host Configuration Protocol (DHCP) server or DHCP relay
 3. Access Control Lists (ACL)
 4. Static routes
 5. Secondary IP address
 6. Read Only Simple Network Management Protocol (ROSNMP) access
 7. Netflow to Customer collector

3.5 Software-Defined Wide Area Network (“SD-WAN”) is a virtual overlay to IP-VPN or DIA which provides a fully-meshed, private VPN service. SD-WAN is a managed service using controllers, network gateways, and Zayo-provided hardware and software at the Customer premises. SD-WAN may be configurable with QoS and application level traffic steering and includes an online portal. Off-Net access methods for SD-WAN may include “bring-your-own-Internet-access” over wired or wireless connectivity. After SD-WAN activation, Customer may submit change requests to Zayo or request access to self-manage configurations via the portal. Zayo will provide up to five (5) configuration changes per network, per month, subject to availability, at no additional charge, however, Zayo may charge Customer for excessive changes or corrections.

3.6 WAN CloudLink is an Offering that enables Customer to extend their IP-VPN, SD-WAN, or ELAN to a TPCP in order to share TPCP services to one (1) or more Customer locations on the IP-VPN, SD-WAN, or ELAN. WAN CloudLink service is provided from an On-Net provider edge router (“PE”) with direct connectivity to the TPCP location.

- a) **BGP Management:** Customer must establish a direct relationship with each TPCP and is solely responsible for all charges or costs from the TPCP. Customer is responsible for: (1) all BGP sessions connecting to and within the TPCP network; and (2) all public and private addresses required by the TPCP.
- b) **Managed IP-VPN Option:** IP-VPN connectivity for CloudLink may include Zayo-provided managed routers at the Customer premises. This option may include Network Address Translation (NAT) for the integration of public TPCP offerings.

3.7 Proactive Notification is an option for IP-VPN, ELAN, SD-WAN, IP Transit, and DIA in which Zayo monitors the network delivering an Offering for Outages, correlates an event to an Offering, and provides notification of such outage to Customer. Proactive Notification is provided in two configurations:

- a) **Basic Notification:** Zayo will send notification of a detected outage to Customer. Customer is responsible to verify the Offering outage and contact the NCC to open a trouble ticket.
- b) **Advanced Notification:** Zayo will send notification of a detected outage to Customer and open a trouble ticket.

4. COMPONENTS AND INSTALLATION.

4.1 Zayo Components. Zayo, or its agent, may provide, install, maintain, repair, operate and control Zayo’s components and equipment (“**Zayo Components**”). The Zayo Components shall remain the sole and exclusive property of Zayo, and nothing contained herein shall give or convey to Customer, or any other person, any ownership right, title or interest whatsoever in the Zayo Components (other than the access rights included within an Offering), notwithstanding that such Zayo Components may be, or become, attached to, or embedded in, realty. Customer shall not tamper with, remove or conceal any identifying plates, tags or labels identifying Zayo’s ownership interest in the Zayo Components. Customer shall not adjust, align, attempt to repair, relocate or remove the Zayo Components, except as expressly authorized in writing by Zayo. Customer shall be liable for any loss of or damage to the Zayo Components caused by Customer’s negligence, intentional acts, or unauthorized maintenance and shall reimburse Zayo for the same within thirty (30) days after receipt by Customer of a request for reimbursement. Customer, at its sole cost and expense, shall be required to obtain space and power to support the Zayo Components for the Offering for the duration of the Order Term.

4.2 Access and Customer Premises Obligations. Customer, at its sole cost and expense, shall provide Zayo with all necessary information and access to all applicable Customer locations for purposes of providing the Offerings, including installation, maintenance, and repair of Zayo Components on Customer premises. For purposes of the preceding sentence, “access” shall include without limitation any necessary license(s) to access, occupy and conduct telecommunication operations within each respective building and or property for the duration of the Order Term (including any necessary rights for Zayo to enter and access each building, and for providing all necessary cable pathways, building access and/or occupancy fees, riser fees, cross-connects and cross-connect fees, coordination at any third party owned location, and, where applicable, necessary space for Zayo’s fiber termination panel). However, notwithstanding Customer’s foregoing responsibility, if Zayo is required by a third party to obtain and maintain any such license to access the building or property, Customer agrees to reimburse Zayo for its costs related to obtaining and maintaining such licenses during the Order Term. Zayo shall provide reasonable notice under the circumstances to Customer prior to entering Customer’s point of presence to install, maintain or repair any of the Zayo Components. Customer will provide a safe place to work and comply with all applicable laws regarding the working conditions on the Customer premises.

4.3 Customer Equipment. Customer is responsible, at its sole cost and expense, for connecting to the Demarcation Point specified in the Customer Order. Components, equipment and operations beyond the Demarcation Point shall be the responsibility of Customer (“**Customer Equipment**”). Customer must procure and maintain, at its sole cost and expense, Customer Equipment which is technically compatible with the Offering and the Zayo network. Zayo shall have no obligation to install, maintain or repair any non-Zayo components or equipment, including any Customer Equipment. If, on responding to a Customer-initiated service call, Zayo reasonably determines that the cause of the deficiency was a failure, malfunction or the inadequacy of components or equipment other than the Zayo Components, Customer shall compensate Zayo for actual time and materials expended during the service call.

5. SERVICE REQUESTS AND DELIVERY.

5.1 Acceptance and Projected Activation Date. Within five (5) business days of Zayo’s acknowledgment to Customer of receipt of a Customer Order for On-Net Offerings, or within two (2) business days after Zayo’s receipt of its Off-Net provider’s projected service activation date for Off-Net Offerings, Zayo will notify Customer (in writing or electronically) of its acceptance of such Customer Order (“**Customer Order Acceptance**”), at which time such Customer Order becomes a binding obligation to purchase the Offerings therein, or rejection of such Customer Order, in which case Zayo will communicate to Customer why it is unable to accept such Customer Order. Zayo may accept or reject any submitted Customer Order in its sole discretion.

5.2 Firm Order Commitment Date. Zayo will provide a firm order commitment date (“**FOC Date**”), a date by which Zayo estimates it will turn over Offering for Customer’s use, unless a FOC Date is already stated in a Customer Order. For Off-Net Offerings, Zayo shall notify Customer of the FOC Date within two (2) business days after Zayo receives an installation date from its Third Party Provider.

5.3 Offering Activation. After Zayo has determined that the Offering conforms to the relevant Customer Order, Zayo will notify Customer that the Offering has been activated in accordance with the Customer Order and is available for use by Customer (“**Offering Activation Notice**”). The “**Activation Date**” shall be the earlier of (i) the date on which Customer begins using the Offering for any purpose other than testing; or (ii) the date that Zayo has sent the Offering Activation Notice to Customer. Customer shall have two (2) days following the Activation Date in which to notify Zayo that it is rejecting the Offering because the Offering does not conform to the Customer Order. If Customer has notified Zayo within such two (2) day period that the Offering does not conform to the Customer Order, then Zayo shall take such steps reasonably necessary to conform the Offering to the Customer Order, at which time Zayo shall issue a new Offering Activation Notice and the acceptance process above shall be repeated. If the Activation Date is delayed as a result of Customer’s failure to meet its responsibilities under the MCA or this Customer Schedule, the Activation Date will be deemed to be the later of (a) the FOC Date or (b) the date that Zayo has completed its tasks to deliver the Offering to the best of its ability.

5.4 Incrementally Delivered Offerings. Unless otherwise specified in a Customer Order, Zayo may incrementally deliver individual Offerings, when ready, which may result in different Activation Dates for such incrementally delivered Offerings. For multipoint Offerings, Zayo may incrementally deliver Offering to each Customer location when ready. The Order Term for incrementally delivered multipoint Offerings shall begin on the Activation Date of the first location and/or circuit delivered and shall end after the period specified as the Order Term from the Activation Date of the last location and/or circuit delivered. Unless otherwise set forth in a Customer Order, the charges associated with a delivered service will be based upon the Allocated MRC. Any Bandwidth Commitment for an incrementally delivered service will be proportionally reduced to reflect the number of locations incrementally delivered out of the total number of locations included under such Bandwidth Commitment and Burst Bandwidth will be determined by using the level then in effect as of the last day of each calendar month. For all multipoint Offerings, Outage Credits shall be granted only to affected Customer locations based on Allocated MRC.

6. PERFORMANCE LEVEL TARGETS

6.1 Availability: For IP-VPN, ELAN, CloudLink, SD-WAN, and Ethernet, “**Availability**” means the percentage of time that a Customer location is connected to and can be reached by one or more other Customer locations on the same Customer network. For DIA and IP Transit, Availability means the percentage of time a Customer location can access the Internet. The Availability measurement period begins when a Zayo trouble ticket is opened and is calculated on a calendar month basis. The Offering Credit available to Customer is ten percent (10%) of Allocated MRC for each full hour that the Offering is unavailable following the Performance Level Target set forth below. Outage Credits are available for On-Net Offerings only for IP-VPN, ELAN, DIA, IP Transit, CloudLink, and Ethernet and for On-Net and Off-Net Offerings for SD-WAN (as described below).

Availability		
Offering	Configuration	Performance Level Target
IP-VPN	Unprotected	99.5%
	Protected, single PE	99.9%
	Protected, dual PE	99.99%
ELAN	Unprotected	99.5%
	Protected, single PE	99.9%
	Protected, dual PE	99.99%
DIA	Unprotected	99.5%
	Protected	99.95%
IP Transit	Unprotected	99.5%
	Protected	99.95%
CloudLink	Protected	100%
SD-WAN	On-Net, single CPE, single access	99.9%
	On-Net/Off-Net, single CPE, dual diverse access	99.99%
	On-Net/Off-Net, dual CPE, 3 or more diverse access	100%
Ethernet	Unprotected	99.5%
	Protected	99.99%

6.2 Latency (Inter-frame Delay): “Latency” means time it takes for a packet of data to get from one Customer premises to a separate Customer premises and back. The Performance Level Target for Latency is applicable to packets that traverse a single network and conform to the performance attributes of the Offering. Latency Performance Level Targets are available for On-Net IP-VPN, ELAN, SD-WAN, and Ethernet Offerings and Outage Credits are calculated as ten percent (10%) of Allocated MRC for each hour beyond two (2) hours that the Offering fails to meet the Performance Level Target.

Geography	Performance Level Target
On-Net National or regional (distances up to 2500 miles)	< 65 ms
On-Net National or regional (distances over 2500 miles)	< 85 ms
On-Net Global	< 300 ms

6.3 Packet Delivery: “Packet Delivery” means the percentage of IP packets that are successfully transmitted across the Customer’s network without loss, measured in each direction between Zayo PEs serving the applicable Customer location. The Performance Level Target for Packet Delivery is applicable to packets that traverse a single network and conform to the performance attributes of the Offering. Packet Delivery Performance Level Targets are applicable to On-Net IP-VPN, ELAN, SD-WAN, and Ethernet Offerings and Outage Credits are calculated as ten percent (10%) of Allocated MRC for each hour beyond two (2) hours that the Offering fails to meet the Performance Level Target.

Geography	Performance Level Target
Distance up to 2500 miles	99.995%
Distance over 2500 miles	99.95%
Global	99.9%

6.4 Jitter (Inter-frame Deviation): “Jitter” means the one-way variance in the arrival time of packets at a Zayo PE serving the applicable Customer location, given that the packets are of equal size and presented at a constant rate, without error, and within contracted delivery rates. Zayo calculates Jitter as an average of each direction’s jitter between two Customer locations. Jitter Performance Level Targets are applicable to On-Net IP-VPN, ELAN, and SD-WAN Offerings and Outage Credits are calculated as ten percent (10%) of Allocated MRC for each hour beyond two (2) hours that the Offering fails to meet the Performance Level Target.

CE to CE Distance	Performance Level Target
Regional (intracontinental)	< 3 ms
Global (intercontinental)	< 10 ms

6.5 Quality of Offering: “QoS” means the option for prioritized traffic from applications that may compete for the same network resources by assigning pre-determined levels of network priority to bandwidth. QoS Performance Level Targets are applicable to On-Net Ethernet Offerings and Outage Credits are calculated as ten percent (10%) of Allocated MRC for each hour beyond two (2) hours that the Offering fails to meet the Performance Level Target. The following levels of QoS may be available (“QoS Classes”):

QoS Classes	Performance Level Target
Critical	99.8%
Preferred	99.7%

6.6 DDoS: If purchased, Zayo will initiate DDoS Protection (“**Protection Initiation**”) within fifteen (15) minutes after Zayo receives authorization from the Customer to begin protection and a trouble ticket is opened (“**Authorization**”). If Protection Initiation does not occur within fifteen (15) minutes of Authorization, then the Offering Credit is ten percent (10%) of Allocated MRC for each subsequent fifteen (15) minute period that Protection Initiation has not yet occurred.

7 OUTAGE CREDITS.

7.1 Outage. Zayo will issue Outage Credits to Customer for circuits affected by interruptions in Offering for Offering Element failures set forth in Section 6 (“**Outage**”); provided, however, that any such interruption or failure of an Offering Element will not be deemed an Outage if caused by: (a) any act or omission of the Customer or its End User Customers, or their representatives, contractors, agents, authorized invitees, successors or assigns; (b) the configuration, failure or malfunction of non-Zayo equipment or systems; (c) scheduled maintenance or planned enhancements or upgrades to Zayo’s network; (d) Zayo not being given reasonable access to the premises; (e) Customer exceeding the maximum capacity of a port connection or any other rate limitation as set forth in the applicable Customer Order; or (f) a Force Majeure Event. Each of the events described in this Section 8 (a), (b), (c), (d), (e) and (f) shall be deemed an “**Excused Outage.**”

7.2 Outage Credit. In the event of an Outage not due to an Excused Outage, Customer may be entitled to one of the service credits set forth in Section 6 (“**Outage Credit**”). For any multipoint Offering, the Allocated MRC shall be used for purposes of calculating Outage Credit per the table in Section 6. For purposes of determining the amount of an Outage Credit, the duration of an Outage begins when Zayo records a trouble ticket number and ends when the Offering is restored or not failing to meet the Performance Level Targets in Section 6 (“**Outage Duration**”). Outage Duration is applicable to specific affected circuits and shall not be aggregated among circuits for purposes of determining Outage Credit. Unless otherwise specified, the Performance Level Objectives applicable to CloudLink Offerings shall be the Performance Level Objectives applicable to the underlying Offering used to deliver such CloudLink Offering. In the event of an Outage during which Customer experiences multiple Offering Element failures and/or Outages, the Outage Credits for each affected Offering Element shall not be aggregated; rather, the Outage Credit shall be the greater of the Outage Credit applicable to any individual Offering Element in Section 6. The maximum Outage Credit in a calendar month for any affected circuit shall not exceed 50% of the Allocated MRC for the affected circuit.

8 ISSUANCE OF CREDITS. In order to receive Outage Credit, Customer must (a) immediately report the Outage to the NCC and open a trouble ticket and (b) make a written request for an Outage Credit within seven (7) days following the end of the month in which the Outage occurred. Upon receipt of Customer’s request, Zayo will investigate the claim under the terms described in this Customer Schedule. Credits will be granted only if Customer has paid all outstanding invoices by the Due Dates thereof. The issuance of credits pursuant to this Section is Zayo’s sole obligation and Customer’s sole remedy for any failure or non-performance of Offerings set forth in this Customer Schedule. Outage Credits shall be deducted from the charges payable by Customer hereunder and shall be expressly indicated on the Customer invoice.

9 THIRD PARTY SERVICES. The Offerings may incorporate services provided by a third party (“**Third Party Provider**”), including, but not limited to, interconnect services (collectively “**Third Party Offerings**”). The costs of Third Party Offerings will be reflected in the applicable Customer Order provided that, following written notice to Customer, Zayo may adjust the rates for Offerings that incorporate Third Party Offerings to reflect, without mark up, any increases in costs imposed on Zayo for Third Party Offerings after the effective date of the applicable Customer Order. The service-specific terms and performance metrics associated with Third Party Offerings, including any available credits for non-performance or service degradation, are limited to Zayo’s terms with, and credits collected from, the applicable Third Party Provider. If Customer cancels an Offering that incorporates Third Party Offerings without cause prior to the expiration of the applicable Order Term, Customer shall reimburse Zayo for any costs incurred by Zayo to terminate such Third Party Offerings. Where a Customer has requested a disconnect for an Offering for which an LOA/CFA was required, the Customer must produce documentation of disconnect confirmation (disconnect FOC or other) from the Third Party Provider.

ZAYO GROUP, LLC

Signature: _____

Name: _____

Title: _____

COMPANY NAME

Signature: _____ No signature required

Name: _____

Title: _____

Customer Information

Company Name:

Technical Contact:

Title:

Site Location:

Request Date:

Email:

Phone Number:

SO, SOC, or CID

Instructions

This form must be completed by the customer so that Zayo can properly configure and activate the ordered Zayo Service(s). If not requesting IP Addresses from Zayo and using static routing, or requesting less than a /24, complete only the IP Configuration Details section. If running BGP with Zayo, complete the entire form. This form is for IPv4 addresses. If also requesting IPv6 addresses, you must also complete the IPv6 Configuration & Address Request Form. A new form must be completed by the customer and submitted to Zayo each time the customer requests additional IP addresses.

Zayo IP Address Policy

Customers with direct IP allocations from ARIN/RIPE must receive additional IP space from ARIN/RIPE.

Zayo will not allocate IP resources to any customer with a direct ARIN/RIPE allocation.

Customers requesting a /23 or greater will be referred to the appropriate regional registry. With all other requests, Customers must provide an IP justification plan that explains how the IP addresses will be used. IP addresses assigned to customers by Zayo are in conjunction with their Zayo Service. Upon termination of service, the assigned IP addresses must be returned to Zayo. Please see Address-Pricing tab for associated monthly charges.

Customers MUST use 60% of the IP addresses requested on the day of installation, with a one-week grace period to cover equipment problems. This means that if Customers request 16 IP addresses, at least 9 addresses must be able to be "pinged" one week after installation. This also means that inverse names must be assigned for each of these addresses.

Customers MUST use 80% of assigned addresses within 3 months, or the addresses will be withdrawn.

Customers MUST use 90% of assigned addresses before Zayo will issue any additional addresses.

Temporary, emergency addresses are available through Zayo's Network Management Center (NMC).

Acceptable IP Justification Plans

Customers should provide at least one of the following types of descriptions:

- (1) A network plan showing machine utilization and/or customer links. Describe expected future growth.
- (2) A list of IP addresses being returned to different ISP. Must include a letter from the other ISP stating that the space will be returned.
- (3) A list of Virtual Hostnames and a technical reason why an IP is required for that virtual host.

One or more justification plans are required by Zayo's IP reassignment policy (also refer to RFC-2050 & ARIN Number Resource Policy Manual, at www.arin.net/policy/nrpm.html or RIPE-492 (IPv4), RIPE-481 (IPv6) at www.ripe.net/ripe/docs/index.html). Additionally, Customer must provide reverse DNS names for IP addresses and contact information to be published in ARIN's whois (swip) database. Zayo may reevaluate previous reassignments before granting additional IP space.

Please provide your IP Address Justification Plan to your sales representative. Please allow 1-3 working days for Zayo approval and IP reassignment.

Current Address Space Usage (List address space in use in your network from all sources)

Network prefix (e.g. 111.22.33.0)	Size (e.g. /24)	Assigned By	Date Assigned	% currently in Use
12.189.44.240	/29	AT&T	5/1/2017	100
38.135.40.0	/27	Speed of Light Broa	2/1/2017	61

List Upstream providers and Peers (if applicable) _____

Number of new public hosts you will be numbering in the next 3 mos. _____

26

Briefly describe products and services offered by your company _____

We are a local government offering many web-accessible services to residents, most via https.

Public IPv4 IP Address Space Requested

Zayo connected/local interface IPv4 address block size? (CIDR)

/31

Additional Zayo Static or BGP block size? (CIDR notation)
(requires justification as cited above*)

None

IP Configuration Details

Optional BGP or static configuration parameters.

None

Static

BGP

If static, are there networks you already own that you'd like Zayo to route to you over this connection?

If BGP, what is your ASN? (Zayo = AS6461)

Optional BGP MD5 authentication?
(Zayo default is no MD5 password)

If BGP, please provide prefixes you will announce.
Zayo default accepts all subnets of listed networks.
(Use IPv4.prefix tab for longer lists*)

If BGP, what route-type would you like Zayo to advertise to you?

Who is the specific contact from your company that will turn up this location?

NAME:
PHONE:
EMAIL:

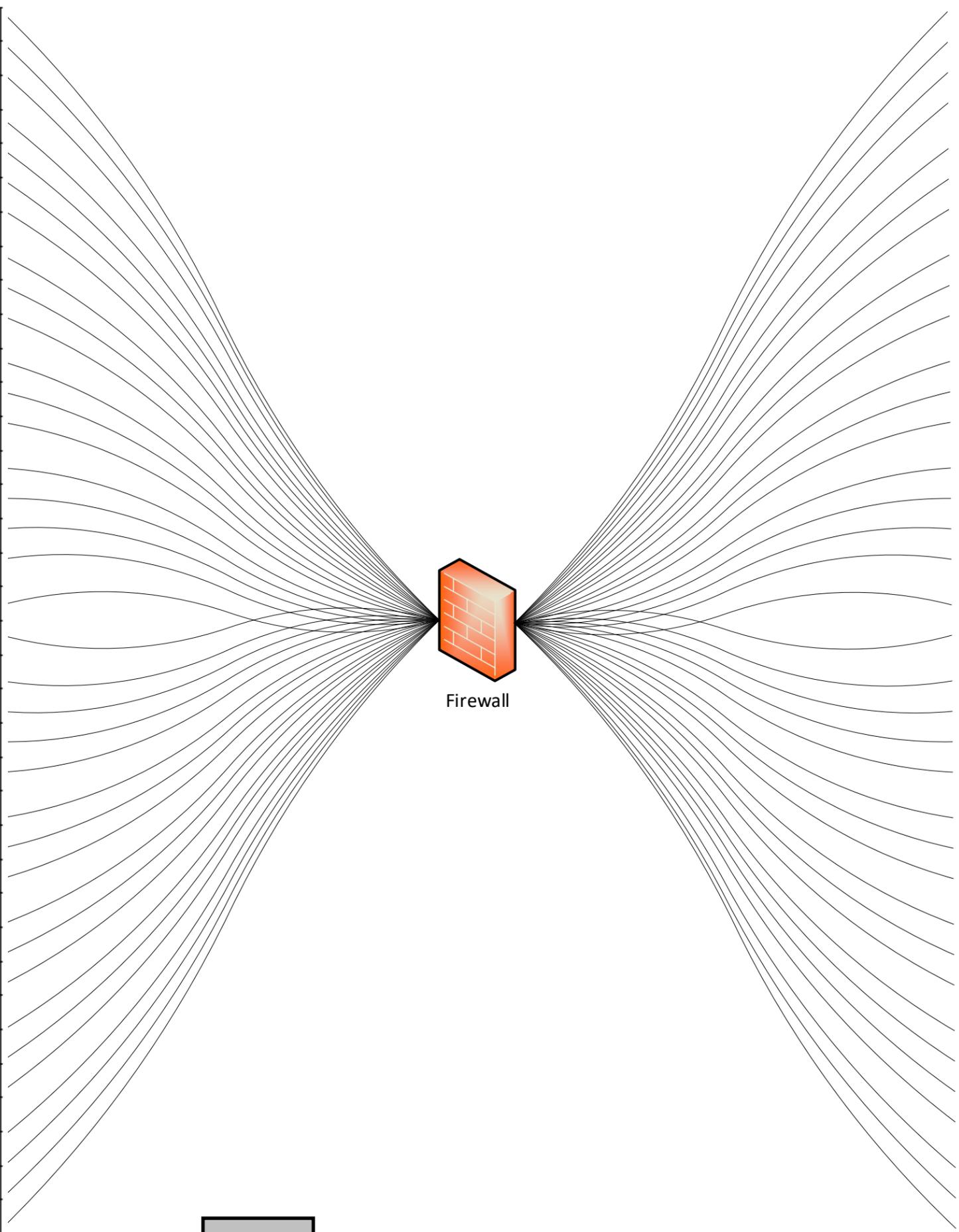
Leigh Johnson

972-569-1150

leigh_johnson@prospertx.gov

IP Address Justification Plan (As appropriate, please attach _____ or worksheet. See above for acceptable submissions.)

12.189.44.241	GATEWAY	
12.189.44.242	HTTP,HTTPS,SMTP,LDAP,ETC.	DIRECTORY SVR
12.189.44.243	HTTP,HTTPS	EMAIL SVR
12.189.44.244	HTTP,HTTPS	WEB SVR
12.189.44.245	HTTP,HTTPS	WEB (APP) SVR
12.189.44.246	HTTP,HTTPS	WEB SVR
38.135.40.1	GATEWAY	
38.135.40.2	HTTP,HTTPS,SMTP,LDAP,ETC.	DIRECTORY SVR
38.135.40.3	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.4	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.5	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.6		
38.135.40.7	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.8	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.9	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.10	CUSTOM	VENDOR CONN.
38.135.40.11		
38.135.40.12	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.13	HTTP,HTTPS,LDAP	WEB (APP) SVR
38.135.40.14	HTTP,HTTPS	VOIP SVR
38.135.40.15	HTTP,HTTPS	WEB (APP) SVR
38.135.40.16	HTTP,HTTPS	WEB (APP) SVR
38.135.40.17	HTTP,HTTPS	WEB (APP) SVR
38.135.40.18	HTTP,HTTPS	WEB (APP) SVR
38.135.40.19	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.20	CUSTOM	INFRASTRUCTURE COMM.
38.135.40.21		
38.135.40.22		
38.135.40.23		
38.135.40.24		
38.135.40.25		
38.135.40.26		
38.135.40.27		
38.135.40.28		
38.135.40.29	VPN	VPN SVR
38.135.40.30	N/A	IDS/IPS



1xx.xxx.xx1.1
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1xx.xxx.xx1.3
1xx.xxx.xx1.4
1xx.xxx.xx1.5
1xx.xxx.xx1.6
1xx.xxx.xx1.7
1xx.xxx.xx1.8
1xx.xxx.xx1.9
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1xx.xxx.xx1.34

Item No. 8.



To: Mayor and Town Council

From: Frank E. Jaromin, Public Works

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon approving an annual fixed-price agreement for the purchase of Neptune water meters and related items, at the unit prices guaranteed, from Core & Main, a sole source provider.

Description of Agenda Item:

Due to high demand and long lead time for orders, staff is requesting to establish an annual fixed-price agreement for the purchase of the Town's standard Neptune water meters, in order to create a more efficient ordering process. Core & Main, the only authorized distributor of Neptune products in our area, has provided a guaranteed price list for products effective through the end of 2020. Orders will be placed on an as-needed basis only, and at the guaranteed price. For each subsequent year, the price list will be updated accordingly.

This purchase falls within the definition of a procurement that is available from only one source (Chapter 252 of the Local Government Code) and is exempt from competitive bidding requirements. Core & Main is the only authorized distributor of Neptune water meters in the North Texas region.

Budget Impact:

This is an approved FY 2019-2020 budget item for meter purchases (200-5545-50-02). The estimated expenditure for this FY is \$199,516.30. Subsequent annual expenditures will be subject to appropriations granted in future fiscal years.

Attached Documents:

1. Neptune Authorized Distributor List
2. Core & Main Price List
3. Summation of Quantities

Town Staff Recommendation:

Staff recommends approving an annual fixed-price agreement for the purchase of Neptune water meters and related items, at the unit prices guaranteed, from Core & Main, a sole source provider.

Proposed Motion:

I move to approve an annual fixed-price agreement for the purchase of Neptune water meters and related items, at the unit prices guaranteed, from Core & Main, a sole source provider.



Charlie Trimble
Territory Manager

Phone: (281)794-3133
ctrimble@neptunetg.com

Service Area: Arizona, New Mexico, Oklahoma, Texas (Northern)

HIDE DISTRIBUTORS

Core and Main
Distributor

Jeff Richards
Phone: (214)240-7805
jeffrey.richards@coreandmain.com
Service Area: Northern/Central/Eastern Texas and Panhandle

Core and Main
Distributor

Mike England
Phone: (832)302-5893
michael.england@coreandmain.com
Service Area: Houston, TX/Eastern, and Northern Texas

Core and Main
Distributor

Kevin Cherrington
Phone: (918)844-6211
kevin.cherrington@coreandmain.com
Service Area: Oklahoma, Northern Texas

Core and Main
Distributor

Ray Richardson
Phone: (505)400-6464
ray.richardson@coreandmain.com
Service Area: New Mexico, Arizona, Nevada, Western Texas



4333 Irving Blvd.
Dallas, Texas 75247
214-631-9410

December 12, 2019

Aubrey Smith
Town of Prosper, Texas

Re: Meter Pricing

Aubrey,

Listed below is your meter pricing good through December 31, 2020. This pricing carries over from your 2019 pricing with no increases.

ITEM	Price
Neptune 5/8 x 3/4 T10 Pro Coder meter	\$95.61 ea.
Neptune 1" T10 Pro Coder meter	\$174.00 ea.
Neptune 1-1/2 T10 Pro Coder meter	\$376.00 ea.
Neptune 2" T10 Pro Coder meter	\$463.00 ea.
Neptune 1-1/2" HPT turbine Pro Coder	\$579.00 ea.
Neptune 2" HPT turbine Pro Coder	\$612.00 ea.
Neptune 3" Tru/Flo compound Pro Coder meter	\$2036.00 ea.
Pro Coder register	\$65.00 ea.

If you have any questions or if I can be of assistance please let me know.

Thanks,
Dennis Woody
Core and Main
972-877-3994

Local Knowledge
Local Experience
Local Service, Nationwide®

2020 Meter Pricing	Price	Quantity	Total
5/8" PD Meter	\$95.61	30	\$2,868.30
1" Pro Coder Meter	\$174.00	750	\$130,500.00
1 1/2" Pro Coder Meter	\$376.00	10	\$3,760.00
1 1/2" HPT Meter	\$579.00	10	\$5,790.00
2" Pro Coder Meter	\$463.00	50	\$23,150.00
2" HPT Meter	\$612.00	48	\$29,376.00
3" Compound Meter	\$2,036.00	2	\$4,072.00

Total: \$199,516.30

**ENGINEERING
SERVICES**

To: Mayor and Town Council

From: Pete Anaya, P.E., Assistant Director of Engineering Services – Capital Projects

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon awarding CSP No. 2020-25-B to Pavecon Public Works, LP, related to construction services for the Cook Lane Phase 2 Improvement project; and authorizing the Town Manager to execute a construction agreement for same.

Description of Agenda Item:

On December 6, 2019, at 2:00 p.m., eight Competitive Sealed Proposals (CSP) were received for the Cook Lane Phase 2 Improvement project. The project was advertised using the Competitive Sealed Proposal alternative procurement method to allow the Town to award the project to the contractor that offers the best value proposal based on the following criteria:

- Qualifications and Experience (30%)
 - Outline contractor and subcontractor experience with similar projects.
 - Outline qualifications of key personnel assigned to this project.
 - Provide references.
- Project Timeline (20%)
- Cost Proposal (50%)

The verified cost proposals ranged between \$1,160,086.65 and \$1,960,328.26. The Engineer's estimate was \$1,053,981. The proposed final completion times ranged from 120 calendar days to 215 calendar days. Pavecon Public Works, LP (Pavecon) was the firm ranked the highest after consideration of Costs, Time, and Qualifications with a cost of \$1,160,086.65, and a project timeline of 120 calendar days. Once the ranking of firms was complete with Pavecon ranking the highest, negotiations with Pavecon allowed the final construction amount to be lowered to \$1,130,824.47, a cost savings of \$29,262.18.

Budget Impact:

The FY 2019-2020 Capital Improvement Program includes \$2,100,000 in roadway improvements for the Cook Lane Phase 1 & 2 projects. The funding source is Account No. 750-6610-50-00-1708-ST.

Legal Obligations and Review:

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

Attached Documents:

1. Proposal Evaluation Matrix
2. Construction Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council Award CSP No. 2020-25-B to Pavecon Public Works, LP, related to construction services for the Cook Lane Phase 2 project; and authorize the Town Manager to execute a construction agreement for same.

Proposed Motion:

I move to award CSP No. 2020-25-B to Pavecon Public Works, LP, related to construction services for the Cook Lane Phase 2 project; and authorize the Town Manager to execute a construction agreement for same.

CSP NO. 2020-25-B
 COOK LANE PHASE 2

EVALUATION MATRIX - BASE SERVICES		ED BELL CONSTRUCTION COMPANY		GROD CONSTRUCTION, LLC		HQS CONSTRUCTION		JOE FUNK CONSTRUCTION, INC.		MARIO SINACOLA & SONS EXCAVATING, INC.		PAVECON PUBLIC WORKS, LP		TISEO PAVING CO.		XIT PAVING AND CONSTRUCTION, INC.	
EVALUATION CRITERIA	WEIGHTING	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE		WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Qualifications and Experience	30%	7.50	2.25	8.50	2.55	6.00	1.80	6.00	1.80	6.00	1.80	8.00	2.40	8.00	2.40	7.50	2.25
Proposed Project Timeline	20%	7.06	1.41	7.13	1.43	5.83	1.17	10.00	2.00	5.83	1.17	8.41	1.68	7.13	1.43	4.67	0.93
Cost Proposal	50%	9.41	4.71	9.64	4.82	6.08	3.04	5.92	2.96	9.01	4.50	10.00	5.00	9.11	4.55	7.97	3.99
TOTAL	100%		8.37		8.80		6.01		6.76		7.47		9.08		8.38		7.17

CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR

COOK LANE PHASE 2
CSP NO. 2020-25-B



TOWN OF PROSPER
COLLIN COUNTY, TEXAS

TOWN OFFICIALS

Ray Smith, Mayor
Curry Vogelsang, Jr., Mayor Pro-Tem
Jason Dixon, Deputy Mayor Pro-Tem
Marcus E. Ray, Place 1
Craig Andres, Place 2
Meigs Miller, Place 4
Jeff Hodges, Place 5

Harlan Jefferson, Town Manager

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LEGAL NOTICE

The Town of Prosper is accepting competitive sealed proposals for **CSP NO. 2020-25-B COOK LANE PHASE 2**. Proposals will be accepted online through IonWave.net, the Town's e-procurement system, or in hard copy in the Purchasing Office located in the 3rd Floor Finance Suite of Town Hall, 250 W. First St., Prosper, Texas 75078 until **2:00 P.M. on Wednesday, December 4, 2019**. Any proposals received after this time will not be accepted, and will be returned unopened. Proposals will be publicly opened and read aloud in the Finance Conference Room, located in the 3rd Floor Finance Suite of Town Hall, 250 W. First St., Prosper, Texas 75078, immediately following the proposal deadline.

The Project consists of furnishing all labor, equipment and materials (except as otherwise specified), and performing all work necessary for the construction of Cook Lane Phase 2.

Each proposal submitted shall be accompanied by a cashier's check in the amount of 5% of the maximum amount proposed, payable without recourse to the Town of Prosper, or a Bid Bond in the same amount from a reliable surety company as a guarantee that, if awarded the contract, the successful Contractor will execute a Construction Agreement with the Town, including all required bonds and other documents.

The successful Contractor shall furnish a Performance Bond in the amount of 115% of the contract amount, and a Payment Bond in the amount of 100% of the contract amount, as well as evidence of all required insurance coverage within ten (10) calendar days of notice of award. The successful Contractor shall also furnish a Maintenance Bond in the amount of 100% of the contract amount covering defects of material and workmanship for two calendar years following the Town's approval and acceptance of the construction. An approved surety company, licensed in the State of Texas, shall issue all bonds in accordance with Texas law.

Copies of Plans, Specifications, and Contract Documents may be examined at **Town of Prosper Engineering Department, 250 W. First Street, Prosper, Texas, 75078, Phone: (972) 569-1198** without charge. These documents may be acquired from that office for the non-refundable purchase price of \$50 per set, payable to the Town of Prosper. Copies of Plans, Specifications, and Contract Documents may also be downloaded free of charge from Current Bidding Opportunities, at the following link: <http://www.prospertx.gov/business/bid-opportunities/>.

Questions and requests for clarifications in regards to this proposal should be emailed directly to January Cook, CPPO, CPPB, Purchasing Manager, at january_cook@prospertx.gov. The deadline for receipt of questions and requests for clarifications is **12:00 P.M. on Friday, November 22, 2019**. After that day and time, no further questions or requests for clarifications will be accepted or answered by the Engineer or Town.

INSTRUCTIONS TO PROPOSERS

1. Submittal Deadline: Proposals will be accepted until **2:00 P.M. on Wednesday, December 4, 2019**.
2. Submittal Location: Proposals will be accepted online through IonWave.net, the Town's e-procurement system, or in hard copy in the Purchasing Office located in the 3rd Floor Finance Suite of Town Hall, 250 W. First St., Prosper, Texas 75078.
3. Electronic Submittal Requirements: If submitting proposal through IonWave.net, Proposer shall complete all requested information and submit all required documents.
4. Hard Copy Submittal Requirements: If submitting proposal in hard copy, Proposer shall submit one (1) original and one (1) copy of their proposal in a sealed envelope clearly marked with their name and **CSP NO. 2020-25-B COOK LANE PHASE 2**. Proposer shall complete all requested information and submit all required documents.
5. Proposal Opening: Proposals will be publicly opened and read aloud in the Finance Conference Room, located in the 3rd Floor Finance Suite of Town Hall, 250 W. First St., Prosper, Texas 75078, immediately following the proposal deadline.
6. Proposal Documents: Copies of Plans, Specifications, and Contract Documents may be examined without charge at the following location:

Town of Prosper
Engineering Department
250 W. First Street
Prosper, TX 75078
Phone: 972-569-1198

or

Download free of charge from Current Bidding Opportunities, at the following link:

<http://www.prospertx.gov/business/bid-opportunities/>.

7. Questions and Requests for Clarification: Questions and requests for clarifications in regard to this proposal should be emailed directly to January Cook, CPPO, CPPB, Purchasing Manager, at january_cook@prospertx.gov. The deadline for receipt of questions and requests for clarifications is **12:00 P.M. on Wednesday, November 20, 2019**. After that day and time, no further questions or requests for clarifications will be accepted or answered by the Engineer or Town.
8. Addenda: If it becomes necessary to provide additional information to potential Proposers, the Town of Prosper will issue an addendum containing the necessary information.
9. Pre-Proposal Meeting: A pre-proposal meeting **will not** be held for this project.
10. Site Visit: N/A

CONSTRUCTION AGREEMENT

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS:

This Construction Agreement (the "Agreement") is made by and between **Pavecon Public Works, LP**, a Texas Limited Partnership, (the "Contractor") and the **Town of Prosper, Texas**, a municipal corporation (the "Owner"). For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

**CSP NO. 2020-25-B
COOK LANE PHASE 2**

in the Town of Prosper, Texas, and all extra work in connection therewith, under the terms as stated in the terms of this Contract, including all Contract Documents incorporated herein; and at his, her or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Specifications as prepared by Town of Prosper or its consultant hereinafter called Engineer, who has been identified by the endorsement of the Contractor's written proposal, the General Conditions of this Contract, the Special Conditions of this Contract, the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

A. Contract Documents and Order of Precedence

The Contract Documents shall consist of the following documents:

1. this Construction Agreement;
2. properly authorized change orders;
3. the Special Conditions of this Contract;
4. the General Conditions of this Contract;
5. the Technical Specifications & Construction Drawings of this Contract;
6. the OWNER's Standard Construction Details;
7. the OWNER's Standard Construction Specifications;
8. the OWNER's written notice to proceed to the CONTRACTOR;
9. the Contractor's Cost Proposal;
10. any listed and numbered addenda;
11. the Performance, Payment, and Maintenance Bonds; and,
12. any other proposal materials distributed by the Owner that relate to the Project.

These Contract Documents are incorporated by reference into this Construction Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be

resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project.

B. Total of Payments Due Contractor

For performance of the Work in accordance with the Contract Documents, the Owner shall pay the Contractor in current funds an amount not to exceed **One Million One Hundred Twenty-Seven Thousand Nineteen Dollars and Twenty-Seven cents (\$1,127,019.27)**. This amount is subject to adjustment by change order in accordance with the Contract Documents.

C. Dates to Start and Complete Work

Contractor shall begin work within ten (10) calendar days after receiving a written Notice to Proceed or written Work Order from the Owner. All Work required under the Contract Documents shall be substantially completed within **110** calendar days after the date of the Notice to Proceed for the base proposal. Within 10 additional calendar days after Substantial Completion, all outstanding issues shall be addressed and ready for final payment.

Under this Construction Agreement, all references to "day" are to be considered "calendar days" unless noted otherwise.

D. CONTRACTOR'S INDEMNITY TO THE OWNER AND OTHERS

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN OF PROSPER (OWNER) TOGETHER WITH ITS MAYOR AND TOWN COUNCIL AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF CONTRACTOR OR ANY SUBCONTRACTORS, INVITEES, AND ANY OTHER THIRD PARTIES OR PERSONS FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE, IN ANY WAY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT TOWN OF PROSPER (OWNER) FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CONTRACTOR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS TOWN OF PROSPER (OWNER) TOGETHER WITH ITS MAYOR AND TOWN COUNCIL AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, FROM AND

AGAINST ANY AND ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES FOR INJURY OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGES TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT. SUCH INDEMNITY SHALL APPLY WHETHER THE CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LIABILITY, LOSSES, PENALTIES, SUITS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE TOWN OF PROSPER (OWNER), ITS MAYOR AND TOWN COUNCIL, OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT TOWN OF PROSPER (OWNER) FROM THE CONSEQUENCES OF TOWN OF PROSPER'S (OWNER'S) OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUB-CONTRACTOR UNDER WORKMEN'S COMPENSATION OR OTHER EMPLOYEE BENEFIT ACTS.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Owner shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Owner. Contractor shall retain approved counsel for the Owner within seven (7) business days after receiving written notice from the Owner that it is invoking its right to indemnification under this Construction Agreement. If Contractor does not retain counsel for the Owner within the required time, then the Owner shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses.

The Owner retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Owner elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Owner for such costs.

(Please note that this "broad-form" indemnification clause is not prohibited by Chapter 151 of the Texas Insurance Code as it falls within one of the exclusions contained in Section 151.105 of the Texas Insurance Code.)

E. Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's proposal. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration. Certificates holder shall be listed as follows, with the project/contract number referenced:

Town of Prosper
Attn: Purchasing Manager
P.O. Box 307
Prosper, Texas 75078

re: CSP No. 2020-25-B COOK LANE PHASE 2

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- a. ISO Form Number GL 00 01 (or similar form) covering Comprehensive General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
- b. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
- c. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

2. Minimum Limits of Insurance

Contractor shall maintain throughout contract limits not less than:

- a. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - 1) Premises / Operations
 - 2) Broad Form Contractual Liability
 - 3) Products and Completed Operations
 - 4) Personal Injury

- 5) Broad Form Property Damage
- 6) Explosion Collapse and Underground (XCU) Coverage.

- b. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
- c. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired and non-owned autos.
- d. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.
- e. \$1,000,000 Umbrella Liability Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.

3. Deductible and Self-Insured Retentions

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

4. Other Insurance Provisions

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

a. General Liability and Automobile Liability Coverage

- 1) The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- 2) The contractor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.

- 3) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- 4) The contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limits of liability.

b. Workers' Compensation and Employer's Liability Coverage

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

c. All Coverages

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

5. Acceptability of Insurers

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

6. Verification of Coverage

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

F. Performance, Payment and Maintenance Bonds

The Contractor shall procure and pay for a Performance Bond applicable to the work in the amount of one hundred fifteen percent (115%) of the total proposed price, and a Payment Bond applicable to the work in the amount of one hundred percent (100%) of the total proposed price. The Contractor shall also procure and pay for a Maintenance Bond applicable to the work in the amount of one hundred percent (100%) of the total proposed price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in this Construction Agreement. The performance, payment and maintenance bonds shall be issued in the form attached to this Construction Agreement as Exhibits B, C and D. Other performance, payment and

maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment and maintenance bonds upon Town request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars (\$100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

G. Progress Payments and Retainage

As it completes portions of the Work, the Contractor may request progress payments from the Owner. Progress payments shall be made by the Owner based on the Owner's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Owner satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Owner:

1. copies of documents reasonably necessary to aid the Owner in preparing an estimate of the value of Work properly completed;
2. full or partial releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Owner releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Owner determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Owner determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Owner the overpayment amount specified by the Owner within thirty (30) calendar days after it receives written demand from the Owner.

The fact that the Owner makes a progress payment shall not be deemed to be an admission by the Owner concerning the quantity, quality or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Owner shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set at five percent (5%). Retainage shall be withheld and may be paid to:

- a. ensure proper completion of the Work. The Owner may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
- b. ensure timely completion of the Work. The Owner may use retained funds to pay liquidated damages; and
- c. provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Owner in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

H. Withholding Payments to Contractor

The Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Owner may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Owner may withhold payment of some or all of any progress or final payment that would otherwise be due if the Owner determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

I. Acceptance of the Work

When the Work is completed, the Contractor shall request that the Owner perform a final inspection. The Owner shall inspect the Work. If the Owner determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Owner determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Owner's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on

"substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Owner's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Owner may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

J. Acceptance of Erosion Control Measures

When the erosion control measures have been completed, the Contractor shall request that the Owner perform a final inspection. The Owner shall inspect the Work. If the Owner determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Owner determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

K. Final Payment

After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens from the Contractor and its subcontractors, or other evidence satisfactory to the Owner to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Owner may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Owner original copies of all documents that the Owner determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Owner has satisfied its obligation to administer the Construction Agreement in accordance with applicable law. The following documents shall, at a minimum, be required to be submitted prior to final payment being due: redline as-built construction plans; consent of surety to final payment; public infrastructure inventory; affidavit of value for public infrastructure; and, final change order(s). "Redline as-built construction plans" shall include, but are not limited to markups for change orders, field revisions, and quantity overruns as applicable. The list of documents contained in this provision is not an exhaustive and exclusive list for every project performed pursuant to these Contract Documents

and Contractor shall provide such other and further documents as may be requested and required by the Owner to close out a particular project.

Subject to the requirements of the Contract Documents, the Owner shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

L. Contractor’s Warranty

For a two-year period after the date specified in a written notice of acceptance of Work, Contractor shall provide and pay for all labor and materials that the Owner determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Owner may make a warranty inspection of the Work. The Owner shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Owner shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Owner may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the performance bond surety, or both.

If the Owner determines that a hazard exists because of defective materials and workmanship, then the Owner may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety. Expenses incurred by the Owner to alleviate the hazard shall be paid by the Contractor, the performance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Owner may make as many warranty inspections as it deems appropriate.

M. Compliance with Laws

The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the

Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

N. "Anti-Israel Boycott" Provision

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

O. Other Items

The Contractor shall sign the Construction Agreement, and deliver signed performance, payment and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the Owner makes available to the Contractor copies of the Contract Documents for signature. Six (6) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided, however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Owner delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure:

1. that Contractor timely delivers to the Owner all bonds and insurance documents; and
2. that the Owner retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST OWNER, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE OWNER BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE

OWNER DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Collin County, Texas.

Although the Construction Agreement has been drafted by the Owner, should any portion of the Construction Agreement be disputed, the Owner and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Owner and Contractor and shall insure to their benefit and as well as that of their respective successors and assigns.

If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.

PAVECON PUBLIC WORKS, LP

TOWN OF PROSPER, TEXAS

By: _____

By: **HARLAN JEFFERSON**

Title: _____

Title: Town Manager

Date: _____

Date: _____

Address: 3022 Roy Orr Blvd
Grand Prairie, TX 75055

Address: 250 W. First St.
P.O. Box 307
Prosper, Texas 75078

Phone: (972) 263-3223
Email: _____

Phone: (972) 346-2640
Email: harlan_jefferson@prospertx.gov

ATTEST:

ROBYN BATTLE
Town Secretary

PERFORMANCE BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, as Surety, are held and firmly bound unto the **TOWN OF PROSPER**, a home-rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter called "Beneficiary", in the penal sum of _____ Dollars (\$_____) plus fifteen percent (15%) of the stated penal sum as an additional sum of money representing additional court expenses, attorneys' fees, and liquidated damages arising out of or connected with the below identified Contract in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. The penal sum of this Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement, which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement, which reduces the Contract price, decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the Town of Prosper, the Beneficiary, dated on or about the **25th day of February A.D. 2020**, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

**CSP NO. 2020-25-B
COOK LANE PHASE 2**

in the Town of Prosper, Texas, as more particularly described and designated in the above-referenced contract such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the Plans, Specifications and Contract Documents during the original term thereof and any extension thereof which may be granted by the Beneficiary, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and final acceptance of the Work by Owner; and, if the Principal shall fully indemnify and save harmless the Beneficiary from and against all costs and damages which Beneficiary may suffer by reason of failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action were filed on this Bond, exclusive Venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder

or the Plans, Specifications and Drawings, etc., accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, this instrument is executed in two copies, each one of which shall be deemed an original, this, the _____ day of _____, 20____.

ATTEST:

PRINCIPAL:

By: _____
Signature

By: _____
Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

[Signatures continued on following page.]

ATTEST:

SURETY:

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

NOTE: Date on Page 1 of Performance Bond must be same date as Contract. Date on Page 2 of Performance Bond must be after date of Contract. If Resident Agent is not a corporation, give a person's name.

PAYMENT BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____, hereinafter called Principal, and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, as Surety, are held and firmly bound unto the **TOWN OF PROSPER**, a home-rule municipal corporation organized and existing under the laws of the State of Texas, hereinafter called "Owner", and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements hereinafter referred to in the penal sum of _____ DOLLARS (\$_____) (one hundred percent (100%) of the total bid price) in lawful money of the United States, to be paid in Collin County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. The penal sum of this Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement, which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement, which reduces the Contract price, decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the Town of Prosper, the Owner, dated on or about the **25th day of February A.D. 2020**, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

**CSP NO. 2020-25-B
COOK LANE PHASE 2**

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in the above-referenced Contract and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action were filed on this Bond, exclusive venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc., accompanying the same, shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work to be performed thereunder.

This Bond is given pursuant to the provisions of Chapter 2253 of the Texas Government Code, and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Collin County or Dallas County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by Article 7.19-1 of the Insurance Code, Vernon's Annotated Civil Statutes of the State of Texas.

IN WITNESS WHEREOF, this instrument is executed in two copies, each one of which shall be deemed an original, this, the _____ day of _____, 20__.

ATTEST:

PRINCIPAL:

By: _____
Signature

By: _____
Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

[Signatures continued on following page.]

ATTEST:

SURETY:

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

The Resident Agent of the Surety in Collin County or Dallas County, Texas, for delivery of notice and service of the process is:

NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

NOTE: Date on Page 1 of Performance Bond must be same date as Contract. Date on Page 2 of Performance Bond must be after date of Contract. If Resident Agent is not a corporation, give a person's name.

MAINTENANCE BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____, hereinafter referred to as "Principal," and _____, a corporate surety/sureties organized under the laws of the State of _____ and fully licensed to transact business in the State of Texas, as Surety, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto the **TOWN OF PROSPER**, a Texas municipal corporation, hereinafter referred to as "Owner," in the penal sum of _____ DOLLARS (\$_____) (one hundred percent (100%) of the total bid price), in lawful money of the United States to be paid to Owner, its successors and assigns, for the payment of which sum well and truly to be made, we bind ourselves, our successors, heirs, executors, administrators and successors and assigns, jointly and severally; and firmly by these presents, the condition of this obligation is such that:

WHEREAS, Principal entered into a certain written Contract with the Town of Prosper, dated on or about the **25th day of February 2020**, to furnish all permits, licenses, bonds, insurance, products, materials, equipment, labor, supervision, and other accessories necessary for the construction of:

**CSP NO. 2020-25-B
COOK LANE PHASE 2**

in the Town of Prosper, Texas, as more particularly described and designated in the above-referenced contract, such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word:

WHEREAS, in said Contract, the Principal binds itself to use first class materials and workmanship and of such kind and quality that for a period of two (2) years from the completion and final acceptance of the improvements by Owner the said improvements shall require no repairs, the necessity for which shall be occasioned by defects in workmanship or materials and during the period of two (2) years following the date of final acceptance of the Work by Owner, Principal binds itself to repair or reconstruct said improvements in whole or in part at any time within said period of time from the date of such notice as the Town Manager or his designee shall determine to be necessary for the preservation of the public health, safety or welfare. If Principal does not repair or reconstruct the improvements within the time period designated, Owner shall be entitled to have said repairs made and charge Principal and/or Surety the cost of same under the terms of this Maintenance Bond.

NOW, THEREFORE, if Principal will maintain and keep in good repair the Work herein contracted to be done and performed for a period of two (2) years from the date of final acceptance and do and perform all necessary work and repair any defective condition (it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal) then this obligation shall be void; otherwise it shall remain in full force and effect and Owner shall have and recover from Principal and its Surety damages in the premises as provided in the Plans and Specifications and Contract.

PROVIDED, however, that Principal hereby holds harmless and indemnifies Owner from and against any claim or liability for personal injury or property damage caused by and occurring during the performance of said maintenance and repair operation.

PROVIDED, further, that if any legal action be filed on this Bond, exclusive venue shall lie in Collin County, Texas.

AND PROVIDED FURTHER, Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work performed thereunder, or the Plans, Specifications, Drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in either Collin or Dallas Counties to whom all requisite notice may be delivered and on whom service of process may be had in matters arising out of this suretyship.

IN WITNESS WHEREOF, this instrument is executed in two copies, each one of which shall be deemed an original, on this the ____ day of _____, 20____.

ATTEST:

PRINCIPAL:

By: _____
Signature

By: _____
Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

[Signatures continued on following page.]

ATTEST:

By: _____
Signature

Printed Name

Title

Address

City State Zip

Phone Fax

SURETY:

By: _____
Signature

Printed Name

Title

Address

City State Zip

Phone Fax

SPECIAL CONDITIONS

SC.01 **PURPOSE:** The Special Conditions contained herein set forth conditions or requirements particular to this Contract:

**CSP NO. 2020-25-B
COOK LANE PHASE 2**

The Special Conditions supplement the General Conditions and the Standard Specifications and take precedence over any conditions or requirements of the General Conditions and the Standard Specifications with which they are in conflict.

SC.02 **DEFINITIONS:** The following words and expressions, or pronouns used in their place, shall wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context:

ENGINEER: The Engineer of Record as shown on the Construction Drawings:
Reece Flanagan, P.E.

SC03. **MINIMUM QUALIFICATIONS OF VENDORS:** The Town will only consider Bidders who meet the Minimum Qualifications identified in this section. Should the Town determine, in its sole discretion, that the Bidder does not meet these Minimum Qualifications, the Town will disqualify the Bidder and its bid will be rejected as non-responsive. Experience performing projects of similar scope, quantities, and cost will be a primary consideration of meeting the minimum qualifications.

The Bidder shall submit within five (5) days of the Owner's request such evidence as the Owner may require to establish its financial responsibility, experience and possession of such equipment as may be needed to prosecute the work in an expeditious, safe and satisfactory manner. Bidders are subject to disqualification if they fail to provide evidence within the five-day period. Confidential bidders are strongly encouraged to have this evidence ready by Bid Opening. Submissions will be made to the Director of Engineering Services, Town of Prosper, 250 W. First Street, Prosper, Texas.

The Town reserves the right to conduct site/yard visits to the Bidders' place of business, yard sites or current project sites. The required information to be submitted shall consist of, but shall not necessarily be limited to, the following:

- A. Current Project Experience. A list of all projects presently under construction by the bidder including approximate cost, project start date and estimated completion date shall be submitted.
- B. Past Project Experience. A minimum of three (3) comparable projects in each category listed below meeting the following requirements shall be submitted:
 - 1. Roadway and Drainage Projects
 - a. Completed within the previous five years from the date of Owner's request;
 - b. Located in the Dallas-Fort Worth Metroplex;
 - c. Total Construction Cost for paving and drainage and related improvements of at least \$500,000;
 - d. Scope of work consisting of similar items and quantities including concrete paving and storm drainage improvements; and
 - e. Copy of actual project schedule used during construction.

- C. Key Personnel Resumes. If requested, bidder shall provide resumes of LOCAL personnel expected to oversee this project. Resumes shall be provided for executive and management team as well as on-site project manager.
- D. Financial Statement. Each Bidder shall be prepared to submit upon request of the Owner a financial statement prepared by an independent Certified Public Accountant with no evidence of threatening losses (current within the last six (6) months of bid date). This information will be used to confirm that the Bidder has suitable financial status to meet obligations incidental to performing the work.
- E. Proof that the bidder maintains a permanent place of business (must be submitted within five (5) days if requested).

SC.04 INTRODUCTION: The Town of Prosper ("Town") is accepting competitive sealed proposals (CSP) for furnishing all labor, equipment and materials (except as otherwise specified), and performing all work necessary for the construction of Cook Lane Phase 2.

The contract will be awarded based on the evaluation criteria stated herein. This document provides interested firms with the information necessary to prepare and submit a proposal for consideration. Proposals are to be submitted in accordance with this document, and the accompanying instructions.

There is no expressed or implied obligation for the Town to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. All costs directly or indirectly related to preparation of a response to this request for competitive sealed proposals (CSP), any oral presentation required to supplement and/or clarify a proposal, and/or reasonable demonstrations which may be, at its discretion, required by the Town shall be the sole responsibility of, and shall be borne completely by the proposer.

Proposals for the projects as specified will be received online, or in hard copy. The date/time stamp located in the Purchasing Office serves as the official time clock. Late Submissions will not be considered. Submissions received after the stated deadline shall be refused and returned unopened. The Town of Prosper is not responsible for issues encountered with methods of delivery. The Town reserves the right to reject any or all proposals submitted.

Proposals submitted will be reviewed by Town staff. It is the responsibility of the proposer to ensure the receipt of any and all addenda related to the proposal. It shall be the sole responsibility of the respondent to insure that their proposal is received by the Purchasing Office within the time limit indicated. Late proposals will not be considered.

During the evaluation process, the Town reserves the right, where it may serve the Town's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the Town, firms submitting proposals may be requested to make oral presentations as part of the evaluation process, including an oral presentation to the Town Council.

The Town reserves the right to retain all proposals submitted, and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this CSP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Town and the firm selected. All proposals submitted will remain valid for a period of 90 days subsequent to the CSP due date.

SC05. SPECIFICATIONS: Proposal must meet or exceed the specifications and requirements herein, in order to be considered.

SC06: SUBMITTALS: In order for your proposal to be considered responsive, the following information must be submitted:

- A. Qualifications and Experience
 - 1) Outline contractor and subcontractor experience with similar projects, and label as **Attachment A1**.
 - 2) Outline qualifications of key personnel assigned to this project and label as **Attachment A2**.
 - 3) Complete the References Worksheet and label as **Attachment A3**.

- B. Pricing
 - 1) For online submissions, please submit the line item pricing.
 - 2) For hard copy submissions, you must print and complete the Bid Lines and submit it with your proposal.
 - 3) The Town is exempt from paying Texas State or local sales and use taxes. Please ensure the prices proposed do not include taxes.

- C. Bid Proposal Conditions (Bid Attributes)
 - 1) For online submissions, you must select "I Agree" for each condition.
 - 2) For hard copy submissions, you must complete and print the Bid Attributes section and submit it with your proposal.

- D. Supplier Information
 - 1) For hard copy submissions, you must complete and print the Supplier Information section and submit it with your proposal.

SC07: EVALUATION CRITERIA: A review committee will evaluate submissions received in accordance with the general criteria defined herein. Failure of respondents to provide in their submission any information requested in this CSP may result in disqualification of the submission. The objective of the review committee will be to select the Proposal that provides the best value to the Town. The decision made by the Town of Prosper will be final. The agreement will be awarded based on the following evaluation criteria:

- A. Qualifications and Experience (30%)
- B. Proposed Project Timeline (20%)
- C. Cost Proposal (50%)

SC08: INTERVIEWS AND PRESENTATIONS: In fairness to all firms, requests for interviews prior to the closing time and date will not be permitted. Interviews with selected firms may or may not be requested by the Town after the closing date. Selection may be made strictly from the information provided in the Proposal. However, the Town reserves the right to conduct interviews with and request presentations from any respondents.

SC09: SELECTION AND AWARD: If the Town is unable to reach an agreement with the first-ranked Contractor, the Town shall terminate further discussions with the first-ranked Contractor, and commence negotiations with the next-ranked Contractor, in the order of the selection ranking until an agreement is reached, or all Proposals are rejected. Time is of the essence, and the award of the contract to the successful Contractor is expressly conditioned upon (1) the Contractor's execution and delivery of the Contract, and delivery of all required bonds and evidence of insurance, within ten (10) calendar days after the Contractor is notified of the acceptance of

its Proposal, and (ii) the Contractor's timely fulfillment of any and all other preconditions expressly set forth in the Contract Documents. Should the Contractor fail to timely execute and deliver the contract, required bonds, evidence of insurance, or fail to timely fulfill any other such preconditions, the Town may, at its option and discretion, without releasing, impairing or affecting its right to receive the Proposal security as damages for such failure, rescind the award, commence negotiations with the next ranked Contractor, or may reject all Proposals.

There will be no contractual obligation on the part of the Town to any Contractor, nor will any firm have any property interest or other right in the contract or work being proposed, unless and until the Agreement is unconditionally executed and delivered by all parties, all submittals required by the Proposal Documents and Agreement and all conditions to be fulfilled by the selected firm have either been so fulfilled by the firm, or waived in writing by the firm or Town, as applicable.

SC10: SUBMISSION OR DELIVERY OF PROPOSAL: Proposals for the construction services specified will be received online, or in hard copy. The date/time stamp located in the Purchasing Office serves as the official time clock. Late Submissions will not be considered. Submissions received after the stated deadline shall be refused and returned unopened. The Town of Prosper is not responsible for issues encountered with methods of delivery.

A. Online Submission

Proposals may be submitted online through IonWave.net, the Town's e-procurement system. Please ensure that you provide all required information, including attachments. Any additional response attachments must be uploaded and included with your submission in order to be considered.

B. Mailed/Delivered Submission

Proposals must be submitted with the RFP number and the respondent's name and address clearly indicated on the front of the envelope. Please submit one (1) unbound original and five (5) bound copies of your proposal, in a sealed envelope or package to the address listed below:

Delivery Address:
Town of Prosper
Attn: Purchasing Manager
250 W. First St.
3rd Floor Finance Suite
Prosper, Texas 75078

Mailing Address (US Postal Service Only):
Town of Prosper
Attn: Purchasing Manager
P.O. Box 307
Prosper, Texas 75078

TECHNICAL SPECIFICATIONS

TS1: FIBER VAULT AND CONDUIT

Cable Vault Specifications

Vault will be 30" X 48" X 36" depth in H10 or better rated, open bottom with "TOWN OF PROSPER FIBER OPTICS" raised letter on the lid. Placement of top vault will be even with final ground grade, 50' of curb radius or right of way line of intersection road. 6" of pea size gravel placed in bottom of vault. An 8' ground rod will be placed in every vault, with 1' exposed above pea gravel. The ground resistance of this ground rod will be 25 ohm or less, contractor will provide testing and results.

Conduit Specifications

6" schedule 40 PVC with (3) - 2", (2) - 1 1/4", (1) - 1" interducts with low friction, polyester fiber pull tape in each interduct, 1800 psi tensile strength. A tracer wire, 10 AWG insulated, will be placed within the 6" duct. The 6" duct will be placed with a minimum of 42" of cover and a 6" orange warning tape placed 1' below the final ground grade with "Fiber Optic Line" printed on it repeatedly. The interducts will enter all the vaults with a minimum of 18" exposed above the pea gravel.

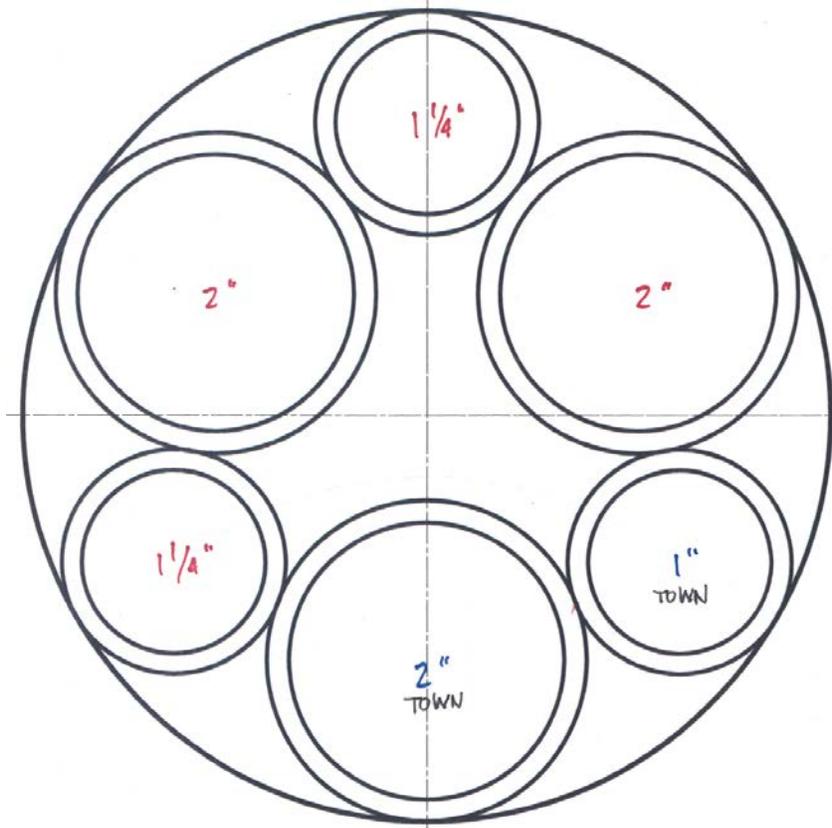


EXHIBIT TS1.1



2020-25-B Addendum 1 Pavecon Public Works, LP Supplier Response

Event Information

Number: 2020-25-B Addendum 1
Title: CSP for Cook Lane Phase 2
Type: Competitive Sealed Proposals
Issue Date: 11/13/2019
Deadline: 12/6/2019 02:00 PM (CT)
Notes: The Town of Prosper is accepting competitive sealed proposals for **CSP NO. 2020-25-B COOK LANE PHASE 2**. Proposals will be accepted online through IonWave.net, the Town's e-procurement system, or in hard copy in the Purchasing Office located in the 3rd Floor Finance Suite of Town Hall, 250 W. First St., Prosper, Texas 75078 until **2:00 P.M. on Wednesday, December 4, 2019**. Any proposals received after this time will not be accepted, and will be returned unopened. Proposals will be publicly opened and read aloud in the Finance Conference Room, located in the 3rd Floor Finance Suite of Town Hall, 250 W. First St., Prosper, Texas 75078, immediately following the proposal deadline.

The Project consists of furnishing all labor, equipment and materials (except as otherwise specified), and performing all work necessary for the construction of Cook Lane Phase 2.

Each proposal submitted shall be accompanied by a cashier's check in the amount of 5% of the maximum amount proposed, payable without recourse to the Town of Prosper, or a Bid Bond in the same amount from a reliable surety company. The bidder warrants and guarantees that, if awarded the contract,

act, the successful Contractor will execute a Construction Agreement with the Town, including all required bonds and other documents.

Item No. 10.

The successful Contractor shall furnish a Performance Bond in the amount of 115% of the contract amount, and a Payment Bond in the amount of 100% of the contract amount, as well as evidence of all required insurance coverage within ten (10) calendar days of notice of award. The successful Contractor shall also furnish a Maintenance Bond in the amount of 100% of the contract amount covering defects of material and workmanship for two calendar years following the Town's approval and acceptance of the construction. An approved surety company, licensed in the State of Texas, shall issue all bonds in accordance with Texas law.

Copies of Plans, Specifications, and Contract Documents may be examined at **Town of Prosper Engineering Department, 250 W. First Street, Prosper, Texas, 75078, Phone: (972) 569-1198** without charge. These documents may be acquired from that office for the non-refundable purchase price of \$50 per set, payable to the Town of Prosper. Copies of Plans, Specifications, and Contract Documents may also be downloaded free of charge from Current Bidding Opportunities, at the following link: <http://www.prospertx.gov/business/bid-opportunities/>.

If you are downloading documents, please complete and submit the Planholder Registration Form to be placed on the official planholder listing.

Contact Information

Contact: January Cook, Purchasing Manager
Address: Purchasing
Town Hall
3rd Floor
250 W. First St.
P.O. Box 307
Prosper, TX 75078
Phone: (972) 569-1018
Email: january_cook@prospertx.gov

Pavecon Public Works, LP Information

Item No. 10.

Contact: Dean Dumke
Address: 3022 Roy Orr Blvd
Grand Prairie, TX 75055
Phone: (972) 263-3223 x138
Fax: (972) 263-6551
Toll Free: (972) 263-3223
Email: deand@pavecon.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Brian Cottle
Signature

brianc@pavecon.com
Email

Submitted at 12/6/2019 12:11:19 PM

Requested Attachments

- Attachment A1** Job Experiences.pdf
Outline contractor and subcontractor experience with similar projects
- Attachment A2** Christopher Johnson Resume.pdf
Outline qualifications of key personnel assigned to this project
- Attachment A3 CIP References Worksheet** CIP References Worksheet.pdf
Complete all information
- Bid Bond** Bid Bond - Prosper.pdf
- Out of State Contractor Compliance Form** Out-Of-State Contractor Compliance to State Law.pdf
If applicable
- Conflict of Interest Questionnaire** Conflict of Interest.pdf
If applicable

Bid Attributes

1	<p>Bid Proposal Condition No. 1</p> <p>The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.</p> <p><input type="checkbox"/> I Agree</p>
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2	<p>Bid Proposal Condition No. 2</p> <p>Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those terms and conditions dealing with the disposition of Bid guaranty. This Bid will remain in subject to acceptance for 90 calendar days after the day of opening Bids. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Contract Documents within ten (10) calendar days after the date of Owner's Notice of Award.</p> <p><input type="checkbox"/> I Agree</p>
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3 Bid Proposal Condition No. 3

The right is reserved, as the interest of the Owner may require, to reject any and all Bids and to waive **Item No. 10.** allit
y in the Bids received.

I Agree

4 Bid Proposal Condition No. 4

Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

I Agree

5 Bid Proposal Condition No. 5

Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface or physical conditions at the site or which otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.

I Agree

6 Bid Proposal Condition No. 6

Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

I Agree

7 Bid Proposal Condition No. 7

Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

I Agree

8 Bid Proposal Condition No. 8

Bidder has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered, if any, in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder.

I Agree

9 Bid Proposal Condition No. 9

This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from submitting a Bid; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

I Agree

10 Bid Proposal Condition No. 10

Bidder will substantially complete the Work for the price(s) shown in the schedule of bid items and within the number of days proposed

I Agree

1 1	<p>Bid Proposal Condition No. 11</p> <p>Bidder hereby agrees to commence work within ten (10) days after the date written notice to proceed is given to him, and to substantially complete the work on which he has bid within the number of days proposed. Within 30 additional calendar days after Substantial Completion, all outstanding issues shall be addressed and ready for final payment. All such time restrictions are subject to such extensions of time as are provided by the General Provisions and Special Conditions.</p> <p style="text-align: right; border: 1px solid black; padding: 2px;"><i>Item No. 10.</i></p> <p><input type="text" value="I Agree"/></p>
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1 2	<p>Bid Proposal Condition No. 12</p> <p>Bidder agrees that the implementation of the Owner's right to delete any portion of the improvements shall not be considered as waiving or invalidating any conditions or provisions of the contract or bonds. Bidder shall perform the Work as altered and no allowances shall be made for anticipated profits.</p> <p><input type="text" value="I Agree"/></p>
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1 3	<p>Bid Proposal Condition No. 13</p> <p>Since the Work on this Project is being performed for a governmental body and function, the Owner will issue to the Contractor a certificate of exemption for payment for the State Sales TAX on materials incorporated into this Project if requested.</p> <p><input type="text" value="I Agree"/></p>
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1 4	<p>Bid Proposal Condition No. 14</p> <p>In the event of the award of a contract, vendor will furnish a Performance Bond for 115% of the contract amount, and a Payment Bond for 100% of the contract amount, to secure proper compliance with the terms and provisions of the contract with sureties offered by <i>surety company named in the space provided</i>, to insure and guarantee the work until final completion and acceptance, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract. In addition, the undersigned will furnish a Maintenance Bond for 100% of the contract amount covering defects of material and workmanship for two calendar years following the Owner's approval and acceptance of the construction.</p> <p><input type="text" value="I Agree"/></p>
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1 5	<p>Bid Proposal Condition No. 15</p> <p>The work, proposed to be done, shall be accepted when fully completed in accordance with the plans and specifications, to the satisfaction of the Engineer and the Owner.</p> <p><input type="text" value="I Agree"/></p>
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1 6	<p>Bid Proposal Condition No. 16</p> <p>The vendor submitting this Bid certifies that the bid prices contained in this Bid have been carefully checked and are submitted as correct and final.</p> <p><input type="text" value="I Agree"/></p>
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1 7	<p>Base Proposal</p> <p>Cost of Materials</p> <p><input type="text" value="\$812060.65"/></p>
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1 8	<p>Base Proposal</p> <p>Cost of Labor, Profit, etc.</p> <p><input type="text" value="\$348026.00"/></p>
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1 9	Addendum No. 1 Bidder has examined copies of all the Contract Documents and of the following Addenda (if issued) Item No. 10. <input type="text" value="Acknowledged"/>
2 0	Addendum No. 2 Bidder has examined copies of all the Contract Documents and of the following Addenda (if issued) <input type="text" value="No response"/>
2 1	Addendum No. 3 Bidder has examined copies of all the Contract Documents and of the following Addenda (if issued) <input type="text" value="No response"/>
2 2	Addendum No. 4 Bidder has examined copies of all the Contract Documents and of the following Addenda (if issued) <input type="text" value="No response"/>
2 3	Addendum No. 5 Bidder has examined copies of all the Contract Documents and of the following Addenda (if issued) <input type="text" value="No response"/>
2 4	Subcontractor 1 - Name Each Bidder shall include a list of proposed subcontractors, the type of work to be completed by each such subcontractor and the approximate percentage of contract labor to be completed by each subcontractor. If complete listing of subcontracts totals more than five, please attach such additional pages as may be required. Owner reserves the right to accept or reject any subcontracts and/or amount subcontracted that it deems to be objectionable. <input type="text" value="RPM xConstruction"/>
2 5	Subcontractor 1 - Type of Work <input type="text" value="Excavation"/>
2 6	Subcontractor 1 - % of Work <input type="text" value="8%"/>
2 7	Subcontractor 2 - Name <input type="text" value="KIK Underground"/>
2 8	Subcontractor 2 - Type of Work <input type="text" value="Utilities"/>
2 9	Subcontractor 2 - % of Work <input type="text" value="46%"/>
3 0	Subcontractor 3 - Name <input type="text" value="Meade Servicing Group"/>
3 1	Subcontractor 3 - Type of Work <input type="text" value="Erosion Control"/>

3 2	Subcontractor 3 - % of Work <input type="text" value="6%"/>	Item No. 10.
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3 3	Subcontractor 4 - Name <input type="text" value="Durable Specialties"/>
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3 4	Subcontractor 4 - Type of Work <input type="text" value="Electrical"/>
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3 5	Subcontractor 4 - % of Work <input type="text" value="3%"/>
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3 6	Subcontractor 5 - Name <input type="text" value="No response"/>
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3 7	Subcontractor 5 - Type of Work <input type="text" value="No response"/>
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3 8	Subcontractor 5 - % of Work <input type="text" value="No response"/>
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3 9	Supplier 1 - Name Each Bidder shall include a list of proposed suppliers of major materials and equipment to be furnished and installed in connection with this Bid. If complete listing of suppliers totals more than five, please attach such additional pages as may be required. <input type="text" value="Nelson Brothers Ready Mix"/>
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4 0	Supplier 1 - Type of Material/Equipment <input type="text" value="Ready Mix"/>
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4 1	Supplier 2 - Name <input type="text" value="Lhoist"/>
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4 2	Supplier 2 - Type of Material/Equipment <input type="text" value="Hydrated Lime"/>
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4 3	Supplier 3 - Name <input type="text" value="No response"/>
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4 4	Supplier 3 - Type of Material/Equipment <input type="text" value="No response"/>
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4 5	Supplier 4 - Name <input type="text" value="No response"/>
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4 6	Supplier 4 - Type of Material/Equipment <input type="text" value="No response"/>
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4 7	Supplier 5 - Name	No response	Item No. 10.
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4 8	Supplier 5 - Type of Material/Equipment	No response
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4 9	Project Timeline: First Milestone
	Provide number of days to reach substantial completion of project
	110

5 0	Project Timeline: Second Milestone
	Provide number of days to reach final completion of project
	120

Bid Lines

1	8 INCH SANITARY SEWER LINE
	Quantity: <u>25</u> UOM: <u>LF</u> Unit Price: \$85.75 Total: \$2,143.75

2	8 INCH PLUG
	Quantity: <u>1</u> UOM: <u>EA</u> Unit Price: \$117.90 Total: \$117.90

3	MANHOLE DROP CONNECTION (INCLUDES 8 INCH PIPE REMOVAL)
	Quantity: <u>1</u> UOM: <u>EA</u> Unit Price: \$1,607.82 Total: \$1,607.82

4	8X4 RBC
	Quantity: <u>668</u> UOM: <u>LF</u> Unit Price: \$487.70 Total: \$325,783.60

5	5X4 RBC
	Quantity: <u>39</u> UOM: <u>LF</u> Unit Price: \$296.91 Total: \$11,579.49

6	42 INCH RCP
	Quantity: <u>352</u> UOM: <u>LF</u> Unit Price: \$159.71 Total: \$56,217.92

7	18 INCH RCP
	Quantity: <u>194</u> UOM: <u>LF</u> Unit Price: \$58.95 Total: \$11,436.30

8	10 FOOT RECESSED CURB INLET
	Quantity: <u>6</u> UOM: <u>EA</u> Unit Price: \$4,287.50 Total: \$25,725.00

9	7X11 JUNCTION BOX
	Quantity: <u>1</u> UOM: <u>EA</u> Unit Price: \$8,467.82 Total: \$8,467.82

1 0	6X6 JUNCTION BOX
	Quantity: <u>1</u> UOM: <u>EA</u> Unit Price: \$6,699.21 Total: \$6,699.21

1 1	8X4 OUTFALL STRUCTURE/TXDOT HEADWALL	Quantity: <u> 1 </u> UOM: <u> EA </u>	Unit Price: <input type="text" value="\$9,512.89"/>	Total: <input type="text" value="Item No. 10. 9"/>
1 2	42 INCH TXDOT HEADWALL	Quantity: <u> 1 </u> UOM: <u> EA </u>	Unit Price: <input type="text" value="\$5,091.41"/>	Total: <input type="text" value="\$5,091.41"/>
1 3	12 INCH RIP RAP	Quantity: <u>4711</u> UOM: <u> SF </u>	Unit Price: <input type="text" value="\$11.79"/>	Total: <input type="text" value="\$55,542.69"/>
1 4	7 INCH REINFORCED CONCRETE PAVEMENT	Quantity: <u>5662</u> UOM: <u> SY </u>	Unit Price: <input type="text" value="\$47.12"/>	Total: <input type="text" value="\$266,793.44"/>
1 5	8 INCH LIME TREATMENT	Quantity: <u>5964</u> UOM: <u> SY </u>	Unit Price: <input type="text" value="\$3.63"/>	Total: <input type="text" value="\$21,649.32"/>
1 6	HYDRATED LIME (ASSUMING 37 LBS/SY)	Quantity: <u>110</u> UOM: <u> TN </u>	Unit Price: <input type="text" value="\$173.64"/>	Total: <input type="text" value="\$19,100.40"/>
1 7	CONSTRUCTION ENTRANCE	Quantity: <u> 1 </u> UOM: <u> EA </u>	Unit Price: <input type="text" value="\$1,602.45"/>	Total: <input type="text" value="\$1,602.45"/>
1 8	SILT FENCE	Quantity: <u>1425</u> UOM: <u> LF </u>	Unit Price: <input type="text" value="\$1.28"/>	Total: <input type="text" value="\$1,824.00"/>
1 9	INLET PROTECTION	Quantity: <u> 7 </u> UOM: <u> EA </u>	Unit Price: <input type="text" value="\$107.19"/>	Total: <input type="text" value="\$750.33"/>
2 0	CHECK DAM	Quantity: <u> 1 </u> UOM: <u> EA </u>	Unit Price: <input type="text" value="\$1,018.27"/>	Total: <input type="text" value="\$1,018.27"/>
2 1	EARTHWORK - FILL (VOLUME NOT ADJUSTED AND DOES NOT ACCOUNT FOR UTILITY SPOILS OR PAVEMENT SECTIONS)	Quantity: <u>4056</u> UOM: <u> CY </u>	Unit Price: <input type="text" value="\$44.21"/>	Total: <input type="text" value="\$179,315.76"/>
2 2	REMOVE AND RELOCATE EX ACCESS ROAD (FLEX BASE)	Quantity: <u>2600</u> UOM: <u> SY </u>	Unit Price: <input type="text" value="\$3.75"/>	Total: <input type="text" value="\$9,750.00"/>
2 3	FIBER VAULT BOX	Quantity: <u> 3 </u> UOM: <u> EA </u>	Unit Price: <input type="text" value="\$5,627.34"/>	Total: <input type="text" value="\$16,882.02"/>
2 4	6 INCH PVC	Quantity: <u>140</u> UOM: <u> LF </u>	Unit Price: <input type="text" value="\$61.10"/>	Total: <input type="text" value="\$8,554.00"/>
2 5	2 INCH PVC	Quantity: <u>420</u> UOM: <u> LF </u>	Unit Price: <input type="text" value="\$5.36"/>	Total: <input type="text" value="\$2,251.20"/>

26	1.25 INCH PVC Quantity: <u>280</u> UOM: <u>LF</u>	Unit Price: <input type="text" value="\$4.29"/>	Total: <input type="text" value="Item No. 10. 0"/>
27	1 INCH PVC Quantity: <u>140</u> UOM: <u>LF</u>	Unit Price: <input type="text" value="\$3.22"/>	Total: <input type="text" value="\$450.80"/>
28	SOD Quantity: <u>3622</u> UOM: <u>SY</u>	Unit Price: <input type="text" value="\$6.39"/>	Total: <input type="text" value="\$23,144.58"/>
29	HYDROMULCH Quantity: <u>7294</u> UOM: <u>SY</u>	Unit Price: <input type="text" value="\$4.72"/>	Total: <input type="text" value="\$34,427.68"/>
30	TOWN OF PROSPER BARRIER FREE RAMP Quantity: <u>2</u> UOM: <u>EA</u>	Unit Price: <input type="text" value="\$3,071.30"/>	Total: <input type="text" value="\$6,142.60"/>
31	ADJUST MSS MANHOLE Quantity: <u>4</u> UOM: <u>EA</u>	Unit Price: <input type="text" value="\$1,071.88"/>	Total: <input type="text" value="\$4,287.52"/>
32	TYPE 2 TXDOT INLET Quantity: <u>6</u> UOM: <u>EA</u>	Unit Price: <input type="text" value="\$4,877.03"/>	Total: <input type="text" value="\$29,262.18"/>
33	HORIZONTAL ADJUSTMENT OF EX WATER AT INLET Quantity: <u>3</u> UOM: <u>EA</u>	Unit Price: <input type="text" value="\$3,917.70"/>	Total: <input type="text" value="\$11,753.10"/>

Response Total: \$1,160,086.65

									Pavecon Public Works, LP			
				Original Cost		Best and Final Offer						
Line #	Description	QTY	UOM	Total Price	\$1,160,086.65	Revised	Total Price	\$1,127,019.27				
				Unit	Extended	QTY	Unit	Extended				
1	8 INCH SANITARY SEWER LINE	25	LF	\$85.75	\$2,143.75	25	\$85.75	\$2,143.75				
2	8 INCH PLUG	1	EA	\$117.90	\$117.90	1	\$117.90	\$117.90				
3	MANHOLE DROP CONNECTION (INCLUDES 8 INCH PIPE REMOVAL)	1	EA	\$1,607.82	\$1,607.82	1	\$1,607.82	\$1,607.82				
4	8X4 RBC	668	LF	\$487.70	\$325,783.60	668	\$487.70	\$325,783.60				
5	5X4 RBC	39	LF	\$296.91	\$11,579.49	39	\$296.91	\$11,579.49				
6	42 INCH RCP	352	LF	\$159.71	\$56,217.92	352	\$159.71	\$56,217.92				
7	18 INCH RCP	194	LF	\$58.95	\$11,436.30	194	\$58.95	\$11,436.30				
8	10 FOOT RECESSED CURB INLET	6	EA	\$4,287.50	\$25,725.00	6	\$4,287.50	\$25,725.00				
9	7X11 JUNCTION BOX	1	EA	\$8,467.82	\$8,467.82	1	\$8,467.82	\$8,467.82				
10	6X6 JUNCTION BOX	1	EA	\$6,699.21	\$6,699.21	1	\$6,699.21	\$6,699.21				
11	8X4 OUTFALL STRUCTURE/TXDOT HEADWALL	1	EA	\$9,512.89	\$9,512.89	1	\$9,512.89	\$9,512.89				
12	42 INCH TXDOT HEADWALL	1	EA	\$5,091.41	\$5,091.41	1	\$5,091.41	\$5,091.41				
13	12 INCH RIP RAP	4711	SF	\$11.79	\$55,542.69	4711	\$11.79	\$55,542.69				
14	7 INCH REINFORCED CONCRETE PAVEMENT	5662	SY	\$47.12	\$266,793.44	5662	\$47.12	\$266,793.44				
15	8 INCH LIME TREATMENT	5964	SY	\$3.63	\$21,649.32	5964	\$3.63	\$21,649.32				
16	HYDRATED LIME (ASSUMING 37 LBS/SY)	110	TN	\$173.64	\$19,100.40	110	\$173.64	\$19,100.40				
17	CONSTRUCTION ENTRANCE	1	EA	\$1,602.45	\$1,602.45	1	\$1,602.45	\$1,602.45				
18	SILT FENCE	1425	LF	\$1.28	\$1,824.00	1425	\$1.28	\$1,824.00				
19	INLET PROTECTION	7	EA	\$107.19	\$750.33	7	\$107.19	\$750.33				
20	CHECK DAM	1	EA	\$1,018.27	\$1,018.27	1	\$1,018.27	\$1,018.27				
21	EARTHWORK - FILL (VOLUME NOT ADJUSTED AND DOES NOT ACCOUNT FOR UTILITY SPOILS OR PAVEMENT SECTIONS)	4056	CY	\$44.21	\$179,315.76	4056	\$44.21	\$179,315.76				
22	REMOVE AND RELOCATE EX ACCESS ROAD (FLEX BASE)	2600	SY	\$3.75	\$9,750.00	2600	\$2.84	\$7,384.00				
23	FIBER VAULT BOX	3	EA	\$5,627.34	\$16,882.02	3	\$5,627.34	\$16,882.02				
24	6 INCH PVC - DELETED	140	LF	\$61.10	\$8,554.00	0	\$61.10	\$0.00				
25	2 INCH PVC - DELETED	420	LF	\$5.36	\$2,251.20	0	\$5.36	\$0.00				
26	1.25 INCH PVC - DELETED	280	LF	\$4.29	\$1,201.20	0	\$4.29	\$0.00				
27	1 INCH PVC - DELETED	140	LF	\$3.22	\$450.80	0	\$3.22	\$0.00				
28	SOD	3622	SY	\$6.39	\$23,144.58	3622	\$6.39	\$23,144.58				
29	HYDROMULCH	7294	SY	\$4.72	\$34,427.68	7294	\$4.72	\$34,427.68				
30	TOWN OF PROSPER BARRIER FREE RAMP	2	EA	\$3,071.30	\$6,142.60	2	\$3,071.30	\$6,142.60				
31	ADJUST MSS MANHOLE	4	EA	\$1,071.88	\$4,287.52	4	\$1,071.88	\$4,287.52				
32	TYPE 2 TXDOT INLET	6	EA	\$4,877.03	\$29,262.18	0	\$4,877.03	\$0.00				
33	HORIZONTAL ADJUSTMENT OF EX WATER AT INLET	3	EA	\$3,917.70	\$11,753.10	3	\$3,917.70	\$11,753.10				
ADD	2EA 4" PVC MULTIDUCT W/4-1.25" HDPE INNERDUCTS(NO CONC ENCASEMENT)		LF			280	\$39.35	\$11,018.00				

BID BOND

Conforms with The American Institute of Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, Pavecon Public Works, LP

3022 Roy Orr Blvd., Grand Prairie, Texas 75050

_____ as Principal, hereinafter called the Principal,
and the Continental Casualty Company

of 151 N. Franklin, Chicago, IL 60606, a corporation duly organized under

the laws of the State of Illinois, as Surety, hereinafter called the Surety, are held and firmly bound unto

Town of Prosper, Texas, 250 W. First, Prosper, TX 75078 as Obligee, hereinafter called the Obligee,

in the sum of ***** FIVE PERCENT OF TOTAL AMOUNT BID BY PRINCIPAL *****

Dollars (5% TAB) , for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for _____

Cook Lane Phase 2 Bid No. 2020-18-B

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 4th day of December, 2019

Cindy Castella

Witness

William Little

Witness

Pavecon Public Works, LP (Seal)

Principal
Brian Cottle, Vice President

Title

Continental Casualty Company
By Patricia Ann Lyttle

Patricia Ann Lyttle Attorney-in-Fact

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (the CNA Companies), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Item No. 10.

Gary W Wheatley, Bryan K Moore, Clark D Fresher, Betty J Reeh, Individually, of San Antonio, TX
Michael D Hendrickson, Patricia Ann Lyttle, Individually, of Irving, TX

their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 24th day of August, 2016.

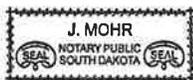


Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat
Paul T. Bruflat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 24th day of August, 2016, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.



My Commission Expires June 23, 2021

J. Mohr
J. Mohr Notary Public

CERTIFICATE

I, D. Bult, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 4th day of December, 2019.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Bult
D. Bult Assistant Secretary

Authorizing By-Laws and Resolutions

Item No. 10.

ADOPTED BY THE BOARD OF DIRECTORS OF CONTINENTAL CASUALTY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 12, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of Continental Casualty Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company.”

ADOPTED BY THE BOARD OF DIRECTORS OF NATIONAL FIRE INSURANCE COMPANY OF HARTFORD:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of National fire Insurance Company of Hartford.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company.”

ADOPTED BY THE BOARD OF DIRECTORS OF AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of American Casualty Company of Reading, Pennsylvania.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company.”

State of Texas

Claim Notice Endorsement

To be attached to and form a part of Bond No. _____.

In accordance with Section 2253.021(f) of the Texas Government Code and Section 53.202(6) of the Texas Property Code any notice of claim to the named surety under this bond(s) should be sent to:

CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

Telephone: 1-877-672-6115

Figure: 28 TAC §1.601(a)(3)

1 IMPORTANT NOTICE

To obtain information or make a complaint:

2 You may contact Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company at 312-822-5000.

3 You may call Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company's toll-free telephone number for information or to make a complaint at:

1-877-672-6115

4 You may also write to Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company at:
CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

5 You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6 You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

7 PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8 ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Form F8277-6-2018

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company al 312-822-5000.

Usted puede llamar al numero de telefono gratis de Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company's para informacion o para someter una queja al:

1-877-672-6115

Usted tambien puede escribir a Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company:
CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concierne a su prima o a un reclamo, debe comunicarse con el Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**ENGINEERING
SERVICES**

To: Mayor and Town Council

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

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Water Impact Fee Reimbursement Agreement between 1385 & 380 Investments LP, Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the extension of water lines to serve the Westside development.

Description of Agenda Item:

1385 & 380 Investments LP, and Prosper 1385 Investments LP, are developing Westside on the northeast corner of FM 1385 and US 380 and in order to facilitate the development, they will be required to extend a 12" water line as depicted on the Town of Prosper Water System Capital Improvement Plan.

Since the proposed water line is depicted on the Town of Prosper Water System Capital Improvement Plan, the actual costs for the design and construction of the improvements are eligible for reimbursement of water impact fees owed by the development. The purpose of the Water Impact Fee Reimbursement Agreement is to outline the obligations of the Town of Prosper, 1385 & 380 Investments LP, and Prosper 1385 Investments LP, related to the design, construction, and reimbursement of collected water impact fees to fund the project.

Budget Impact:

The estimated cost for the design and construction of the extension of 2,863 feet of a 12" water line and associated connections is approximately \$284,415. The anticipated water impact fees owed by the Westside development is approximately \$763,357. If the full reimbursement is not made by the Town to 1385 & 380 Investments LP, and Prosper 1385 Investments LP, within the ten (10) year expiration from the date of the Town's acceptance of the water line, the Town shall endeavor to reimburse Developer from applicable water impact fee funds.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the agreement as to form and legality. 1385 & 380 Investments LP, and Prosper 1385 Investments LP, agree to pay the Town

reasonable attorney's fees charged to the Town by the Town's legal counsel associated with preparation and negotiation of this Agreement, in an amount not to exceed \$5,000.

Attached Documents:

1. Town of Prosper Water System Capital Improvement Plan
2. Water Impact Fee Reimbursement Agreement

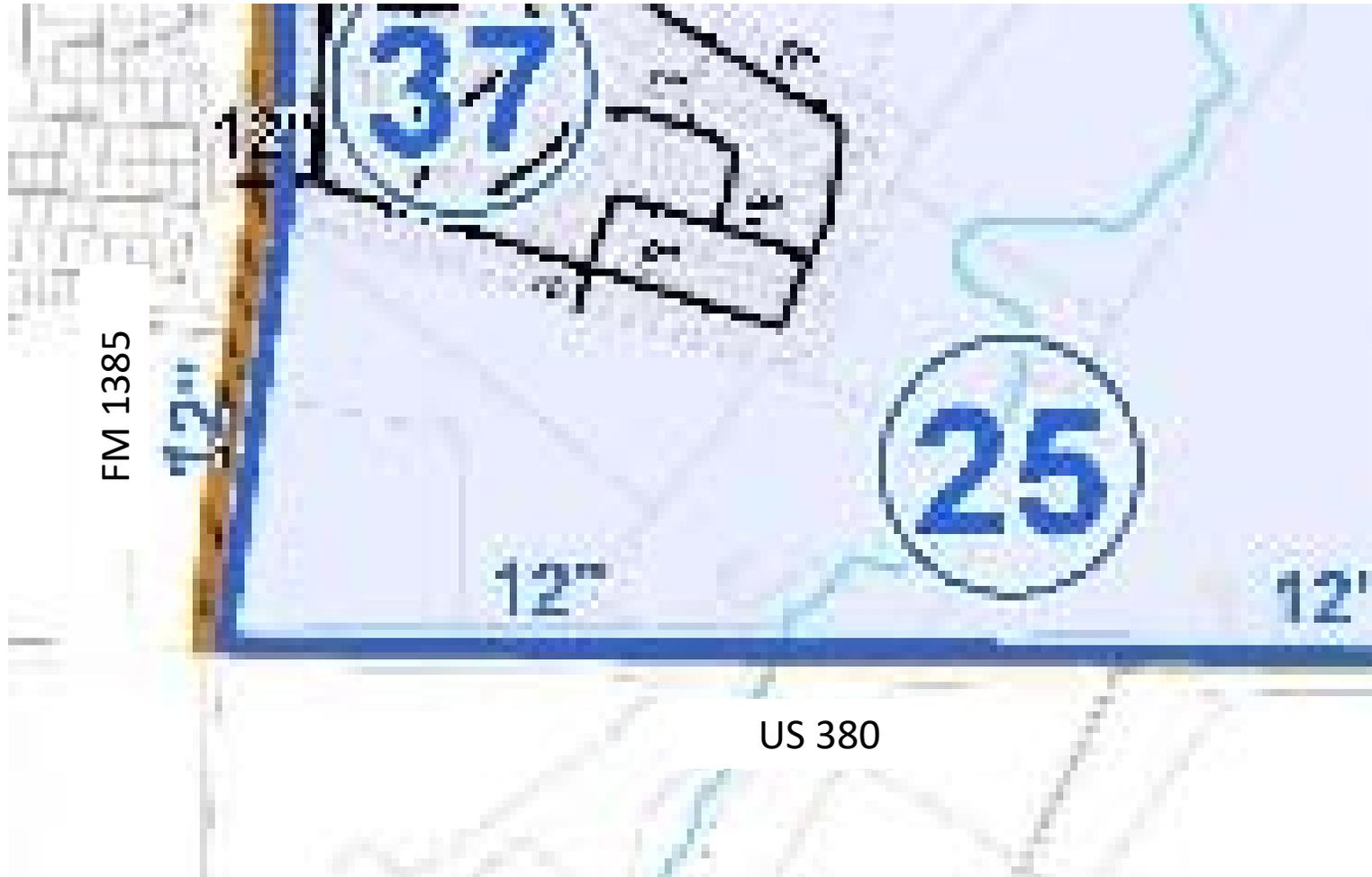
Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Water Impact Fee Reimbursement Agreement between 1385 & 380 Investments LP, Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the extension of water lines to serve the Westside development.

Proposed Motion:

I move to authorize the Town Manager to execute a Water Impact Fee Reimbursement Agreement between 1385 & 380 Investments LP, Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the extension of water lines to serve the Westside development.

Town of Prosper Water System CIP – Westside



After Recording, Return to:
Town Manager
Town of Prosper
P.O. Box 307
Prosper, Texas 75078

Item No. 11.

WATER IMPACT FEE REIMBURSEMENT AGREEMENT

(WestSide)

THIS WATER IMPACT FEE REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of February, 2020 (“Effective Date”), by and between, the Town of Prosper, Texas (“Prosper” or the “Town”), and 1385 & 380 Investments LP, a Texas limited partnership, and Prosper 1385 Investments LP, a Texas limited partnership (“Developer”), individually referred to as a “Party” and collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, Developer is developing a project in the Town known as WestSide (“WestSide”), which development previously has been approved, in part, by the Town, which contains multiple development phases; and

WHEREAS, the legal descriptions of the WestSide property (“Property”), are attached hereto as Exhibit A; and

WHEREAS, the Town and Developer wish to address the construction of water mains as well as the timing construction and payment of associated costs thereof, related to WestSide; and

WHEREAS, the Town has adopted a Water Capital Improvements Plan (“Water CIP”) as a part of its impact fee ordinance, contained in Article 10.02 of Chapter 10 of the Town’s Code of Ordinances, as amended, all of which adopted pursuant of the authority contained in Chapter 395 of the Texas Local Government Code, as amended; and

WHEREAS, in an effort to facilitate the construction of water mains serving WestSide, the Parties have agreed the terms and provisions of this Agreement; and

WHEREAS, this Agreement clearly is in the best interest of the Town and the Developer and it is deemed mutually beneficial to each that the construction of water mains and the development of WestSide proceed uniformly.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Developer covenant and agree as follows:

1. **Water Impact Fees and Water CIP Projects**. Builders of improvements on the land within WestSide shall be subject to and shall pay the Town water impact fees, currently estimated at \$763,357.00 pursuant to applicable provisions of the Town’s Code of Ordinances, as amended. In each phase of development of WestSide, there are impact-fee eligible water main projects (individually a

“**Water CIP Project**,” and collectively the “**Water CIP Projects**”) that are identified on the Town’s Water CIP that Developer agrees to construct, if and to the extent Developer elects in its discretion to develop the applicable phases of WestSide which possible Water CIP projects are reflected in **Exhibit B**, attached hereto and incorporated by reference. Should Developer construct any Water CIP Projects described in the preceding sentence and/or should Developer elect in its discretion or otherwise be required to construct the twelve (12) inch CIP Water Main along US Highway 380 and Farm to Market 1385 (which shall constitute a Water CIP Project for purposes hereof), then Developer shall be entitled to reimbursement for same in accordance with terms of this Agreement.

2. **Third Party Water Project Easements.** The Parties shall acknowledge that all easements required from third Parties (“**Third Party Water Project Easements**”) for any Water CIP Project depicted in **Exhibit B** have been obtained, and agree that no other Third Party Water Project Easements will be required for any Water CIP Project depicted in **Exhibit B**.

3. **Easement Acquisition Fees, Construction Costs and Reimbursement.** Provided Developer constructs, and the Town accepts, any Water CIP Project contemplated by this Agreement, Developer shall be reimbursed impact fee-eligible costs by this Agreement for the construction costs associated with the Water CIP Project. The Term “construction costs” as used above shall mean the actual costs of constructing the Water CIP Projects, including, but not limited to: design costs, labor and material costs, engineering costs, surveying costs and geotechnical material testing costs associated with the Water CIP Projects. The current estimated construction costs for the planned twelve (12) inch water line along US Highway 380 and Farm to Market 1385 is two hundred eighty-four thousand four hundred fourteen dollars and 92/100 cents (\$284,414.92). The parties acknowledge that additional construction costs may be incurred in completing such water line and such additional construction costs shall be subject to reimbursement in accordance with the provisions of this Agreement. No construction costs for any Water CIP Project shall be incurred by Developer until Developer submits a request for reimbursement for same to the Town’s Engineer for review and written approval, which review and approval shall not be unreasonably withheld, conditioned or delayed. The Town will, subject to paragraphs 4 and 5 below, pay Developer any requested reimbursement quarterly as applicable, on January 15, April 15, July 15, and October 15 of each year beginning the first quarterly date after the Town accepts any particular Water CIP Project.

4. **Reimbursement from Water Impact Fees.** Any reimbursement to Developer contemplated by this Agreement shall come only from: water impact fees collected by the Town from development within WestSide to be served by the Water CIP Projects as shown on **Exhibit C**, attached hereto. The reimbursement of water impact fees for any Water CIP Project shall cease when the amount tendered to Developer through the reimbursement of collected water impact fees by the Town equals the total of the sum of the construction costs, as defined above. Attached hereto and incorporated by reference is **Exhibit D**, which exhibit reflects the current proposed development schedule of the Property by phases, and anticipated water impact fees to be collected by the Town from property located in WestSide and to be reimbursed to Developer by the Town.

5. **Timing of Reimbursement by the Town.** Water impact fees collected by the Town shall be Reimbursed to Developer for eligible Water CIP Project costs as described above, based upon the order of the Town’s acceptance of each particular Water CIP Project. For purposes of clarification, upon the Town’s acceptance of the first Water CIP Project, Developer shall receive reimbursement of water impact fees collected by the Town until Developer is paid the full amount eligible for reimbursement. If a second Water CIP Project is accepted by the Town prior to full reimbursement for

the first Water CIP Project, no reimbursement shall be paid for the second Water CIP Project until reimbursement for the first Water CIP Project has been made in full.

6. **Obligation to Reimburse.** In the event that full reimbursement has not been made to Developer by the Town after the expiration of ten (10) years from the date of acceptance of the final Water CIP Project for WestSide, as reflected in the Water CIP and as contemplated by this Agreement, the Town shall endeavor to reimburse Developer from general water impact fees collected by the Town.

7. **Assignment.** Developer shall have the right to assign this Agreement, in whole or in part, only by an instrument, approved by the Town, which specifically provides for an assignment of Developer's rights under this Agreement which is made to one or more parties purchasing undeveloped portions of WestSide, which party (or parties) shall have the option to construct any Water CIP Projects located in such portions. As to the sale of land by Developer to any party to whom this Agreement has not been assigned, in whole or in part, the purchaser thereof shall have no right or obligations under this Agreement and this Agreement shall not apply with respect to such land. If Developer assigns its rights under this Agreement with respect to a Water CIP Project to another party, Developer shall have no further obligations under this Agreement with respect to such Water CIP Project and the assignee shall be solely responsible for all obligations of Developer under this Agreement with respect to such Water CIP Project.

8. **Default.** If Developer fails to comply with any provision of this Agreement after receiving fifteen (15) days written notice to comply from Town or such longer period as may be reasonably necessary provided that Developer commences to cure the default or breach within the 15-day period and proceeds with reasonable diligence thereafter to complete such cure, then so long as such default continues and is not cured, Town shall have the following remedies, in addition to Town's other rights and remedies:

- a) To refuse to accept any public improvements as to the applicable portion of WestSide to which the default relates (provided however the Town shall not be entitled to rescind any prior acceptance to public improvements); and/or
- b) To construct and/or complete the Water CIP Projects that Developer is required to construct hereunder and to recover any and all reasonable, necessary and actual costs and expenses associated with the construction and/or completion of same, including, but not limited to, any and all reasonable and necessary attorney's fees and costs associated therewith; and/or
- c) To seek specific enforcement of the Agreement.

In the even Town fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement and/or bring suit to recover any amounts due and owing hereunder (but not consequential or punitive damages) as its sole and exclusive remedies.

9. **Other Applicable Development Ordinances.** Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve any developer from responsibilities for the construction of other public improvements under applicable development ordinances of the Town.

10. **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 Agreement shall lie in Collin County, Texas.

Party.

18. **Savings/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. In the event any provisions 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.

19. **Notification of Sale or Transfer**. The Developer shall notify the Town in writing of sale or transfer of all or any portion of the Property where Developer plans to assign all or a portion of this Agreement, as contemplated herein, within ten (10) business days after such sale or transfer.

20. **Authority to Execute**. The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. This Agreement is and shall be binding upon the Developer. Its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all other holding any interest now or in the future.

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

22. **Indemnification**. From the Effective Date of this Agreement to the date on which all work with respect to a Water CIP Project required to be constructed by Developer is completed and all improvements in connection with such Water CIP Project, as contemplated herein, have been accepted by the Town, Developer does hereby agree to release, defend, indemnify and hold harmless Town and its elected and appointed officials, officers, employees and agents from and against all actual damages (but not consequential or punitive damages), injuries (including death), claims, property damage (including loss of use) losses, demands, suits, judgements and costs, including reasonable attorney's fees and expenses (including reasonable attorney's fees and expenses incurred in enforcing this indemnity), caused by the negligent, grossly negligent, and/or intentional act and/or omission of Developer, or any other third parties for whom Developer engaged, in its/their performance of this Agreement, including but not limited to: the construction of the Water CIP Projects contemplated herein (hereinafter "**claims**"). Developer is expressly required to defend the Town against all such claims arising under this Agreement, and the Town is required to reasonably cooperate and assist developer(s) in providing such defense. Developer shall not be required to indemnify the Town from claims caused in whole or in part by the Town's negligent, grossly negligent, and/or intentional act and/or omissions, or any other third parties for whom the Town engaged. After a Water CIP Project has been accepted by the Town, Developer shall have no further obligations in connection with such Water CIP Project, including without limitation, any indemnification obligations under this paragraph.

23. **Approval of Counsel**. In its reasonable discretion, the Town shall have the right to approve counsel to be retained by Developer in fulfilling its obligation hereunder to defend and indemnify the Town. The Town reserves the right to provide a portion or all of its' own defense, at its sole cost; however, the Town is under no obligation to do so. Any such action by the Town or as a waiver of Developer's obligation to indemnify the Town pursuant to this Agreement. Developer shall retain

Town-approved defense counsel within ten (10) business days of the Town’s written notice that the Town in invoking its right to indemnification under this Agreement.

24. **Survival.** Paragraph 22, “Indemnification,” shall survive the termination of this Agreement.

25. **Additional Representations.** Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had the opportunity to confer with its counsel.

26. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

27. **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.

28. **Applicability of Town Ordinances.** The signatories hereto shall be subject to all applicable ordinances of the Town, in effect as of the Effective Date of this Agreement.

29. **Rough Proportionality.** Developer hereby agrees that any land or property donated and/or dedicated pursuant to this Agreement, whether in fee simple or otherwise, to the Town relative to any development on the Property is roughly proportional to the need for such land and Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs the development referenced herein. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in Dolan v. City of Tigard, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the provisions of roadway services of the Property.

30. **Attorney’s Fees.** Developer agrees to pay, or cause to be paid, to the Town reasonable attorney’s fees charged to the Town by the Town’s legal counsel for, among other things, legal review and revision of this Agreement and all further agreements, ordinances or resolutions contemplated by this Agreement, negotiations and discussions with Developer’s attorney and the provision of advice to applicable Prosper Town Staff and the Prosper Town Council, in an amount not to exceed \$5,000.00 within ten (10) days upon receipt of an invoice of same from the Town.

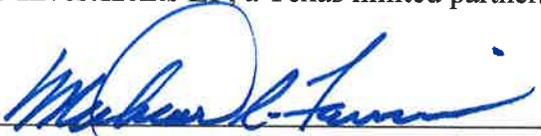
IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed as of the Effective Date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DEVELOPER:

Item No. 11.

1385 & 380 Investments LP, a Texas limited partnership

By: 

Michael Fannin, Manager

By: 

Ryan Griffin, Manager

By: 

Jeff Brawner, Manager

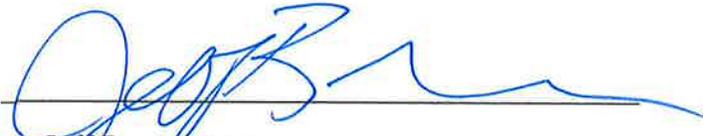
And **Prosper 1385 Investments LP**, a Texas limited partnership

By: 

Michael Fannin, Manager

By: 

Ryan Griffin, Manager

By: 

Jeff Brawner, Manager

AGREED AND ACCEPTED:

TOWN OF PROSPER, TEXAS

By: _____

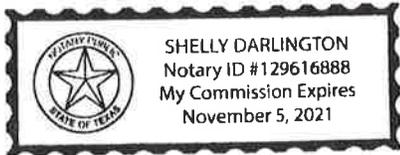
Harlan Jefferson, Town Manager

THE STATE OF TEXAS

COUNTY OF Collin

BEFORE ME, the undersigned authority, on this day personally appeared Michael Fannin, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the Manager and duly authorized representative of **1385 & 380 Investments LP**, a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12 day of February, 2020.



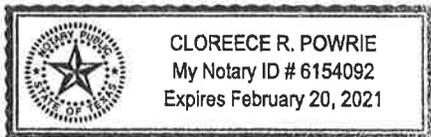
Shelly Darlington
Notary Public in and for the State of Texas
My Commission Expires: 11/5/21

THE STATE OF TEXAS

COUNTY OF Collin

BEFORE ME, the undersigned authority, on this day personally appeared Ryan Griffin, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the Manager and duly authorized representative of **1385 & 380 Investments LP**, a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of February, 2020.



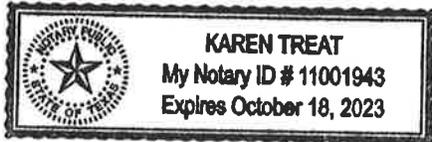
Cloreec R. Powrie
Notary Public in and for the State of Texas
My Commission Expires: 2/20/21

THE STATE OF TEXAS

COUNTY OF Dallas

BEFORE ME, the undersigned authority, on this day personally appeared Jeffrey Brawner, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the Manager and duly authorized representative of **1385 & 380 Investments LP**, a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of February, 2020.



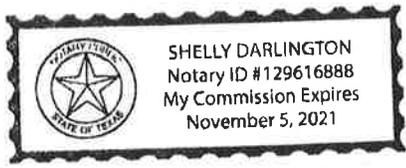
Karen Treat
Notary Public in and for the State of Texas
My Commission Expires: Oct 18, 2023

THE STATE OF TEXAS

COUNTY OF Collin

BEFORE ME, the undersigned authority, on this day personally appeared Michael Fannin, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the Manager and duly authorized representative of **Prosper 1385 Investments LP**, a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12 day of February, 2020.



Shelly Darlington
Notary Public in and for the State of Texas
My Commission Expires: 11-5-21

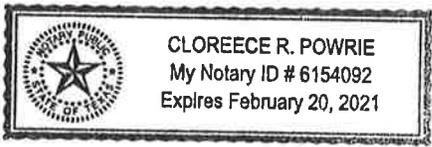
THE STATE OF TEXAS

COUNTY OF Collin

BEFORE ME, the undersigned authority, on this day personally appeared Ryan Griffin, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the Manager and duly authorized representative of **Prosper 1385 Investments LP**, a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of February, 2020.

Cloreece R. Powrie
Notary Public in and for the State of Texas
My Commission Expires: 2/20/21



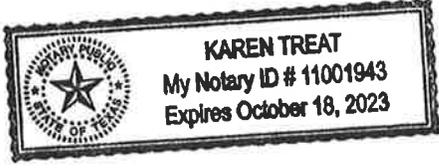
THE STATE OF TEXAS

COUNTY OF Dallas

BEFORE ME, the undersigned authority, on this day personally appeared Jeffrey Brawner, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the Manager and duly authorized representative of **Prosper 1385 Investments LP**, a Texas limited partnership, and he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of said corporations.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of February, 2020.

Karen Treat
Notary Public in and for the State of Texas
My Commission Expires Oct. 18, 2023



THE STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared Harlan Jefferson, Town Manager, for and on behalf of the **TOWN OF PROSPER, TEXAS**, A Texas home-rule municipal corporation; he acknowledged to me he is the duly authorized representative of the Town of Prosper, Texas and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2020.

Notary Public in and for the State of Texas

My Commission Expires: _____

Exhibit "A"
Legal Description of Property

BEING a tract of land situated in the John Haynes Survey, Abstract No. 625, The B.R. Hodges Survey, Abstract No. 593 and the Phillip Barnes Survey, Abstract No. 79, Denton county, Texas and being part of a called 64.2 acre tract conveyed to M. Taylor Hansel as recorded in County Clerks No. 94-R0091793, Land Records of Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a Texas Department Aluminum cap (TXDOT Cap) found for corner at the intersection of the north Right of Way line of State Highway No. 380 and the east Right of Way line of F.M. No. 1385;

THENCE N 05°28'55" E following the east Right of Way line of F.M. No. 1385 a distance of 517.80' to a capped 1/2" iron rod stamped "4613" set for corner at the beginning of a curve to the right;

THENCE along said curve to the right following the east Right of Way line of F.M. No. 1385 through a central angle of 03°15'00", a radius of 5689.58, an arc length of 322.73, with a chord bearing of N 07°06'25" E, and a chord length of 322.69 to a capped 1/2" iron rod stamped "4613" set for corner;

THENCE N 08°43'55" E following the east Right of Way line of F.M. No. 1385 a distance of 601.90' to a capped 1/2" iron rod stamped "4613" set for corner at the beginning of a curve to the left;

THENCE along said curve to the left following the east Right of Way line of F.M. No. 1385 through a central angle of 03°22'06", a radius of 1185.92, an arc length of 69.72, with a chord bearing of N 07°02'52" E, and a chord length of 69.71 to a 1/2" iron rod found for corner;

THENCE S 72°45'21" E a distance of 2051.43' to a brass monument stamped J-828-2 found for corner;

THENCE S 73°00'43" E a distance of 688.48' to a capped 1/2" iron rod stamped "4613" set for corner;

THENCE S 18°27'31" W a distance of 197.90' to a point;

THENCE S 56°21'31" W a distance of 183.40' to a point;

THENCE S 15°24'31" W a distance of 184.70' to a point;

THENCE N 61°55'29" W a distance of 216.20' to a brass monument stamped J-827-6 found for corner;

THENCE S 45°33'31" W a distance of 261.10' to a brass monument stamped J-827-5 found for corner;

THENCE N 80°29'13" W a distance of 88.42' to a brass monument stamped J-827-4 found for corner;

THENCE N 20°38'31" E a distance of 155.70' to a brass monument stamped J-827-3 found for corner;

THENCE S 56°19'31" W a distance of 132.20' to a brass monument stamped J-827-2 found for corner;

THENCE S 09°16'31" W a distance of 244.40' to a capped 1/2" iron rod stamped "4613" set for corner in the north ROW line of S.H. No. 380;

THENCE N 89°04'14" W following the north ROW line of S.H. No. 380 a distance of 451.43' to a TXDOT alum. mon. found for corner at the northeast corner of a tract conveyed to the State of Texas as recorded in Volume 4297, Page 1865, L.R.D.C.T.;

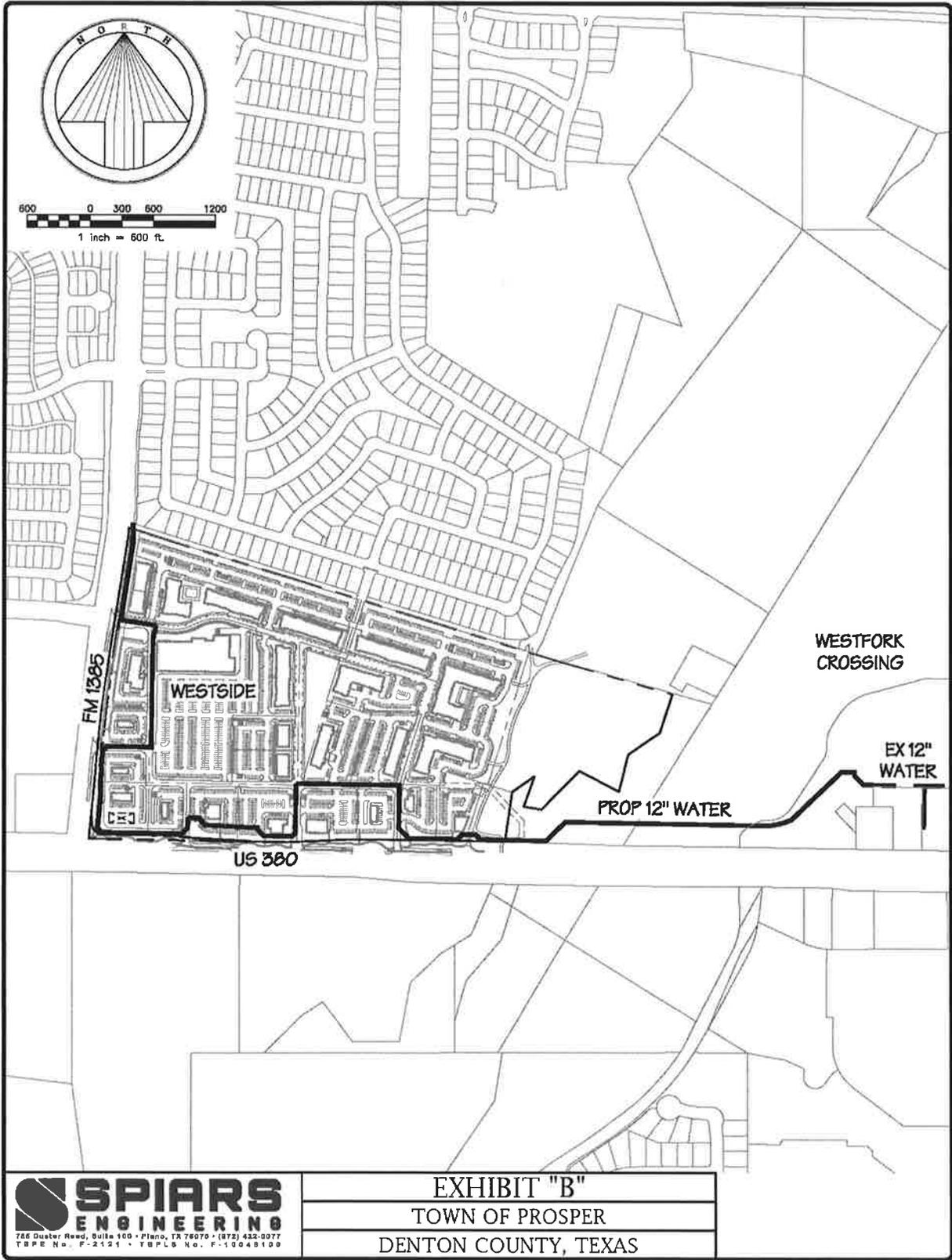
THENCE N 89°50'20" W following the north ROW line of S.H. No. 380 a distance of 276.91' following the north line of said tract to the State of Texas a TXDOT alum. mon. found for corner;

THENCE S 87°49'20" W following the north ROW line of S.H. No. 380 a distance of 300.44' following the north line of said tract to the State of Texas to a TXDOT alum. mon. found for corner at the northwest corner of said State of Texas tract;

THENCE N 89°04'14" W following the north ROW line of S.H. No. 380 a distance of 955.27' to the

POINT OF BEGINNING and containing 2,783,716 Square Feet or 63.905 Acres of land.

Exhibit "B"
Water CIP Project



SPIARS
ENGINEERING
766 Quaker Road, Suite 100 • Plano, TX 75075 • (972) 422-0077
TXPE No. F-2121 • TBPLS No. F-10048100

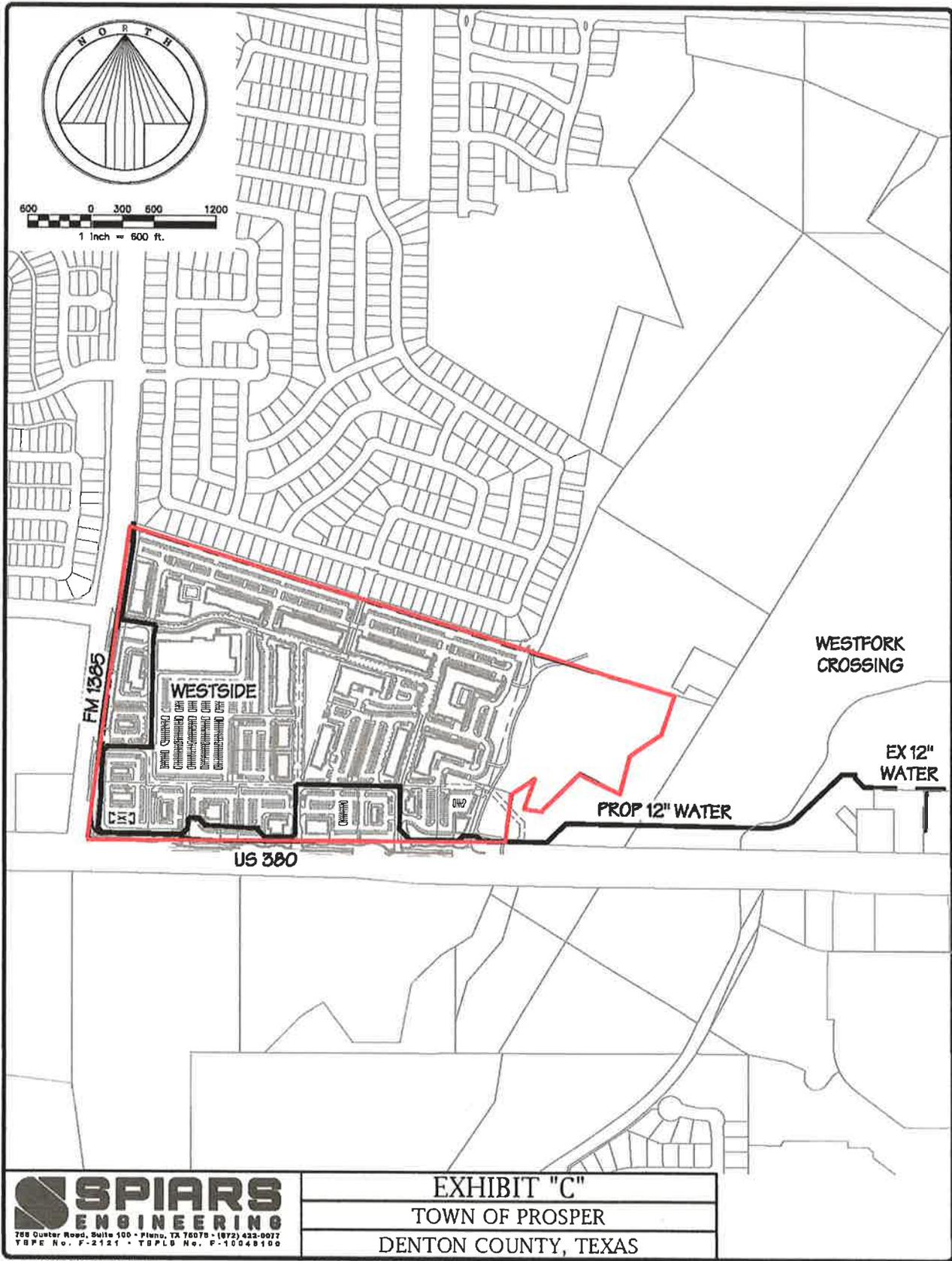
EXHIBIT "B"
TOWN OF PROSPER
DENTON COUNTY, TEXAS

Drawing: C:\2018\J085\18-224 WestSide Infrastructure\CAD\Utility Exhibit.dwg Saved By: Tborrett Save Time: 1/24/2020 11:22:06 AM

Plotted by: lborrett Plot Date: 1/31/2020 7:00 AM

Exhibit "C"
Service Areas

Item No. 11.



SPIARS
ENGINEERING
708 Quater Road, Suite 100 • Plano, TX 75075 • (972) 423-0077
TYPE No. F-2121 • TGPLD No. F-10048100

EXHIBIT "C"
TOWN OF PROSPER
DENTON COUNTY, TEXAS

Drawing: ©\2018\J085\15-224 WestSide Infrastructure\CAD\Utility Exhibit.dwg Saved By: Thornett Save Time: 1/24/2020 11:22:06 AM

Plotted by: Iborrett Plot Date: 1/31/2020 7:00 AM

Exhibit "D"
Current Proposed Development Schedule of the Property

WestSide, Prosper, TX
Water Capital Improvement Projects
To Be Developed in One Phase

Whole Development Estimated CIP Water Cost	\$ 284,414.92
Whole Development Impact Fees Available	\$ 763,357.00

Note: The phasing of the project is based upon current estimates and are subject to change at any time due to economic or other conditions.

Estimated Construction Costs

WestSide 12" Onsite Water Line Cost Estimate

Contractor	Description	Unit	Qty	\$ Per Unit	Total Amount
Blue Star Utilities	12" PVC Water	LF	873	\$ 33.00	\$ 28,809.00
Blue Star Utilities	6" Gate Valve	EA	2	\$ 909.00	\$ 1,818.00
Blue Star Utilities	12" Gate Valve	EA	2	\$ 2,088.00	\$ 4,176.00
Blue Star Utilities	Fittings	TN	1.5	\$ 8,057.33	\$ 12,086.00
Blue Star Utilities	Fire Hydrants	EA	2	\$ 3,130.00	\$ 6,260.00
Blue Star Utilities	Connect To Existing WL	EA	1	\$ 769.00	\$ 769.00
BLUE STAR SUBTOTAL					\$ 53,918.00
Spiars Engineering	Civil Engineering	EA	1	\$ 3,350.00	\$ 3,350.00
SPIARS SUBTOTAL					\$ 3,350.00
SUBTOTAL					\$ 57,268.00
Haney Construction	Project Manager			3%	\$ 1,718.04
12" ONSITE WATER LINE TOTAL					\$ 58,986.03

WestSide 12" Offsite Water Line Cost Estimate

Contractor	Description	Unit	Qty	\$ Per Unit	Total Amount
Blue Star Utilities	12" PVC	LF	1,990	\$ 33.00	\$ 65,670.00
Blue Star Utilities	12" Gate Valve	EA	6	\$ 2,128.00	\$ 12,768.00
Blue Star Utilities	6" Gate Valve	EA	2	\$ 952.00	\$ 1,904.00
Blue Star Utilities	Fire Hydrant	EA	1	\$ 3,130.00	\$ 3,130.00
Blue Star Utilities	Fittings	LS	1.0	\$ 8,921.00	\$ 8,921.00
Blue Star Utilities	Concrete Blocking	LS	1.0	\$ 3,250.00	\$ 3,250.00
Blue Star Utilities	18" Bore	LF	195	\$ 464.00	\$ 90,480.00
Blue Star Utilities	Connect to Existing WL	EA	2	\$ 769.00	\$ 1,538.00
Blue Star Utilities	End & Plug	EA	1	\$ 614.00	\$ 614.00
Blue Star Utilities	Trench Safety	LF	1,990	\$ 0.10	\$ 199.00
Blue Star Utilities	Water Line Testing	LF	1,990	\$ 2.50	\$ 4,975.00
BLUE STAR SUBTOTAL					\$ 193,449.00
Chris Harp Construction	Tree & Site Clearing Dozer	DAY	2	\$ 1,950.00	\$ 3,900.00
Chris Harp Construction	Track Excavator	DAY	2	\$ 1,950.00	\$ 3,900.00
Chris Harp Construction	Round Bottom Dump Truck	DAY	1	\$ 1,000.00	\$ 1,000.00
Chris Harp Construction	Off Road Truck	DAY	1	\$ 1,950.00	\$ 1,950.00
CHRIS HARP SUBTOTAL					\$ 10,750.00
Spiars Engineering	Civil Engineering	EA	1	\$ 9,100.00	\$ 9,100.00
Spiars Engineering	Construction Staking	EA	1	\$ 3,200.00	\$ 3,200.00
Spiars Engineering	Easement by Separate Inst.	EA	1	\$ 1,299.00	\$ 1,299.00
Spiars Engineering	Limited Construction Admin.	EA	1	\$ 1,000.00	\$ 1,000.00
SPIARS ENG. SUBTOTAL					\$ 14,599.00
TCEQ	SWPPP Sign	EA	1	\$ 65.00	\$ 65.00
SUBTOTAL					\$ 218,863.00
Blue Star Utilities	Construction Manager	EA	1	3%	\$ 6,565.89
12" OFFSITE WATER LINE TOTAL					\$ 225,428.89

TOTAL 12" ONSITE & OFFSITE WATER LINE					\$ 284,414.92
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PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between 1385 & 380 Investments LP and Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the Westside development.

Description of Agenda Item:

On December 11, 2018, the Town Council approved the rezoning request (Z18-0012) related to a mixed-use development, known as Westside, located on the northeast corner of US 380 and FM 1385. Planned Development-94 (PD-94) includes provisions regarding the phasing of the permitted multifamily dwelling units in association with obligations related to non-residential development. Specifically, PD-94, states:

1. For Phase 1B, which consists of a maximum of 243 units, construction may not commence until construction of the first floor framing has begun on the restaurant/retail building as shown on Lot 8 on Exhibit D and the Limited Service Hotel on Lot 15 on Exhibit D.
2. For Phase 2B, which consists of a maximum of 237 units, construction may not commence until vertical construction has begun on a minimum fifty thousand (50,000) square foot Indoor Commercial Amusement building or similar size retail building.

The applicant has inquired about the possibility of constructing Phase 2 prior to Phase 1, in accordance with the required obligations. The purpose of the proposed development agreement is to provide clarifying language related to the phasing of the multifamily units, in order to allow Phase 2 to be constructed prior to Phase 1. The development agreement includes architectural and masonry standards consistent with PD-94.

Staff recommends approval of the Development Agreement.

Legal Obligations and Review:

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

Attached Documents:

1. Development Agreement
2. Exhibit A-Property Description
3. Exhibit F-Elevations

Town Staff Recommendation:

Staff recommends the Town Council authorize the Town Manager to execute a Development Agreement between 1385 & 380 Investments LP and Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the Westside development.

Proposed Motion:

I move to authorize the Town Manager to execute a Development Agreement between 1385 & 380 Investments LP and Prosper 1385 Investments LP, and the Town of Prosper, Texas, related to the Westside development.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and 1385 & 380 Investments LP and Prosper 1385 Investments LP (collectively, “Owner”) (individually, a “Party” and collectively, the “Parties”) to be effective (the “Effective Date”) on the latest date executed by a Party.

WHEREAS, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is a Texas limited partnership qualified to do business in the State of Texas; and

WHEREAS, Owner is developing property in the Town to be known as WestSide (“WestSide”), the zoning for which development was approved by the Town on or about December 11, 2018, in Ordinance No. 18-108, such development also known as Planned Development 94 (“PD-94”); and

WHEREAS, a legal description of the property for WestSide is more particularly described in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in PD-94, as may be amended, to recognize Owner’s reasonable investment-backed expectations in PD-94, as may be amended, and to clarify issues related to the timing of development, as more fully described herein; and

WHEREAS, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property structures in accordance with the provisions, standards and notes reflected in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. Architectural Standards and Building Materials. For any structure built in WestSide following the Effective Date, it shall comply with the applicable requirements contained in Exhibit B, “Architectural Standards and Building Materials,” attached hereto and incorporated by reference, and Owner agrees to construct those structures in compliance therewith. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

2. Covenant Running with the Land. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Owner and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other owners of the Property, regardless of whether this Agreement is expressly referenced therein.

3. **Phasing of Development.** The Parties acknowledge that PD-94 documentation reflects phasing of the WestSide development. To clarify timing obligations related thereto, the Parties agree that either Phase 1 (consisting of both Phase 1A and Phase 1B) or Phase 2 (consisting of Phase 2A and Phase 2B) may be constructed first.

4. **Applicability of Town Ordinances.** Owner shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

5. **Default.** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

6. **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 Denton County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Denton County, Texas.

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

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

If to Owner: 1385 & 380 Investments LP
 Prosper 1385 Investments LP
 9550 John W. Elliott Drive, Suite 106
 Frisco, Texas 75033
 Attention: Michael Fannin, Manager

With a Copy to: Shelly Darlington
 15700 State Highway 121
 Frisco, Texas 75033

8. **Prevailing Party.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

9. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

10. **Savings/Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

11. **Binding Agreement.** A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either party.

12. **Authority to Execute.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

13. **Filing in Deed Records.** This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Denton County, Texas.

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

15. **Notification of Sale or Transfer; Assignment of Agreement.** Owner shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Owner has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Owner. Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain true and correct copies of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

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

17. **Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

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

19. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

20. **Exactions/Infrastructure Costs.** Owner has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Owner, regarding Owner's rights under Texas and federal law. Owner hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Owner hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

21. **Rough Proportionality.** Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to roadway or infrastructure requirements imposed by this Agreement. Owner and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement, with respect to roadway or infrastructure requirements imposed by this Agreement.

22. **Waiver of Texas Government Code § 3000.001 et seq.** With respect to any structures or improvements constructed on the Property pursuant to this Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, effective as of September 1, 2019.

23. **Time.** Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

24. **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.

25. **Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.

26. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____
Name: Harlan Jefferson
Title: Town Manager, Town of Prosper

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2020, by Harlan Jefferson, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

1385 & 380 Investments LP,
a Texas limited partnership

By: _____
Name: Michael Fannin
Title: Manager

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2020, by Michael Fannin, in his capacity as Manager of 1385 & 380 Investments LP, a Texas limited partnership, 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.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

Prosper 1385 Investments LP,
a Texas limited partnership

By: _____
Name: Michael Fannin
Title: Manager

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2020, by Michael Fannin, in his capacity as Manager of Prosper 1385 Investments LP, a Texas limited partnership, 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.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A
(Property Description)

All property described and depicted in the Exhibit to Planned Development 94 (PD-94),
Town of Prosper Ordinance No. 08-108, as amended.

EXHIBIT B

ARCHITECTURAL STANDARDS AND BUILDING MATERIALS

Tract A (as depicted in Ordinance No. 18-108) – Retail District

1. Architectural Standards

- a. At least eighty percent (80%) of each building’s façade (excluding doors and windows) shall be finished in one of the following materials: Masonry (brick or stone)
 - i. Commercial Amusement, Indoor may utilize architectural finished concrete as a primary masonry material, and may be used for up to one hundred percent (80%) of a building elevation, as shown on Exhibit F. In addition, a maximum of ten percent (10%) secondary material, and minimum of ten percent (10%) stone, per elevation, shall be required for Commercial Amusement, Indoor.
 - ii. Limited Service Hotels may utilize sintered stone as a primary masonry material, as shown on Exhibit F.
- b. For retail/restaurant uses, no more than thirty percent (30%) of each façade elevation shall use wood-based high pressure laminate (i.e. Prodema, Trespa, CompactWood), as shown on Exhibit F.
- c. No more than fifteen percent (15%) of each façade elevation may use a combination of accent materials such as cedar or similar quality decorative wood, architectural metal panel, tile, stucco, or Exterior Insulating Finishing System (EIFS). Stucco and EIFS may only be used eight feet (8’) above the ground floor and is prohibited on all building elevations with the exception of its use for exterior trim and molding features. Commercial Amusement, Indoor shall be limited to a maximum ten percent (10%).
- d. Architectural embellishments not intended for human occupancy that are integral to the architectural style of the buildings, including spires, belfries, towers, cupolas, domes, marquees and roof forms whose area in plan is no greater than fifteen percent (15%) of the ground floor footprint may exceed the height limits by up to ten feet (10’).
- e. No single material shall exceed eighty percent (80%) percent of an elevation area. Except for Commercial Amusement, Indoor, a minimum of twenty percent (20%) of the front façade and all facades facing public right-of-way shall be natural or manufactured stone. A minimum of ten percent (10%) of all other facades shall be natural or manufactured stone. Commercial Amusement, Indoor shall require a minimum ten percent (10%) stone, per elevation.
 - i. All buildings shall be designed to incorporate a form of architectural articulation every thirty feet (30’), both horizontally along each wall’s length and vertically along each wall’s height. Acceptable articulation may include the following:
 - ii. Canopies, awnings, or porticos;
 - iii. Recesses/projections;

- iv. Arcades;
- v. Arches;
- vi. Display windows, including a minimum sill height of thirty (30) inches;
- vii. Architectural details (such as tile work and moldings) integrated into the building facade;
- viii. Articulated ground floor levels or base;
- ix. Articulated cornice line;
- x. Integrated planters or wing walls that incorporate landscape and sitting areas;
- xi. Offsets, reveals or projecting rib used to express architectural or structural bays; or
- xii. Varied roof heights;
- f. All buildings shall be architecturally finished on all four (4) sides with same materials, detailing, and features.
- g. Except for the Commercial Amusement, Indoor, all primary and secondary exterior building materials (exclusive of glass) shall be of natural texture and shall be neutrals, creams, or other similar, non-reflective earth tone colors. Bright, reflective, pure tone primary or secondary colors, such as red, orange, yellow, blue, violet, or green are not permitted.
- h. Corporate identities that conflict with the building design criteria shall be reviewed on a case-by-case basis and approved by the Director of Development Services or his/her designee. The applicant may appeal the decision to the Planning & Zoning Commission and Town Council using the appeal procedure in Chapter 4, Section 1 of the Town's Zoning Ordinance.
- i. Exposed conduit, ladders, utility boxes, and drain spouts shall be painted to match the color of the building or an accent color. Natural metal finishes (patina) are an acceptable alternative to paint.
- j. All retail/commercial buildings with facades greater than two hundred feet (200') in length shall incorporate wall plane projections or recesses that are at least six feet (6') deep. Projections/recesses must be at least twenty five percent (25%) of the length of the facade. Except for Commercial Amusement, Indoor, no uninterrupted length of facade may exceed one hundred feet (100') in length.

2. Windows and Doors

- a. All ground floor front facades of buildings along streets or public ways with on-street parking or that face directly onto Open Space and contain non-residential uses shall have transparent storefront windows covering no less than thirty percent (30%) of the façade area. Hotels shall have no less than ten percent (10%) of the façade.
 - i. Clear glass is required in all non-residential storefronts. Smoked, reflective, or black glass that blocks two-way visibility is only permitted above the first story. Windows shall have a maximum exterior visible reflectivity of thirty percent (30%).

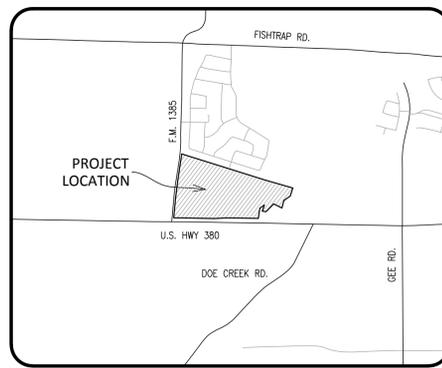
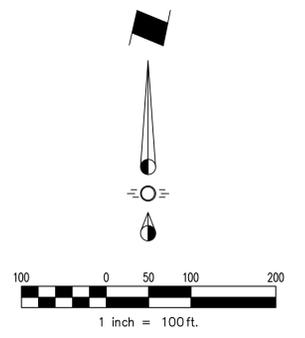
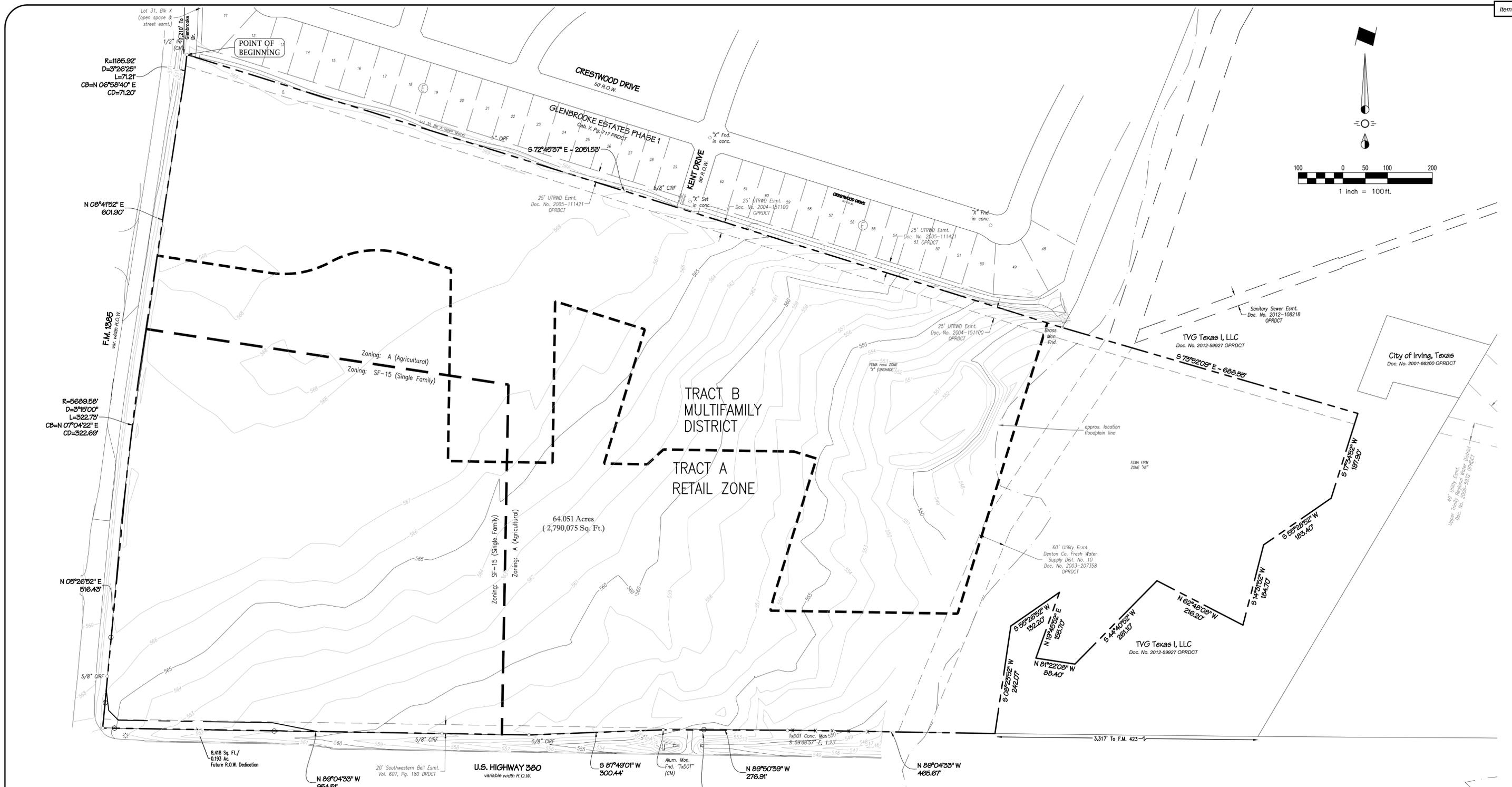
- b. At the time of Site Plan in conjunction with the detailed Façade Plans for a Limited Service Hotel, window detailing shall be provided, including but not limited to articulations, recesses, and/or projections.
- 3. Awning, Canopies, Arcades, and Overhangs
 - a. Awnings shall not be internally illuminated.
 - b. Canopies shall not exceed one hundred linear feet (100') without a break of at least five feet (5').
 - c. Awnings and canopies shall not extend beyond ten feet (10') from the main building façade.

Tract B (as depicted in Ordinance No. 18-108) – Multifamily District

1. Architectural Standards

- a. At least eighty percent (80%) of each building's façade (excluding doors and windows) shall be finished in one of the following materials: Masonry (brick and stone).
- b. No more than fifteen percent (15%) of each façade elevation shall use a combination of accent materials such as cedar or similar quality decorative wood, fiber cement siding, resin-impregnated wood panel system, cementitious-fiber clapboard (not sheet) with at least a fifty (50) year warranty, architectural metal panel, split-face concrete block, tile, stucco, or Exterior Insulating Finishing System (EIFS). Stucco and EIFS may only be used eight feet (8') above the ground floor and is prohibited on all building elevations with the exception of its use for exterior trim and molding features.
- c. Any enclosed one or two-car garage shall be designed and constructed of the same material as the primary building.

NOTE: For purposes of this Agreement, "masonry" shall mean stone, stucco, brick, tile, concrete, glass or similar materials of any similar material approved by the Town's Director of Development Services.



METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the J. Gonzalez Survey, Abstract No. 447, the B. Hodges Survey, Abstract No. 593, the P. Barnes Survey, Abstract No. 79, the R. Taylor Survey, Abstract No. 1671, the J. Haynes Survey, Abstract No. 573, and the Angus Jamison Survey, town of Prosper, Denton County, Texas, the subject tract being a portion of a tract conveyed to M. Taylor Hansel according to the deed recorded in Document No. 94-91793 of the Official Public Records, Denton County, Texas (OPRDCT), with the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod found on the east line of Farm to Market Road 1385 (F.M. 1385), a variable width right-of-way, for the southwest corner of Glenbrook Estates Phase 1, an addition recorded in Cabinet X, Page 717, Plat Records, Denton County, Texas;

THENCE S 72°45'37" E, 2051.53 feet along the south line of Glenbrook Estates Phase 1 to a U.S. Army Corps of Engineers brass monument found for the southeast corner thereof and a westerly corner of a tract conveyed to TVG Texas I, LLC, recorded in Document No. 2012-59927 OPRDCT;

THENCE along the common line thereof, the following:

S 73°52'09" E, 688.55 feet;
 S 17°34'52" W, 197.90 feet;
 S 55°28'52" W, 183.40 feet;
 S 14°31'52" W, 184.70 feet;
 N 62°48'08" W, 216.20 feet;
 S 44°40'52" W, 261.10 feet;
 N 81°22'08" W, 88.40 feet;
 N 19°45'52" E, 155.70 feet;
 S 55°26'52" W, 132.20 feet;

And S 08°23'52" W, 242.07 feet to the north line of U.S. Highway 380, a variable width right-of-way;

THENCE along the north line of U.S. Highway 380, the following:

N 89°04'33" W, 465.67 feet to a point from which a concrete right-of-way monument bears S 59°08'57" E, 1.23 feet;

N 89°50'39" W, 276.91 feet to an aluminum TxDOT monument found;

S 87°49'01" W, 300.44 feet to a 5/8" iron rod with plastic cap found;

And N 89°04'33" W, 954.51 feet to a 1/2" iron rod with plastic cap stamped "SPIRSENG" set for the intersection of the north line of U.S. Highway 380 with the east line of F.M. 1385;

THENCE along the east line of F.M. 1385, the following:

N 05°26'52" E, 516.43 feet;

A tangent curve to the right having a central angle of 03°15'00", a radius of 5689.58 feet, a chord of N 07°04'22" E - 322.69 feet, an arc length of 322.73 feet;

N 08°41'52" E, 601.90 feet;

And a tangent curve to the left having a central angle of 03°26'25", a radius of 1185.92 feet, a chord of N 06°58'40" E - 71.20 feet, an arc length of 71.21 feet to the POINT OF BEGINNING with the subject tract containing 2,790,075 square feet or 64.051 acres of land.

TOWN OF PROSPER CASE NO. Z18-0012 Exhibit A

WestSide

BEING 64.501 ACRES OF LAND (GROSS)
 63.858 ACRES OF LAND (NET)
 IN THE B. HODGES SURVEY, ABSTRACT NO. 593 &
 IN THE J. GONZALEZ SURVEY, ABSTRACT NO. 447 &
 IN THE P. BARNES SURVEY, ABSTRACT NO. 79 &
 IN THE R. TAYLOR SURVEY, ABSTRACT NO. 1671 &
 IN THE J. HAYNES SURVEY, ABSTRACT NO. 573 &
 IN THE ANGUS JAMISON SURVEY
 TOWN OF PROSPER, DENTON COUNTY, TEXAS

OWNER Taylor Hansel P.O. Box 770 Frisco, Texas 75034	APPLICANT MCF Investments 15700 S.H. 121 Frisco, Texas 75035 Telephone (214) 619-4930 Contact: Mike Fannin	ENGINEER / SURVEYOR Spiars Engineering, Inc. 765 Custer Road, Suite 100 Plano, TX 75075 Telephone: (972) 422-0077 TBPE No. F-2121 / TBPLS No. F-10043100 Contact: Kevin Wier
--	--	---



1 EAST ELEVATION
3/32" = 1'-0"



2 WEST ELEVATION
3/32" = 1'-0"



3 NORTH ELEVATION
3/32" = 1'-0"

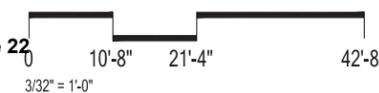


4 SOUTH ELEVATION
3/32" = 1'-0"

FACADE MATERIAL ANALYSIS		
01 EAST ELEVATION		
MATERIAL	AREA (SF)	%
BRICK VENEER	1220	46.90%
WOOD-BASED HIGH PRESSURE LAMINATE	509	19.60%
STONE	873	33.60%
TOTALS*	2602	100.00%
*GLAZING NOT INCLUDED		
02 WEST ELEVATION		
MATERIAL	AREA (SF)	%
BRICK VENEER	1220	47.50%
WOOD-BASED HIGH PRESSURE LAMINATE	511	19.90%
STONE	839	32.60%
TOTALS*	2570	100.00%
*GLAZING NOT INCLUDED		
03 NORTH ELEVATION		
MATERIAL	AREA (SF)	%
BRICK VENEER	1474	100.00%
WOOD-BASED HIGH PRESSURE LAMINATE	0	0.00%
STONE	0	0.00%
TOTALS*	1474	100.00%
*GLAZING NOT INCLUDED		
04 SOUTH ELEVATION		
MATERIAL	AREA (SF)	%
BRICK VENEER	161	10.70%
WOOD-BASED HIGH PRESSURE LAMINATE	186	12.40%
STONE	1157	76.90%
TOTALS*	1504	100.00%
*GLAZING NOT INCLUDED		



- NOTES
- 1 This Conceptual Elevation is for conceptual purposes only. All building plans require review and approval from the Building Inspection Division.
 - 2 All mechanical equipment shall be screened from public view in accordance with the Zoning Ordinance.
 - 3 When permitted, exposed utility boxes and conduits shall be painted to match the building.
 - 4 All signage areas and locations are subject to approval by the Building Inspection Department.
 - 5 Windows shall have a maximum exterior visible reflectivity of (10) percent.



Owner:
GF3 Partnership, LLC
Contact: Michael C. Fannin
15700 State Highway 121
Frisco, Texas 75035
972.747.9233
mcfannin@gmail.com

Job #: 17173.02
File Name: RestaurantRetailElevations_2018-0928.dwg
Date: 09/28/18
Drawn by: BEM, LA, PA

For Staff Use



PLANNING

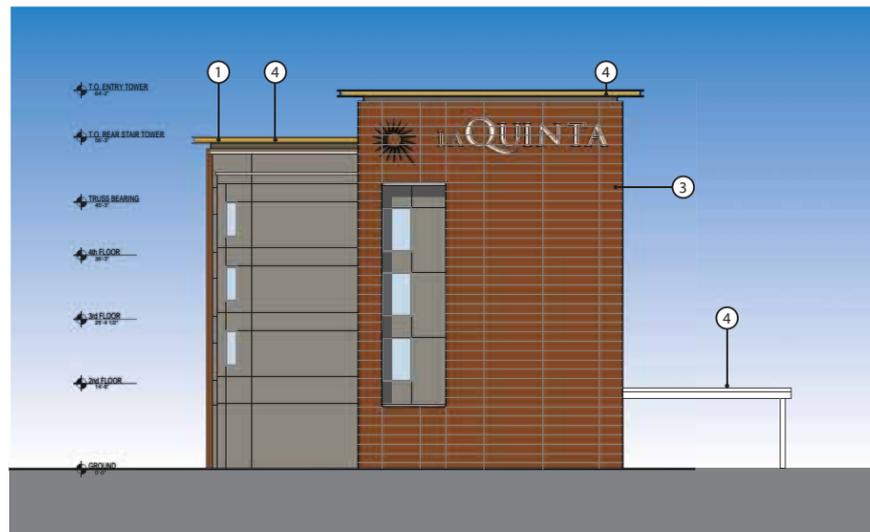
2808 Fairmount Street,
Suite 300
Dallas, Texas 75201 |
214.303.1500

3300 West 7th Street,
Suite 110
Fort Worth, Texas 76107 |
817.303.1500

EXHIBIT "F"
US 380 / FM 1385 NEC
Prosper, Texas
63.905 Acres



1 EAST ELEVATION
1/8" = 1'-0"



2 SOUTH ELEVATION
1/8" = 1'-0"



3 NORTH ELEVATION
1/8" = 1'-0"



4 WEST ELEVATION
1/8" = 1'-0"

FACADE MATERIAL ANALYSIS

1 - EAST ELEVATION

MATERIAL	AREA (SF)	%
STONE	2256	26%
BRICK	2965	33%
NEOLITH SINTERED STONE	3627	38%
ALUMINIUM	130	2%
TOTAL	9500	100%

2 - SOUTH ELEVATION

MATERIAL	AREA (SF)	%
STONE	1448	39%
BRICK	116	1%
NEOLITH SINTERED STONE	2382	64%
ALUMINIUM	46	2%
TOTAL	3700	100%

3 - NORTH ELEVATION

MATERIAL	AREA (SF)	%
STONE	520	2%
BRICK	570	2%
NEOLITH SINTERED STONE	2436	79%
ALUMINIUM	22	1%
TOTAL	3000	100%

4 - WEST ELEVATION

MATERIAL	AREA (SF)	%
STONE	2204	23%
BRICK	6653	71%
NEOLITH SINTERED STONE	1427	15%
ALUMINIUM	94	1%
TOTAL	9400	100%

MATERIAL TABLE

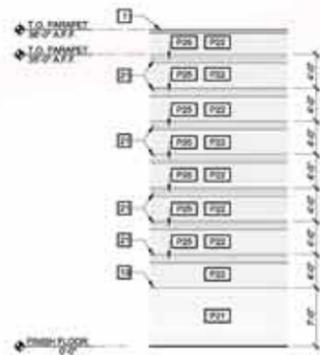
STONE	BRICK #2	NEOLITH SINTERED STONE	ALUMINIUM
1	2	3	4

- NOTES
- THIS CONCEPTUAL ELEVATION IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTION DIVISION.
 - ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW IN ACCORDANCE WITH ZONING ORDINANCE.
 - WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.
 - ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BY THE BUILDING INSPECTION DEPARTMENT.
 - WINDOWS SHALL HAVE A MAXIMUM EXTERIOR VISIBLE REFLECTIVITY OF (10) PERCENT.

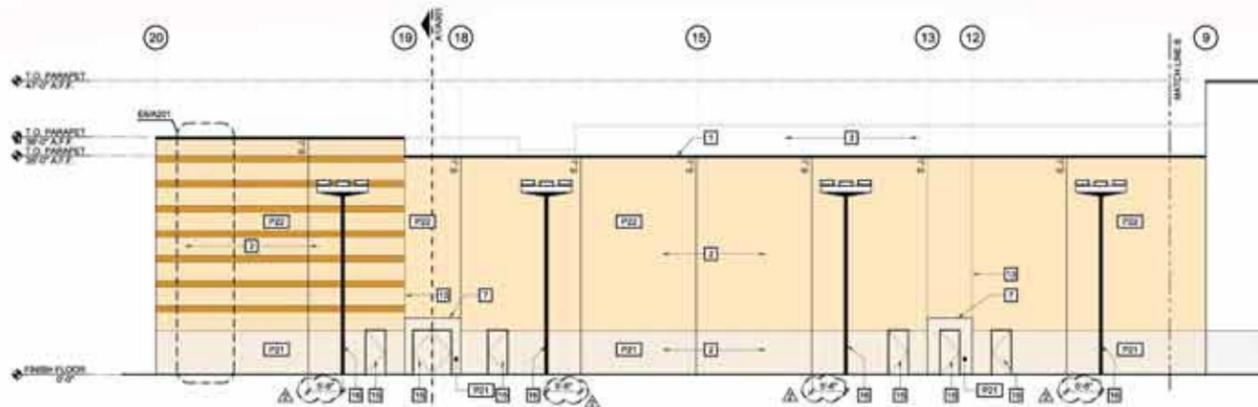
FOR STAFF USE

ARCHITECT
+
ASSOCIATES INC.

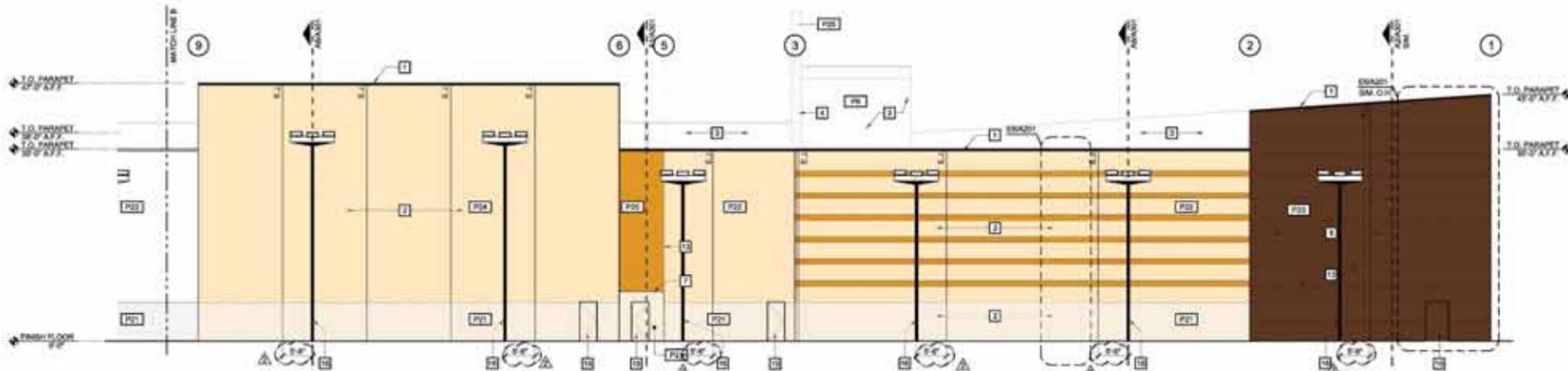
EXHIBIT "F"
US 380/FM 1385 NEC
PROSPER, TEXAS



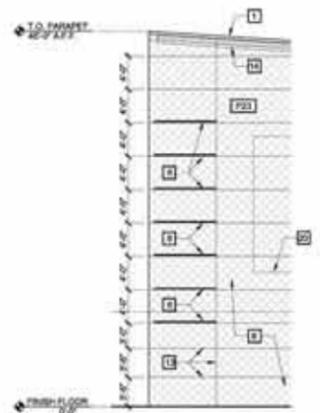
E6 PAINT DETAIL
SCALE: 1/8" = 1'-0"



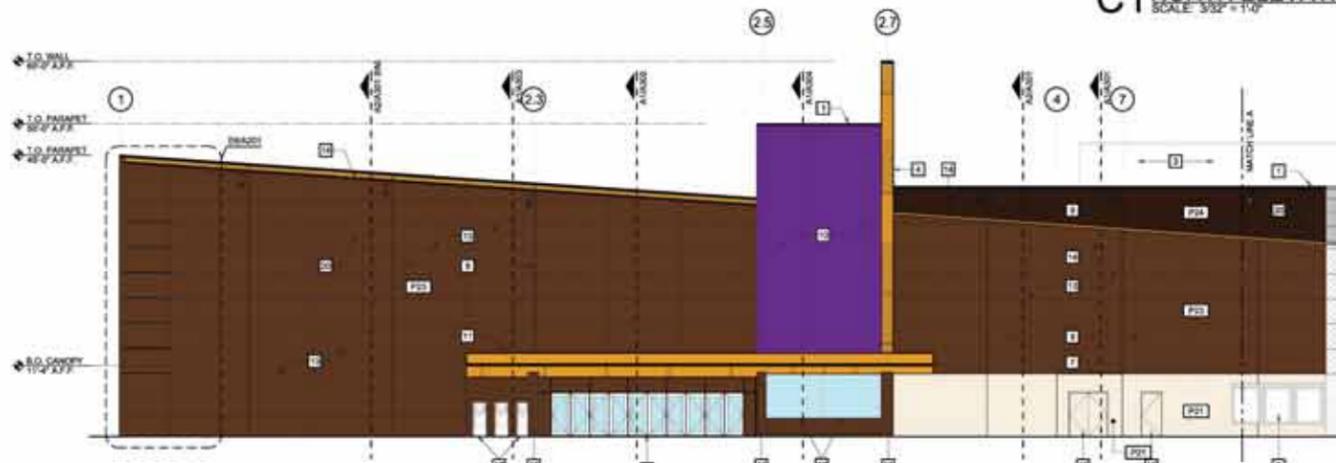
D1 NORTH ELEVATION - AREA 'B'
SCALE: 3/32" = 1'-0"



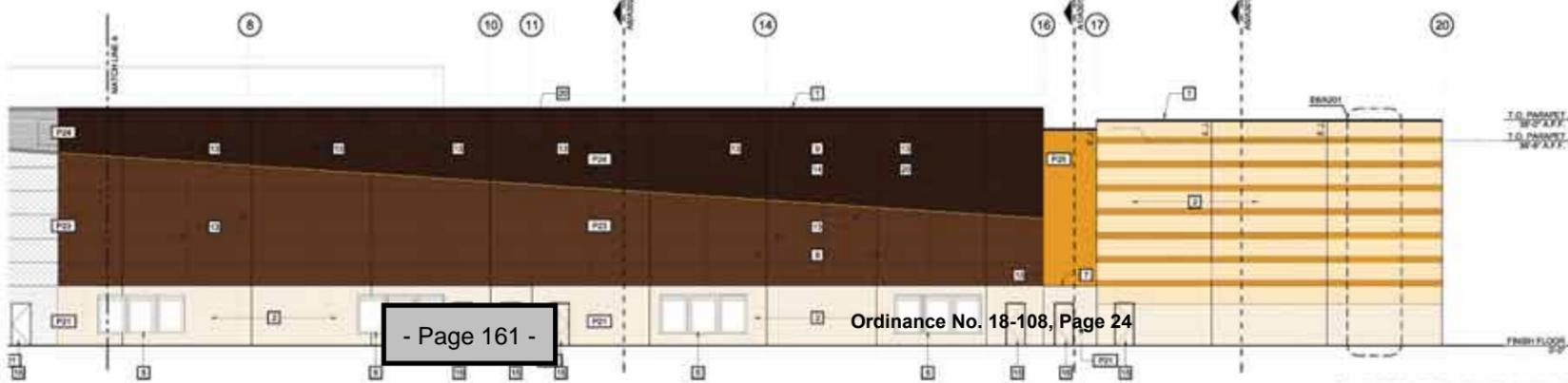
C1 NORTH ELEVATION - AREA 'A'
SCALE: 3/32" = 1'-0"



B6 EIFS DETAIL
SCALE: 3/32" = 1'-0"



B1 SOUTH ELEVATION - AREA 'A'
SCALE: 3/32" = 1'-0"



A1 SOUTH ELEVATION - AREA 'B'
SCALE: 3/32" = 1'-0"

- KEY NOTES**
1. FINISHED METAL COPING PER SPEC.
 2. EXPOSED TILT WALL PANEL, TEXTURED PAINT
 3. PARAPET BEYOND
 4. STUCCO FINISH - PAINT P02
 5. POSTER CASE SUPPLIED BY OWNER'S VENDOR, G.C. TO INSTALL AND PROVIDE POWER AND BLOCKING
 6. COPING LIGHT, RE: MEP, R24511
 7. PAINT FACE OF ALCOVE PERPENDICULAR TO VIEW, P01
 8. 2 1/2" ARCHITECTURALLY FINISHED CONCRETE, RE: WALL SECTIONS
 9. 4" ARCHITECTURALLY FINISHED CONCRETE, RE: WALL SECTIONS
 10. STAINLESS STEEL TILE - T11
 11. STUCCO FINISHED CANOPY - PAINT P02
 12. TILE FINISH - T3
 13. REVEAL 1/2" RE: CHASSIS
 14. CONTINUOUS COPING LIGHT MOUNTED ON WALL SYSTEM, RE: MEP & R24511 S.M.
 15. HOLLOW METAL DOOR - PAINT TO MATCH ADJACENT COLOR, TYP
 16. TIE-IN METAL DOWNSPOUT WITH 2 OVERFLOW DRAINS, TYP. PAINT TO MATCH P02, RE: CHASSIS, MEP, & CIVIL DRAWINGS
 17. TICKET KIOSKS SUPPLIED AND INSTALLED BY OWNER'S VENDOR, G.C. TO INSTALL, PROVIDE POWER DATA AND BLOCKING
 18. ANODIZED ALUMINUM STOREFRONT, RE: PLAN & WINDOW SCHEDULE
 19. TICKET COUNTER - ANODIZED ALUMINUM WINDOW, RE: WINDOW SCHEDULE
 20. DASHED LINE INDICATES SIGNAGE SUPPLIED AND INSTALLED BY OWNER'S VENDOR, G.C. TO PROVIDE POWER & BLOCKING
 21. REVEAL 1/2" - CHASSIS
 22. TILT WALL VERTICAL EXPANSION JOINTS 'E.J.', RE: A01

- GENERAL NOTES**
- A. PROVIDE EGRESS WALL PACK TO BE MOUNTED 1'-0" ABOVE EMERGENCY EXIT DOOR FRAME AND G.C. OF EACH DOOR OPENING, RE: A01
 - B. SEAL ALL EXTERIOR PENETRATIONS, CONTROL JOINTS AND JOINTS IN DISSIMILAR WALL ASSEMBLIES
 - C. SEAL TOP OF ALL EXTERIOR LIGHT FIXTURES WITH CALK, FINISH TO MATCH FIXTURE COLOR, RE: SPEC
 - D. ALL EXTERIOR GROUND BUILDING AND ROOFTOP MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW ON ALL SIDES
 - E. ALL EXTERIOR MATERIALS TO MEET LOCAL REQUIREMENTS AND SPECIFICATIONS
 - F. ALL BOXES AND CONDUIT SHALL BE PAINTED TO MATCH ADJACENT FINISH MATERIALS
 - G. INSTALL INTEGRALLY COLORED EXTERIOR CALK AT ALL CONTROL JOINTS AFTER BUILDING HAS BEEN PAINTED. CALK SHALL CHANGE COLORS AS REQUIRED TO MATCH ADJACENT MATERIAL, FIELD COLOR, COORDINATE EXACT COLORS WITH ARCHITECT. DO NOT PAINT CALK.
 - H. SEAL TOP OF ALL EXTERIOR LIGHT FIXTURES WITH CALK, FINISH TO MATCH FIXTURE COLOR, REFER TO SPECIFICATIONS
 - I. ALL EXTERIOR SIGNAGE IS SUBJECT TO APPROVAL BY LOCAL AUTHORITIES

SCREENING NOTE

ALL EXTERIOR GROUND, BUILDING, AND ROOFTOP MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW ON ALL SIDES. EQUIPMENT TO BE SCREENED INCLUDES, BUT IS NOT LIMITED TO HEATING, AIR CONDITIONING AND REFRIGERATION EQUIPMENT, PLUMBING LINES, DUCTWORK, TRANSFORMERS, AND METER BANKS. SCREENING MATERIALS MAY BE SOLID CONCRETE, WOOD, LANDSCAPING, OR OTHER OPaque MATERIAL THAT IS COMPATIBLE WITH THE BUILDING ARCHITECTURE AND EFFECTIVELY SCREENS MECHANICAL EQUIPMENT SO THAT IT IS NOT VISIBLE FROM A PUBLIC STREET OR ADJACENT LOT. SCREENING MATERIAL MAY HAVE EVENLY DISTRIBUTED OPENINGS OR PERFORATIONS NOT EXCEEDING 50 PERCENT OF THE SURFACE AREA. ROOFTOP EQUIPMENT MAY BE SCREENED USING ENCLOSURE, PARTIAL SCREENS, OR PARAPET WALLS.

FACADE MATERIAL ANALYSIS

D1 NORTH ELEVATION - AREA 'B'		
MATERIAL	AREA (SF)	%
2" ARCHITECTURALLY FINISHED CONCRETE	0	0.00
STAINLESS STEEL TILE-T11	0	0.00
STUCCO FINISH PAINT P02	0	0.00
EXPOSED TILT WALL PANEL, TEXTURED PAINT	5627	100.00
2" ARCHITECTURALLY FINISHED CONCRETE	0	0.00
TOTAL	5627	100.00

C1 NORTH ELEVATION - AREA 'A'		
MATERIAL	AREA (SF)	%
2" ARCHITECTURALLY FINISHED CONCRETE	1910	16.3
STAINLESS STEEL TILE-T11	0	0.00
WOOD STOREFRONT	0	0.00
EXPOSED TILT WALL PANEL, TEXTURED PAINT	9389	91.3
4" ARCHITECTURALLY FINISHED CONCRETE	0	0.00
TOTAL	10299	100.00

B1 SOUTH ELEVATION - AREA 'A'		
MATERIAL	AREA (SF)	%
2 1/2" ARCHITECTURALLY FINISHED CONCRETE	5094	80.2
STAINLESS STEEL TILE-T11	0	0.00
STUCCO FINISH PAINT P02	718	11.3
EXPOSED TILT WALL PANEL, TEXTURED PAINT	0	0.00
4" ARCHITECTURALLY FINISHED CONCRETE	542	8.5
TOTAL	6354	100.00

A1 SOUTH ELEVATION - AREA 'B'		
MATERIAL	AREA (SF)	%
2 1/2" ARCHITECTURALLY FINISHED CONCRETE	2920	32.5
STAINLESS STEEL TILE-T11	0	0.00
STUCCO FINISH PAINT P02	0	0.00
EXPOSED TILT WALL PANEL, TEXTURED PAINT	3961	43.9
4" ARCHITECTURALLY FINISHED CONCRETE	2113	23.6
TOTAL	8994	100.00

- NOTES**
1. This Conceptual Elevation is for conceptual purposes only. All building plans require review and approval from the Building Inspection Division.
 2. All mechanical equipment shall be screened from public view in accordance with the Zoning Ordinance.
 3. When permitted, exposed utility boxes and conduits shall be painted to match the building.
 4. All signage areas and locations are subject to approval by the Building Inspection Department.
 5. Windows shall have a maximum exterior visible reflectivity of (10) percent.



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1111 Third Street, Muskogee, Tulsa 74402 Phone 774.562.3100 Fax 771.995.2198

OWNER:
Showbiz Cinema
1200 East Main
Suite 1000
Tulsa, OK 74104
774.971.6700

STRUCTURE:
C20 Engineers
1000 Broadway Ave
Suite 200
Tulsa, OK 74102
774.971.6700

MEP:
Julian & Sons Engineers, Inc.
1000 Broadway Ave
Suite 200
Tulsa, OK 74102
774.971.6700

Keenon Rayner, AIA
STATE OF OKLAHOMA REGISTERED ARCHITECT #1111
1111 Third Street, Muskogee, Tulsa 74402 Phone 774.562.3100 Fax 771.995.2198



NO.	DATE	REVISION	ISSUE
01/13/2018		ISSUE FOR PERMIT	
02/07/2018		OKC HEALTH DEPT. COMM. #1	
03/08/2018		CITY RESPERANED #1	
04/13/2018		ISSUE FOR CONSTRUCTION	
06/06/2018		REVISION 2	

PROJECT NAME AND ADDRESS:
SHOWBIZ EDMOND
NE CORNER OF W BOONER RD. AND E. COVELL RD.
EDMOND, OKLAHOMA 73034

DRAWN: PROJ. MGR.
REFERENCE NUMBER: 18-108

TITLE: EXTERIOR ELEVATIONS

DRAWING NUMBER: **A201**



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 11178 License No. 11178
 11178 License No. 11178

OWNER:
 ShowBiz Cinema
 1200 East Tower
 Suite 200
 Tulsa, OK 74103
 918.438.8888

STRUCTURE:
 C.C. Engineering
 5000 Westwood Drive
 Suite 200
 Houston, TX 77056
 281.977.3333

MEP:
 Jansen & Smith Engineers, Inc.
 10000 Westwood Ave
 Suite 200
 Houston, TX 77056
 281.977.3333

Keenon Rayner, AIA
 STATE OF OKLAHOMA REGISTERED ARCHITECT #11178
 11178 License No. 11178



- KEY NOTES**
1. FIRE-FINISHED METAL COPING PER SPEC.
 2. EXPOSED TILT WALL PANEL, TEXTURED PAINT
 3. PARAPET BEYOND
 4. STUCCO FINISH - PAINT P25
 5. POSTER CASE SUPPLIED BY OWNER'S VENDOR, G.C. TO METAL AND PROVIDE POWER AND BLOCKING
 6. COPING LIGHT, RE: MEP, READ 11
 7. PAINT FACE OF ACCESS PERPENDICULAR TO VIEW, P21
 8. 2 1/2" ARCHITECTURALLY FINISHED CONCRETE, RE: WALL SECTIONS
 9. 4" ARCHITECTURALLY FINISHED CONCRETE, RE: WALL SECTIONS
 10. STAINLESS STEEL TILE - T11
 11. STUCCO FINISHED CANOPY - PAINT P25
 12. TILE FINISH - T3
 13. REVEAL "R1" RE: CHASSIS
 14. CONTINUOUS COPING LIGHT MOUNTED ON WALL SYSTEM, RE: MEP & BEAM 11 SW
 15. HOLLOW METAL DOOR - PAINT TO MATCH ADJACENT COLOR, TYP
 16. TIED-IN METAL DOWNSPOUT WITH 2 OVERFLOW DRAINS, TYP. PAINT TO MATCH P25, RE: CIVIL, MEP, & CIVIL DRAWINGS
 17. TICKET KIOSKS SUPPLIED AND INSTALLED BY OWNER'S VENDOR, G.C. TO INSTALL, PROVIDE POWER DATA AND BLOCKING
 18. ANODIZED ALUMINUM STOREFRONT, RE: PLAN & WINDOW SCHEDULE
 19. TICKET COUNTER - ANODIZED ALUMINUM WINDOW, RE: WINDOW SCHEDULE
 20. DASHED LINE INDICATES SIGNAGE SUPPLIED AND INSTALLED BY OWNER'S VENDOR, G.C. TO PROVIDE POWER & BLOCKING
 21. REVEAL "R2" - CHASSIS
 22. TILT WALL VERTICAL EXPANSION JOINTS "E.L.", RE: AM1

- GENERAL NOTES**
- PROVIDE GIBBS WALL PACH TO BE MOUNTED 1' ABOVE EMERGENCY EXIT DOOR FRAME AND O.C. OF EACH DOOR OPENING, RE: AM1
 - SEAL ALL EXTERIOR PENETRATIONS, CONTROL JOINTS AND JOINTS IN DISJUNCT WALL ASSEMBLIES
 - SEAL TOP OF ALL EXTERIOR LIGHT FIXTURES WITH CALK, FINISH TO MATCH FIXTURE COLOR, RE: SPEC
 - ALL EXTERIOR GROUND BUILDING AND ROOFTOP MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW ON ALL SIDES
 - ALL EXTERIOR MATERIALS TO MEET LOCAL REQUIREMENTS AND SPECIFICATIONS
 - ALL BOXES AND CONDUIT SHALL BE PAINTED TO MATCH ADJACENT FINISH MATERIALS
 - INSTALL INTERNALLY COLORED EXTERIOR CALK AT ALL CONTROL JOINTS AFTER BUILDING HAS BEEN PAINTED. CALK SHALL CHANGE COLORS AS REQUIRED TO MATCH ADJACENT MATERIAL, FIELD COLOR, COORDINATE EXACT COLORS WITH ARCHITECT. DO NOT PAINT CALK.
 - SEAL TOP OF ALL EXTERIOR LIGHT FIXTURES WITH CALK, FINISH TO MATCH FIXTURE COLOR. REFER TO SPECIFICATION
 - ALL EXTERIOR SIGNAGE IS SUBJECT TO APPROVAL BY LOCAL AUTHORITIES

SCREENING NOTE

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FACADE MATERIAL ANALYSIS

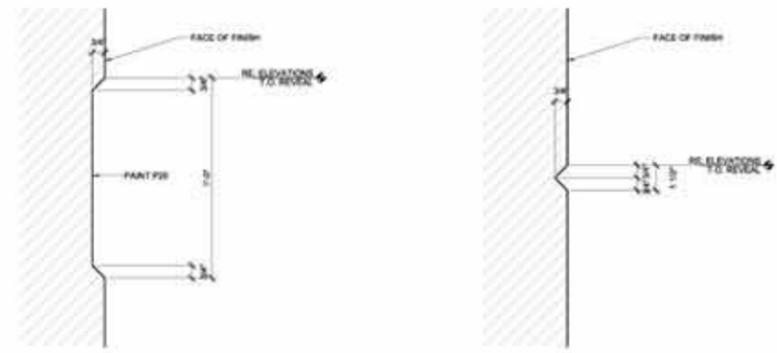
B1 WEST ELEVATION

MATERIAL	AREA (SF)	%
2 1/2" ARCHITECTURALLY FINISHED CONCRETE	3415	42.9
STAINLESS STEEL TILE-T11	488	6.1
STUCCO FINISH PAINT P5	236	3
TEXTURED PAINT	3812	48
4" ARCHITECTURALLY FINISHED CONCRETE	0	0
TOTAL	7,951	100

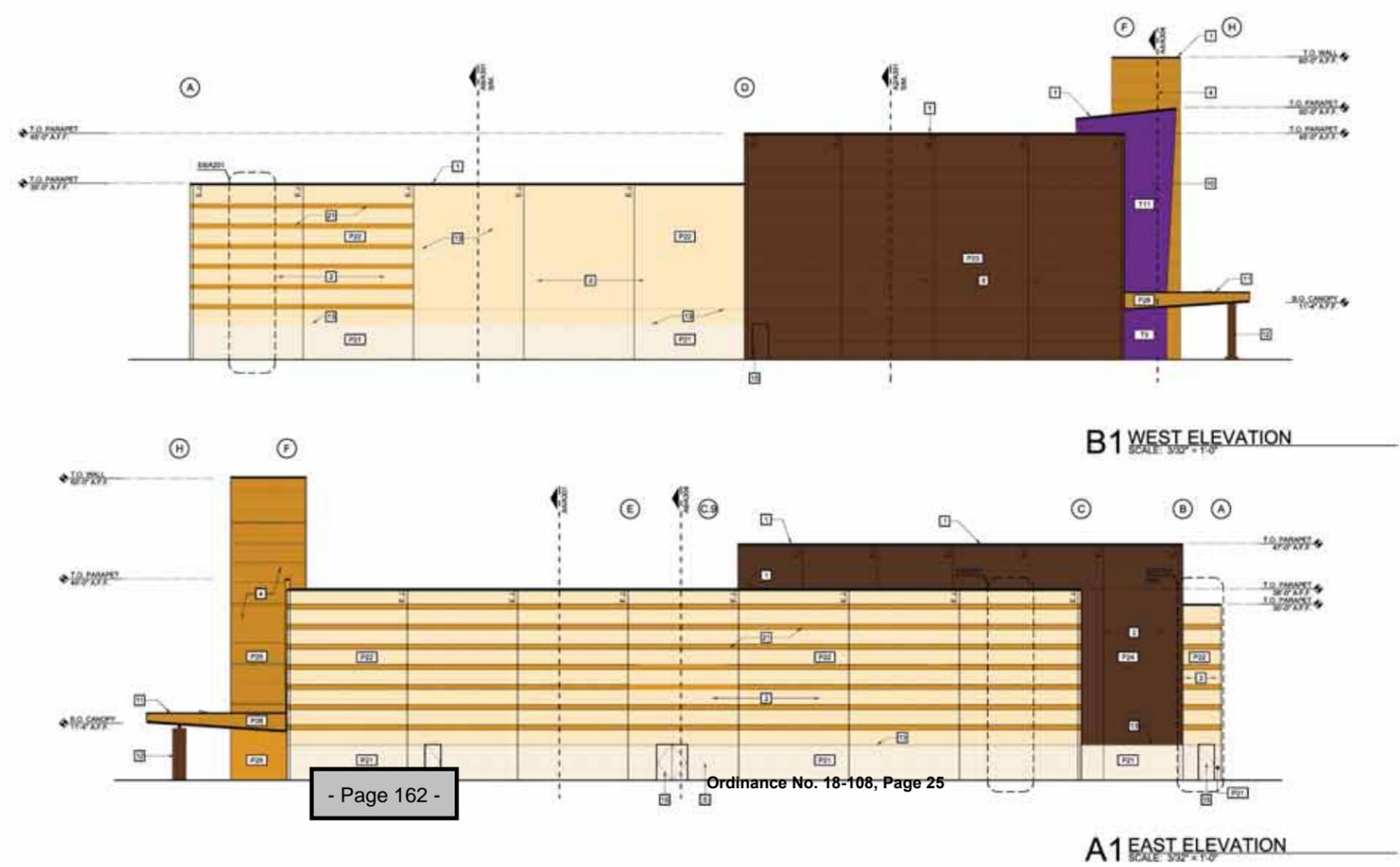
A1 EAST ELEVATION

MATERIAL	AREA (SF)	%
2 1/2" ARCHITECTURALLY FINISHED CONCRETE	0	0
STAINLESS STEEL TILE-T11	0	0
STUCCO FINISH PAINT P5	746	9.7
EXPOSED TILT WALL PANEL	7789	91.3
TEXTURED PAINT	0	0
4" ARCHITECTURALLY FINISHED CONCRETE	0	0
REVEAL	8,040	100

- NOTES**
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 2. All mechanical equipment shall be screened from public view in accordance with the Zoning Ordinance.
 3. When permitted, exposed utility boxes and conduits shall be painted to match the building.
 4. All signage areas and locations are subject to approval by the Building Inspection Department.
 5. Windows shall have a maximum exterior visible reflectivity of 10 percent.



C2 REVEAL - PROFILE "R2" SCALE: 3/8" = 1'-0"
C1 REVEAL - PROFILE "R1" SCALE: 3/8" = 1'-0"



NO.	DATE	REVISION/ISSUE
01/18/2018	ISSUE FOR PERMIT	
02/27/2018	OKC HEALTH DEPT. COM. 01	
03/08/2018	CITY RESPONSE #1	
04/13/2018	ISSUE FOR CONSTRUCTION	

PROJECT NAME AND ADDRESS:
SHOWBIZ EDMOND

NE CORNER OF N BOONER RD. AND E. COVELL RD.
 EDMOND, OKLAHOMA 73034

DRAWN: _____ PROJ. MGR: _____

REFERENCE NUMBER: 17817-01

TITLE: **EXTERIOR ELEVATIONS**

DRAWING NUMBER: **A202**

NOTES	
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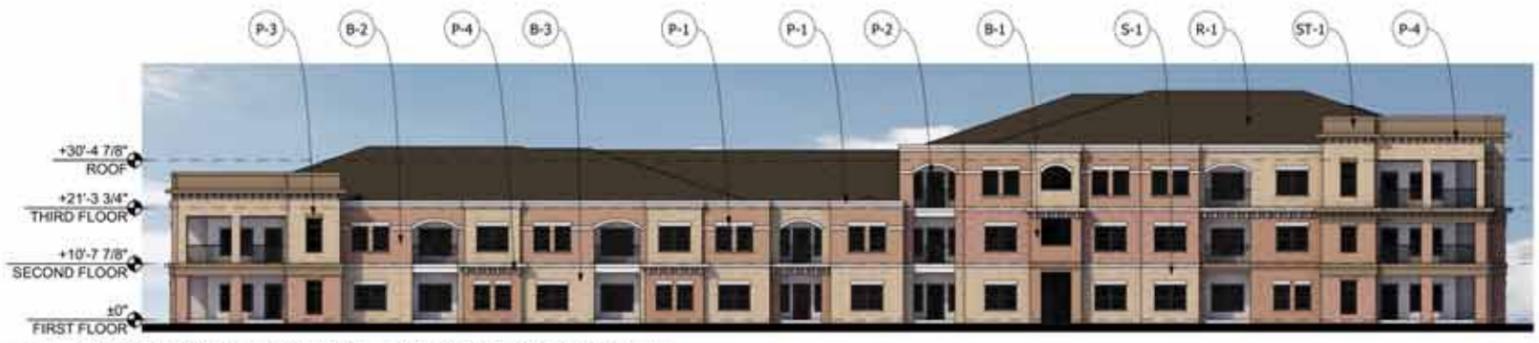


GLA-ATL, LLC

649 11TH STREET
ATLANTA, GA 30309
PHONE: 404.228.1500
FAX: 404.228.1510

WWW.GLAATL.COM

MATERIAL CALCULATION (PHASE 2-BLDG. 1)			
TOTAL AREA (EXCLUDING GLAZING) IN SF: 4,675 = 100%			
MASONRY (BRICK/STONE) IN SF:	3,981 SF	85.2%	
STUCCO IN SF (TRIM/PAN/NET)	636 SF	13.6%	
FIBER CEMENT/OTHER IN SF (BALCONY FACIA)	58 SF	1.2%	



3 BUILDING ELEVATION - 2/3-STORY CONCEPT
R-1

MATERIAL CALCULATION (3-Story Concept)			
TOTAL AREA (EXCLUDING GLAZING) IN SF: 7,414 = 100%			
MASONRY (BRICK/STONE) IN SF:	6,557 SF	89.0%	
STUCCO IN SF (TRIM/PAN/NET)	761 SF	10.3%	
FIBER CEMENT/OTHER IN SF (BALCONY FACIA)	96 SF	0.7%	

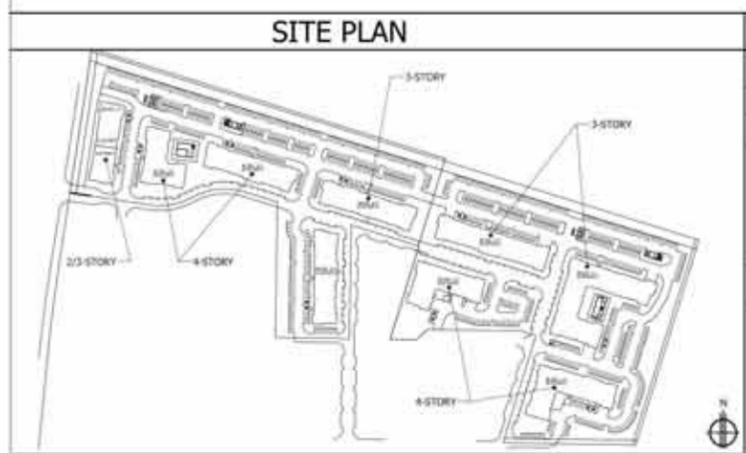


2 BUILDING ELEVATION - 3-STORY CONCEPT
R-1

MATERIAL CALCULATION (4-Story Concept)			
TOTAL AREA (EXCLUDING GLAZING) IN SF: 11,078 = 100%			
MASONRY (BRICK/STONE) IN SF:	10,057 SF	90.8%	
STUCCO IN SF (TRIM/PAN/NET)	761 SF	7.0%	
FIBER CEMENT/OTHER IN SF (BALCONY FACIA)	240 SF	2.2%	



1 BUILDING ELEVATION - 4-STORY CONCEPT
R-1



BUILDING HEIGHTS		NOTES
NUMBER OF STORIES	RIDGE HEIGHT	
4	54'-11"	1. ALL MECHANICAL UNITS SHALL BE SCREENED FROM PUBLIC VIEW, OR AS REQUIRED BY ZONING GUIDELINES. 2. BUILDING RENDERINGS REFLECT THE DESIGN FORM AND SCOPE OF THE REFERENCED BUILDINGS. ADDITIONAL DETAIL, GARAGE, TRASH SERVICES, AND OTHER ELEMENTS TO BE INCORPORATED AS DESIGN DEVELOPS. 3. SITE PLAN IS FOR GENERAL LOCATION PURPOSES ONLY AND MAY NOT FULLY REFLECT EXISTING/CURRENT SITE DESIGN. PLEASE REFERENCE EXHIBIT D "CONCEPTUAL SITE PLAN". 4. MATERIAL CALCULATIONS DO NOT INCLUDE WINDOW BEARING PLANE.
3	49'-5"	
2/3	43'-7"	

ABBREVIATIONS	
BLDG	BUILDING
STL	STEEL
ELEV. HGT.	ELEVATION HEIGHT
DWG. NO.	DRAWING TITLE
SCALE	SCALE
TITLE	TITLE

FACADE PLANS											
MATERIAL LEGEND						MATERIAL LEGEND					
TAG	SWATCH	DESCRIPTION	TAG	SWATCH	DESCRIPTION	TAG	SWATCH	DESCRIPTION	TAG	SWATCH	DESCRIPTION
S-1	[Swatch]	VENDOR: BORAL CASTNET CUT: FRENCH GRAY COLOR: GRAY MATERIAL: NATURAL STONE	B-1	[Swatch]	VENDOR: BORAL BRICK COLOR: REMINGTON CLASSIC MATERIAL: CLAY-FIRED BRICK	P-1	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: WESTHIGHLAND WHITE NUMBER: SW7566 R-242, G-238, B-228 MATERIAL: TRIM & GUTTER	P-4	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: BARCELONA BEIGE NUMBER: SW7530 R-196, G-180, B-158 MATERIAL: SUB-TRIM, CORNER CORBELS
ST-1	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: STUDIO TAUPE NUMBER: SW7549 R-173, G-156, B-133 MATERIAL: STUCCO	B-2	[Swatch]	VENDOR: BORAL BRICK COLOR: SUMMER HARVEST MATERIAL: CLAY-FIRED BRICK	P-2	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: URBANE BRONZE NUMBER: SW7098 R-84, G-80, B-74 MATERIAL: RAILINGS & DOORS	R-1	[Swatch]	VENDOR: CERTAINTED SERIES: LANDMARK COLOR: WEATHERED WOOD MATERIAL: ASPHALT SHINGLES
			B-3	[Swatch]	VENDOR: BORAL BRICK COLOR: TARRYTOWN MATERIAL: CLAY-FIRED BRICK	P-3	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: SAN ANTONIO SAGE NUMBER: SW7731 R-167, G-151, B-120 MATERIAL: CORNER HEADERS			

PROJECT INFO.	
Subdivisor's Name:	WestSide
Block / Lot Number:	A / 1-19
Client:	Davis Development
Phone:	770-474-5213
Address:	1050 Eagles Landing Parkway, Suite 300 Stockbridge, Georgia 30281
Architect:	Gehlbach Lewis Assoc.
Phone:	404-228-1958
Address:	649 11th St. Atlanta, Georgia 30318
Applicant:	MCF Investments
Phone:	(214) 619-4930
Address:	15700 S.H. 121 Frisco, Texas 75035
Scale:	AS NOTED
Date:	11/07/2018
Drawn By:	BT
NOT RELEASED FOR CONSTRUCTION www.glaatl.com	



1 REAR/INTERIOR ELEVATION
R-2 SCALE 3/32" = 1'-0"



1 REAR/INTERIOR ELEVATION
R-2 SCALE 3/32" = 1'-0"



FACADE PLANS

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

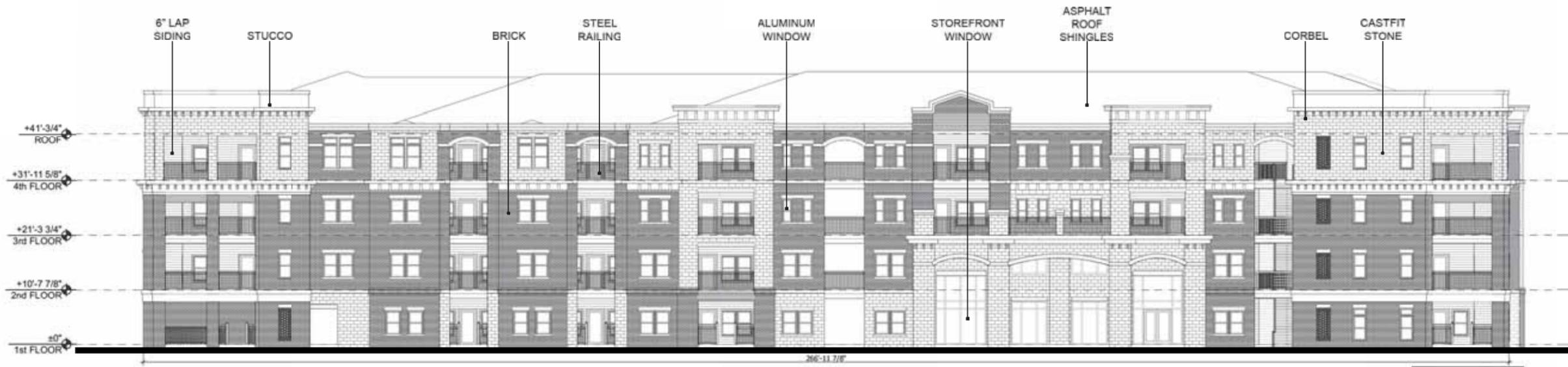
NOTES	FACADE PLAN NOTES
1. RENDERING AND ELEVATIONS ON SHEETS R-2, R-3, AND R-4 ARE REPRESENTATIVE OF THE PROPOSED PROJECT, BUT ARE INDICATIVE OF DESIGN INTENT AND SIMILAR CONDITIONS.	1. ALL MECHANICAL UNITS SHALL BE SCREENED FROM PUBLIC VIEW, OR AS REQUIRED BY ZONING ORDINANCES. 2. BUILDING RENDERINGS REFLECT THE DESIGN FORM AND INTENT OF THE REFERENCED BUILDING. ADDITIONAL DETAIL, GARAGE, TRASH SERVICES, AND OTHER ELEMENTS TO BE INCORPORATED AS DESIGN DEVELOPS. 3. SITE PLAN IS FOR GENERAL LOCATION PURPOSES ONLY AND MAY NOT FULLY REFLECT EXACT CURRENT SITE DESIGN. PLEASE REFERENCE EXHIBIT D) CONCEPTUAL SITE PLAN. 4. MATERIALS CALCULATIONS DO NOT INCLUDE MINOR TRIM OR MATERIALS ABOVE THE COMMON ROOF BEARING PLANE.
ABBREVIATIONS	
ALUM. ALUMINUM	ELEV. HGT. ELEVATION HGT.
STL. STEEL	DWG. NO. DWG. TITLE
	DRAWING SCALE
	AI ENCL. TITLE

MATERIAL LEGEND											
TAG	SWATCH	DESCRIPTION	TAG	SWATCH	DESCRIPTION	TAG	SWATCH	DESCRIPTION	TAG	SWATCH	DESCRIPTION
S-1	[Swatch]	VENDOR: BORAL CASTFIT CUT: FRENCH GRAY COLOR: GRAY MATERIAL: NATURAL STONE	B-4	[Swatch]	VENDOR: BORAL BRICK COLOR: REMINGTON CLASSIC MATERIAL: CLAY-FIRED BRICK	P-1	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: WEB GRAY NUMBER: SW7075 R-97, G-102, R-105 MATERIAL: SIDING		[Swatch]	COLOR: BRONZE MATERIAL: WINDOWS (ALUM.)
ST-1	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: STUCCO TAUPE NUMBER: SW7548 R-173, G-156, B-133 MATERIAL: STUCCO	B-5	[Swatch]	VENDOR: BORAL BRICK COLOR: SUMMER HARVEST MATERIAL: CLAY-FIRED BRICK	P-2	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: REPOSE GRAY NUMBER: SW7115 R-204, G-201, E-192 MATERIAL: TRIM & GUTTER	B-3	[Swatch]	VENDOR: CERTAINTEED SERIES: LANDMARK COLOR: HEATHER BLEND MATERIAL: ASPHALT SHINGLES
			B-6	[Swatch]	VENDOR: BORAL BRICK COLOR: TARRYTOWN MATERIAL: CLAY-FIRED BRICK	P-3	[Swatch]	VENDOR: SHERWIN WILLIAMS COLOR: URBANE BRONZE NUMBER: SW7048 R-94, G-90, B-74 MATERIAL: RAILINGS & DOORS			*EQUAL ALTERNATES MAY BE SUBSTITUTED WITH APPROVAL FROM ARCHITECT AND OWNER

PROJECT INFO.	
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Phone:	(214) 619-4930
Address:	15700 S.H. 121 Pricco, Texas 75025
Scale:	AS NOTED
Date:	08/28/2018
Drawn By:	BT
NOT RELEASED FOR CONSTRUCTION www.glaatl.com	



2 FRONT ELEVATION
R-3 SCALE 3/32" = 1'-0"



MATERIAL	SQ. FT.	PERCENTAGE
BRICK	746	57%
STONE	230	17%
SLATING	187	15%

1 FRONT ELEVATION
R-3 SCALE 3/32" = 1'-0"

NOTES		NOTES	FACADE PLAN NOTES	MATERIAL LEGEND												PROJECT INFO.
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3	When permitted, exposed utility boxes and conduits shall be painted to match the building.			B-4		VENDOR: BORAL BRICK COLOR: REMINGTON CLASSIC MATERIAL: CLAY-FIRED BRICK	P-2		VENDOR: SHERWIN WILLIAMS COLOR: REPOSE GRAY NUMBER: SW715 R-204, G-201, E-192 MATERIAL: TRIM & GUTTER			VENDOR: CERTAINTED SERIES: LANDMARK COLOR: HEATHER BLEND MATERIAL: ASPHALT SHINGLES				
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5	Windows shall have a maximum exterior visible reflectivity of (10) percent.			B-4		VENDOR: BORAL BRICK COLOR: TARRYTOWN MATERIAL: CLAY-FIRED BRICK	P-3		VENDOR: SHERWIN WILLIAMS COLOR: URBAN BRONZE NUMBER: SW748 R-94, G-80, B-74 MATERIAL: RAILINGS & DOORS							
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2 FRONT ELEVATION
R-4 SCALE: 1/32" = 1'-0"



1 FRONT ELEVATION
R-4 SCALE: 1/32" = 1'-0"



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				<p>Ordinance No. 18-108, Page 29</p>												<p>NOT RELEASED FOR CONSTRUCTION www.glaatl.com</p>																																																																					

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon an ordinance rezoning 1.6± acres from Single Family-15 (SF-15) to Planned Development-Downtown Office (PD-DTO), located on the north side of Broadway Street, west of Craig Road. (Z19-0023).

Description of Agenda Item:

On January 28, 2020, Town Council approved the proposed rezoning request by a vote of 7-0, subject to:

1. Approval of a development agreement addressing (1) maintenance and consistency of landscaping; (2) replacement landscaping; and (3) maintaining the current height of landscaping materials along Broadway Street as well as the inclusion of construction materials and architectural features.

An ordinance has been prepared accordingly.

Legal Obligations and Review:

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

Attached Documents:

1. Ordinance
2. Proposed Exhibits A, B, C, D, E, and G

Staff Recommendation:

Staff recommends approval of an ordinance rezoning 1.6± acres from Single Family-15 (SF-15) to Planned Development-Downtown Office (PD-DTO), located on the north side of Broadway Street, west of Craig Road.

Proposed Motion:

I move to approve an ordinance rezoning 1.6± acres from Single Family-15 (SF-15) to Planned Development-Downtown Office (PD-DTO), located on the north side of Broadway Street, west of Craig Road.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-___

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING PROSPER’S ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 1.16 ACRES, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS FROM SINGLE FAMILY-15 (SF-15) TO PLANNED DEVELOPMENT-DOWNTOWN OFFICE (PD-DTO); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Town of Prosper, Texas (“Prosper”) has received a request (Z19-0023) from Claymoore Engineering (“Applicant”), to rezone 1.16 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, from Single Family-15 (SF-15) to Planned Development-Downtown Office (PD-DTO) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes; and

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

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

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

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

SECTION 1

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

SECTION 2

Amendment to the Town’s Zoning Ordinance. The Town’s Zoning Ordinance, adopted by Ordinance No. 05-20 is amended as follows: The zoning designation of the below described property containing 1.16 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the “Property”) and all streets, roads, and alleyways contiguous and/or adjacent thereto is hereby zoned as Planned

Development-Downtown Office (PD-DTO) and being more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes as if set forth verbatim.

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

1. Approval of a development agreement addressing (1) maintenance and consistency of landscaping; (2) replacement landscaping; and (3) maintaining the current height of landscaping materials along Broadway Street as well as the inclusion of construction materials and architectural features.

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

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

SECTION 3

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

SECTION 4

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

SECTION 5

Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6

Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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 7

Savings/Repealing Clause. Prosper’s Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25th DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

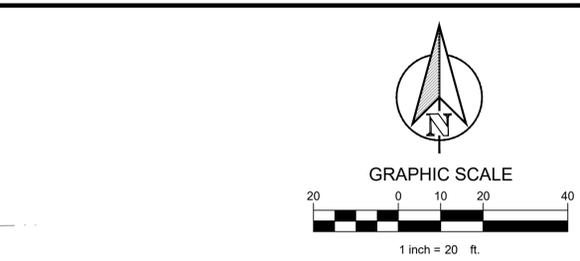
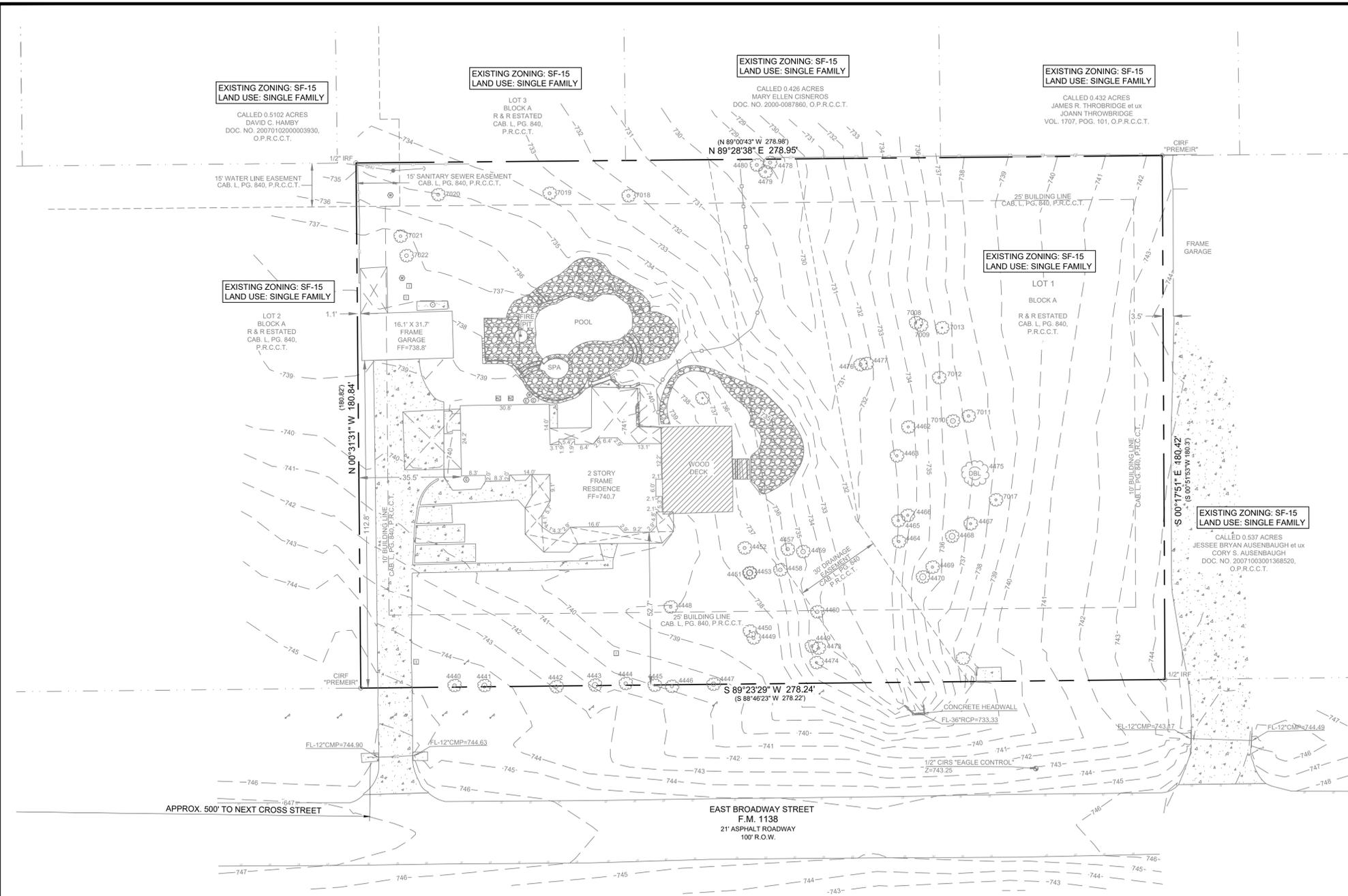
ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

PLOTTED BY: REGGIE SMITH
 PLOT DATE: 12/26/2019 4:43 PM
 LOCAL DATE: 12/26/2019 4:41 PM
 LAST SAVED: 12/26/2019 4:41 PM



VICINITY MAP & EXISTING ZONING MAP

Being a 1.16-acre tract or parcel of land situated in the Collin School Land Survey, Abstract Number 147 in the City of Prosper, Collin County, Texas and being all of Lot 1, Block A of R & R Estates an addition to the City of Prosper, Collin County, Texas, recorded in Cabinet L, Page 840 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

BEING as a capped 1/2" iron rod stamped "PREMEIR" found at the Southwest corner of said Lot 1 and the common Southeast corner of Lot 2, Block A of said R & R Estates and being in the North right-of-way line of Farm to Market Road 1138 (100' right-of-way);

THENCE North 00°31'31" West, with the West line of said Lot 1 and the common East line of said Lot 2, a distance of 180.84 feet to a 1/2" iron rod found at the Northwest corner of said Lot 1 and the common Northeast corner of said Lot 2 and being in the South line of Lot 3, Block A of said R & R Estates;

THENCE North 89°28'38" East, with the North line of said Lot 1 and the common South line of said Lot 3, a distance of 278.95 feet to a capped 1/2" iron rod stamped "PREMEIR" found at the Northeast corner of said Lot 1;

THENCE South 00°17'51" East, with the East line of said Lot 1, a distance of 180.45 feet to a 1/2" iron rod found at the Southwest corner of said Lot 1 and being in the North right-of-way line of said Farm to Market Road 1138;

THENCE South 89°23'53" West, with the South line of said Lot 1 and the common North right-of-way line of said Farm to Market Road 1138, a distance of 278.24 to the POINT OF BEGINNING and containing 1.16 acres of land more or less.

EXISTING ZONING: SF-15 (1.16 AC)
 PROPOSED ZONING: PD (DTO) (1.16 AC)

FLOODPLAIN NOTE

ACCORDING TO MAP NO. 48085C0235J, DATED JUNE 2, 2009 OF THE NATIONAL FLOOD INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF COLLIN COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, THIS PROPERTY IS WITHIN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN). IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

603 BROADWAY STREET	
CASE # : Z19-0023	
OWNER: DUGAN P KELLEY 301 S COLEMAN ST, STE 20 PROSPER, TX 75078 CONTACT NAME: DUGAN P KELLEY	
APPLICANT/REPRESENTATIVE: CLAYMOORE ENGINEERING, INC. 301 S. COLEMAN, SUITE #40 PROSPER, TX 75078 PH: 817.201.6982 CONTACT NAME: MATT MOORE	
SURVEYOR: EAGLE SURVEYING 210 S. ELM STREET, SUITE #104 DENTON, TX 76201 PH: 940.222.3009 CONTACT NAME: DAN RICK	
LEGAL DESCRIPTION: R & R ESTATES (CPR), BLOCK A, LOT 1, 1.156 ACRES	
CITY: PROSPER	STATE: TEXAS
COUNTY: COLLIN	SURVEY: C.C.S.L.
ABSTRACT NO. A0147	

TEXAS REGISTRATION #14199

CLAYMOORE ENGINEERING

1901 CENTRAL DR., SUITE #1
PROSPER, TX 75078
WWW.CLAYMOORE.COM

PRELIMINARY

FOR REVIEW ONLY
Not for construction purposes.

CLAYMOORE ENGINEERING
ENGINEERING AND PLANNING
CONSULTANTS

Engineer: **MATT MOORE**
P.E. No. 98351, Date 12/3/2019

**603 BROADWAY CONCEPT
PROSPER, TX**

No.	DATE	REVISION	BY

EXHIBIT A

SHEET
EX-A

File No.



EXHIBIT B – STATEMENT OF INTENT AND PURPOSE

December 9, 2019

Planning Dept.
City of Prosper
407 E. 1st St.
Prosper, Texas 75078

Re: PD Zoning Request
603 Broadway Street
Letter of Intent

To whom it may concern,

Please let this letter serve as the Letter of Intent for the PD Zoning request associated with the proposed development located at 603 Broadway Street. The subject tract is currently zoned SF-15. The proposed office space is 1,923 square feet. The specific PD standards requested as part of this submittal are further detailed in Exhibit C attached.

Should you have any questions, please feel free to contact me.

Sincerely,

Claymoore Engineering, Inc.
301 S. Coleman, Suite 40
Prosper, TX 75078
817-281-0572

Thank you and please call if you have any comments or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Drew Donosky". The signature is written in a cursive style.

Drew Donosky, P.E.

Z19-0023

EXHIBIT "C"

DEVELOPMENT STANDARDS

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20), as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.

1. Except as noted below, the Tract shall continue to be used in accordance with the Downtown Office (DTO) District, as it exists or may be amended.
2. Development Plans
 - A. Conceptual Site Plan: The tract shall continue to be used in general accordance with the attached concept plan, set forth in Exhibit D.
 - B. Building Elevations: The tract shall continue to be used in general accordance with the attached façade plans, set forth in Exhibit F.
 - C. Landscape Plan: The tract shall continue to be used in general accordance with the attached landscape plan, set forth in Exhibit G.
3. Regulations:
 - A. Landscape Setbacks:
 1. Minimum Front Yard – Ten feet (10').
 2. Minimum Side Yard – Two feet (2').
 - B. Parking:
 1. Minimum Drive Aisle – Twenty feet (20').
 2. Maximum fifteen (15) parking spaces shall be permitted on dead-end drive aisles.
 - C. Screening:
 1. A minimum eight-foot (8') screening fence shall be required along the north side of the property, as shown on Exhibit D, in accordance with the screening requirements of the Zoning Ordinance. All remaining screening shall be required in accordance with the screening requirements of the Zoning Ordinance.



Exhibit E – 603 Broadway Street Development Schedule

Below is an anticipated project schedule for the proposed 603 Broadway Development Schedule in accordance with the submittal checklist. This schedule is conceptual and subject to change based on permitting/entitlements. The proposed developer is working on obtaining the required manufacturer approvals for the subject tract. Once obtained, then the permitting approvals will start with the Town.

- Zoning Submittal to Town – 12/09/19
- Zoning Approval from Town – 02/11/20
- Final Site Plan Submittal to Town – 02/17/20
- Final Site Plan Approval from Town – 03/06/20
- Submit Building Permit – 03/06/20
- Final Engineering Approval from Town – 03/06/20
- Building Permit Issuance – 03/20/20
- Start Construction – 03/21/20
- Construction Complete – 05/31/20

Thank you and please call if you have any comments or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Drew Donosky". The signature is fluid and cursive, with the first and last names being clearly legible.

Drew Donosky, P.E.

PLANT LIST

CANOPY TREES				
3	SO	Shumard Oak	Quercus shumardii	3" cal. 11' ht. 5' spread
ORNAMENTAL TREES				
7	TY	Tree Yaupon	Ilex vomitoria	30 gal. 8' ht. multi-trunk female
17	CR-T	Tuscarora Crapemyrtle	Lagerstroemia indica 'Tuscarora'	30 gal. 8' ht. 3 trunk 3" cal. min.
4	CR-N	Natchez Crapemyrtle	Lagerstroemia indica 'Natchez'	30 gal. 8' ht. 3 trunk 3" cal. min.
17	RB	Redbud	Cercis canadensis	30 gal. 8' ht. multi-trunk 3" cal. min.
SHRUBS & GROUNDCOVERS				
31	WM	Dwarf Wax Myrtle	Myrica pusilla	5 gal. 36" oc
9	GL	Giant Liriope	Liriope gigantea	5 gal. 36" oc
19	RY	Red Yucca	Hesperaloe parviflora	5 gal. 36" oc
68	DB	Dwarf Burford Holly	Ilex cornuta 'Burfordii'	5 gal. 36" oc
36	TX	Texas Sage	Leucophyllum frutescens 'Silverado'	5 gal. 36" oc
19	PM	Pink Muhly	Muhlenbergia capillaris	5 gal. 36" oc
6	CS	Cherry Sage	Salvia greggii	5 gal. 36" oc
8	YU	Twistleaf Yucca	Yucca rupicola	5 gal. 36" oc

Town of Prosper, Texas Landscape Calculations

Street Landscape Area				
1 tree per 30 LF		Required	Provided	
15 shrubs per 30 LF		10 trees	7 ex. trees + 3 new	
FM 1138	278 LF	150 shrubs	150 shrubs	
Interior Landscape Area				
13 spaces		Required	Provided	
15 sf area for each parking space		195 SF	331 SF	
1 tree / 15 spaces	At least 1 tree within 150' of each parking space.	1 tree	1 tree	
Perimeter Landscape				
1 tree and 1 shrub per 15 LF		Required	Provided	
West property line	180.84 LF	13 trees	13 trees	
		13 shrubs	13 shrubs	
North property line	278.95 LF	19 trees	19 trees	
		19 shrubs	19 shrubs	
East property line	180.42 LF	13 trees	13 trees	
		13 shrubs	14 shrubs	

Landscape Plan is conceptual in nature. Must meet all required Zoning requirements

Town of Prosper Notes

- Plant material shall be measured and sized according to the latest edition of the Texas Nursery & Landscape Association (TNLA) Specifications, Grades and Standards.
- All plant substitutions are subject to Town approval and must be specified on the approved landscape plan.
- Ground covers used in lieu of turf grass must provide complete coverage within one (1) year of planting and maintain adequate coverage as approved by the Town.
- Trees must be planted four feet (4') or greater from curbs, sidewalks, utility lines, screening walls, and/or other structures. The Town has final approval for all tree placements.
- Tree pits shall have roughened sides and be two to three times wider than the root ball of the tree in order to facilitate healthy root growth.
- Tree pits shall be tested for water percolation. If water does not drain out of tree pit with in a 24-hour period, the contractor shall provide berming, or devise alternative drainage.
- Trees shall not be planted deeper than the base of the "trunk flare".
- The tree pit shall be backfilled with native topsoil free of rock and other debris.
- Burlap, twine, and wire baskets shall be loosened and pulled back from the trunk of tree as much as possible.
- Trees shall not be watered to excess that results in soil saturation. If soil becomes saturated, the watering schedule shall be adjusted to allow for drainage and absorption of the excess water.
- A 3-4" layer of mulch shall be provided around the base of the planted tree. The mulch shall be pulled back 1-2" from the trunk of the tree.
- No person(s) or entity may use improper or malicious maintenance or pruning techniques which would likely lead to the death of the tree. Improper or malicious techniques include, but are not limited to, topping or other unsymmetrical trimming of trees, trimming trees with a backhoe, or use of fire or poison to cause the death of a tree.
- Topsoll shall be a minimum of 8 inches in depth in planting areas. Soil shall be free of stones, roots, and clods and any other foreign material that is not beneficial for plant growth.
- All plant beds shall be top-dressed with a minimum of 3 inches of mulch.
- Trees overhanging walks and parking shall have a minimum clear trunk height of 7 feet. Trees overhanging public street pavement drive aisles and fire lanes shall have a minimum clear trunk height of 14 feet.
- A visibility triangle must be provided at all intersections, where shrubs are not to exceed 30 inches in height, and trees shall have a minimum clear trunk height of 9 feet.
- Trees planted on a slope shall have the tree well at the average grade of slope.
- No shrubs shall be permitted within areas less than 3 feet in width. All beds less than 3 feet in width shall be grass, groundcover, or some type of fixed paving.
- The owner, tenant, and/or their agents, if any, shall be jointly and severally responsible for the maintenance, establishment, and permanence of plant material. All landscaping shall be maintained in a neat and orderly manner at all times. This shall include, but not limited to, mowing, edging, pruning, fertilizing, watering, and other activities necessary for the maintenance of landscaped areas.
- All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Plant material that is damaged, destroyed, or removed shall be replaced with plant material of similar size and variety within 30 days unless otherwise approved in writing by the Town of Prosper.
- Landscape and open areas shall be kept free of trash, litter, and weeds.
- An automatic irrigation system shall be provided to irrigate all landscape areas. Overspray on streets and walks is prohibited. A permit from the building inspection department is required for each irrigation system.
- No plant material shall be allowed to encroach on right-of-way, sidewalks, or easements to the extent that the vision or route of travel for vehicular, pedestrian, or bicycle traffic is impeded.
- No planting areas shall exceed 3:1 slope. 3' horizontal to 1' vertical.
- Earthen berms shall not include construction debris. Contractor must correct slippage or damage to the smooth finish grade of the berm prior to acceptance.
- All walkways shall meet A.D.A. and T.A.S. requirements.
- Contact Town of Prosper Parks and Recreation Division at (972) 346-3502 for landscape inspection. Note that landscape installation must comply with approved landscape plans prior to final acceptance by the Town and/or obtaining a Certificate of Occupancy.
- Final inspection and approval of screening walls, irrigation, and landscape is subject to all public utilities, including but not limited to manholes, valves, water meters, cleanouts, and other appurtenances, to be accessible, adjusted to grade, and to the Town of Prosper's Public Works Department standards.
- Prior to calling for a landscape inspection, contractor is responsible for marking all manholes, valves, water meters, cleanouts, and other utility appurtenances with flagging for field verification by the Town.

site integration studio
Landscape Architecture - Sustainable Site Planning - Natural Resource Design

John F. Murphy, ASLA

7529 Cross Gate Way
Tyler, TX 75703
john@siteint.com
scott@siteint.com

512.632.3822 - Tyler
512.589.9584 - Austin
www.siteint.com

TEXAS REGISTRATION #14199

CLAY MOORE ENGINEERING

1000 CENTRAL DR. SUITE #1
BEDFORD, TX 76021
PHONE: 817-281-0272
WWW.CLAYMOOREENG.COM



TREE LIST

ID	D.B.H. (")	TYPE
4440	14	HACKBERRY
4441	20	HACKBERRY
4442	13	HACKBERRY
4443	22	HACKBERRY
4444	15	HACKBERRY
4445	8	ELM
4446	12	HACKBERRY
4447	18	HACKBERRY
4448	11	BRADFORD PEAR
4449	12	HACKBERRY
4450	6	HACKBERRY
4451	24	HACKBERRY
4452	12	ELM
4453	24	HACKBERRY
4455	6	MAGNOLIA
4457	7	HACKBERRY
4458	15	ELM
4459	19	ELM
4460	14	HACKBERRY
4461	10	CEDAR
4462	9	ELM
4463	10	BOIS D' ARC
4464	10	HACKBERRY
4465	9	HACKBERRY
4466	9	ELM
4467	9	BOIS D' ARC
4468	24	ELM
4469	10	HACKBERRY
4470	26	ELM
4472	23	HACKBERRY
4473	10	ELM
4474	9	HACKBERRY
4475	53	ELM
4476	13	HACKBERRY
4477	5	HACKBERRY
4478	13	ELM
4479	9	HACKBERRY
4480	12	HACKBERRY
7008	7	ELM
7009	6	ELM
7010	22	ELM
7011	23	ELM
7012	9	HACKBERRY
7013	6	ELM
7017	9	CEDAR
7018	12	CREPE MYRTLE
7019	12	CREPE MYRTLE
7020	12	CREPE MYRTLE

R = Removed tree

603 BROADWAY CONCEPT
PROSPER, TX

EXHIBIT G
LANDSCAPE DETAILS

TREE STAKE SOLUTIONS LLC
9973 FM 521 ROAD
ROSHARON, TX 77583
PHONE: (281) 778-1400
FAX: (281) 778-1425
www.treestakesolutions.com

1. WITH TREE NA STRAIGHT & PLUMB POSITION, CENTER THE APPROPRIATE ROOT ANCHOR SAFETY STAKE AROUND THE TRUNK, WITH RINGS LAYING FLAT AGAINST ROOTBALL. U-BRACKETS FACING UP.

2. INSERT 1" OF NAIL STAKES THROUGH EACH OF THE U-BRACKETS. NAILS SHOULD REST IN THE UNDISTURBED SOIL AT THE BOTTOM OF THE TREE PIT. ALL NAILS SHOULD FIT SNUG AGAINST THE SIDE OF THE ROOTBALL.

3. NAIL STAKES SHOULD BE DRIVEN STRAIGHT DOWN INTO THE UNDISTURBED SOIL BELOW THE ROOTBALL. THE NAILS ARE NOW CAGING THE ROOTBALL IN PLACE, WHILE THE TOP-BRACKET PINS OF THE ROOTBALL DOWN.

FOR HAND OR MACHINE DUG TREES, IT MAY BE NECESSARY TO PENETRATE 1" - 4" OF OUTER AREA OF THE ROOTBALL WITH THE NAIL.

REFER TO ARBOR-GUY DETAIL FOR ANCHORING

PREPARE SOIL MIX AND FERTILIZER PER SPECS.

ITEM #	DESCRIPTION	NAIL LENGTH X 3PC (INCLUDED)	ITEM #	DESCRIPTION	NAIL LENGTH X 3PC (INCLUDED)
5 BG	5 GALLON OR 10' ROOTBALL	#4 X 24"	100 BG	95/100 GALLON OR 36' ROOTBALL	#5 X 48"
15 BG	10/15 GALLON OR 17' ROOTBALL	#4 X 36"	150 BG	150 GALLON OR 42' ROOTBALL	#5 X 60"
30 BG	20/30 GALLON OR 22' ROOTBALL	#4 X 36"	300 BG	200 GALLON OR 48' ROOTBALL	#5 X 72"
45/65 BG	45/65 GALLON OR 27-30' ROOTBALL	#4 X 48"	300 BG	300 GALLON OR 58' ROOTBALL	#5 X 72"

1 CANOPY TREE PLANTING
SCALE: NONE

TOP OF BALL OR ROOT CROWN 1" ABOVE FIN. GRADE

4" MULCH LAYER WATER BASIN

NATIVE SOIL

2 MULTI-TRUNK PLANTING
SCALE: NONE

STEEL EDGING SEE PLAN

4" MULCH LAYER

PREPARED SOIL MIX AND FERTILIZER (SEE SPECS)

SCARPED BOTTOM OF PLANTING BED BEFORE PLACING PREPARED MIX

SECTION

TRIANGULAR SPACING SEE PLAN

PLAN

3 SHRUB PLANTING
SCALE: NONE

STEEL EDGING SEE PLAN

12" DEPTH OF PLANTING MIX

4" MULCH LAYER

SECTION

TRIANGULAR SPACING

PLAN

4 GROUNDCOVER PLANTING
SCALE: NONE

DESIGN: ASD
DRAWN: ASD
CHECKED: MAM
DATE: 12/31/2019

SHEET
L-2

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between Dugan P. Kelley and Matthew Clarke, and the Town of Prosper, Texas, related to the Downtown Office development, located at 603 E. Broadway Street.

Description of Agenda Item:

On January 28, 2020, the Town Council unanimously approved the rezoning request (Z19-0023) related to a downtown office development located at 603 E. Broadway Street. The zoning request was approved, subject to Town Council approval of a development agreement addressing (1) maintenance and consistency of landscaping; (2) replacement landscaping; and (3) maintaining the current height of landscaping materials along Broadway Street as well as the inclusion of construction materials and architectural features. A Development Agreement has been prepared accordingly.

Legal Obligations and Review:

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

Attached Documents:

- 1. Development Agreement
- 2. Exhibit A-Property Description

Town Staff Recommendation:

Staff recommends authorizing the Town Manager to execute a Development Agreement between Dugan P. Kelley and Matthew Clarke, and the Town of Prosper, Texas, related to the Downtown Office development, located at 603 E. Broadway Street.

Proposed Motion:

I move to authorize the Town Manager to execute a Development Agreement between Dugan P. Kelley and Matthew Clarke, and the Town of Prosper, Texas, related to the Downtown Office development, located at 603 E. Broadway Street.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Dugan P. Kelley and Matthew Clarke (“Owner”) (individually, a “Party” and collectively, the “Parties”) to be effective (the “Effective Date”) on the latest date executed by a Party.

WHEREAS, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is the owner of property located at 603 Broadway Street in the Town, the legal description of which is more particularly described in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, Owner has requested to rezone the Property from Single Family-15 (SF-15) to Planned Development-Downtown Office (PD-DTO); and

WHEREAS, this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in the underlying zoning ordinance, as may be amended, and/or this Development Agreement, to recognize Owner’s reasonable investment-backed expectations in the Property, as may be amended, and as more fully described herein; and

WHEREAS, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property structures in accordance with the provisions, standards and notes reflected in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. **Architectural Standards and Building Materials.** For any structure built on the Property following the Effective Date, it shall comply with the applicable requirements contained in Exhibit B, “Architectural Standards and Building Materials,” and Exhibit C, “Exterior Building Materials,” attached hereto and incorporated by reference, and Owner agrees to construct those structures in compliance therewith. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

2. **Landscaping.** The Parties acknowledge that the Landscape Plan is attached to the planned development ordinance for the Property as an exhibit and its provisions are incorporated by reference. Notwithstanding any requirement contained in the Landscape Plan, Owner shall (1) maintain all landscaping elements in a healthy state; (2) provide consistency of landscaping materials as reflected in the Landscape Plan; (3)

replace any landscaping materials when replacement is mandated due to the death of landscaping materials or otherwise mandated by on-site conditions; and (4) maintain the current height of landscaping materials along Broadway Street.

3. Covenant Running with the Land. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Owner and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other owners of the Property, regardless of whether this Agreement is expressly referenced therein.

4. Applicability of Town Ordinances. Owner shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

5. Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

6. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.

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

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

If to Owner: Dugan P. Kelley
 301 S. Coleman, Suite 20
 Prosper, Texas 75078

Matthew Clarke
603 E. Broadway
Prosper, TX 75078

8. Prevailing Party. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

9. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

10. Savings/Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

11. Binding Agreement. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either party.

12. Authority to Execute. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

13. **Filing in Deed Records.** This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Collin County, Texas.

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

15. **Notification of Sale or Transfer; Assignment of Agreement.** Owner shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Owner has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Owner. Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain true and correct copies of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

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

17. **Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

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

19. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

20. **Exactions/Infrastructure Costs.** Owner has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Owner, regarding Owner's rights under Texas and federal law. Owner hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Owner hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

21. **Rough Proportionality.** Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to roadway or infrastructure requirements imposed by this Agreement. Owner and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement, with respect to roadway or infrastructure requirements imposed by this Agreement.

22. **Waiver of Texas Government Code § 3000.001 et seq.** With respect to any structures or improvements constructed on the Property pursuant to this Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, effective as of September 1, 2019.

23. **Time.** Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

24. **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.

25. **Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.

26. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____
Name: Harlan Jefferson
Title: Town Manager, Town of Prosper

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2020, by Harlan Jefferson, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:
DUGAN P. KELLEY

By: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____, 2020, by Dugan P. Kelley, 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.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

MATTHEW CLARKE

By: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____, 2020, by Matthew Clarke, 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.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A
(Property Description)

EXHIBIT B**ARCHITECTURAL STANDARDS AND BUILDING MATERIALS**

- A. All exterior facades, excluding glass windows and doors, shall be constructed using the permitted buildings materials in Sections B and C.
- B. Permitted primary exterior materials are clay fired brick, natural, precast, and manufactured stone, granite, marble, architectural concrete block, split face concrete masonry unit, architecturally finished concrete tilt wall and stucco.
- C. Secondary materials used on the façade of a building are those that comprise a total of ten percent (10%) or less of an elevation area. Permitted secondary materials are all primary materials, aluminum or other metal, cedar or similar quality decorative wood, and high impact exterior insulation and finish systems (EIFS).
- D. No single material shall exceed eighty percent (80%) of an elevation area. A minimum of twenty percent (20%) of the front façade and all facades facing public right-of-way shall be natural or manufactured stone. A minimum of ten percent (10%) of all other facades shall be natural or manufactured stone.
- E. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or less from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a six (6) in twelve (12) inch minimum slope. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or greater from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof, or a flat roof with an articulated parapet wall or cornice. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- F. All buildings with a footprint of ten thousand (10,000) square feet and greater shall incorporate sloped roof elements including, but not limited to pitched roofs on towers or arcades, sloped awnings, sloped parapets. Flat roofs are permitted with an articulated parapet wall or cornice in place of the required sloped roof elements. The sloped elements shall be provided along a minimum of sixty percent (60%) of each wall's length. All sloped roof elements shall have a six (6) in twelve (12) inch minimum slope. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- G. All buildings shall be designed to incorporate a form of architectural articulation every thirty feet (30'), both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:
- Canopies, awnings, or porticos;

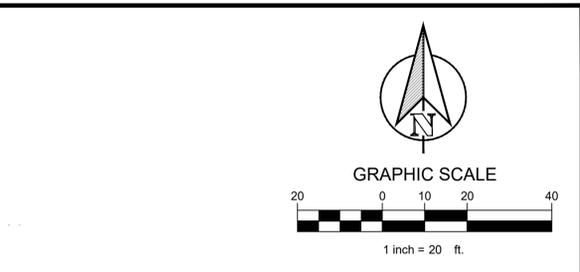
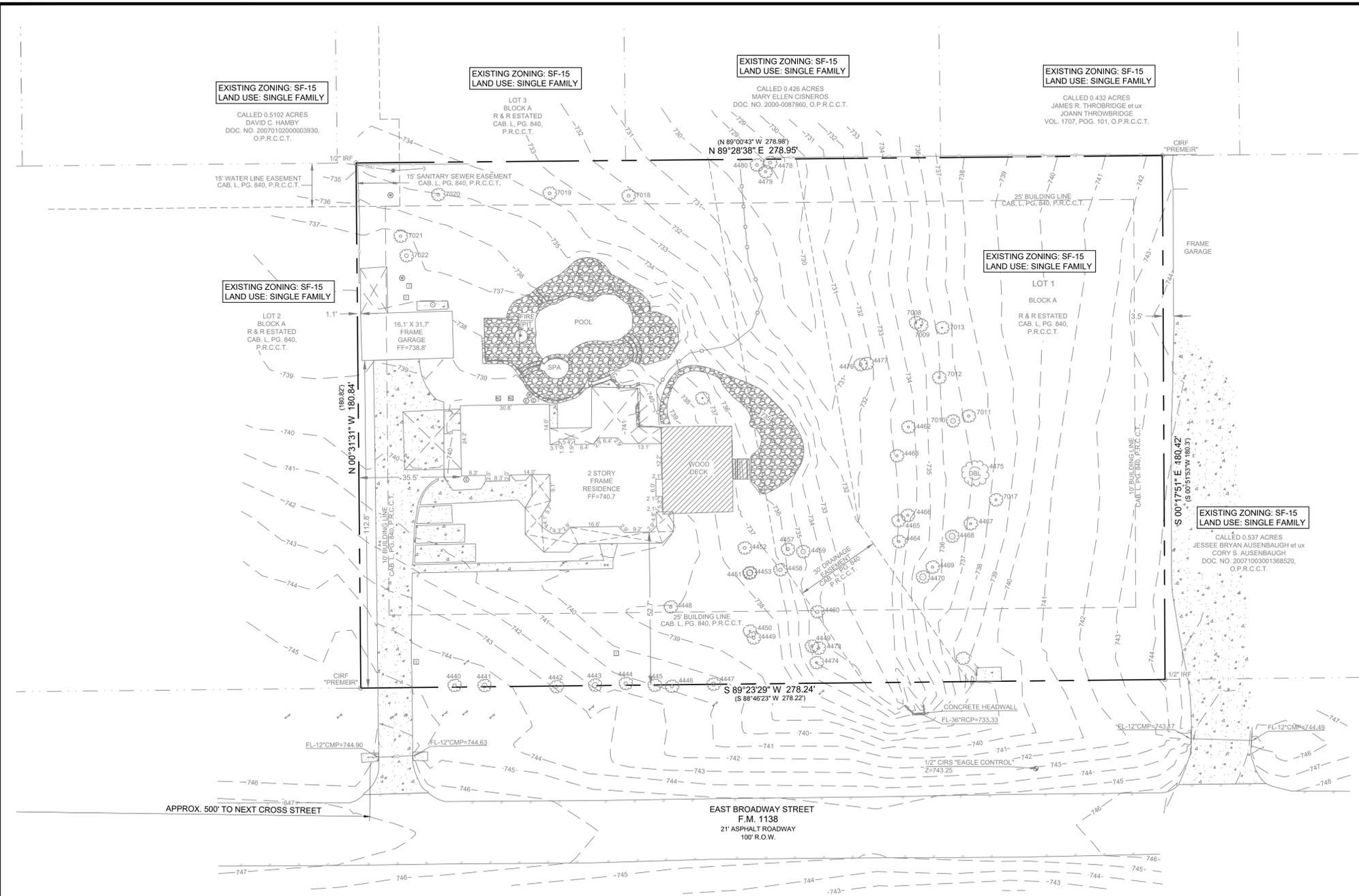
- Recesses/projections;
 - Arcades;
 - Arches;
 - Display windows, including a minimum sill height of thirty inches (30”);
 - Architectural details (such as tile work and moldings) integrated into the building facade;
 - Articulated ground floor levels or base;
 - Articulated cornice line;
 - Integrated planters or wing walls that incorporate landscape and sitting areas;
 - Offsets, reveals or projecting rib used to express architectural or structural bays; or
 - Varied roof heights.
- H. All buildings shall be architecturally finished on all four (4) sides with same materials, detailing, and features except the rear if two (2) rows of trees are planted on the perimeter behind the building. In this case, the architectural finish must match the remainder of the building in color only. A double row of trees on offset fifty foot (50’) centers in a fifteen foot (15’) landscape edge, where fifty percent (50%) of the trees are canopy evergreen trees. This is for facades that are not visible from public streets and apply to anchor buildings and attached in line spaces only. This provision does not apply to “out” buildings or pad sites.
- I. All primary and secondary exterior building materials (exclusive of glass) shall be of natural texture and shall be neutrals, creams, or other similar, non-reflective earth tone colors. Bright, reflective, pure tone primary or secondary colors, such as red, orange, yellow, blue, violet, or green are not permitted.
- J. Corporate identities that conflict with the building design criteria shall be reviewed on a case-by-case basis and approved by the Director of Development Services or his/her designee. The applicant may appeal the decision to the Planning & Zoning Commission and Town Council using the appeal procedure in Chapter 4, Section 1 of the Zoning Ordinance.

EXHIBIT C**EXTERIOR BUILDING MATERIALS**

The exterior facades of a main building or structure, excluding glass windows and doors, shall comply with the following requirements:

- A. The exterior facades shall be constructed of one hundred percent (100%) masonry, unless otherwise specified.
- B. Cementitious fiber board is considered masonry, but may only constitute fifty percent (50%) of stories other than the first story.
- C. Cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story.
- D. Unless an alternate material is approved by the Town Council, any portion of an upper story, excluding windows, that faces a street, public or private open space, public or private parks, or hike and bike trails, shall be 100% masonry and shall not be comprised of cementitious fiber board.
- E. Unless an alternate material is approved by the Town Council, the exterior cladding of chimneys shall be brick, natural or manufactured stone, or stucco.
- F. Cementitious fiber board may be used on up to ninety (90) percent of a structure.
- G. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, or other architectural features approved by the Building Official.
- H. The roof pitches of a main building or structure, including garages, shall meet the following roof pitch standards: (a) a minimum of sixty-five percent (65%) of the surface area of composition roofs shall maintain a minimum roof pitch of 8:12; (b) a minimum of seventy-five percent (75%) of the surface area of clay tile, cement tile, slate or slate products, or metal roofs shall maintain a minimum roof pitch of 3:12; and (c) wood roof shingles are prohibited.

PLOTTED BY: REGGIE SMITH
 PLOT DATE: 12/26/2019 4:43 PM
 LOCAL DATE: 12/26/2019 4:41 PM
 LAST SAVED: 12/26/2019 4:41 PM



TEXAS REGISTRATION #14199

CLAYMOORE ENGINEERING

1901 CENTRAL DR., SUITE #1
 PROSPER, TX 75080
 WWW.CLAYMOORE.COM

PRELIMINARY

FOR REVIEW ONLY
 Not for construction purposes.

CLAYMOORE ENGINEERING
 ENGINEERING AND PLANNING
 CONSULTANTS

Engineer: **MATT MOORE**
 P.E. No. 98351 Date 12/3/2019

**603 BROADWAY CONCEPT
 PROSPER, TX**

Being a 1.16-acre tract or parcel of land situated in the Collin School Land Survey, Abstract Number 147 in the City of Prosper, Collin County, Texas and being all of Lot 1, Block A of R & R Estates an addition to the City of Prosper, Collin County, Texas, recorded in Cabinet L, Page 840 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a capped 1/2" iron rod stamped "PREMEIR" found at the Southwest corner of said Lot 1 and the common Southeast corner of Lot 2, Block A of said R & R Estates and being in the North right-of-way line of Farm to Market Road 1138 (100' right-of-way);

THENCE North 00°31'31" West, with the West line of said Lot 1 and the common East line of said Lot 2, a distance of 180.84 feet to a 1/2" iron rod found at the Northwest corner of said Lot 1 and the common Northeast corner of said Lot 2 and being in the South line of Lot 3, Block A of said R & R Estates;

THENCE North 89°28'38" East, with the North line of said Lot 1 and the common South line of said Lot 3, a distance of 278.95 feet to a capped 1/2" iron rod stamped "PREMEIR" found at the Northeast corner of said Lot 1;

THENCE South 00°17'51" East, with the East line of said Lot 1, a distance of 180.45 feet to a 1/2" iron rod found at the Southwest corner of said Lot 1 and being in the North right-of-way of said Farm to Market Road 1138;

THENCE South 89°23'53" West, with the South line of said Lot 1 and the common North right-of-way line of said Farm to Market Road 1138, a distance of 278.24 to the POINT OF BEGINNING and containing 1.16 acres of land more or less.

[Signature]
 12-04-2019

**EXISTING ZONING: SF-15 (1.16 AC)
 PROPOSED ZONING: PD (DTO) (1.16 AC)**

FLOODPLAIN NOTE

ACCORDING TO MAP NO. 48085C0235J, DATED JUNE 2, 2009 OF THE NATIONAL FLOOD INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF COLLIN COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, THIS PROPERTY IS WITHIN ZONE "X" (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN). IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

603 BROADWAY STREET	
CASE # : Z19-0023	
OWNER: DUGAN P KELLEY 301 S COLEMAN ST, STE 20 PROSPER, TX 75078 CONTACT NAME: DUGAN P KELLEY	
APPLICANT/REPRESENTATIVE: CLAYMOORE ENGINEERING, INC. 301 S. COLEMAN, SUITE #40 PROSPER, TX 75078 PH: 817.201.6982 CONTACT NAME: MATT MOORE	
SURVEYOR: EAGLE SURVEYING 210 S. ELM STREET, SUITE #104 DENTON, TX 76201 PH: 940.222.3009 CONTACT NAME: DAN RICK	
LEGAL DESCRIPTION: R & R ESTATES (CPR), BLOCK A, LOT 1, 1.156 ACRES	
CITY: PROSPER	STATE: TEXAS
COUNTY: COLLIN	SURVEY: C.C.S.L.
ABSTRACT NO. A0147	
SHEET EX-A	

No.	DATE	REVISION	BY

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon an ordinance amending the Future Land Use Plan from Low Density Residential to Tollway District, generally located on the north side of Prosper Trail, west of Shawnee Trail. (CA19-0005). *[Companion Case Z19-0024]*

Description of Agenda Item:

On February 11, 2020, the Town Council approved the proposed request, by a vote of 7-0. An ordinance has been prepared accordingly.

Legal Obligations and Review:

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

Attached Documents:

1. Ordinance
2. Exhibit A

Staff Recommendation:

Town staff recommends the Town Council approve the ordinance.

Proposed Motion:

I move to approve an ordinance amending the Future Land Use Plan from Low Density Residential to Tollway District, generally located on the north side of Prosper Trail, west of Shawnee Trail.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-___

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE FUTURE LAND USE 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 Future Land Use Plan of the Town of Prosper (“Prosper”) Comprehensive Plan, adopted by Ordinance No. 12-21, as amended, should be amended; and

WHEREAS, Prosper received a request to amend the Future Land Use Plan from Low Density Residential to Tollway District, generally located on the north side of Prosper Trail, west of Shawnee Trail (Case CA19-0005).

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 Future Land Use Plan Map of the Town of Prosper’s Comprehensive Plan, adopted by Ordinance No. 12-21, as amended, is hereby amended to reflect Tollway District on the north side of Prosper Trail, west of Shawnee Trail, 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. Prosper's Comprehensive Plan, adopted by Ordinance 12-21, 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 25TH DAY OF FEBRUARY, 2020.

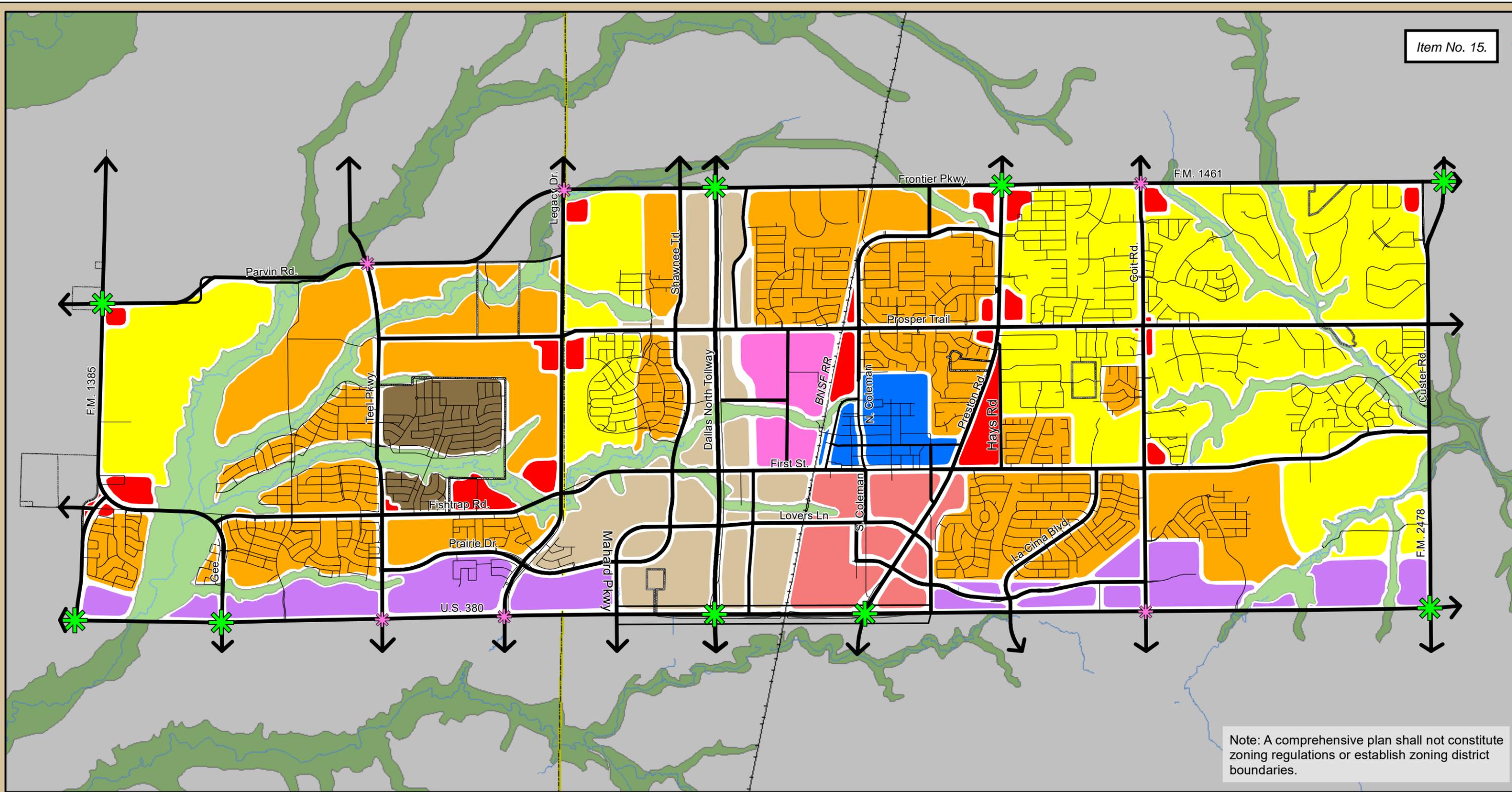
Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



Note: A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries.

Updated February 2020



Legend

- | | | |
|--------------------------------|-------------------|---------------|
| Low Density Residential | Old Town District | Major Gateway |
| Medium Density Residential | Town Center | Minor Gateway |
| High Density Residential | Tollway District | 100 Year ETJ |
| Retail & Neighborhood Services | US 380 District | |
| Business Park | | |

Future Land Use Plan





To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon an ordinance to rezone 3.4± acres from Agricultural (A) to Office (O) and 5.6± acres from Agricultural (A) to Single Family-15 (SF-15), located on the north side of Prosper Trail, west of Shawnee Trail. (Z19-0024). [Companion Case CA19-0005]

Description of Agenda Item:

On February 11, 2020, the Town Council approved the proposed rezoning request, by a vote of 7-0, subject to the developer entering into a Development Agreement relative to the building materials and architectural requirements of the Zoning Ordinance. A Development Agreement has been prepared and is on the February 25, 2020 agenda for Town Council consideration. An ordinance has been prepared accordingly.

Legal Obligations and Review:

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

Attached Documents:

- 1. Ordinance
- 2. Exhibit A

Staff Recommendation:

Staff recommends the Town Council approve an ordinance to rezone 3.4± acres from Agricultural (A) to Office (O) and 5.6± acres from Agricultural (A) to Single Family-15 (SF-15), located on the north side of Prosper Trail, west of Shawnee Trail.

Proposed Motion:

I move to approve an ordinance to rezone 3.4± acres from Agricultural (A) to Office (O) and 5.6± acres from Agricultural (A) to Single Family-15 (SF-15), located on the north side of Prosper Trail, west of Shawnee Trail.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-___

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING PROSPER’S ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 8.99 ACRES, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS FROM AGRICULTURAL (A) TO SINGLE FAMILY-15 (SF-15) AND OFFICE (O); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Town of Prosper, Texas (“Prosper”) has received a request from Kirk and Laurie Andrews (“Applicant”), to rezone 8.99 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, from Agricultural (A) to Single Family-15 (SF-15) and Office (O) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes; and

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

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

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

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

SECTION 1

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

SECTION 2

Amendment to the Town’s Zoning Ordinance. The Town’s Zoning Ordinance, adopted by Ordinance No. 05-20 is amended as follows: The zoning designation of the below described property containing 8.99 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the “Property”) and all streets, roads, and alleyways contiguous and/or adjacent thereto is hereby zoned as Single Family-15 (SF-15) and Office (O) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes as if set forth verbatim.

All development plans, standards, and uses for the Property shall comply fully with the requirements of all ordinances, rules, and regulations of the Town of Prosper, as they currently exist or may be amended.

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

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

SECTION 3

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

SECTION 4

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

SECTION 5

Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper’s Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day’s violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6

Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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 7

Savings/Repealing Clause. Prosper’s Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

Z19-0024

EXHIBIT A

SINGLE FAMILY-15 LEGAL DESCRIPTION

Being a 4.92 acre tract or parcel of land situated in the Collin County School Land Survey, Abstract Number 147 in Collin County, Texas and being a portion of a Lot 1, Block A of Andrews Addition, an addition to the City of Prosper, Collin County, Texas, recorded in Volume 2013, Page 68 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2" iron rod found at the Southwest corner of said Lot 1, Block A and in the East line of a called 18.15 acre tract of land described in the deed to James Richard Morgan, recorded in Volume 4905, Page 3272 of the Official Public Records of Collin County, Texas and being in the North right-of-way line of Prosper Trail (variable width right-of-way);

THENCE North 00°34'32" West, with the West line of said Lot 1, Block A and the common East line of said 18.15 acre tract, a distance of 45.00 feet to the POINT OF BEGINNING; THENCE North 00°34'32" West, with the West line of said Lot 1, Block A and the common East line of said 18.15 acre tract, a distance of 672.56 feet to a point in a creek, from which a 1/2" iron rod found at the Northwest corner of said Lot 1, Block A and the common Northeast corner of said 18.15 acre tract bears North 00°34'32" West, a distance of 562.15 feet;

THENCE over and across said Lot 1, Block A and with the meanders of a creek, the following courses and distances:

North 60°48'07" East, a distance of 12.58 feet;
 North 04°11'23" East, a distance of 7.83 feet;
 North 24°50'28" West, a distance of 5.42 feet;
 North 20°35'40" East, a distance of 11.38 feet;
 North 54°34'57" East, a distance of 99.82 feet;
 South 39°00'23" East, a distance of 39.11 feet;
 North 79°36'35" East, a distance of 51.13 feet;
 South 70°12'50" East, a distance of 40.44 feet;
 South 54°18'10" East, a distance of 29.60 feet;
 South 14°06'27" West, a distance of 77.02 feet;
 South 45°40'20" East, a distance of 56.38 feet;
 North 84°19'42" East, a distance of 17.28 feet;
 North 18°59'05" East, a distance of 16.05 feet;
 South 79°30'01" East, a distance of 20.39 feet;
 South 41°31'09" East, a distance of 26.93 feet;
 South 86°31'59" East, a distance of 19.70 feet;
 South 42°30'45" East, a distance of 27.18 feet;
 South 16°12'13" East, a distance of 54.15 feet;
 South 68°05'04" East, a distance of 76.53 feet;

South 26°00'03" West, a distance of 16.41 feet;
South 41°44'33" East, a distance of 41.66 feet;
South 81°20'00" East, a distance of 37.81 feet;
North 84°05'05" East, a distance of 49.39 feet;
North 76°16'59" East, a distance of 35.63 feet;
South 47°46'30" East, a distance of 64.32 feet;
South 29°16'22" East, a distance of 6.05 feet to a point in the East line of said Lot 1, Block A and the common West line of Lot 1X, Block A, of Legacy Gardens Phase 1, an addition to the City of Prosper, Collin County, Texas, recorded in Volume 2019, Page 619 of the Plat Records of Collin County, Texas from which a capped 5/8" iron rod stamped "JONES CARTER" found at the Northeast corner of said Lot 1, Block A bears North 00°36'49" West, a distance of 843.44 feet;

THENCE South 00°36'49" East, with the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, a distance of 134.47 feet to a point from which a 1/2" iron rod found at the Southeast corner of said Lot 1, Block A and the common Southwest corner of said Lot 1X, Block A bears South 00°36'49" East a distance of 303.00 feet;

THENCE over and across said Lot 1, Block A the following courses and distances:

South 89°27'29" West, a distance of 577.20 feet;
South 00°34'32" East, a distance of 258.00 feet;
South 89°27'29" West, a distance of 50.00 feet to the POINT OF BEGINNING and containing 4.92 acres of land more or less.

OFFICE LEGAL DESCRIPTION

Being a 3.42 acre tract or parcel of land situated in the Collin County School Land Survey, Abstract Number 147 in Collin County, Texas and being a portion of a Lot 1, Block A of Andrews Addition, an addition to the City of Prosper, Collin County, Texas, recorded in Volume 2013, Page 68 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 1/2" iron rod found at the Southeast corner of said Lot 1, Block A and the common Southwest corner of Lot 1X, Block A of Legacy Gardens Phase 1, an addition to the City of Prosper, Collin County, Texas, recorded in Volume 2019, Page 619 of the Plat Records of Collin County, Texas and being in the North right-of-way line of Prosper Trail (variable width right-of-way);

THENCE North 00°36'49" West, with the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, a distance of 45.00 feet to the POINT OF BEGINNING;

THENCE over and across said Lot 1, Block A the following courses and distances:

South 89°27'29" West, a distance of 577.37 feet;
North 00°34'32" West, a distance of 258.00 feet;
North 89°27'29" East, a distance of 577.20 feet to a point in the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, from which a

capped 5/8" iron rod stamped "JONES CARTER" found at the Northeast corner of said Lot 1, Block A bears North 00°36'49" West, a distance of 977.91 feet;

THENCE South 00°36'49" East, with the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, a distance of 258.00 feet to the POINT OF BEGINNING and containing 3.42 acres of land more or less.

PROSPER TRAIL RIGHT-OF-WAY LEGAL DESCRIPTION

Being a 0.65 acre tract or parcel of land situated in the Collin County School Land Survey, Abstract Number 147 in Collin County, Texas and being a portion of a Lot 1, Block A of Andrews Addition, an addition to the City of Prosper, Collin County, Texas, recorded in Volume 2013, Page 68 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found at the Southeast corner of said Lot 1, Block A and the common Southwest corner of Lot 1X, Block A of Legacy Gardens Phase 1, an addition to the City of Prosper, Collin County, Texas, recorded in Volume 2019, Page 619 of the Plat Records of Collin County, Texas and being in the North right-of-way line of Prosper Trail (variable width right-of-way);

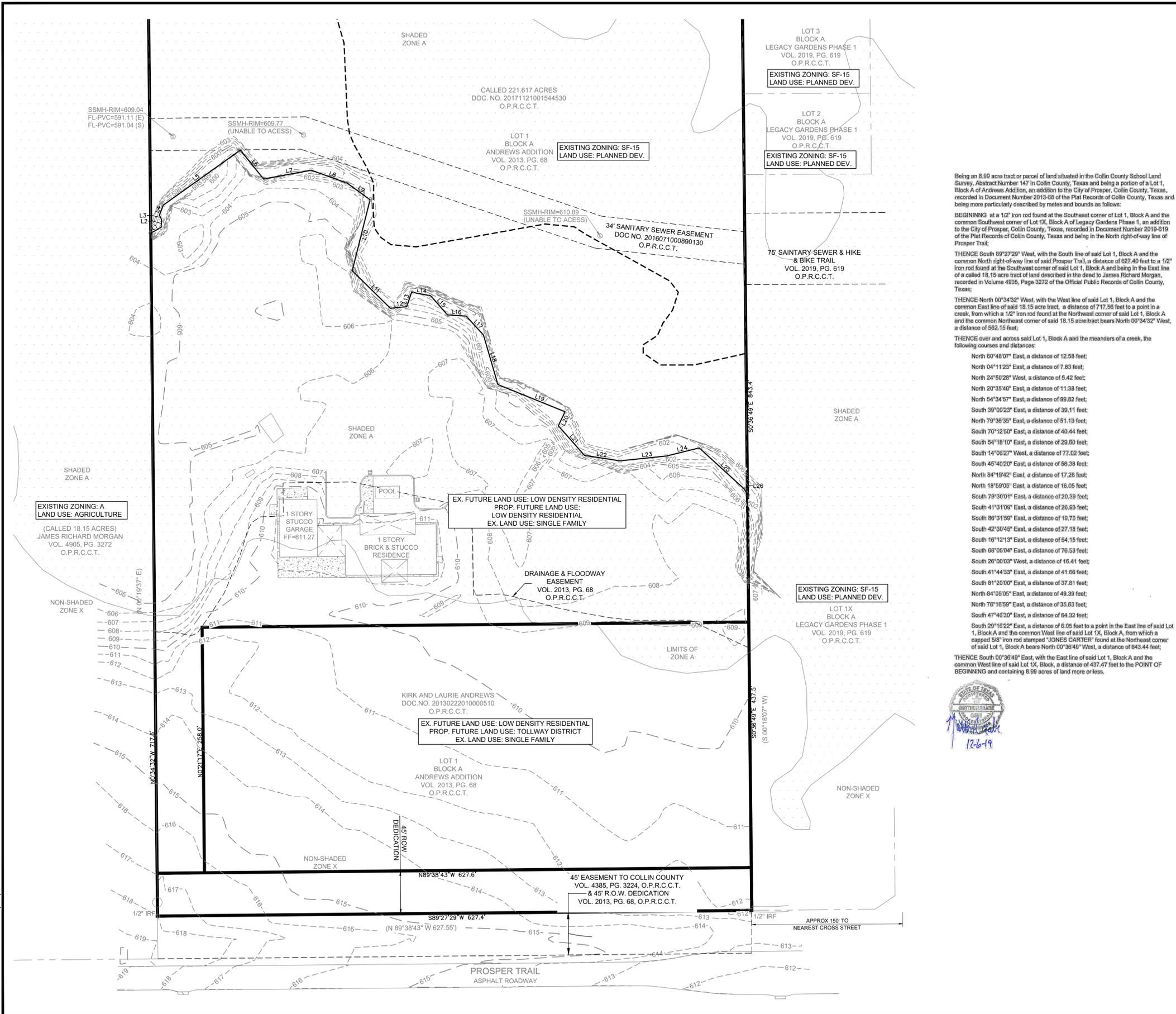
THENCE South 89°27'29" West, with the South line of said Lot 1, Block A and the common North right-of-way line of said Prosper Trail, a distance of 627.40 feet to a 1/2" iron rod found at the Southwest corner of said Lot 1, Block A and being in the East line of a called 18.15 acre tract of land described in the deed to James Richard Morgan, recorded in Volume 4905, Page 3272 of the Official Public Records of Collin County, Texas;

THENCE North 00°34'32" West, with the West line of said Lot 1, Block A and the common East line of said 18.15 acre tract, a distance of 45.00 feet to a point, from which a 1/2" iron rod found at the Northwest corner of said Lot 1, Block A and the common Northeast corner of said 18.15 acre tract bears North 00°34'32" West, a distance of 1234.72 feet;

THENCE North 89°27'29" East, over and across said Lot 1, Block A, a distance of 627.37 feet to a point in the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, from which a capped 5/8" iron rod stamped "JONES CARTER" found at the Northeast corner of said Lot 1, Block A bears North 00°36'49" West, a distance of 1235.91 feet;

THENCE South 00°36'49" East, with the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, a distance of 45.00 feet to the POINT OF BEGINNING and containing 0.65 acres of land more or less.

PLOTTED BY: REGGIE SMITH
 PLOT DATE: 7/15/2020 3:34 AM
 LOCATION: Z:\PROJECTS\MARKETING\CHC PROSPER TRAIL\CADD\EXHIBIT\LAND USE EXHIBIT.DWG
 LAST SAVED: 7/15/2020 3:23 PM



EXISTING ZONING: A
LAND USE: AGRICULTURE
 (CALLED 18.15 ACRES)
 JAMES RICHARD MORGAN
 VOL. 4905, PG. 3272
 O.P.R.C.C.T.

EX. FUTURE LAND USE: LOW DENSITY RESIDENTIAL
PROP. FUTURE LAND USE: LOW DENSITY RESIDENTIAL
EX. LAND USE: SINGLE FAMILY

EX. FUTURE LAND USE: LOW DENSITY RESIDENTIAL
PROP. FUTURE LAND USE: TOLLWAY DISTRICT
EX. LAND USE: SINGLE FAMILY

EXISTING ZONING: SF-15
LAND USE: PLANNED DEV.

LOT 1X
 BLOCK A
 LEGACY GARDENS PHASE 1
 VOL. 2019, PG. 619
 O.P.R.C.C.T.

Being an 8.99 acre tract or parcel of land situated in the Collin County School Land Survey, Abstract Number 147 in Collin County, Texas and being a portion of a Lot 1, Block A of Andrews Addition, an addition to the City of Prosper, Collin County, Texas, recorded in Document Number 2013-68 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

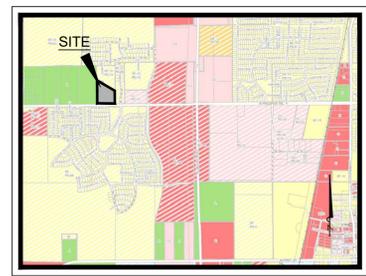
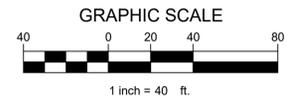
BEGINNING at a 1/2" iron rod found at the Southeast corner of Lot 1, Block A and the common Southwest corner of Lot 1X, Block A of Legacy Gardens Phase 1, an addition to the City of Prosper, Collin County, Texas, recorded in Document Number 2019-619 of the Plat Records of Collin County, Texas and being in the North right-of-way line of Prosper Trail;

THENCE South 69°27'28" West, with the South line of said Lot 1, Block A and the common South line of said Prosper Trail, a distance of 627.40 feet to a 1/2" iron rod found at the Southwest corner of said Lot 1, Block A and being in the East line of a called 18.15 acre tract of land described in the deed to James Richard Morgan, recorded in Volume 4905, Page 3272 of the Official Public Records of Collin County, Texas;

THENCE North 00°34'32" West, with the West line of said Lot 1, Block A and the common East line of said 18.15 acre tract, a distance of 717.56 feet to a point in a creek, from which a 1/2" iron rod found at the Northwest corner of said Lot 1, Block A and the common Northeast corner of said 18.15 acre tract bears North 00°34'32" West, a distance of 562.15 feet;

THENCE over and across said Lot 1, Block A and the meanders of a creek, the following courses and distances:

- North 60°48'07" East, a distance of 12.58 feet;
- North 04°11'23" East, a distance of 7.83 feet;
- North 24°50'28" West, a distance of 5.42 feet;
- North 20°35'40" East, a distance of 11.38 feet;
- North 54°34'57" East, a distance of 99.82 feet;
- South 39°00'23" East, a distance of 39.11 feet;
- North 79°38'35" East, a distance of 51.13 feet;
- South 70°12'50" East, a distance of 40.44 feet;
- South 54°18'10" East, a distance of 29.60 feet;
- South 14°06'27" West, a distance of 77.02 feet;
- South 45°40'20" East, a distance of 56.38 feet;
- North 84°19'42" East, a distance of 17.28 feet;
- North 18°59'05" East, a distance of 16.05 feet;
- South 79°30'01" East, a distance of 20.39 feet;
- South 41°31'09" East, a distance of 26.93 feet;
- South 86°31'59" East, a distance of 19.70 feet;
- South 42°30'45" East, a distance of 27.18 feet;
- South 16°12'13" East, a distance of 54.15 feet;
- South 68°05'04" East, a distance of 76.53 feet;
- South 28°00'03" West, a distance of 16.41 feet;
- South 41°44'33" East, a distance of 41.66 feet;
- South 81°20'09" East, a distance of 37.61 feet;
- North 84°05'05" East, a distance of 49.39 feet;
- North 76°16'59" East, a distance of 35.63 feet;
- South 47°46'30" East, a distance of 64.32 feet;
- South 29°16'22" East, a distance of 6.05 feet to a point in the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, from which a capped 5/8" iron rod stamped "JONES CARTER" found at the Northeast corner of said Lot 1, Block A bears North 00°36'49" West, a distance of 843.44 feet;
- South 00°36'49" East, with the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block, a distance of 437.47 feet to the POINT OF BEGINNING and containing 8.99 acres of land more or less.



VICINITY MAP & EXISTING ZONING MAP

FLOODPLAIN NOTE

ACCORDING TO MAP NO. 48085C0235J, DATED JUNE 2, 2009 OF THE NATIONAL FLOOD INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF COLLIN COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, THIS PROPERTY IS PARTIALLY WITHIN ZONE "X". (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN AND PARTIALLY WITHIN ZONE "X" AREAS DETERMINED TO BE WITHIN THE 0.2% ANNUAL CHANCE FLOODPLAIN). IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

EXISTING ZONING: A (8.99 AC)
PROPOSED ZONING: O (3.42 AC)
PROPOSED ZONING: SF-15 (5.57 AC)

1880 W. PROSPER TRAIL	
CASE # : Z19-0024	
OWNER:	
KIRK & LAURIE ANDREWS 1880 WEST PROSPER TRAIL PROSPER, TX 75078	
CONTACT NAME: KIRK & LAURIE ANDREWS	
APPLICANT/REPRESENTATIVE:	
CLAYMOORE ENGINEERING, INC. 301 S. COLEMAN, SUITE #40 PROSPER, TX 75078 PH: 817.201.6982	
CONTACT NAME: MATT MOORE	
SURVEYOR:	
EAGLE SURVEYING 210 S. ELM STREET, SUITE #104 DENTON, TX 76201 PH: 940.222.3009	
CONTACT NAME: DAN RICK	
LEGAL DESCRIPTION:	
ANDREWS ADDITION LOT 1, BLOCK A 18.439 ACRES	
CITY:	STATE:
PROSPER	TEXAS
COUNTY:	SURVEY:
COLLIN	S10341
ABSTRACT NO.	
A0147	

TEXAS REGISTRATION #14199

 1903 CENTRAL DR. SUITE #1
 PROSPER, TX 75080
 PHONE: 817.201.6982
 WWW.CLAYMOORE.COM

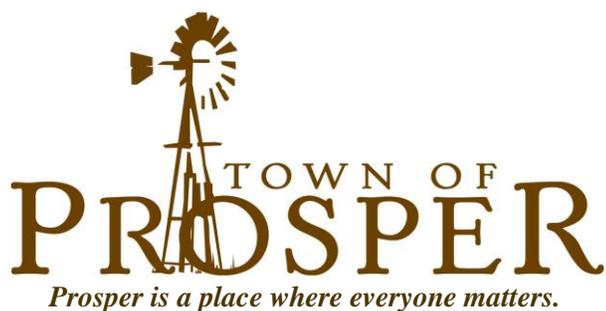
PRELIMINARY
 FOR REVIEW ONLY
 Not for construction purposes.
 CLAYMOORE ENGINEERING
 ENGINEERING AND PLANNING
 CONSULTANTS
 Engineer: MATT MOORE
 P.E. No. 98351 Date 1/16/2020

**1880 W. PROSPER TRAIL
 PROSPER, TX**

NO.	DATE	REVISION	BY

LAND USE EXHIBIT

DESIGN:	ASD
DRAWN:	ASD
CHECKED:	MAM
DATE:	9/3/2019
SHEET	
EX-B	
File No.	



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between The Carnegie Holding Company, LLC, and the Town of Prosper, Texas, related to the CHC Prosper Trail Office development.

Description of Agenda Item:

On February 11, 2020, the Town Council unanimously approved the rezoning request (Z19-0024) related to the CHC Prosper Trail Office development, located on the north side of Prosper Trail, west of Shawnee Trail. The zoning request was approved subject to Town Council approval of a Development Agreement, including architectural standards and building materials. A Development Agreement has been prepared accordingly.

Legal Obligations and Review:

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

Attached Documents:

1. Development Agreement
2. Exhibit A-Property Description
3. Exhibit B-Architectural Standards and Building Materials

Town Staff Recommendation:

Staff recommends the Town Council authorize the Town Manager to execute a Development Agreement between The Carnegie Holding Company, LLC, and the Town of Prosper, Texas, related to the CHC Prosper Trail Office development.

Proposed Motion:

I move to authorize the Town Manager to execute a Development Agreement between The Carnegie Holding Company, LLC, and the Town of Prosper, Texas, related to the CHC Prosper Trail Office development.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and The Carnegie Holding Company, LLC (“Owner”) (individually, a “Party” and collectively, the “Parties”) to be effective (the “Effective Date”) on the latest date executed by a Party.

WHEREAS, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is a limited liability company qualified to do business in the State of Texas; and

WHEREAS, Owner is developing property in the Town for office and single-family residential uses (the “Development”); and

WHEREAS, a legal description of the property for the Development is more particularly described in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, this Agreement seeks to incorporate, in part, the negotiated and agreed upon materials construction and architectural standards for the Development and as contained in this Development Agreement, and to recognize Owner’s reasonable investment-backed expectations in the Development, as more fully described herein; and

WHEREAS, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property structures in accordance with the provisions, standards and notes reflected in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. **Architectural Standards and Building Materials.** For any structure built in the Development following the Effective Date, it shall comply with the applicable requirements contained in Exhibit B, “Architectural Standards and Building Materials,” attached hereto and incorporated by reference, and Owner agrees to construct those structures in compliance therewith. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

2. **Covenant Running with the Land.** The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Owner and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other owners of the Property, regardless of whether this Agreement is expressly referenced therein.

3. **Applicability of Town Ordinances.** Owner shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

4. **Default.** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

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

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

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

If to Owner: The Carnegie Holding Company, LLC
 PO Box 470978
 Fort Worth, Texas 76147
 Attention: Rian Maguire, Manager

With a Copy to: Andy Rogers, Attorney at Law
 Kelly Hart
 201 Main Street, Suite 25
 Fort Worth, Texas 76102

7. **Prevailing Party.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

8. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

9. **Savings/Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

10. **Binding Agreement.** A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either party.

11. **Authority to Execute.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

12. **Filing in Deed Records.** This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Denton County, Texas.

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

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

15. **Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

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

17. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

18. **Exactions/Infrastructure Costs.** Owner has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Owner, regarding Owner's rights under Texas and federal law. Owner hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves its right to appeal the

apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Owner hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

19. Rough Proportionality. Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to roadway or infrastructure requirements imposed by this Agreement. Owner and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement, with respect to roadway or infrastructure requirements imposed by this Agreement.

20. Waiver of Texas Government Code § 3000.001 et seq. With respect to any structures or improvements constructed on the Property pursuant to this Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, effective as of September 1, 2019.

21. Time. Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

22. 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.

23. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.

24. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____

Name: Harlan Jefferson

Title: Town Manager, Town of Prosper

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of February, 2020, by Harlan Jefferson, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

The Carnegie Holding Company, LLC

By: _____
Name: Rian Maguire
Title: Manager

STATE OF TEXAS)
)
COUNTY OF TARRANT)

This instrument was acknowledged before me on the ____ day of February, 2020, by Rian Maguire, in his capacity as Manager of The Carnegie Holding Company, LLC, 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.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A

Item No. 17.

Being an 8.99 acre tract or parcel of land situated in the Collin County School Land Survey, Abstract Number 147 in Collin County, Texas and being a portion of a Lot 1, Block A of Andrews Addition, an addition to the City of Prosper, Collin County, Texas, recorded in Document Number 2013-68 of the Plat Records of Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found at the Southeast corner of Lot 1, Block A and the common Southwest corner of Lot 1X, Block A of Legacy Gardens Phase 1, an addition to the City of Prosper, Collin County, Texas, recorded in Document Number 2019-619 of the Plat Records of Collin County, Texas and being in the North right-of-way line of Prosper Trail;

THENCE South 89°27'29" West, with the South line of said Lot 1, Block A and the common North right-of-way line of said Prosper Trail, a distance of 627.40 feet to a 1/2" iron rod found at the Southwest corner of said Lot 1, Block A and being in the East line of a called 18.15 acre tract of land described in the deed to James Richard Morgan, recorded in Volume 4905, Page 3272 of the Official Public Records of Collin County, Texas;

THENCE North 00°34'32" West, with the West line of said Lot 1, Block A and the common East line of said 18.15 acre tract, a distance of 717.56 feet to a point in a creek, from which a 1/2" iron rod found at the Northwest corner of said Lot 1, Block A and the common Northeast corner of said 18.15 acre tract bears North 00°34'32" West, a distance of 562.15 feet;

THENCE over and across said Lot 1, Block A and the meanders of a creek, the following courses and distances:

North 60°48'07" East, a distance of 12.58 feet;

North 04°11'23" East, a distance of 7.83 feet;

North 24°50'28" West, a distance of 5.42 feet;

North 20°35'40" East, a distance of 11.38 feet;

North 54°34'57" East, a distance of 99.82 feet;

South 39°00'23" East, a distance of 39.11 feet;

North 79°36'35" East, a distance of 51.13 feet;

South 70°12'50" East, a distance of 40.44 feet;

South 54°18'10" East, a distance of 29.60 feet;

South 14°06'27" West, a distance of 77.02 feet;

South 45°40'20" East, a distance of 56.38 feet;

North 84°19'42" East, a distance of 17.28 feet;
North 18°59'05" East, a distance of 16.05 feet;
South 79°30'01" East, a distance of 20.39 feet;
South 41°31'09" East, a distance of 26.93 feet;
South 86°31'59" East, a distance of 19.70 feet;
South 42°30'45" East, a distance of 27.18 feet;
South 16°12'13" East, a distance of 54.15 feet;
South 68°05'04" East, a distance of 76.53 feet;
South 26°00'03" West, a distance of 16.41 feet;
South 41°44'33" East, a distance of 41.66 feet;
South 81°20'00" East, a distance of 37.81 feet;
North 84°05'05" East, a distance of 49.39 feet;
North 76°16'59" East, a distance of 35.63 feet;
South 47°46'30" East, a distance of 64.32 feet;

South 29°16'22" East, a distance of 6.05 feet to a point in the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block A, from which a capped 5/8" iron rod stamped "JONES CARTER" found at the Northeast corner of said Lot 1, Block A bears North 00°36'49" West, a distance of 843.44 feet;

THENCE South 00°36'49" East, with the East line of said Lot 1, Block A and the common West line of said Lot 1X, Block, a distance of 437.47 feet to the POINT OF BEGINNING and containing 8.99 acres of land more or less.



EXHIBIT B**ARCHITECTURAL STANDARDS AND BUILDING MATERIALS****Office Structure(s)**

- A. All exterior facades of any office building or structure, excluding glass windows and doors, shall be constructed using the permitted buildings materials in Sections B and C.
- B. Permitted primary exterior materials are clay fired brick, natural, precast, and manufactured stone, granite, marble, architectural concrete block, split face concrete masonry unit, and architecturally finished concrete tilt wall.
- C. Secondary materials used on the façade of a building are those that comprise a total of ten percent (10%) or less of an elevation area. Permitted secondary materials are all primary materials, aluminum or other metal, cedar or similar quality decorative wood, stucco and high impact exterior insulation and finish systems (EIFS). Stucco and EIFS are only permitted a minimum of nine feet (9') above grade.
- D. No single material shall exceed eighty percent (80%) of an elevation area. A minimum of twenty percent (20%) of the front façade and all facades facing public right-of-way shall be natural or manufactured stone. A minimum of ten percent (10%) of all other facades shall be natural or manufactured stone.
- E. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or less from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a six (6) in twelve (12) inch minimum slope. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or greater from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof, or a flat roof with an articulated parapet wall or cornice. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- F. All buildings with a footprint of ten thousand (10,000) square feet and greater shall incorporate sloped roof elements including, but not limited to pitched roofs on towers or arcades, sloped awnings, sloped parapets. Flat roofs are permitted with an articulated parapet wall or cornice in place of the required sloped roof elements. The sloped elements shall be provided along a minimum of sixty percent (60%) of each wall's length. All sloped roof elements shall have a six (6) in twelve (12) inch minimum slope. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.

- G. All buildings shall be designed to incorporate a form of architectural articulation every thirty feet (30'), both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:
- Canopies, awnings, or porticos;
 - Recesses/projections;
 - Arcades;
 - Arches;
 - Display windows, including a minimum sill height of thirty inches (30");
 - Architectural details (such as tile work and moldings) integrated into the building facade;
 - Articulated ground floor levels or base;
 - Articulated cornice line;
 - Integrated planters or wing walls that incorporate landscape and sitting areas;
 - Offsets, reveals or projecting rib used to express architectural or structural bays; or
 - Varied roof heights.
- H. All buildings shall be architecturally finished on all four (4) sides with same materials, detailing, and features except the rear if two (2) rows of trees are planted on the perimeter behind the building. In this case, the architectural finish must match the remainder of the building in color only. A double row of trees on offset fifty foot (50') centers in a fifteen foot (15') landscape edge, where fifty percent (50%) of the trees are canopy evergreen trees. This is for facades that are not visible from public streets and apply to anchor buildings and attached in line spaces only. This provision does not apply to "out" buildings or pad sites.
- I. Windows shall have a maximum exterior visible reflectivity of ten percent (10%). The intent of this provision is to prevent the safety hazard of light reflecting from the windows on to adjacent roadways.
- J. All buildings within a common development, as shown on a Preliminary Site Plan, shall have similar architectural styles, materials, and colors.

1. Conceptual facade plans and sample boards shall be submitted with the Preliminary Site Plan application for all non-residential uses. The purpose of the conceptual facade plan is to ensure consistency and compatibility for all buildings within a single development. Facade plans will be used only to ensure minimum standards are met.
 2. A final facade plan and sample boards shall be submitted with the Final Site Plan application for all non-residential uses. Facade plans will be used only to ensure minimum standards are met. Facade plans shall be reviewed and approved by the Director of Development Services or his/her designee. The applicant may appeal the decision to the Planning & Zoning Commission and Town Council using the appeal procedure in Chapter 4, Section 1 of the Zoning Ordinance.
- K. All primary and secondary exterior building materials (exclusive of glass) shall be of natural texture and shall be neutrals, creams, or other similar, non-reflective earth tone colors. Bright, reflective, pure tone primary or secondary colors, such as red, orange, yellow, blue, violet, or green are not permitted.
- L. Corporate identities that conflict with the building design criteria shall be reviewed on a case-by-case basis and approved by the Director of Development Services or his/her designee. The applicant may appeal the decision to the Planning & Zoning Commission and Town Council using the appeal procedure in Chapter 4, Section 1 of the Zoning Ordinance.
- M. Exposed conduit, ladders, utility boxes, and drain spouts shall be painted to match the color of the building or an accent color. Natural metal finishes (patina) are an acceptable alternative to paint.

Single-Family Residential Structures

- A. The exterior facade of a residential building or structure, excluding glass windows and doors, shall comply with the following requirements:
1. The exterior facades shall be constructed of one hundred percent (100%) masonry.
 2. Cementitious fiber board is considered masonry, but may only constitute fifty percent (50%) of stories other than the first story.
 3. Cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story.
 4. Any portion of an upper story, excluding windows, that faces a street, public or private open space, public or private parks, or hike and bike trails, shall be 100% masonry and shall not be comprised of cementitious fiber board.

5. The exterior cladding of chimneys shall be brick, natural or manufactured stone, or stucco.
 6. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, or other architectural features approved by the Building Official.
- B. The roof pitches of any building or structure, including garages, shall meet the following roof pitch standards:
1. A minimum of sixty-five percent (65%) of the surface area of composition roofs shall maintain a minimum roof pitch of 8:12.
 2. A minimum of seventy-five percent (75%) of the surface area of clay tile, cement tile, slate or slate products, or metal roofs shall maintain a minimum roof pitch of 3:12.
 3. Wood roof shingles are prohibited.

NOTE: For purposes of this Agreement, “masonry” shall mean stone, stucco, brick, tile, concrete, glass or similar materials of any similar material approved by the Town’s Director of Development Services.

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Conduct a Public Hearing, and consider and act upon an ordinance rezoning 0.4± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street). (Z20-0001).

Description of Agenda Item:

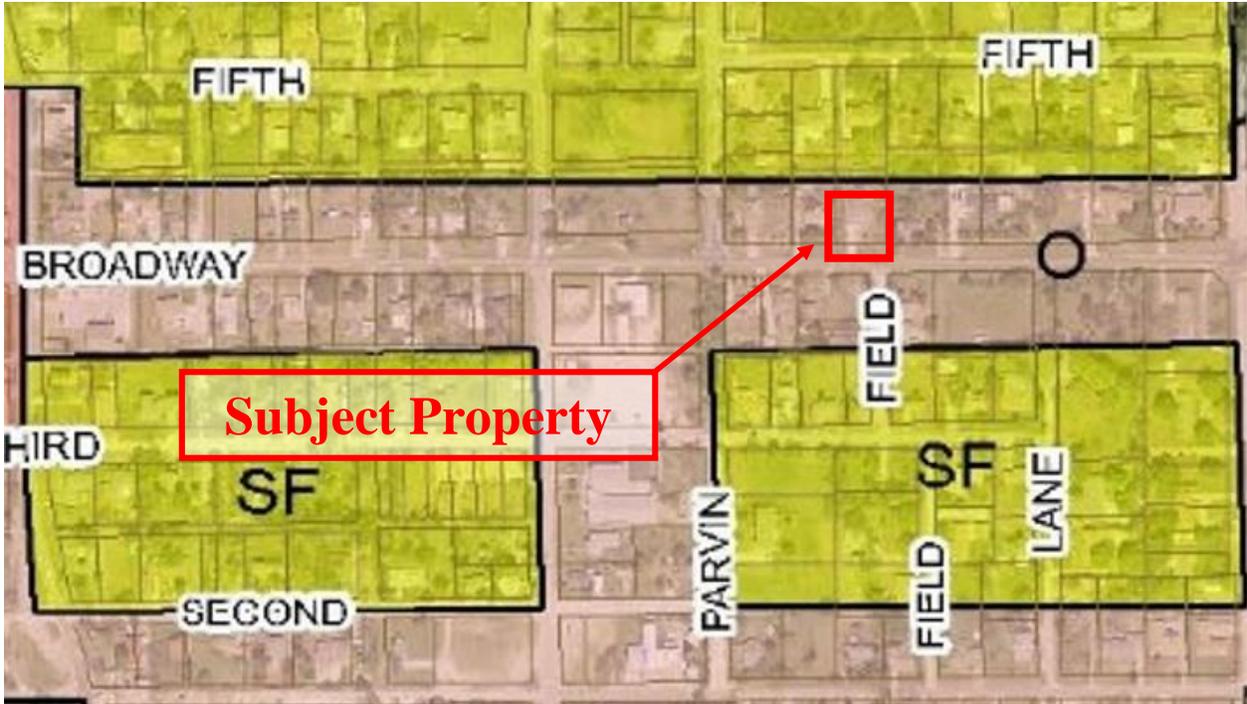
The zoning and land use of the surrounding properties are as follows:

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Single Family-15	Single Family Residential	Old Town Office
North	Single Family-15	Single Family Residential	Old Town Single Family
East	Single Family-15	Single Family Residential	Old Town Office
South	Downtown Office	Vacant	Old Town Office
West	Single Family-15	Single Family Residential	Old Town Office

Requested Zoning – The purpose of this request is to rezone the property to the Downtown Office (DTO) District to allow for the conversion of the existing residential structure into an office. At the time of an application for “straight” zoning, the applicant is not required to submit an exhibit depicting how the property will be specifically developed or elevations of the proposed building. Prior to development, the developer will be required to submit a Site Plan for review and approval by the Planning & Zoning Commission. The applicant has been advised of the standards

necessary for development. The applicant has agreed to enter into a Development Agreement with the Town regarding architecture and building materials. A Development Agreement is also on the Town Council's February 25, 2020, Consent Agenda for consideration.

Future Land Use Plan – The Future Land Use Plan recommends Old Town Office. The proposed zoning request conforms to the Future Land Use Plan.



Thoroughfare Plan – The property has direct access to Broadway Street, a two lane divided roadway. The proposed request conforms to the Thoroughfare Plan.

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

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by State Law. Town staff has received one (1) Public Hearing Notice Reply Form, in support of the request. Town Attorney, Terrence Welch of Brown & Hofmeister, L.L.P., has approved the standard ordinance as to form and legality.

Attached Documents:

- 1. Aerial and Zoning Maps
- 2. Ordinance
- 3. Proposed Exhibit A
- 4. Public Hearing Notice Reply Form

Town Staff Recommendation:

Staff recommends approval of the request to rezone 0.4± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street), subject to approval of a development agreement regarding architecture and building materials.

Proposed Motion:

I move to approve an ordinance rezoning 0.4± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street).

Item No. 18.



Z20-0001

CHURCH ST

PARVIN ST

FIFTH ST

FIFTH ST

BROADWAY ST

CRAIG RD

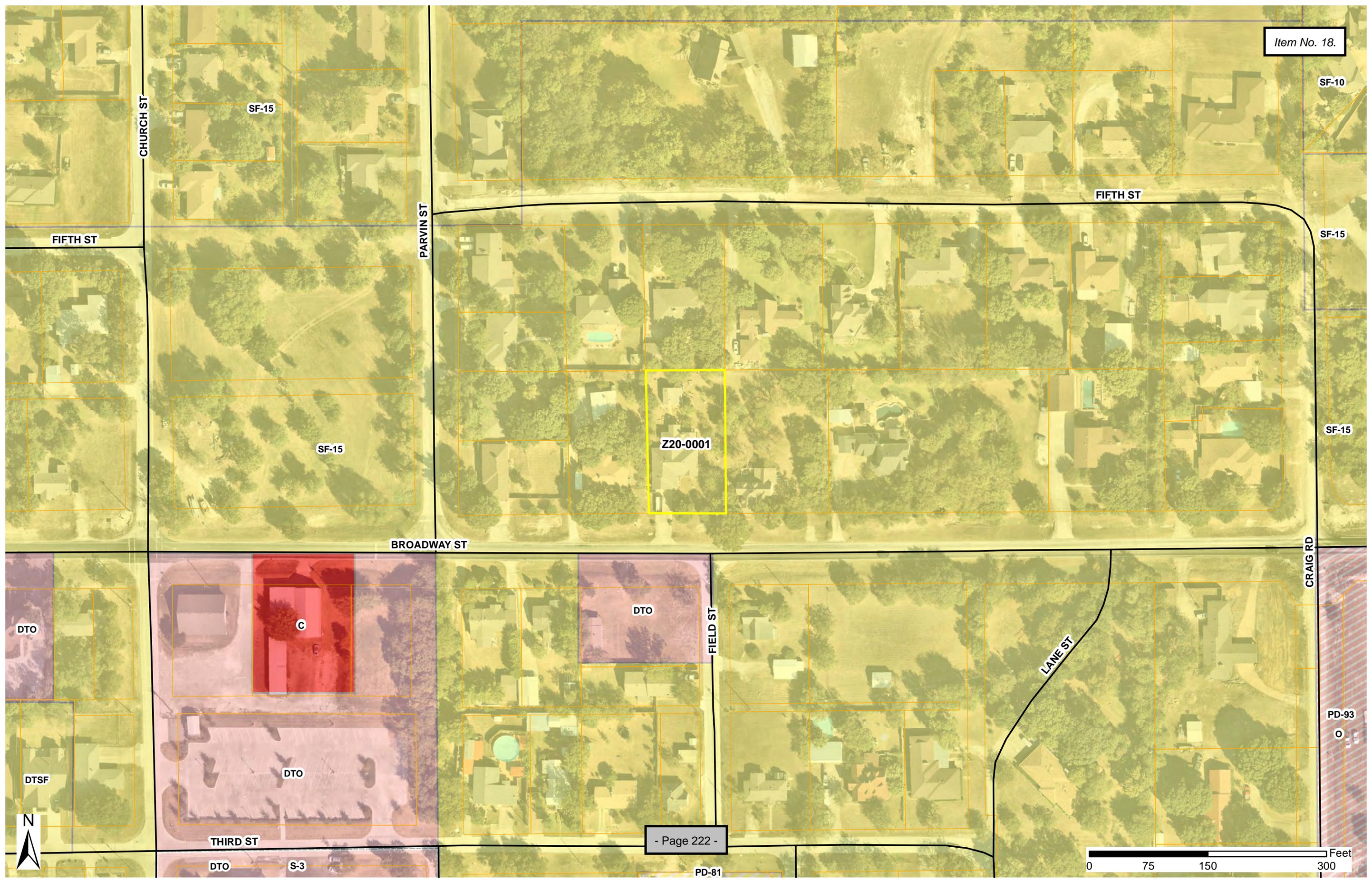
FIELD ST

LANE ST

THIRD ST



Item No. 18.



TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-___

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING PROSPER’S ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 0.41 ACRES, SITUATED IN THE COLLIN COUNTY SCHOOL LAND, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS FROM SINGLE FAMILY-15 (SF-15) TO DOWNTOWN OFFICE (DTO); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Town of Prosper, Texas (“Prosper”) has received a request (Case Z20-0001) from Lifelong Properties, LLC (“Applicant”), to rezone 0.41 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, from Single Family-15 (SF-15) to Downtown Office (DTO) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes; and

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

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

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

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

SECTION 1

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

SECTION 2

Amendment to the Town’s Zoning Ordinance. The Town’s Zoning Ordinance, adopted by Ordinance No. 05-20 is amended as follows: The zoning designation of the below described property containing 0.41 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the “Property”) and all streets, roads, and alleyways contiguous and/or adjacent thereto is hereby zoned as Downtown Office (DTO) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes as if set forth verbatim.

All development plans, standards, and uses for the Property shall comply fully with the requirements of all ordinances, rules, and regulations of the Town of Prosper, as they currently exist or may be amended.

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

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

SECTION 3

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

SECTION 4

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

SECTION 5

Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper’s Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day’s violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6

Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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 7

Savings/Repealing Clause. Prosper’s Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

7509 PENNRIDGE CIRCLE
ROWLETT, TX 75088

SURVEY PLAT



FIRM REGISTRATION NO. 10194366

BARRY S. RHODES Registered Professional Land Surveyor (214) 326-1090

This is to certify that I have, this date, made a careful and accurate survey on the ground of property located at No. 511 E. BROADWAY STREET, in the Town of PROSPER, Texas.

Being all that certain lot, tract or parcel of land situated in the Collin County School Land Survey, Abstract No. 147, and being Lot 8 of the Phenix Addition, Phase 11 (an un-recorded Plat) in the Town of Prosper, Collin County, Texas and being the same land described in deed to Florentino San Miguel and Aurora San Miguel, recorded in Volume 1311, Page 899, Deed Records, Collin County, Texas (D.R.C.C.T.) and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for corner in the North line of E. Broadway Street, at the Southwest corner of R&R Estates, an Addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Cabinet L, Page 840, Plat Records, Collin County, Texas (P.R.C.C.T.) and at the Southeast corner of said Miguel tract;

THENCE South 89 degrees 22 minutes 50 seconds West, with the said North line of E. Broadway Street, a distance of 19.80 feet to a point for corner;

THENCE North 89 degrees 39 minutes 10 seconds West, with the said North line of E. Broadway Street, a distance of 80.21 feet to a 1/2 inch iron rod found for corner at the Southeast corner of a tract of land described in deed to Christina Blythe, recorded in Instrument No. 20121218001610110 (D.R.C.C.T.);

THENCE North 00 degrees 40 minutes 45 seconds West, a distance of 180.35 feet to a 1/2 inch yellow capped iron rod set for corner at the Northeast corner of said Blythe tract, at the Southeast corner of a tract of land described in deed to Gary Paul Baczkowski, recorded in Instrument No. 20080811000971930 (D.R.C.C.T.), and at the Southwest corner of a tract of land described in deed to Timothy S. Hardy and spouse, Robin A. Hardy, recorded in Volume 4572, Page 2427 (D.R.C.C.T.);

THENCE North 89 degrees 51 minutes 55 seconds East, a distance of 100.00 feet to a point for corner, at the Southeast corner of said Hardy tract, at the Southwest corner of a tract of land described in deed to David C. Hamby, recorded in Instrument No. 20070102000003930 (D.R.C.C.T.), at the Northwest corner of said R&R Estates, from which a 1/2 inch iron rod found bears South 05 degrees 58 minutes 09 seconds West, a distance of 0.48 feet for witness;

THENCE South 00 degrees 40 minutes 44 seconds East, a distance of 180.86 feet to the PLACE OF BEGINNING and containing 18,073 square feet or 0.41 of an acre of land.

EXHIBIT A
CASE NO. Z20-0001

THE ABOVE DESCRIBED PROPERTY DOES NOT LIE IN A FLOOD HAZARD AREA ACCORDING TO THE F.E.M.A. FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 48085C0235J

THE SURVEY IS HEREBY ACCEPTED WITH THE DISCREPANCIES, CONFLICTS, OR SHORTAGES IN AREA OF BOUNDARY LINES, ENCROACHMENTS, PROTRUSIONS, OR OVERLAPPING OF IMPROVEMENTS SHOWN.

x. _____
x. _____

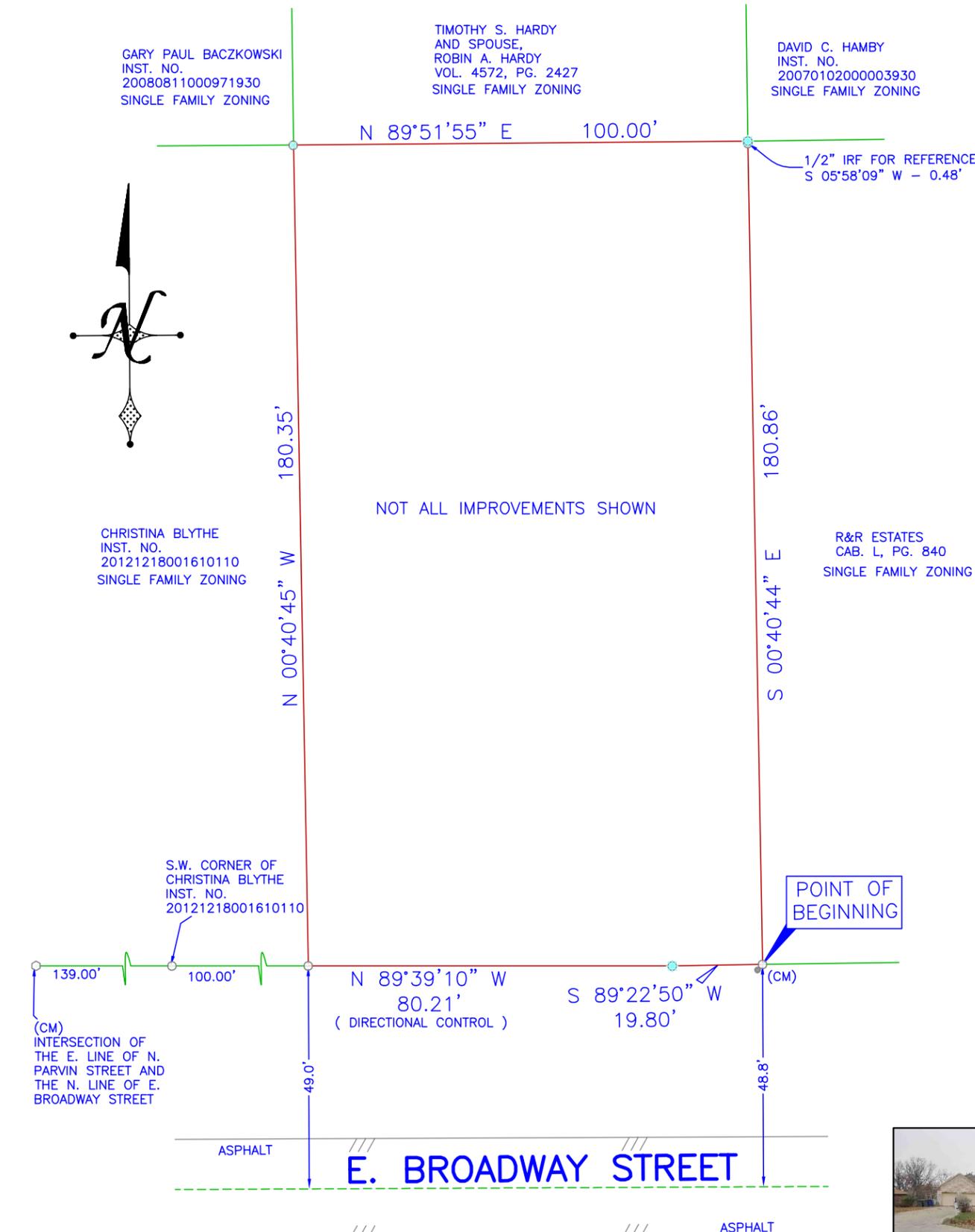
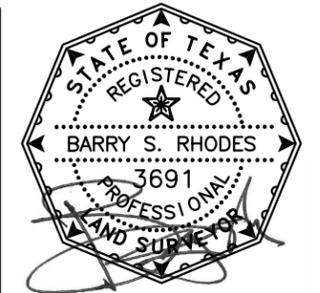
The plat hereon is true, correct, and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat: the size, location and type of building and improvements are as shown, all improvements being within the boundaries of the property, set back from property lines the distance indicated, or visible and apparent easements.

TITLE AND ABSTRACTING WORK FURNISHED BY REPUBLIC TITLE
THERE ARE NO ENCROACHMENTS, CONFLICTS, OR PROTRUSIONS, EXCEPT AS SHOWN.

Scale: 1" = 30'
Date: 12/16/2019
G. F. No.: 1012-285680-RTT
Job no.: 201909193
Drawn by: CMR

USE OF THIS SURVEY FOR ANY OTHER PURPOSE OR OTHER PARTIES SHALL BE AT THEIR RISK AND UNDERSIGNED IS NOT RESPONSIBLE TO OTHER FOR ANY LOSS RESULTING THEREFROM.
THIS SURVEY WAS PERFORMED EXCLUSIVELY FOR REPUBLIC TITLE

LEGEND	
WOOD FENCE	TEXT
CHAIN LINK	IMPROVEMENTS
IRON FENCE	BOUNDARY LINE
WIRE FENCE	EASEMENT/SETBACK
CM	CONTROLLING MONUMENT
MRD	MONUMENTS OF RECORD DIGNITY
○	1/2" IRON ROD FOUND
○	1/2" YELLOW-CAPPED IRON ROD SET
□	SET 'X'
□	FOUND 'X'
○	5/8" IRON ROD FOUND
○	PK NAIL FOUND
○	CABLE
○	CLEAN OUT
○	GAS METER
○	FIRE HYDRANT
○	LIGHT POLE
○	MANHOLE
○	WATER METER
○	WATER VALVE
○	ELECTRIC
○	POOL EQUIP
○	POWER POLE
○	TELEPHONE
○	UNLESS OTHERWISE NOTED



NOT ALL IMPROVEMENTS SHOWN

POINT OF BEGINNING



**DEVELOPMENT SERVICES
DEPARTMENT**
250 W. First Street
Prosper, TX 75078
Phone: 972-346-3502

REPLY FORM

SUBJECT:

Zoning Case Z20-0001: The Town of Prosper has received A request to rezone 0.4± acres from Single Family-15 (SF-15) to Downtown Office (DTO).

LOCATION OF SUBJECT PROPERTY:

The property is located on the north side of Broadway Street, east of Parvin Street.

- I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition.
- I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

In 508 E. Broadway St.
Vacant Lot

I was sent the enclosed sheet with
info on 511 E. Broadway

Christie Mason
Name (please print)

Christie Mason
Signature

25570 Springtide Ct
Address

1.28.2020
Date

Bonita Springs, Florida
City, State, and Zip Code 34135

Christiejm1@yahoo.com
E-mail Address

PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Development Agreement between Lifelong Properties, LLC, and the Town of Prosper, Texas, related to a downtown office located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street).

Description of Agenda Item:

On February 4, 2020, the Planning & Zoning Commission recommended unanimous approval of the rezoning request (Z20-0001) of 511 E. Broadway Street from Single Family-15 (SF-15) to Downtown Office (DTO). In conjunction with the request, the applicant agreed to enter into a Development Agreement related to construction materials and architectural features. The proposed rezoning request and ordinance are also on the Town Council’s February, 25, 2020, Consent Agenda for consideration. In conjunction with the rezoning request, a Development Agreement has been prepared accordingly.

Legal Obligations and Review:

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

Attached Documents:

- 1. Development Agreement
- 2. Exhibit A-Property Description

Town Staff Recommendation:

Town Staff recommends authorizing the Town Manager to execute a Development Agreement between Lifelong Properties, LLC, and the Town of Prosper, Texas, related to a downtown office located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street).

Proposed Motion:

I move to authorize the Town Manager to execute a Development Agreement between Lifelong Properties, LLC, and the Town of Prosper, Texas, related to a downtown office located on the north side of Broadway Street, east of Parvin Street (511 E. Broadway Street).

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Lifelong Properties, LLC (“Owner”) (individually, a “Party” and collectively, the “Parties”) to be effective (the “Effective Date”) on the latest date executed by a Party.

WHEREAS, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is the owner of property located at 511 Broadway in the Town, the legal description of which is more particularly described in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, Owner has requested to rezone the Property from Single Family-15 (SF-15) to Downtown Office (DTO); and

WHEREAS, this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in the underlying zoning ordinance, as may be amended, and/or this Development Agreement, to recognize Owner’s reasonable investment-backed expectations in the Property, as may be amended, and as more fully described herein; and

WHEREAS, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property structures in accordance with the provisions, standards and notes reflected in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. **Architectural Standards and Building Materials.** For any structure built on the Property following the Effective Date, it shall comply with the applicable requirements contained in Exhibit B, “Architectural Standards and Building Materials,” and Exhibit C, “Exterior Building Materials,” attached hereto and incorporated by reference, and Owner agrees to construct those structures in compliance therewith. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

2. **Covenant Running with the Land.** The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Owner and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the

Property or any portion thereof hereafter made by any other owners of the Property, regardless of whether this Agreement is expressly referenced therein.

3. **Applicability of Town Ordinances.** Owner shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

4. **Default.** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

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

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

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

If to Owner: Lifelong Properties, LLC
212 E. Broadway Street
Prosper, Texas 75078

7. **Prevailing Party.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

8. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

9. **Savings/Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

10. **Binding Agreement.** A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either party.

11. **Authority to Execute.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

12. **Filing in Deed Records.** This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Collin County, Texas.

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

14. **Notification of Sale or Transfer; Assignment of Agreement.** Owner shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Owner has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Owner. Each assignment shall be in writing executed by Owner and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor owner assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject

of such assignment, effective upon receipt of the assignment by the Town. No assignment by Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain true and correct copies of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

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

16. Effect of Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

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

18. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

19. Exactions/Infrastructure Costs. Owner has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Owner, regarding Owner's rights under Texas and federal law. Owner hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Owner hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

20. Rough Proportionality. Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to roadway or infrastructure requirements imposed by this Agreement. Owner and the Town further agree to waive and release all claims one may

have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Agreement, with respect to roadway or infrastructure requirements imposed by this Agreement.

21. Waiver of Texas Government Code § 3000.001 et seq. With respect to any structures or improvements constructed on the Property pursuant to this Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, effective as of September 1, 2019.

22. Time. Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

23. 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.

24. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.

25. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____

Name: Harlan Jefferson

Title: Town Manager, Town of Prosper

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2020, by Harlan Jefferson, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

My Commission Expires: _____

OWNER:
LIFELONG PROPERTIES, LLC

By: _____

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ___ day of _____, 2020, by _____, 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.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A
(Property Description)

EXHIBIT B**ARCHITECTURAL STANDARDS AND BUILDING MATERIALS**

- A. All exterior facades, excluding glass windows and doors, shall be constructed using the permitted buildings materials in Sections B and C.
- B. Permitted primary exterior materials are clay fired brick, natural, precast, and manufactured stone, granite, marble, architectural concrete block, split face concrete masonry unit, architecturally finished concrete tilt wall and stucco.
- C. Secondary materials used on the façade of a building are those that comprise a total of ten percent (10%) or less of an elevation area. Permitted secondary materials are all primary materials, aluminum or other metal, cedar or similar quality decorative wood, and high impact exterior insulation and finish systems (EIFS).
- D. No single material shall exceed eighty percent (80%) of an elevation area. A minimum of twenty percent (20%) of the front façade and all facades facing public right-of-way shall be natural or manufactured stone. A minimum of ten percent (10%) of all other facades shall be natural or manufactured stone.
- E. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or less from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a six (6) in twelve (12) inch minimum slope. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or greater from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof, or a flat roof with an articulated parapet wall or cornice. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- F. All buildings with a footprint of ten thousand (10,000) square feet and greater shall incorporate sloped roof elements including, but not limited to pitched roofs on towers or arcades, sloped awnings, sloped parapets. Flat roofs are permitted with an articulated parapet wall or cornice in place of the required sloped roof elements. The sloped elements shall be provided along a minimum of sixty percent (60%) of each wall's length. All sloped roof elements shall have a six (6) in twelve (12) inch minimum slope. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- G. All buildings shall be designed to incorporate a form of architectural articulation every thirty feet (30'), both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:
- Canopies, awnings, or porticos;

- Recesses/projections;
 - Arcades;
 - Arches;
 - Display windows, including a minimum sill height of thirty inches (30”);
 - Architectural details (such as tile work and moldings) integrated into the building facade;
 - Articulated ground floor levels or base;
 - Articulated cornice line;
 - Integrated planters or wing walls that incorporate landscape and sitting areas;
 - Offsets, reveals or projecting rib used to express architectural or structural bays; or
 - Varied roof heights.
- H. All buildings shall be architecturally finished on all four (4) sides with same materials, detailing, and features except the rear if two (2) rows of trees are planted on the perimeter behind the building. In this case, the architectural finish must match the remainder of the building in color only. A double row of trees on offset fifty foot (50’) centers in a fifteen foot (15’) landscape edge, where fifty percent (50%) of the trees are canopy evergreen trees. This is for facades that are not visible from public streets and apply to anchor buildings and attached in line spaces only. This provision does not apply to “out” buildings or pad sites.
- I. All primary and secondary exterior building materials (exclusive of glass) shall be of natural texture and shall be neutrals, creams, or other similar, non-reflective earth tone colors. Bright, reflective, pure tone primary or secondary colors, such as red, orange, yellow, blue, violet, or green are not permitted.
- J. Corporate identities that conflict with the building design criteria shall be reviewed on a case-by-case basis and approved by the Director of Development Services or his/her designee. The applicant may appeal the decision to the Planning & Zoning Commission and Town Council using the appeal procedure in Chapter 4, Section 1 of the Zoning Ordinance.

EXHIBIT C**EXTERIOR BUILDING MATERIALS**

The exterior facades of a main building or structure, excluding glass windows and doors, shall comply with the following requirements:

- A. The exterior facades shall be constructed of one hundred percent (100%) masonry, unless otherwise specified.
- B. Cementitious fiber board is considered masonry, but may only constitute fifty percent (50%) of stories other than the first story.
- C. Cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story.
- D. Unless an alternate material is approved by the Town Council, any portion of an upper story, excluding windows, that faces a street, public or private open space, public or private parks, or hike and bike trails, shall be 100% masonry and shall not be comprised of cementitious fiber board.
- E. Unless an alternate material is approved by the Town Council, the exterior cladding of chimneys shall be brick, natural or manufactured stone, or stucco.
- F. Cementitious fiber board may be used on up to ninety (90) percent of a structure.
- G. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, or other architectural features approved by the Building Official.
- H. The roof pitches of a main building or structure, including garages, shall meet the following roof pitch standards: (a) a minimum of sixty-five percent (65%) of the surface area of composition roofs shall maintain a minimum roof pitch of 8:12; (b) a minimum of seventy-five percent (75%) of the surface area of clay tile, cement tile, slate or slate products, or metal roofs shall maintain a minimum roof pitch of 3:12; and (c) wood roof shingles are prohibited.

7509 PENNRIDGE CIRCLE
ROWLETT, TX 75088

SURVEY PLAT



FIRM REGISTRATION NO. 10194366

BARRY S. RHODES Registered Professional Land Surveyor (214) 326-1090

This is to certify that I have, this date, made a careful and accurate survey on the ground of property located at No. 511 E. BROADWAY STREET, in the Town of PROSPER, Texas.

Being all that certain lot, tract or parcel of land situated in the Collin County School Land Survey, Abstract No. 147, and being Lot 8 of the Phenix Addition, Phase 11 (an un-recorded Plat) in the Town of Prosper, Collin County, Texas and being the same land described in deed to Florentino San Miguel and Aurora San Miguel, recorded in Volume 1311, Page 899, Deed Records, Collin County, Texas (D.R.C.C.T.) and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found for corner in the North line of E. Broadway Street, at the Southwest corner of R&R Estates, an Addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Cabinet L, Page 840, Plat Records, Collin County, Texas (P.R.C.C.T.) and at the Southeast corner of said Miguel tract;

THENCE South 89 degrees 22 minutes 50 seconds West, with the said North line of E. Broadway Street, a distance of 19.80 feet to a point for corner;

THENCE North 89 degrees 39 minutes 10 seconds West, with the said North line of E. Broadway Street, a distance of 80.21 feet to a 1/2 inch iron rod found for corner at the Southeast corner of a tract of land described in deed to Christina Blythe, recorded in Instrument No. 20121218001610110 (D.R.C.C.T.);

THENCE North 00 degrees 40 minutes 45 seconds West, a distance of 180.35 feet to a 1/2 inch yellow capped iron rod set for corner at the Northeast corner of said Blythe tract, at the Southeast corner of a tract of land described in deed to Gary Paul Baczkowski, recorded in Instrument No. 20080811000971930 (D.R.C.C.T.), and at the Southwest corner of a tract of land described in deed to Timothy S. Hardy and spouse, Robin A. Hardy, recorded in Volume 4572, Page 2427 (D.R.C.C.T.);

THENCE North 89 degrees 51 minutes 55 seconds East, a distance of 100.00 feet to a point for corner, at the Southeast corner of said Hardy tract, at the Southwest corner of a tract of land described in deed to David C. Hamby, recorded in Instrument No. 20070102000003930 (D.R.C.C.T.), at the Northwest corner of said R&R Estates, from which a 1/2 inch iron rod found bears South 05 degrees 58 minutes 09 seconds West, a distance of 0.48 feet for witness;

THENCE South 00 degrees 40 minutes 44 seconds East, a distance of 180.86 feet to the PLACE OF BEGINNING and containing 18,073 square feet or 0.41 of an acre of land.

EXHIBIT A

THE ABOVE DESCRIBED PROPERTY DOES NOT LIE IN A FLOOD HAZARD AREA ACCORDING TO THE F.E.M.A. FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO.

48085C0235J

THE SURVEY IS HEREBY ACCEPTED WITH THE DISCREPANCIES, CONFLICTS, OR SHORTAGES IN AREA OF BOUNDARY LINES, ENCROACHMENTS, PROTRUSIONS, OR OVERLAPPING OF IMPROVEMENTS SHOWN.

x. _____
x. _____

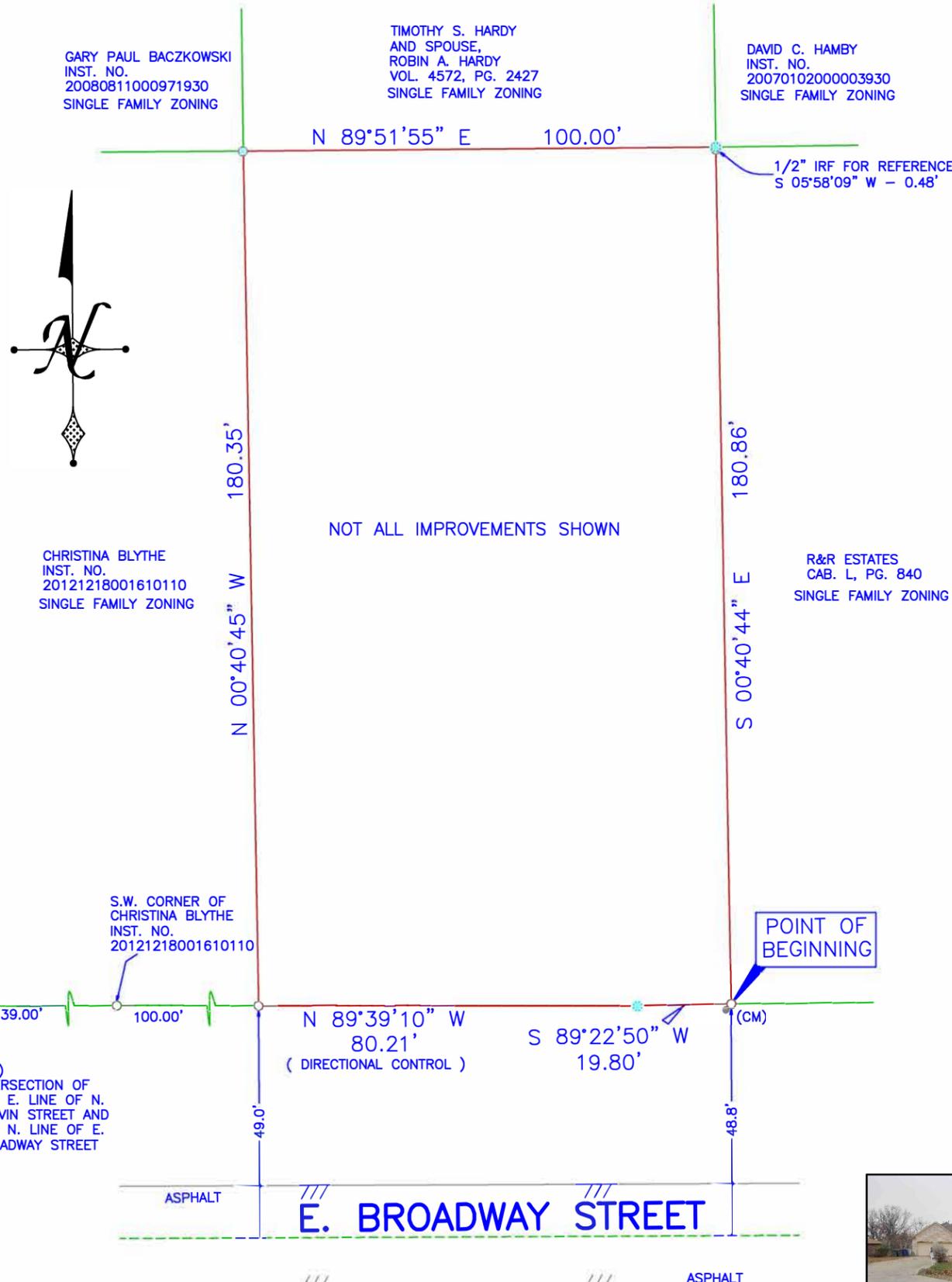
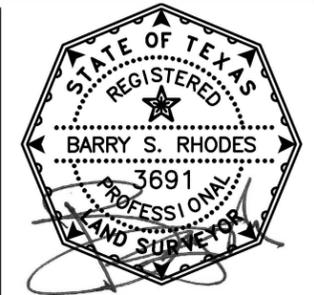
The plat hereon is true, correct, and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat: the size, location and type of building and improvements are as shown, all improvements being within the boundaries of the property, set back from property lines the distance indicated, or visible and apparent easements.

TITLE AND ABSTRACTING WORK FURNISHED BY REPUBLIC TITLE
THERE ARE NO ENCROACHMENTS, CONFLICTS, OR PROTRUSIONS, EXCEPT AS SHOWN.

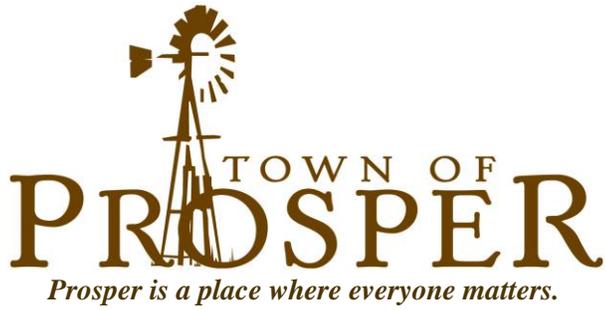
Scale: 1" = 30'
Date: 12/16/2019
No.: 1012-285680-RTT
no.: 201909193
USE OF THIS SURVEY FOR ANY OTHER PURPOSE OR OTHER PARTIES SHALL BE AT THEIR RISK AND UNDERSIGNED IS NOT RESPONSIBLE TO OTHER FOR ANY LOSS RESULTING THEREFROM.
THIS SURVEY WAS PERFORMED EXCLUSIVELY FOR REPUBLIC TITLE

Drawn by: CMR

LEGEND	
WOOD FENCE	TEXT
CHAIN LINK	IMPROVEMENTS
IRON FENCE	BOUNDARY LINE
WIRE FENCE	EASEMENT/SETBACK
	RESIDENCE
CM	CONTROLLING MONUMENT
MRD	MONUMENTS OF RECORD DIGNITY
○	1/2" IRON ROD FOUND
○	1/2" YELLOW-CAPPED IRON ROD SET
□	SET 'X'
□	FOUND 'X'
○	5/8" IRON ROD FOUND
○	PK NAIL FOUND
⊕	ELECTRIC
⊕	CABLE
⊕	PE - POOL EQUIP
⊕	CLEAN OUT
⊕	POWER POLE
⊕	GAS METER
⊕	TELEPHONE
⊕	FIRE HYDRANT
⊕	WATER METER
⊕	LIGHT POLE
⊕	MANHOLE
⊕	WATER VALVE
()	(UNLESS OTHERWISE NOTED)



PLANNING



To: Mayor and Town Council
From: Alex Glushko, AICP, Planning Manager
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – February 25, 2020

Agenda Item:

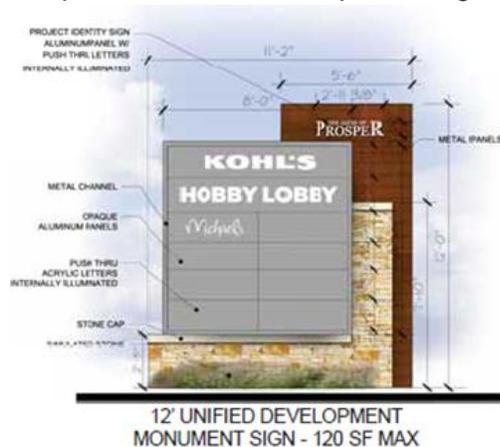
Conduct a Public Hearing, and consider and act upon a request for a Sign Waiver for Gates of Prosper, Phase 2, located on the southwest corner of Preston Road and Lovers Lane, generally to allow for signage consistent with the signage located in Gates of Prosper, Phase 1. (MD20-0001).

Description of Agenda Item:

The applicant is proposing a Sign Waiver for Gates of Prosper, Phase 2, in order to allow for signage consistent with existing signage located on the east side of Preston Road in Gates of Prosper, Phase 1. The applicant is proposing a Waiver for two (2) specific items

- *Masonry Border* – The Sign Ordinance requires Unified Development Signs and Monument Signs to contain a minimum one-foot (1') masonry with mortar border around all sides of signage. The applicant is proposing to waive the requirement for a masonry border, in order to allow signage consistent with signage in Phase 1, as shown below.

Proposed Unified Development Sign



Proposed Monument Sign



The proposed unified development signs and monument signs meet all other Town standards.

- *Identity Signage* – The Sign Ordinance does not recognize this type of sign. On April 10, 2018, Town Council approved Identity Signage located on both sides of Richland Boulevard, on the east side of Preston Road. With this request, the applicant is proposing the same signage on both sides of Richland Boulevard, on the west side of Preston Road. The proposed signs are consistent with the signage in Phase 1, as shown below.



Staff recommends approval of the request as submitted.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by the Sign Ordinance. Staff has not received any Public Hearing Notice Reply Forms.

Attached Documents:

1. Location map
2. Site Plan and Sign Drawing

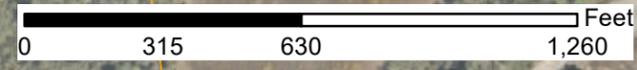
Town Staff Recommendation:

Staff recommends the Town Council approve the request for a Sign Waiver for Gates of Prosper, Phase 2, located on the southwest corner of Preston Road and Lovers Lane, generally to allow for signage consistent with signage located in Phase 1.

Proposed Motion:

I move to approve the request for a Sign Waiver for Gates of Prosper, Phase 2, located on the southwest corner of Preston Road and Lovers Lane, generally to allow for signage consistent with signage located in Phase 1.

MD20-0001



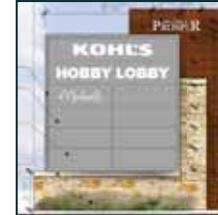
Sign Coordination Plan

16 LOTS TOTAL
16 SIGNS TOTAL

SIGN TYPES:

- TYPE A @ 12'-0"**
 - UNIFIED DEVELOPMENT MONUMENT SIGN
 - PROVIDED **6 SIGNS:**

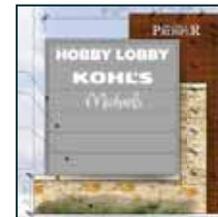
A C G J O P



Signs C & G



Sign J



Sign O

- TYPE B @ 8'-0"**
 - MONUMENT SIGN
 - PROVIDED **10 SIGNS:**

B E F H I K L M N Q



TYPE B // Sign B, L, M, N: TO PROVIDE FOR ONE TENANT SIGN



* TYPE B-1 // Sign E, F, H, I, K, Q: TO PROVIDE FOR TWO TENANT SIGNS

- TYPE C @ 5'-0"**
 - DEVELOPMENT IDENTITY "GATES OF PROSPER" SIGN
 - PROVIDED **2 SIGNS:**

R S



SITE AREA: 24.48 AC
BUILDING SF: 152,297 SF
(+/- 6,856 SF PATIO)
(+/- 36,500 SF REST. MAX)
904 SP PROV. - 5.94/1000

SITE AREA: 4.42 AC
BUILDING SF: 15,324 SF
& 4,000 SF PATIO
(+/- 15,324 SF REST. &
5,500 SF PATIO MAX)
209 SP PROV.

DISTANCES: (Adjacent lots)

A to B	650'
B to C	130'
C to E	1175'
E to F	145'
F to G	170'
G to H	820'
H to I	270'
I to J	85'
J to K	100'
K to L	180'
L to M	100'
M to N	125'
N to O	240'
O to P	880'
P to A	750'
G to Q	950'
H to Q	775'

DISTANCES: (UDSs)

A to C	790'
C to G	1525'
G to J	1080'
J to O	770'
O to P	880'
P to A	750'

* D not used

* D not used

Per currently adopted Sign Ordinance:

- 1 sign per lot, allows for 16 signs which matches number of lots in development.
- 75' separation between signs on adjacent lots (single or multi tenant)
- 75' separation between UDSs and single-tenant or multi-tenant monument signs.
- 750' separation between UDSs.

Enlarged Plan

LEGEND:

- Sign Location
- ▲ Type A: Unified Development
- Type B: Monument
- Type C: "Gates of Prosper" Development Identity Sign



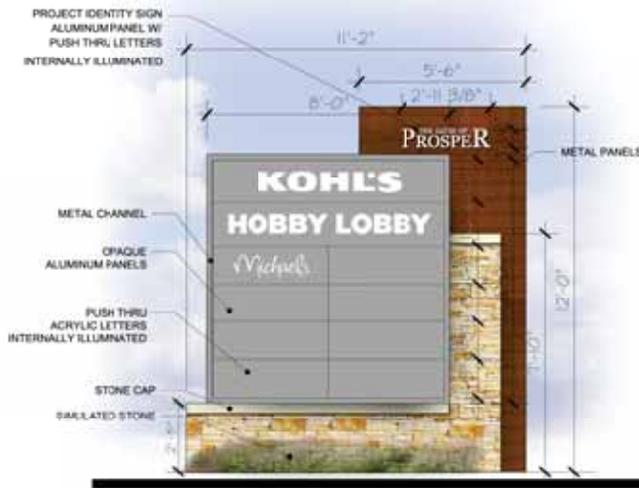
TYPE A - UNIFIED DEVELOPMENT MONUMENT SIGN
PROVIDED 6 SIGNS

Per code:

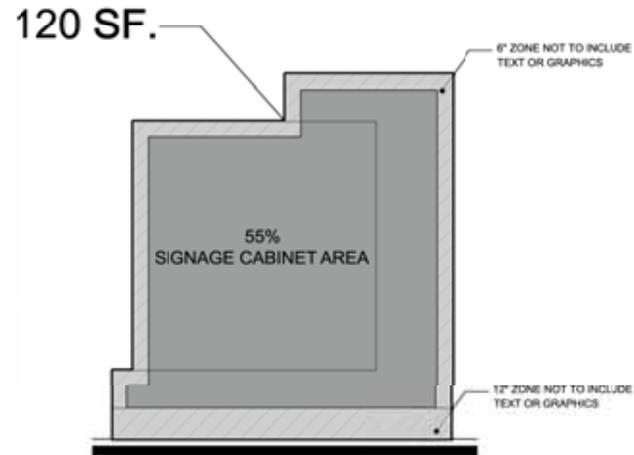
1. 15' minimum setback required.
2. 24" minimum base required.
3. 1' masonry with mortar border around all sides required.

Deviation from code:

1. Sign design does not meet 1' masonry with mortar border around all sides.



12' UNIFIED DEVELOPMENT
 MONUMENT SIGN - 120 SF MAX



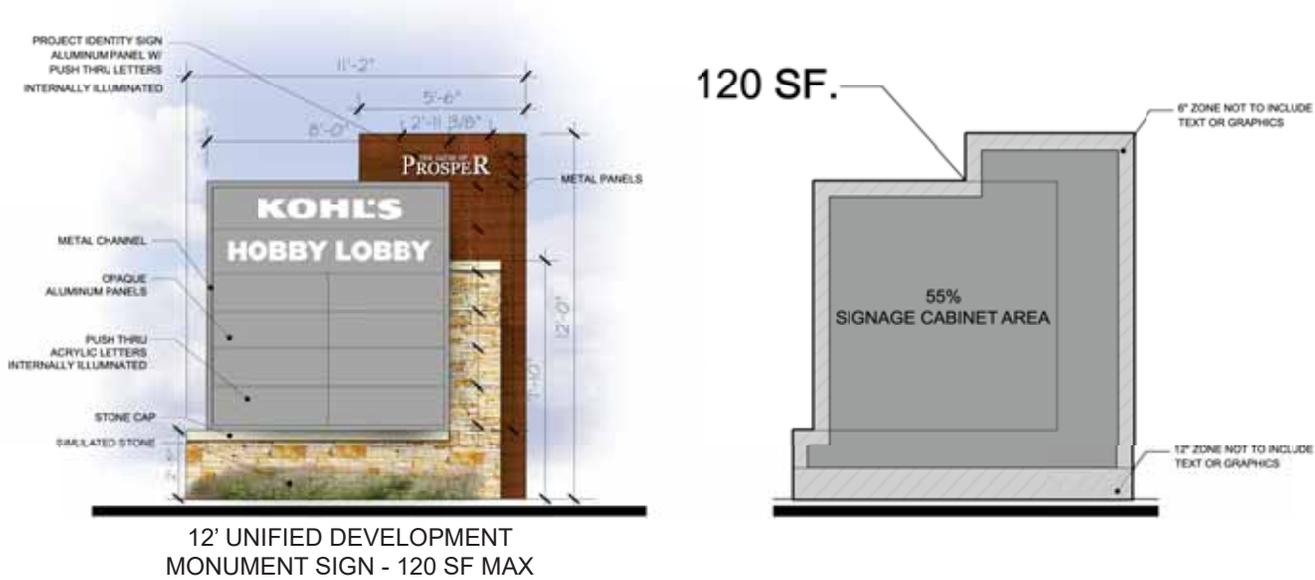
TYPE A - UNIFIED DEVELOPMENT MONUMENT SIGN
PROVIDED 6 SIGNS

Per code:

1. 15' minimum setback required.
2. 24" minimum base required.
3. 1' masonry with mortar border around all sides required.

Deviation from code:

1. Sign design does not meet 1' masonry with mortar border around all sides.



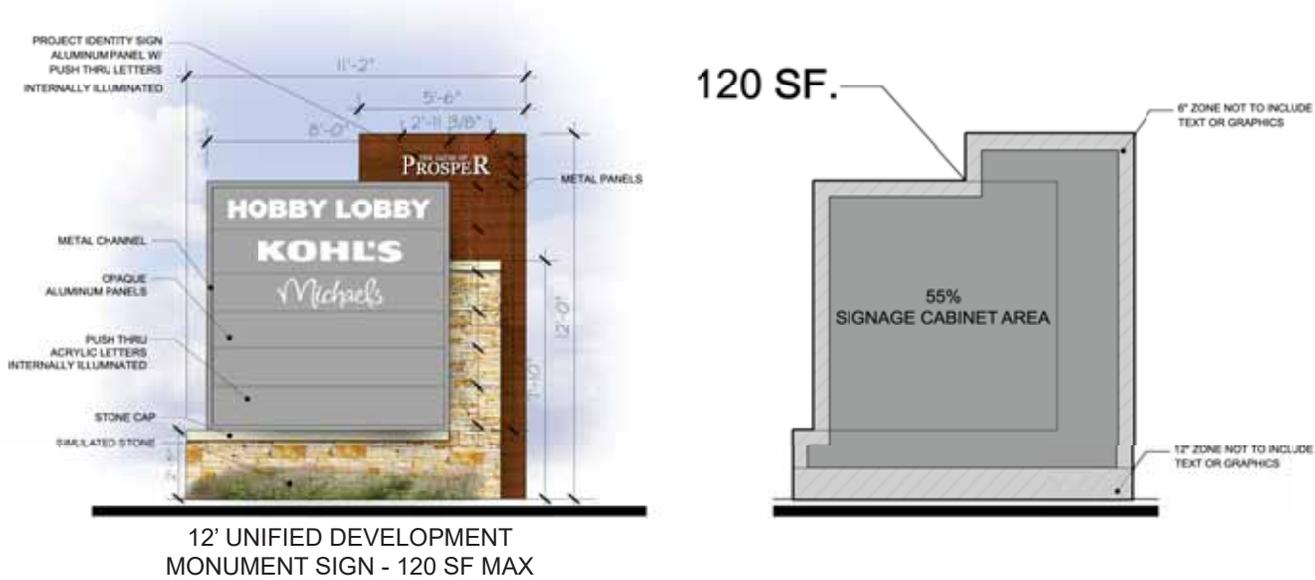
TYPE A - UNIFIED DEVELOPMENT MONUMENT SIGN
PROVIDED 6 SIGNS

Per code:

1. 15' minimum setback required.
2. 24" minimum base required.
3. 1' masonry with mortar border around all sides required.

Deviation from code:

1. Sign design does not meet 1' masonry with mortar border around all sides.



TYPE B - MONUMENT SIGN
 PROVIDED **10 SIGNS**

Elevations / Sign Details
Sign Type B: Signage for one tenant
Sign B, L, M, N

Per code:

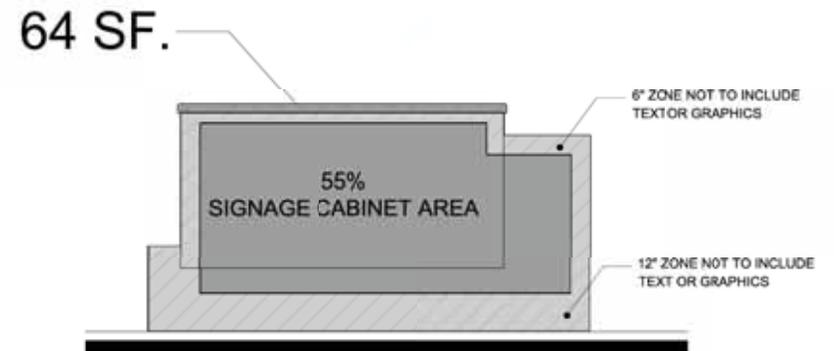
1. 15' minimum setback required.
2. 24" minimum base required.
3. 1' masonry with mortar border around all sides required.

Deviation from code:

1. Sign design does not meet 1' masonry with mortar border around all sides.



MONUMENT SIGN - 64 SF

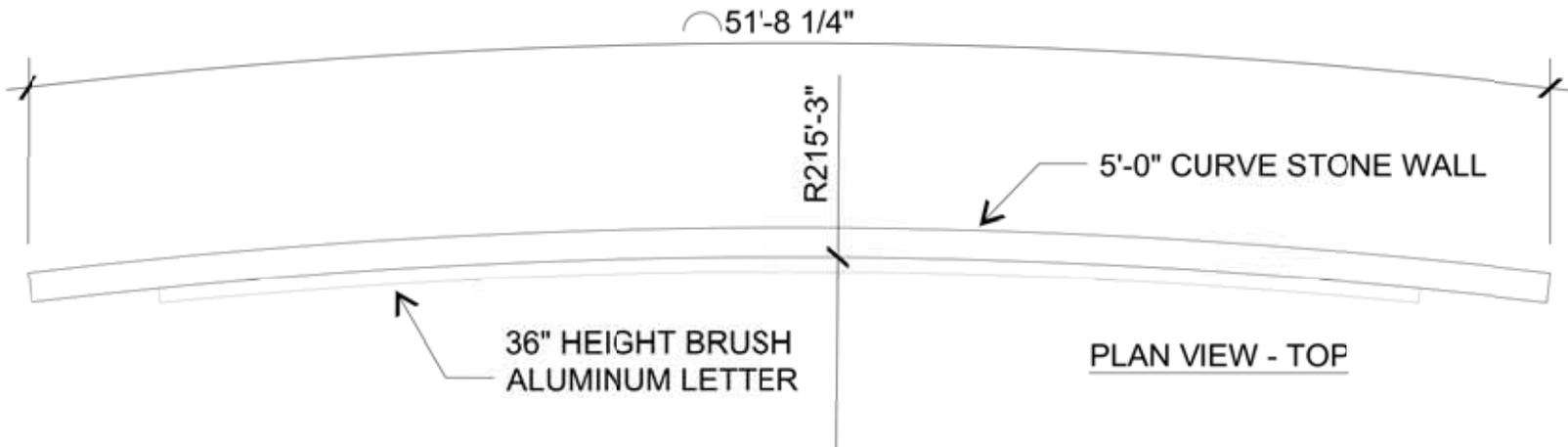


TYPE C - DEVELOPMENT IDENTITY SIGN
PROVIDED 2 SIGNS

Elevations /
Sign Details * Sign Type
C: Sign R, S

Per code:

1. 15' minimum setback required.
2. 75' separation between signs (UDSs, single-tenant, multi-tenant monument signs)
3. 1' masonry with mortar border around all sides required.



PLANNING



To: Mayor and Town Council

From: Alex Glushko, AICP, Planning Manager

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – February 25, 2020

Agenda Item:

Conduct a Public Hearing, and consider and act upon an ordinance amending Planned Development-99 (PD-99), on 19.4± acres, located on the northwest corner of Mahard Parkway and US 380, generally to allow for the rental of cargo trucks as an incidental use at Longo Toyota. (Z20-0002).

Description of Agenda Item:

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

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Planned Development-99	Automobile Dealership (Toyota) and Undeveloped	US 380 District
North	Planned Development-98-Senior Living and Planned Development-101-Office	Undeveloped	US 380 District
East	Planned Development-47 and Specific Use Permit-11	Medical Office (Texas Health Resources) and Undeveloped	Tollway District
South	City of Frisco	Undeveloped	City of Frisco
West	Planned Development-97-Commercial	Undeveloped	US 380 District

In 2014, the Town Council approved a Specific Use Permit for the Toyota dealership. On September 24, 2019, Town Council approved Planned Development-99 (PD-99) for the existing Longo Toyota dealership on “Tract 1” along US 380, and to permit major automobile repair on

“Tract 2” to the north. Tract 1 allows New Automobile Sales/Leasing as a permitted primary use, which allows used automobile sales, automobile repair and automobile storage as permitted accessory uses. The PD does not allow rental of cargo trucks as an accessory use. Longo Toyota has submitted a request to allow for a maximum of five (5) cargo trucks, a maximum of twenty-six feet (26’) in length, to be located on the north side of the dealership building for rental. The rental trucks are not permitted to be displayed along the roadway, and are limited to the area identified on the graphic below:



Pictures of rental of cargo trucks currently located on the property are below.



The applicant has provided a letter and exhibit outlining the request. Staff believes this request is reasonable and recommends approval.

Future Land Use Plan – The Future Land Use Plan recommends US 380 District; this request complies with the Future Land Use Plan.

Thoroughfare Plan – The property has direct access to US 380, a 6-lane divided highway and Mahard Parkway, a 90-foot, 4-lane divided thoroughfare; this request complies with the Thoroughfare Plan. Mahard Parkway will have to be extended to the northern property line of the Penske facility.

Parks Master Plan – The Parks Master Plan does not indicate a park is needed on the subject property; however, hike and bike trails are adjacent to the subject property.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by State Law. To date, Town staff has not received any Public Hearing Notice Reply Forms. Town Attorney, Terrence Welch of Brown & Hofmeister, L.L.P., has approved the standard ordinance as to form and legality.

Attached Documents:

- 1. Aerial and Zoning Maps
- 2. Existing PD Exhibits C and D
- 3. Proposed PD Exhibits C and D
- 4. Ordinance

Town Staff Recommendation:

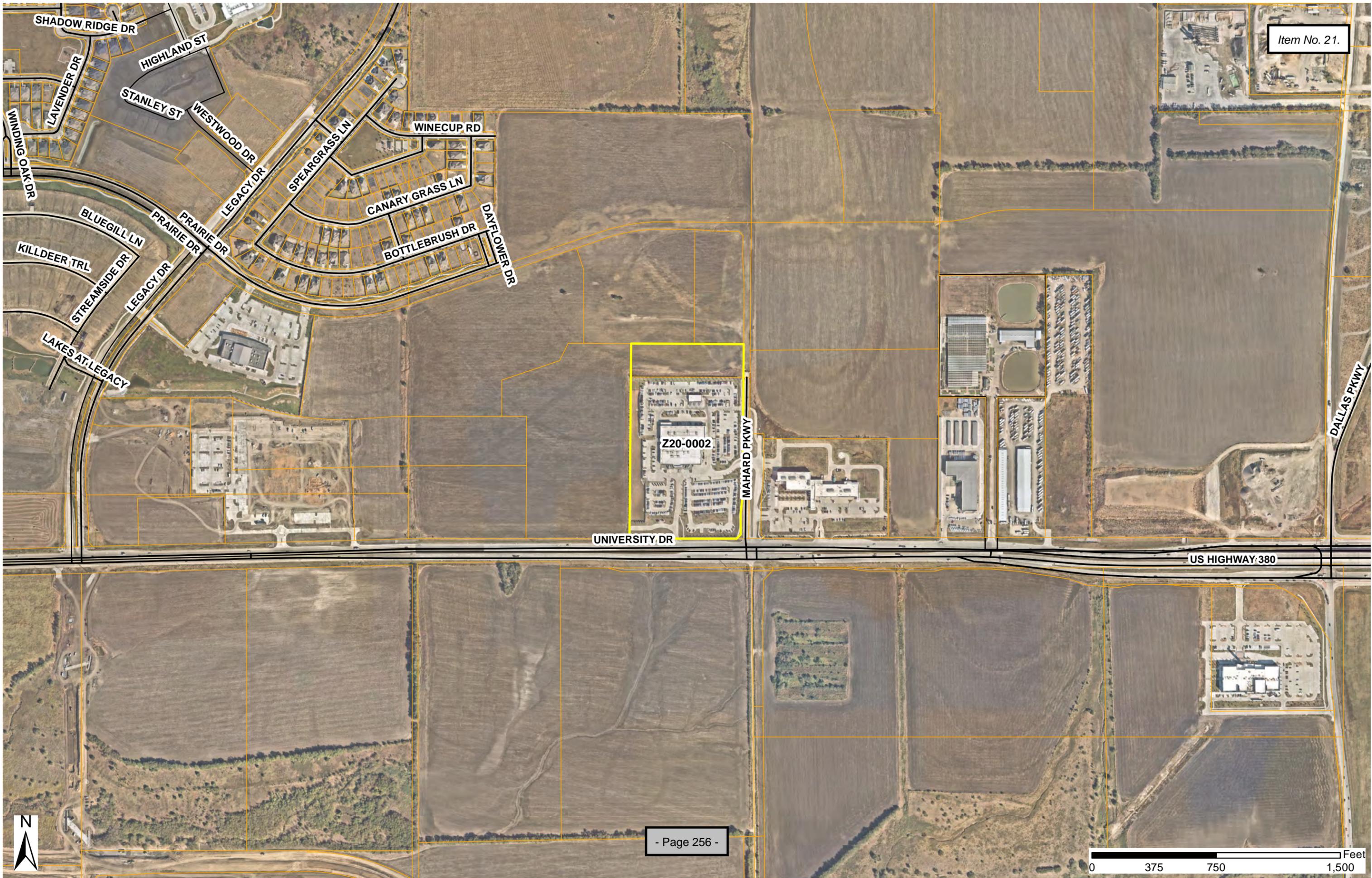
Staff recommends approval of the ordinance amending Planned Development-99 (PD-99), on 19.4± acres, located on the northwest corner of Mahard Parkway and US 380, generally to allow for the rental of cargo trucks as an incidental use at Longo Toyota.

Planning & Zoning Commission Recommendation:

At their February 4, 2020 meeting, the Planning and Zoning Commission recommended the Town Council approve the request, by a vote of 6-0.

Proposed Motion:

I move to approve an ordinance amending Planned Development-99 (PD-99), on 19.4± acres, located on the northwest corner of Mahard Parkway and US 380, generally to allow for the rental of cargo trucks as an incidental use at Longo Toyota.



Item No. 21.

Z20-0002

UNIVERSITY DR

MAHARD PKWY

US HIGHWAY 380

DALLAS PKWY

SHADOW RIDGE DR

HIGHLAND ST

WINDING OAK DR

LAVENDER DR

STANLEY ST

WESTWOOD DR

LEGACY DR

SPEARGRASS LN

WINECUP RD

CANARY GRASS LN

BOTTLEBRUSH DR

DAYFLOWER DR

BLUEGILL LN

PRAIRIE DR

PRAIRIE DR

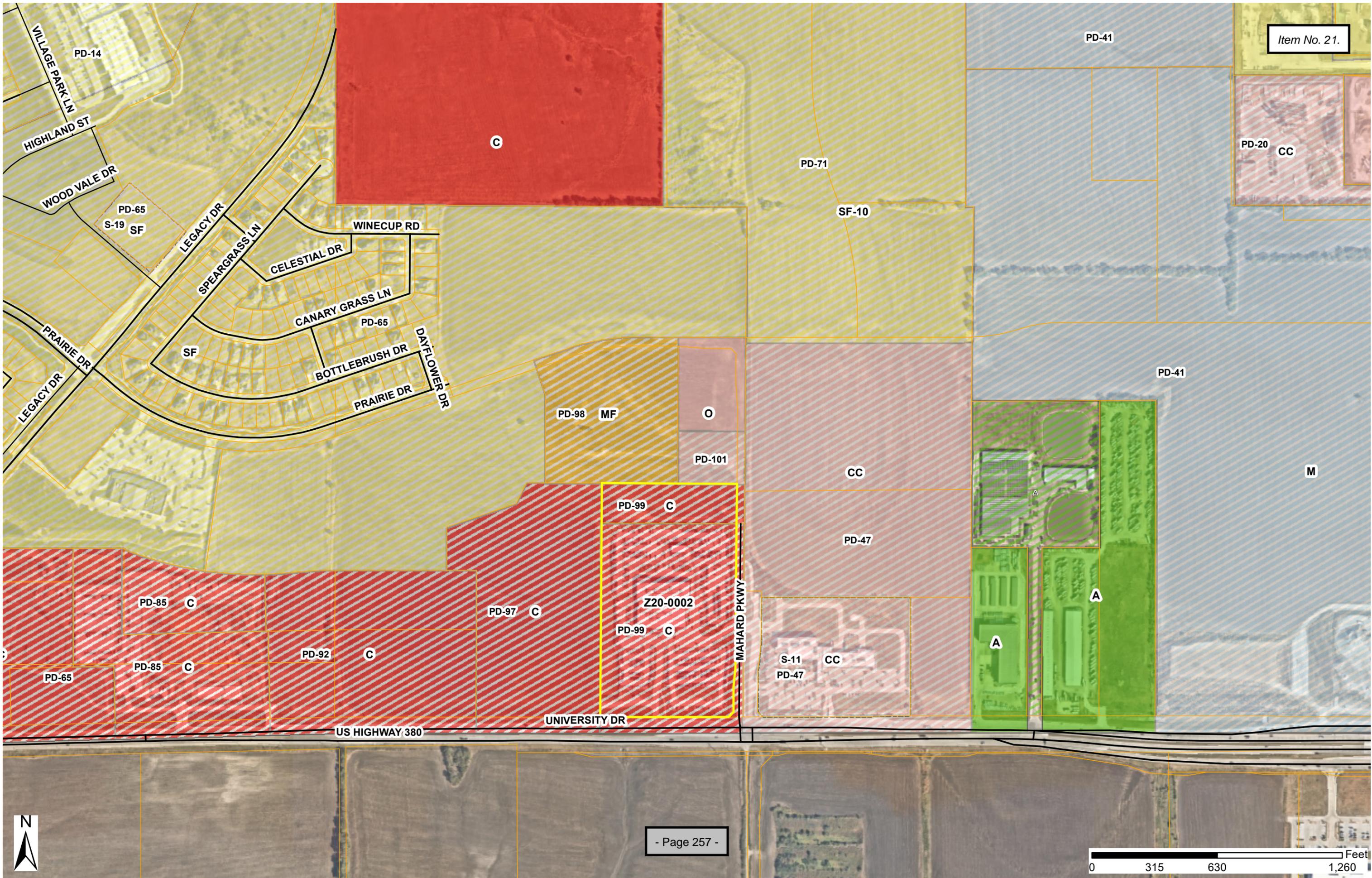
KILLDEER TRL

STREAMSIDE DR

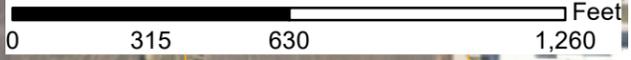
LEGACY DR

LAKES AT LEGACY





Item No. 21.



Z19-0007

EXHIBIT "C"

DEVELOPMENT STANDARDS

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20), as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.

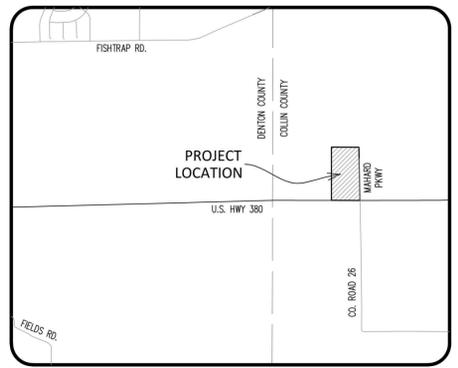
Tract 1 – An existing automobile dealership located on approximately 16.06 acres, previously authorized by SUP-9 (Ordinance No. 14-71) for the operation of a New Automobile Sales/Leasing Facility.

- 1. Except as noted below, the Tract shall continue to be used in accordance with the Commercial (C) District, as it exists or may be amended.
- 2. Development Plans
 - a. Concept Plan: The tract shall continue to be used in general accordance with the attached concept plan, set forth in Exhibit D.
 - b. Elevations: The tract shall continue to be used in general accordance with the attached façade plans, set forth in Exhibit F.
 - c. Landscape Plan: The tract shall continue to be used in general accordance with the attached landscape plan, set forth in Exhibit G.
- 3. Uses. Uses shall be permitted in accordance with the Commercial (C) District with the exception of the following:
 - a. Automobile Sales / Leasing, New shall be permitted on the subject property.
- 4. Regulations:
 - a. No outdoor intercoms, speakers, or sound amplification devices shall be utilized on the property;
 - b. Any structures with a garage or bay shall include an automatic door closing device for such garage or bay, exclusive of the Automatic Car Wash; and
 - c. After-hours reduction of outdoor lighting by ninety percent (90%) at the daily close of business.

Tract 2 – A proposed automotive body repair facility located on approximately 3.13 acres.

- 1. Except as noted below, the Tract shall develop in accordance with the Commercial (C) District, as it exists or may be amended.
- 2. Development Plans
 - a. Concept Plan: The tract shall be developed in general accordance with the attached concept plan, set forth in Exhibit D.
 - b. Elevations: The tract shall be developed in general accordance with the attached façade plans, set forth in Exhibits F-2.
 - c. Landscape Plan: The tract shall be developed in general accordance with the attached landscape plan, set forth in Exhibit G-2.

3. Uses. Uses shall be permitted in accordance with the Commercial (C) District with the exception of the following:
 - a. Automobile Repair, Major shall be permitted on the subject property.
4. Regulations:
 - a. No outdoor intercoms, speakers, or sound amplification devices shall be utilized on the property;
 - b. Any structures with a garage or bay shall include an automatic door closing device for such garage or bay; and
 - c. After-hours reduction of outdoor lighting by ninety percent (90%) at the daily close of business.
5. Screening: Required screening shall be as follows:
 - a. An 8' tall masonry screening wall shall be provided adjacent to any residentially zoned property and constructed of materials consistent with any screening provided on the eastern adjacent property.
6. Parking: On-street parking for customers, employees or other vehicles related to the automotive body repair facility shall be prohibited, and all repair-related vehicles shall be stored and screened on Tract 2, and shall be prohibited on Tract 1.



LOCATION MAP
1" = 2000'

Site Data

Ex. Zoning CC PD-43
Proposed Use Automobile Sales/ Leasing
Lot Area 15,121 Ac. (659,690 S.F.) - Net
Building Area 45,436 Sq. Ft. Total
Building Height 1 Story, 40' Max.
Lot Coverage 8.93%
Floor Area Ratio 0.08931:1
Parking Required 1 Sp./500 Sq. Ft.=118 Spaces
Customer/Employee Parking Provided 118 Spaces (Incl. 6 HC)
Inventory Parking Provided 663 Spaces
Total Parking Provided 781 Spaces (Incl. 6 HC)
Total Impervious Surface 371,409 Sq. Ft.
Required Open Space (7%) 46,178 Sq. Ft.
Provided Open Space 78,863 Sq. Ft.
Required Landscape Area 15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.
Provided Landscape Area 16,353 Sq. Ft.

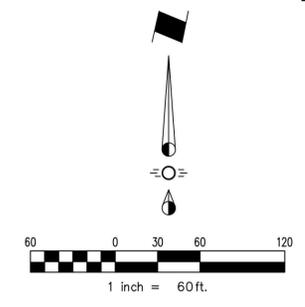
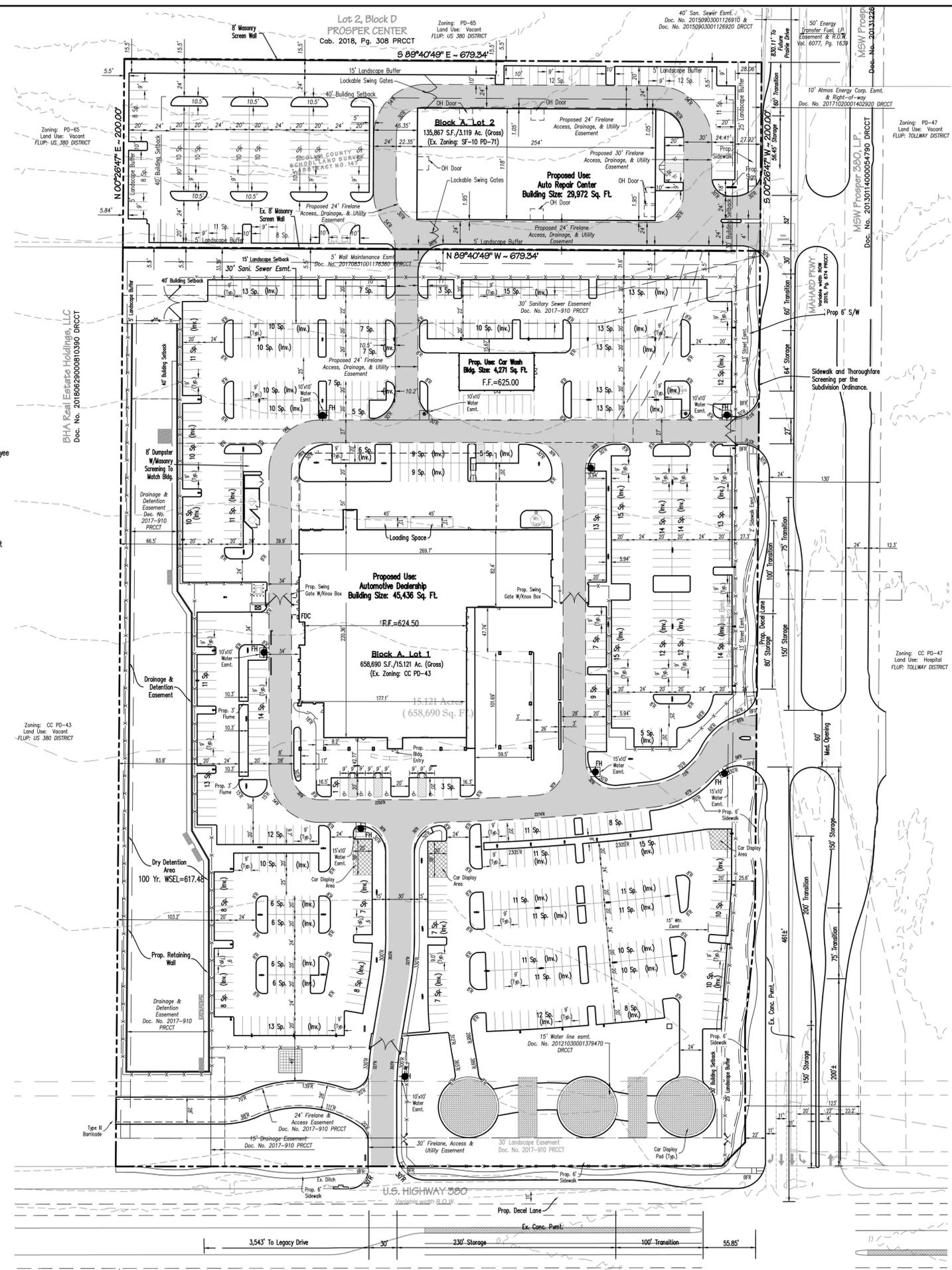
Lot 1, Block A

CC PD-43
Automobile Sales/ Leasing
15,121 Ac. (659,690 S.F.) - Net
29,972 Sq. Ft. Total
1 Story, 40' Max.
8.93%
0.221:1
1 Sp./500 Sq. Ft.=118 Spaces
118 Spaces (Incl. 6 HC)
663 Spaces
781 Spaces (Incl. 6 HC)
371,409 Sq. Ft.
46,178 Sq. Ft.
78,863 Sq. Ft.
15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.
16,353 Sq. Ft.

Lot 2, Block A

SF (Single Family) PD-65
Auto Repair Center
3,119 Ac. (135,867 Sq. Ft.)
29,972 Sq. Ft. Total
1 Story, 40' Max.
22.06%
0.221:1
3 per Bay (10 Bays) + 1 per Employee (20 Emp) = 50 Spaces
145 Spaces
99,103 Sq. Ft.
9,511 Sq. Ft.
2,568 Sq. Ft.
15 Sq. Ft. Per Pkg Sp.=2,115 Sq. Ft.
2,130 Sq. Ft.

- Notes:
- Total Open Space Required = 55,689 Sq. Ft.
Total Open Space Provided = 84,431 Sq. Ft.
 - Lot 1 detention pond was designed to accommodate single family developed flows from Lot 2. Any additional detention required at the time of Lot 2 development shall be provided on Lot 2 or via adjustment to facilities on Lot 1.



- LEGEND
- FIRELANE, ACCESS & UTILITY EASEMENT
 - - - - - EXISTING CONTOUR
 - L/S LANDSCAPE AREA
 - 1/2" IRON ROD W/ PLASTIC CAP STAMPED "SPIARSENG" SET, UNLESS OTHERWISE NOTED.
 - POWER POLE
 - LIGHT POLE/STANDARD
 - GUY WIRE ANCHOR
 - BOLLARD
 - SIGNPOST
 - OVERHEAD POWER LINE
 - CONTROL MONUMENT
 - PROPOSED FIRE HYDRANT
 - EXISTING FIRE HYDRANT
 - PROPOSED MANHOLE
 - EXISTING MANHOLE
 - PROPOSED METER

- Notes:
- The thoroughfare alignments shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of final plat.
 - No 100 year floodplain exists onsite.

Town Case No. Z19-0007
EXHIBIT "D"
GST PROSPER
BLOCK A, LOT 1 & 2
IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS
COLLIN CO. SCHOOL LAND SURVEY, ABST. NO. 147
18.240 Acres

Vertical text on the left edge of the page, likely a drawing or revision log.

Z20-0002

EXHIBIT "C"

DEVELOPMENT STANDARDS

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20), as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.

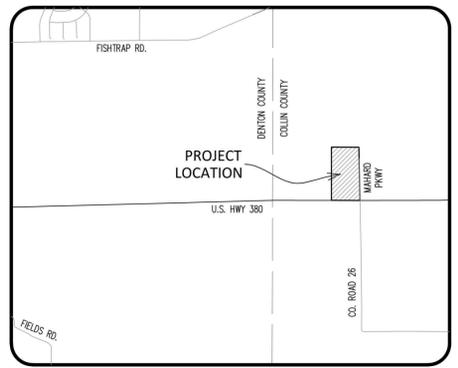
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 - c. Landscape Plan: The tract shall continue to be used in general accordance with the attached landscape plan, set forth in Exhibit G.
- 3. Uses. Uses shall be permitted in accordance with the Commercial (C) District with the exception of the following:
 - a. Automobile Sales / Leasing, New shall be permitted on the subject property.
 - b. Rental of cargo trucks, as an incidental use, as follows:
 - 3.b.1 A maximum of five (5) cargo trucks, a maximum of twenty-six feet (26') in length, shall be permitted on Tract 1, and limited to the location identified on Exhibit D.
- 4. Regulations:
 - a. No outdoor intercoms, speakers, or sound amplification devices shall be utilized on the property;
 - b. Any structures with a garage or bay shall include an automatic door closing device for such garage or bay, exclusive of the Automatic Car Wash; and
 - c. After-hours reduction of outdoor lighting by ninety percent (90%) at the daily close of business.

Tract 2 – A proposed automotive body repair facility located on approximately 3.13 acres.

- 1. Except as noted below, the Tract shall develop in accordance with the Commercial (C) District, as it exists or may be amended.
- 2. Development Plans
 - a. Concept Plan: The tract shall be developed in general accordance with the attached concept plan, set forth in Exhibit D.
 - b. Elevations: The tract shall be developed in general accordance with the attached façade plans, set forth in Exhibits F-2.

- c. Landscape Plan: The tract shall be developed in general accordance with the attached landscape plan, set forth in Exhibit G-2.
3. Uses. Uses shall be permitted in accordance with the Commercial (C) District with the exception of the following:
 - a. Automobile Repair, Major shall be permitted on the subject property.
4. Regulations:
 - a. No outdoor intercoms, speakers, or sound amplification devices shall be utilized on the property;
 - b. Any structures with a garage or bay shall include an automatic door closing device for such garage or bay; and
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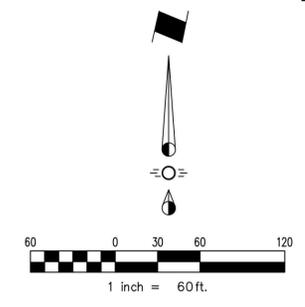
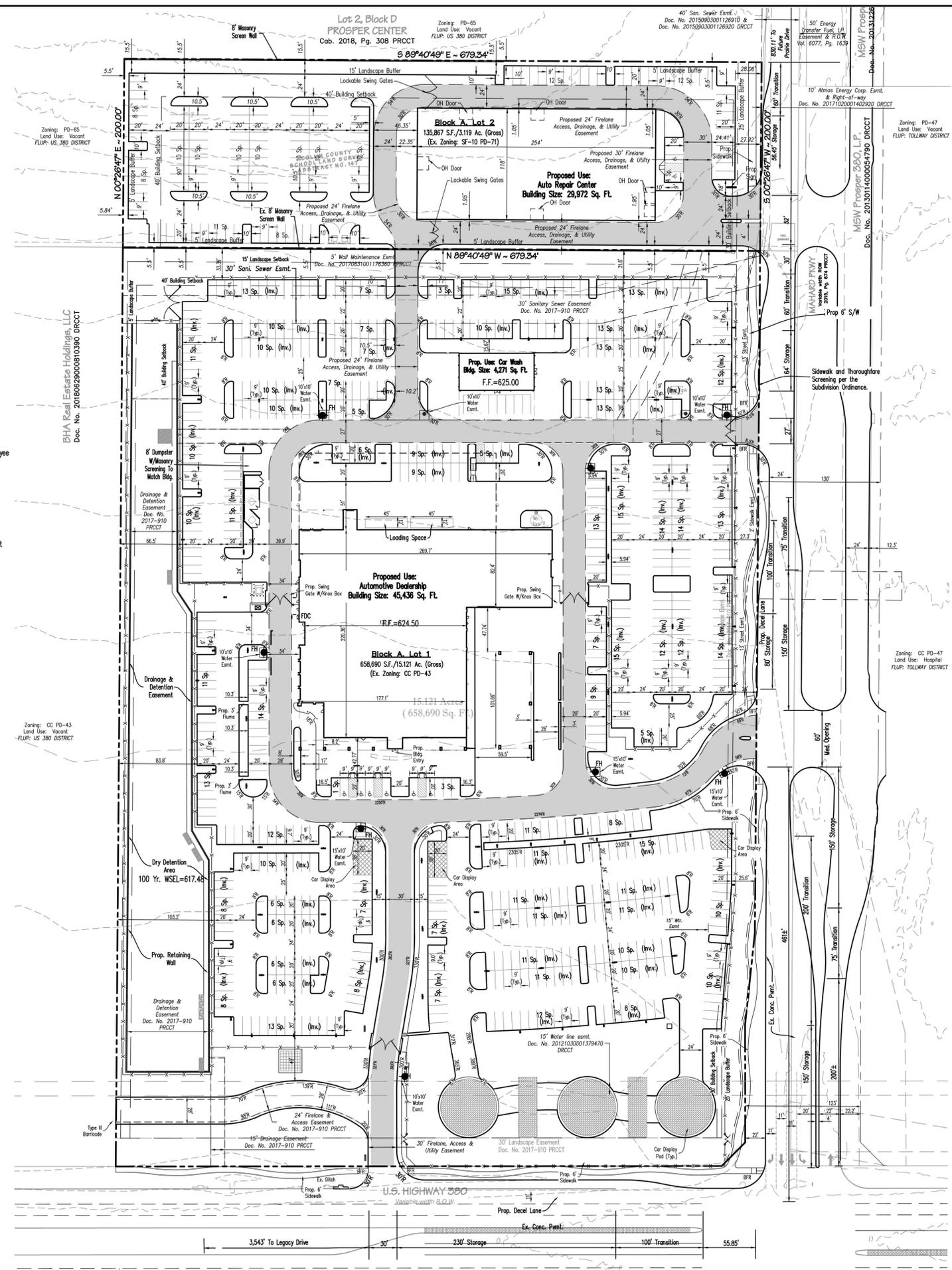
LOCATION MAP
1" = 2000'

Site Data

Ex. Zoning	CC PD-43	Lot 1, Block A	CC PD-43	Lot 2, Block A	SF (Single Family) PD-65
Proposed Use	Automobile Sales/ Leasing		Automobile Sales/ Leasing	Auto Repair Center	
Lot Area	15,121 AC. (659,690 S.F.) - Net		15,121 AC. (659,690 S.F.) - Net	3,119 Ac. (135,867 Sq. Ft.)	
Building Area	45,436 Sq. Ft. Total		45,436 Sq. Ft. Total	29,972 Sq. Ft. Total	
Building Height	1 Story, 40' Max.		1 Story, 40' Max.	1 Story, 40' Max.	
Lot Coverage	8.93%		8.93%	22.06%	
Floor Area Ratio	0.0893:1		0.0893:1	0.221:1	
Parking Required	1 Sp./500 Sq. Ft.=118 Spaces		1 Sp./500 Sq. Ft.=118 Spaces	3 per Bay (10 Bays) + 1 per Employee (20 Emp.) = 50 Spaces	
Customer/Employee Parking Provided	118 Spaces (Incl. 6 HC)		118 Spaces (Incl. 6 HC)	145 Spaces	
Inventory Parking Provided	663 Spaces		663 Spaces		
Total Parking Provided	781 Spaces (Incl. 6 HC)		781 Spaces (Incl. 6 HC)		
Total Impervious Surface	371,409 Sq. Ft.		371,409 Sq. Ft.	99,103 Sq. Ft.	
Required Open Space (7%)	46,178 Sq. Ft.		46,178 Sq. Ft.	9,511 Sq. Ft.	
Provided Open Space	78,863 Sq. Ft.		78,863 Sq. Ft.	2,568 Sq. Ft.	
Required Landscape Area	15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.		15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.	2,130 Sq. Ft.	
Provided Landscape Area	16,353 Sq. Ft.		16,353 Sq. Ft.		

Notes:

- Total Open Space Required = 55,689 Sq. Ft.
Total Open Space Provided = 84,431 Sq. Ft.
- Lot 1 detention pond was designed to accommodate single family developed flows from Lot 2. Any additional detention required at the time of Lot 2 development shall be provided on Lot 2 or via adjustment to facilities on Lot 1.



LEGEND

- FIRELINE, ACCESS & UTILITY EASEMENT
- EXISTING CONTOUR
- LANDSCAPE AREA
-
- POWER POLE
- LIGHT POLE/STANDARD GUY WIRE ANCHOR
- BOLLARD
- SIGNPOST
- OVERHEAD POWER LINE CONTROL MONUMENT
- PROPOSED FIRE HYDRANT
- EXISTING FIRE HYDRANT
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- EXISTING MANHOLE
- PROPOSED METER

- Notes:**
- The thoroughfare alignments shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of final plat.
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Town Case No. Z19-0007
EXHIBIT "D"
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BLOCK A, LOT 1 & 2
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COLLIN CO. SCHOOL LAND SURVEY, ABST. NO. 147
18.240 Acres

Vertical text on the left edge of the page, likely a drawing or revision log.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2020-___

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING PROSPER’S ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 19.364 ACRES, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS FROM PLANNED DEVELOPMENT-99 (PD-99), TO PLANNED DEVELOPMENT-99 (PD-99); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Town of Prosper, Texas (“Prosper”) has received a request (Case Z20-0002) from G Wood 2, LLC (“Applicant”), to rezone 19.364 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, from Planned Development-99 (PD-99), to Planned Development-99 (PD-99) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes; and

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

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

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

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

SECTION 1

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

SECTION 2

Amendment to the Town’s Zoning Ordinance. The Town’s Zoning Ordinance, adopted by Ordinance No. 05-20 is amended as follows: The zoning designation of the below described property containing 19.364 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the “Property”) and all streets, roads, and alleyways contiguous and/or adjacent thereto is hereby zoned as Planned

Development-99 (PD-98) and being more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with 1) the Statement of Intent and Purpose, attached hereto as Exhibit B; 2) the Development Standards, attached hereto as Exhibit C; 3) the Site Plan, attached hereto as Exhibit D; 4) the Development Schedule, attached hereto as Exhibit E; 5) the Façade Plans, attached hereto as Exhibit F; and 6) the Landscape Plans, attached hereto as Exhibit G, which are incorporated herein for all purposes as if set forth verbatim.

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

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

SECTION 3

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

SECTION 4

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

SECTION 5

Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6

Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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 7

Savings/Repealing Clause. Prosper’s Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY, 2020.

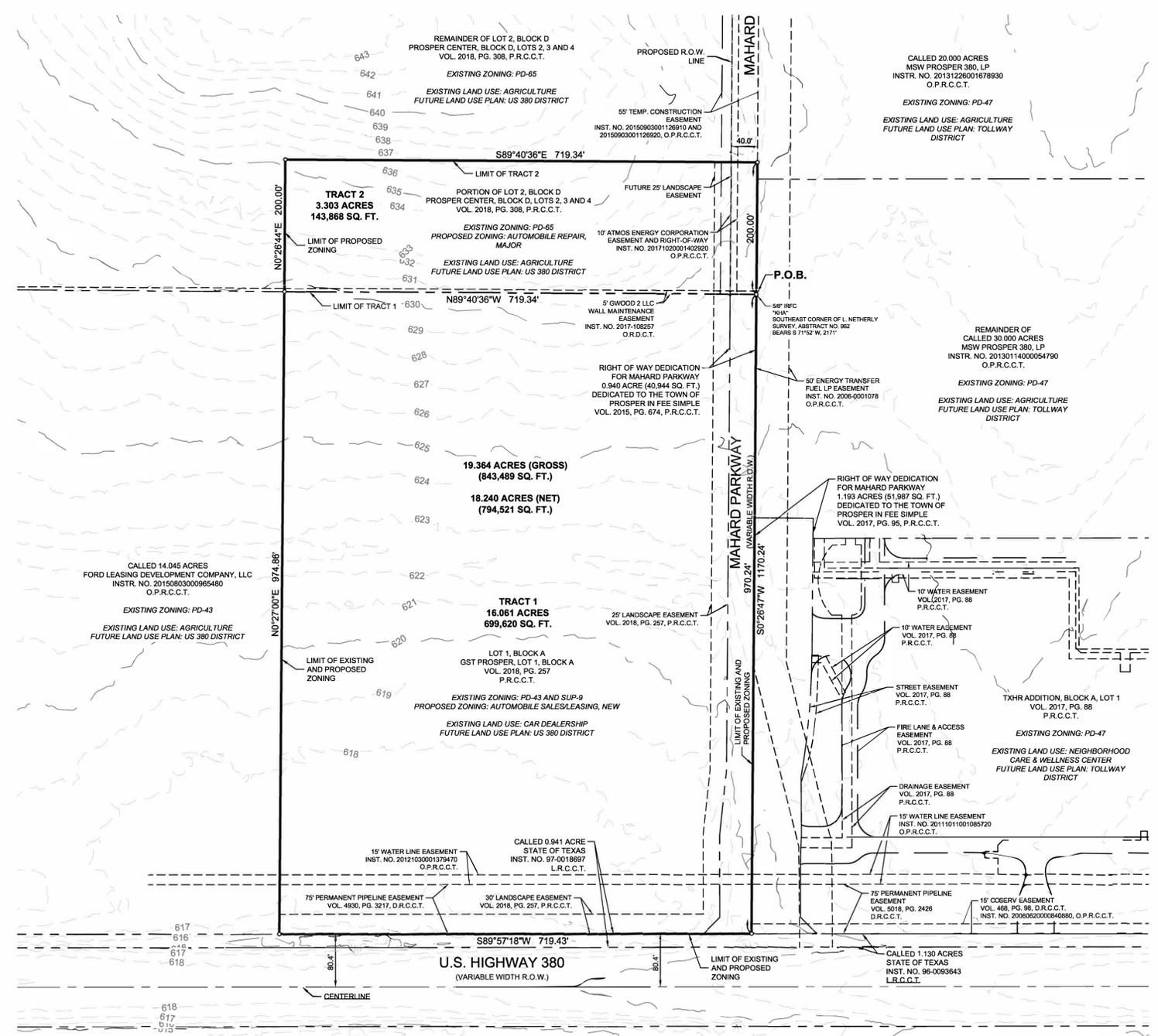
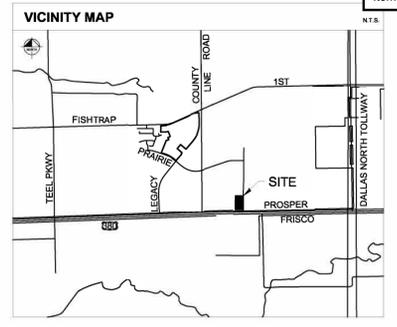
Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



LEGAL DESCRIPTION: BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Town of Prosper, Collin County, Texas...

THENCE South 0°26'47" West, along the easterly line of said right-of-way dedication, the centerline of said Mahard Parkway...

THENCE North 0°27'00" East, departing the northerly right-of-way line of said U.S. Highway 380 and along the westerly line of said Lot 1, Block A...

THENCE North 0°26'44" East, departing the southerly line of said Lot 2, Block D and crossing said Lot 2, Block D...

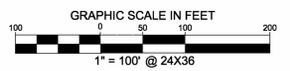
THENCE South 89°40'36" East, continuing across said Lot 2, Block D, a distance of 719.34 feet to a point for corner on the easterly line of said Lot 2, Block D...

THENCE South 0°26'47" West, along the easterly line of said Lot 2, Block D, the westerly line of said 20.000 acre tract, and the westerly line of said 30.000 acre tract...

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property...

SYLVIANA GUNAWAN REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6461 6160 WARREN PKWY., SUITE 210 FRISCO, TEXAS 75034 PH. 972-335-3580 sylviana.gunawan@kimley-horn.com

PRELIMINARY THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT



- NOTES: 1. Bearing system based on the south line of Prosper Center Block B, Lot 1R and 2 as recorded in Doc. No. 2016-241 P.R.D.C.T. 2. According to Map No. 48121C0230J, dated June 02, 2009 of the National Flood Insurance Program Map...

LEGEND P.O.B. = POINT OF BEGINNING IRSC = 5/8" IRON ROD W/ "KHA" CAP SET IPF = IRON PIPE FOUND INST. = INSTRUMENT DOC. = DOCUMENT NO. = NUMBER VOL. = VOLUME PG. = PAGE D.R.D.C.T. = DEED RECORDS, DENTON COUNTY, TEXAS O.R.D.C.T. = OFFICIAL RECORDS, DENTON COUNTY, TEXAS P.R.D.C.T. = PLAT RECORD, DENTON COUNTY, TEXAS P.R.C.C.T. = PLAT RECORD, COLLIN COUNTY, TEXAS O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS

EXHIBIT A 19.364 ACRES (GROSS) 18.240 ACRES (NET) PORTION OF LOT 2, BLOCK D OF PROSPER CENTER, BLOCK D, LOTS 2, 3 AND 4 AND ALL OF GST PROSPER, LOT 1, BLOCK A COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147 TOWN OF PROSPER, COLLIN COUNTY, TEXAS CASE NO. ZZ0-000Z

Kimley Horn logo and contact information: 6160 Warren Parkway, Suite 210 Frisco, Texas 75034 FIRM # 10193822 Tel. No. (972) 335-3580 Fax No. (972) 335-3779

ENGINEER: Kimley-Horn and Associates, Inc. 5750 Genesis Court, Suite 200 Frisco, Texas 75034 Ph: 972.335.3580 Contact: Thomas Fletcher, P.E.

OWNERS: Prosper Villages at Legacy LLC 10950 Research Road Frisco, Texas 75033 Ph: 214.387.3993 Contact: Clint Richardson

GSWOOD 2 LLC 3534 N. Peck Road El Monte, California 91731 Ph: 626.580.1332 Contact: Doug Erch

DWG NAME: P:\PLAT_SURVEY\2017\20170519_ZONING_AUTO_EXHIBIT_A.DWG PLOTTED BY: VOLCK, MARISSA (SMITH) 01/16/2018 9:25 AM LAST SAVED: 6/16/2019 10:22 AM

Z20-0002

EXHIBIT "B"

STATEMENT OF INTENT AND PURPOSE

The Planned Development District provides the ability to accommodate automobile sales, automobile service, and automobile repairs to the regional community on a tract of land within the Town of Prosper located at the intersection of a state highway and a Minor Thoroughfare.

The majority of the Planned Development District will accommodate an existing automobile sales facility and provide for the addition of an adjacent automobile repair facility.

Z20-0002

EXHIBIT "C"

DEVELOPMENT STANDARDS

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20), as it exists or may be amended, and the Subdivision Ordinance, as it exists or may be amended, shall apply.

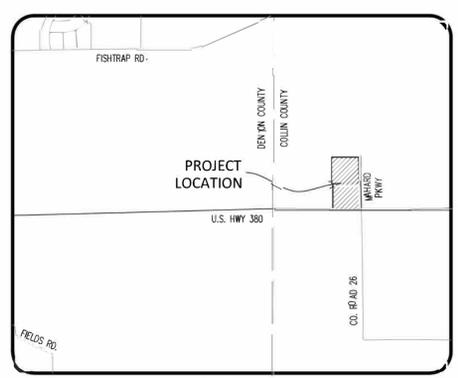
Tract 1 – An existing automobile dealership located on approximately 16.06 acres, previously authorized by SUP-9 (Ordinance No. 14-71) for the operation of a New Automobile Sales/Leasing Facility.

1. Except as noted below, the Tract shall continue to be used in accordance with the Commercial (C) District, as it exists or may be amended.
2. Development Plans
 - a. Concept Plan: The tract shall continue to be used in general accordance with the attached concept plan, set forth in Exhibit D.
 - b. Elevations: The tract shall continue to be used in general accordance with the attached façade plans, set forth in Exhibit F.
 - c. Landscape Plan: The tract shall continue to be used in general accordance with the attached landscape plan, set forth in Exhibit G.
3. Uses. Uses shall be permitted in accordance with the Commercial (C) District with the exception of the following:
 - a. Automobile Sales / Leasing, New shall be permitted on the subject property.
 - b. Rental of cargo trucks, as an incidental use, as follows:
 - 3.b.1 A maximum of five (5) cargo trucks, a maximum of twenty-six feet (26') in length, shall be permitted on Tract 1, and limited to the location identified on Exhibit D.
4. Regulations:
 - a. No outdoor intercoms, speakers, or sound amplification devices shall be utilized on the property;
 - b. Any structures with a garage or bay shall include an automatic door closing device for such garage or bay, exclusive of the Automatic Car Wash; and
 - c. After-hours reduction of outdoor lighting by ninety percent (90%) at the daily close of business.

Tract 2 – A proposed automotive body repair facility located on approximately 3.13 acres.

1. Except as noted below, the Tract shall develop in accordance with the Commercial (C) District, as it exists or may be amended.
2. Development Plans
 - a. Concept Plan: The tract shall be developed in general accordance with the attached concept plan, set forth in Exhibit D.
 - b. Elevations: The tract shall be developed in general accordance with the attached façade plans, set forth in Exhibits F-2.

- c. Landscape Plan: The tract shall be developed in general accordance with the attached landscape plan, set forth in Exhibit G-2.
3. Uses. Uses shall be permitted in accordance with the Commercial (C) District with the exception of the following:
 - a. Automobile Repair, Major shall be permitted on the subject property.
4. Regulations:
 - a. No outdoor intercoms, speakers, or sound amplification devices shall be utilized on the property;
 - b. Any structures with a garage or bay shall include an automatic door closing device for such garage or bay; and
 - c. After-hours reduction of outdoor lighting by ninety percent (90%) at the daily close of business.
5. Screening: Required screening shall be as follows:
 - a. An 8' tall masonry screening wall shall be provided adjacent to any residentially zoned property and constructed of materials consistent with any screening provided on the eastern adjacent property.
6. Parking: On-street parking for customers, employees or other vehicles related to the automotive body repair facility shall be prohibited, and all repair-related vehicles shall be stored and screened on Tract 2, and shall be prohibited on Tract 1.



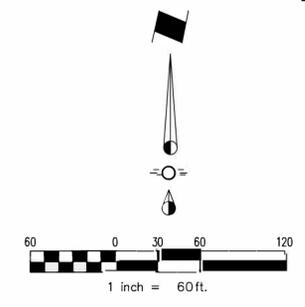
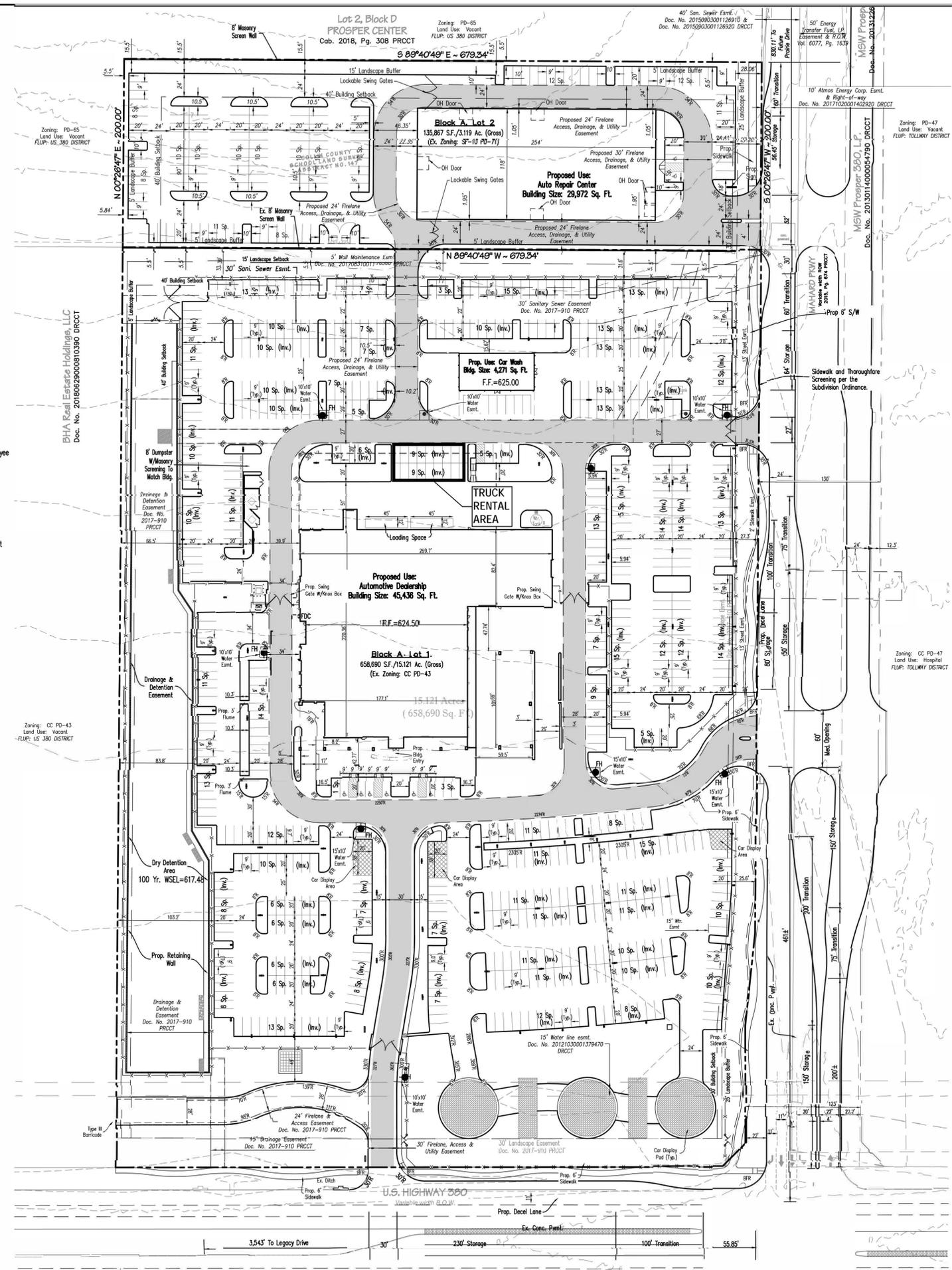
LOCATION MAP
1" = 2000'

Site Data

Ex. Zoning	CC PD-43	Lot 1, Block A	CC PD-43	Lot 2, Block A	SF (Single Family) PD-65
Proposed Use	Automobile Sales/ Leasing		Automobile Sales/ Leasing		Auto Repair Center
Lot Area	15,121 AC. (658,690 S.F.) - Net		15,121 AC. (658,690 S.F.) - Net		3,119 Ac. (135,867 Sq. Ft.)
Building Area	45,436 Sq. Ft. Total		45,436 Sq. Ft. Total		29,972 Sq. Ft. Total
Building Height	1 Story, 40' Max.		1 Story, 40' Max.		1 Story, 40' Max.
Lot Coverage	8.93%		8.93%		22.06%
Floor Area Ratio	0.0893:1		0.0893:1		0.221:1
Parking Required	1 Sp./500 Sq. Ft.=118 Spaces		1 Sp./500 Sq. Ft.=118 Spaces		3 per Bay (10 Bays) + 1 per Employee (20 Emp.) = 50 Spaces
Customer/Employee Parking Provided	118 Spaces (Incl. 6 HC)		118 Spaces (Incl. 6 HC)		145 Spaces
Inventory Parking Provided	663 Spaces		663 Spaces		781 Spaces (Incl. 6 HC)
Total Parking Provided	781 Spaces (Incl. 6 HC)		781 Spaces (Incl. 6 HC)		99,103 Sq. Ft.
Total Impervious Surface	371,409 Sq. Ft.		371,409 Sq. Ft.		46,178 Sq. Ft.
Required Open Space (7%)	46,178 Sq. Ft.		46,178 Sq. Ft.		2,568 Sq. Ft.
Provided Open Space	78,863 Sq. Ft.		78,863 Sq. Ft.		15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.
Required Landscape Area	15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.		15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.		2,130 Sq. Ft.
Provided Landscape Area	16,353 Sq. Ft.		16,353 Sq. Ft.		

Notes:-

- Total Open Space Required = 55,689 Sq. Ft.
Total Open Space Provided = 84,431 Sq. Ft.
- Lot 1 detention pond was designed to accommodate single family developed flows from Lot 2. Any additional detention required at the time of Lot 2 development shall be provided on Lot 2 or via adjustment to facilities on Lot 1.



LEGEND

	FIRELANE, ACCESS & UTILITY EASEMENT
	EXISTING CONTOUR
	LANDSCAPE AREA
	1/2" IRON ROD W/ PLASTIC CAP STAMPED "SPARSENG" SET, UNLESS OTHERWISE NOTED.
	POWER POLE
	LIGHT POLE/STANDARD
	GUY WIRE ANCHOR
	BOLLARD
	SIGNPOST
	OVERHEAD POWER LINE
	CONTROL MONUMENT
	PROPOSED FIRE HYDRANT
	EXISTING FIRE HYDRANT
	PROPOSED MANHOLE
	EXISTING MANHOLE
	PROPOSED METER

- Notes:-**
- The thoroughfare alignments shown on this exhibit are for illustration purposes and does not set the alignment. The alignment is determined at time of final plat.
 - No 100 year floodplain exists onsite.

Town Case No. Z20-0002
EXHIBIT "D"
GST PROSPER
 BLOCK A, LOT 1 & 2
 IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS
 COLLIN CO. SCHOOL LAND SURVEY, ABST. NO. 147
 18.240 Acres

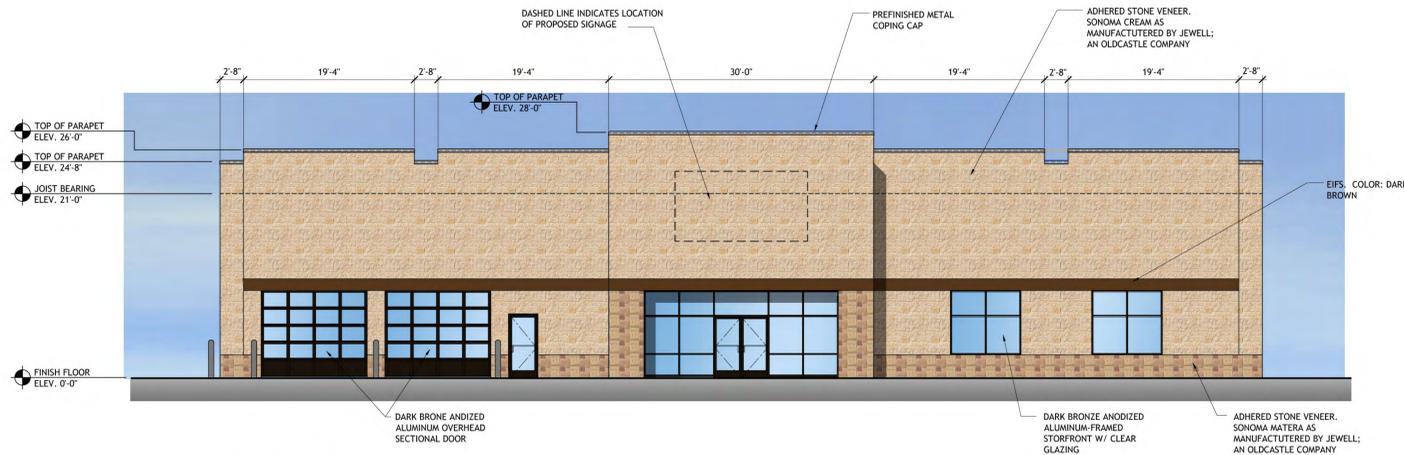
Z20-0002

EXHIBIT "E"

DEVELOPMENT SCHEDULE

The automobile dealership is an existing use on Tract 1. It is anticipated that the construction of the automobile repair center on Tract 2 will begin within 1 to 3 years after approval of the zoning ordinance.

Progress of development will depend on time frames established for construction of thoroughfares, utilities, and market trends/demands for the area.



PROPOSED EAST ELEVATION

SCALE: 1/8" = 1'-0"

MATERIALS CALCULATION

EAST ELEVATION
 TOTAL SURFACE AREA: 3,404 S.F.
 GLAZING SURFACE AREA: 603 S.F.
 NET SURFACE AREA (EXCLUDES GLAZING): 2,801 S.F.

FIELD STONE: 2,194 S.F. / 78%
 ACCENT STONE: 397 S.F. / 14%
 EIFS: 158 S.F. / 6%
 METAL COPING: 52 S.F. / 2%

SOUTH ELEVATION
 TOTAL SURFACE AREA: 6,318 S.F.
 GLAZING SURFACE AREA: 340 S.F.
 NET SURFACE AREA (EXCLUDES GLAZING): 5,978 S.F.

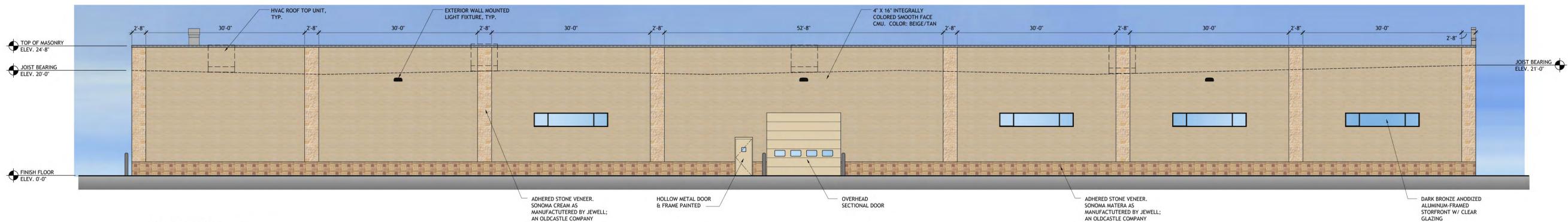
STONE AT COLUMNS: 464 S.F. / 8%
 STONE AT BASE: 631 S.F. / 10%
 METAL COPING: 106 S.F. / 2%
 INTEGRALLY COLORED CMU: 4,777 S.F. / 80%

WEST ELEVATION
 TOTAL SURFACE AREA: 2,935 S.F.
 GLAZING SURFACE AREA: 266 S.F.
 NET SURFACE AREA (EXCLUDES GLAZING): 2,669 S.F.

STONE AT COLUMNS: 232 S.F. / 9%
 STONE AT BASE: 269 S.F. / 10%
 METAL COPING: 49 S.F. / 2%
 INTEGRALLY COLORED CMU: 2,119 S.F. / 79%

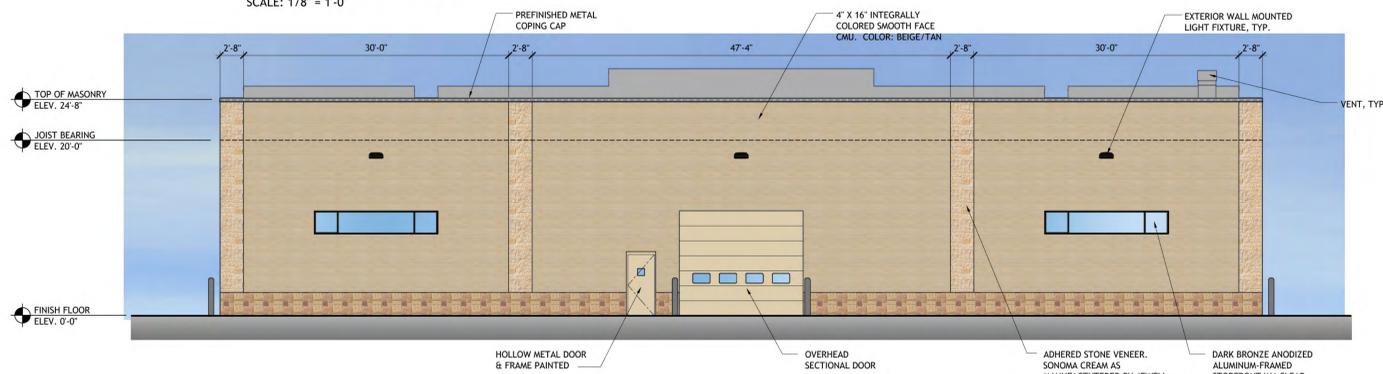
NORTH ELEVATION
 TOTAL SURFACE AREA: 6,318 S.F.
 GLAZING SURFACE AREA: 545 S.F.
 NET SURFACE AREA (EXCLUDES GLAZING): 5,773 S.F.

STONE AT COLUMNS: 464 S.F. / 8%
 STONE AT BASE: 594 S.F. / 10%
 METAL COPING: 106 S.F. / 2%
 INTEGRALLY COLORED CMU: 4,609 S.F. / 80%



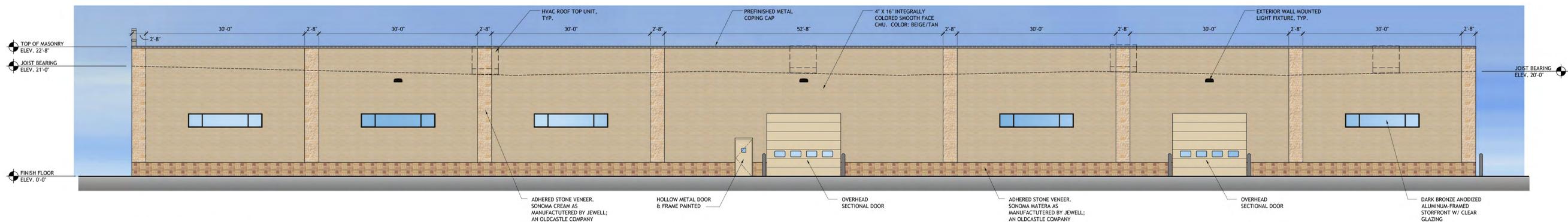
PROPOSED SOUTH ELEVATION

SCALE: 1/8" = 1'-0"



PROPOSED WEST ELEVATION

SCALE: 1/8" = 1'-0"



PROPOSED NORTH ELEVATION

SCALE: 1/8" = 1'-0"

- GENERAL NOTES:**
1. THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL FROM THE BUILDING INSPECTIONS DEPARTMENT.
 2. ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW. ROOFTOP MOUNTED EQUIPMENT SHALL BE SCREENED BY A PARAPET WALL OR SCREENING WALL. SCREENING WALLS SHALL BE THE SPECIFICATIONS OF THE ZONING ORDINANCE.
 3. WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.
 4. ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BY THE BUILDING INSPECTIONS DEPARTMENT.
 5. WINDOWS SHALL HAVE A MAXIMUM EXTERIOR VISIBLE REFLECTIVITY OF TEN (10) PERCENT.
 6. ANY DEVIATION FROM THE APPROVED FACADE PLAN WILL REQUIRE RE-APPROVAL BY THE TOWN OF PROSPER.

OWNER:
 GWOOD, LLC
 2100 W. UNIVERSITY DRIVE
 PROSPER, TX 75078

APPLICANT:
 DOUG EROH
 PENSKE MOTOR GROUP
 2100 W. UNIVERSITY DRIVE
 PROSPER, TX 75078
 PH: 626.580.1332

PROPOSED AUTO REPAIR CENTER
 BLOCK A, LOT 2
 MAHARD PARKWAY
 IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS

TOWN CASE NO. Z00-0002
 EXHIBIT "F"
 07.31.2019

CONFIDENTIAL CLIENT

PROSPER, TX

Gensler

5420 LBJ Freeway
Suite 1100
Dallas TX 75240
Tel: 214.273.1500

Issue #	Issue Date	Issue Description
-	-	-

This Facade Plan is for conceptual purposes only. All building plans require review and approval from the Building Inspection Division.

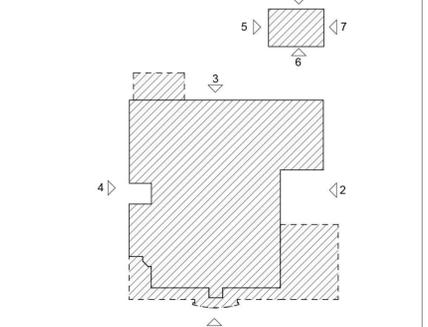
All mechanical equipment shall be screened from public view in accordance with the Comprehensive Zoning Ordinance.

When permitted, exposed utility boxes and conduits shall be painted to match the building.

All signage areas and locations are subject to approval by the Building Inspection Department.

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

When permitted, exposed utility boxes and conduits shall be painted to match the building.



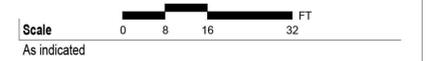
LOCATION KEY

Seal/Signature _____

Project Name
PROSPER, TX

Project Number _____

Description
EXTERIOR ELEVATIONS



ELEVATIONS

SOUTH ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 2,065 sf
Total Facade Area: 5,849 sf

- CAST STONE ACCENT AND CAST STONE COPING: 30 sf 1% Coverage
- THIN SET SIMULATED STONE: 2,198 sf 59% Coverage
- ENTRY PORTAL ELEMENT: 1,323 sf 34% Coverage
- SIMULATED WOOD: 170 sf 4% Coverage
- LIMESTONE VENEER: 63 sf 2% Coverage
- BRICK COLOR 1
- BRICK COLOR 2

WEST ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 1,272 sf
Total Facade Area: 5,517 sf

- CAST STONE ACCENT AND CAST STONE COPING: 44 sf 1% Coverage
- THIN SET SIMULATED STONE: 3,378 sf 79% Coverage
- GLASS PANEL PORTAL ENTRY ELEMENT: 87 sf 2% Coverage
- SIMULATED WOOD: 65 sf 2% Coverage
- LIMESTONE VENEER: 480 sf 11% Coverage
- BRICK COLOR 1
- BRICK COLOR 2: 191 sf 5% Coverage

NORTH ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 509 sf
Total Facade Area: 5,256 sf

- CAST STONE ACCENT AND CAST STONE COPING: 42 sf 1% Coverage
- THIN SET SIMULATED STONE: 3,592 sf 75% Coverage
- GLASS PANEL PORTAL ENTRY ELEMENT: 87 sf 2% Coverage
- SIMULATED WOOD: 59 sf 1% Coverage
- LIMESTONE VENEER: 645 sf 14% Coverage
- BRICK COLOR 1
- BRICK COLOR 2: 322 sf 7% Coverage

EAST ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 411 sf
Total Facade Area: 5,446 sf

- CAST STONE ACCENT AND CAST STONE COPING: 57 sf 1% Coverage
- THIN SET SIMULATED STONE: 3,977 sf 79% Coverage
- GLASS PANEL PORTAL ENTRY ELEMENT: 95 sf 2% Coverage
- SIMULATED WOOD: 234 sf 4% Coverage
- LIMESTONE VENEER: 814 sf 40% Coverage
- BRICK COLOR 1
- BRICK COLOR 2: 68 sf 1% Coverage

NORTH CARWASH ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 64 sf
Total Facade Area: 1,407 sf

- CAST STONE ACCENT AND CAST STONE COPING: 8 sf 1% Coverage
- THIN SET SIMULATED STONE: 484 sf 38% Coverage
- LIMESTONE VENEER: 138 sf 10% Coverage
- BRICK COLOR 1: 577 sf 44% Coverage
- BRICK COLOR 2: 88 sf 7% Coverage

EAST CARWASH ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 288 sf
Total Facade Area: 957 sf

- CAST STONE ACCENT AND CAST STONE COPING: 7 sf 1% Coverage
- THIN SET SIMULATED STONE: 530 sf 79% Coverage
- LIMESTONE VENEER: 132 sf 20% Coverage
- BRICK COLOR 1
- BRICK COLOR 2

SOUTH CARWASH ELEVATION
SCALE: 1/16" = 1'-0"

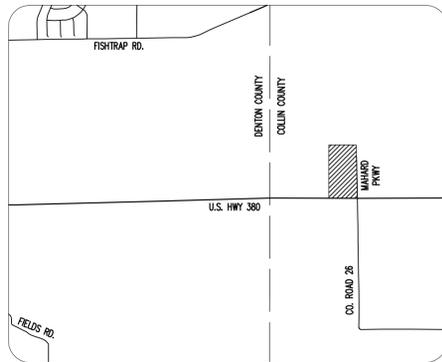
Glazing Surface Area: 64 sf
Total Facade Area: 1,407 sf

- CAST STONE ACCENT AND CAST STONE COPING: 8 sf 1% Coverage
- THIN SET SIMULATED STONE: 484 sf 38% Coverage
- LIMESTONE VENEER: 138 sf 10% Coverage
- BRICK COLOR 1: 577 sf 44% Coverage
- BRICK COLOR 2: 88 sf 7% Coverage

WEST SOUTH CARWASH ELEVATION
SCALE: 1/16" = 1'-0"

Glazing Surface Area: 288 sf
Total Facade Area: 957 sf

- CAST STONE ACCENT AND CAST STONE COPING: 7 sf 1% Coverage
- THIN SET SIMULATED STONE: 530 sf 79% Coverage
- LIMESTONE VENEER: 132 sf 20% Coverage
- BRICK COLOR 1
- BRICK COLOR 2



LOCATION MAP
1" = 2000'

LANDSCAPE TABULATIONS: EXISTING LOT 1 BLOCK A

STREET REQUIREMENTS
Requirements: (1) tree, 3" cal., per 30 l.f. of frontage
(15) shrubs, 5 gal., per 30 l.f. of frontage or 3' ht. berm

MAHARD PARKWAY: (833.13 l.f. BASED ON R.O.W. DEDICATION)
Required: (28) trees, 3" cal. (420) shrubs
Provided: (39) trees, 3" cal. (466) shrubs

SH 380: (681.38 l.f.)
Required: (23) trees, 3" cal. (345) shrubs
Provided: (15) trees, 3" cal. located behind car display (24) small trees, 3" cal. @ 3:1 = (8) trees (360) shrubs

PARKING LOT (754 spaces)
Requirements: (1) tree, 3" cal., per 15 parking spaces and 15 s.f. of landscape per each parking space tree within 150' of any space

HEADLIGHT SCREEN PROVIDED
Required: (50) trees, 3" cal. 11,310 s.f.
Provided: (103) trees, 3" cal. 19,769 s.f.

PERIMETER LANDSCAPE
Requirements: 5' width; (1) small tree and (1) shrub, 5 gallon, per 15 l.f.
West Property Line: (974.90 l.f.)
Required: (65) small trees (65) shrubs, 5 gal.
Provided: (65) small trees (65) shrubs, 5 gal., along east side of detention

PERIMETER LANDSCAPE
Requirements: 15' width; (1) large tree per 30' and (1) shrub, 5 gallon, per 15 l.f.
North Property Line: (679.34 l.f.)
Required: (23) trees, 3" cal. (45) shrubs, 5 gal.
Provided: (26) trees, 3" cal. (61) shrubs, 4 ht.

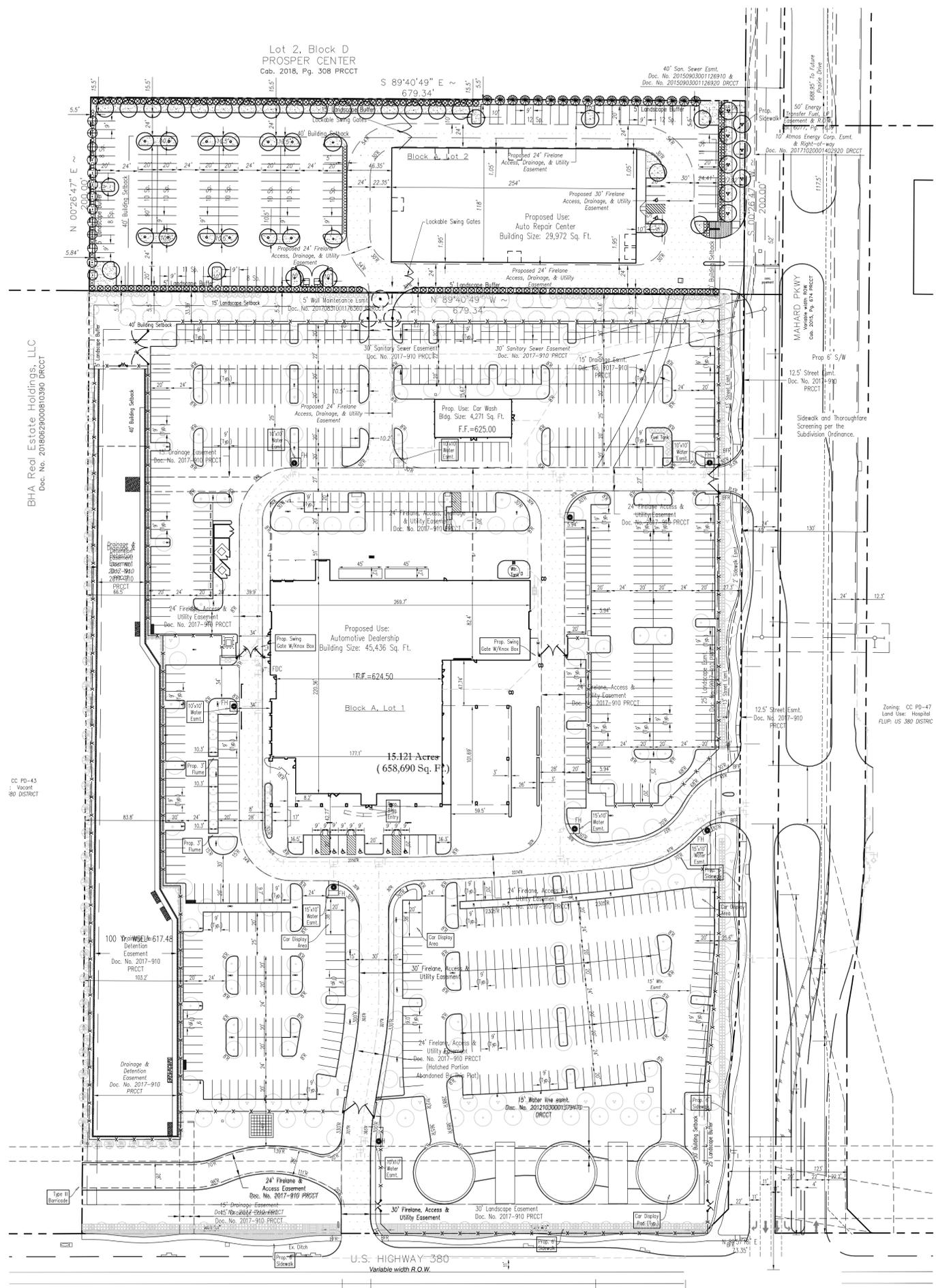
BUILDING LANDSCAPE
Requirements: (1) tree, 3" cal., per 10,000 s.f. of Gross Floor Area within 30' of building. Ornamentals can be used at a ratio of 5:1
Gross Floor Area: 45,436 s.f.
Required: (5) trees, 3" cal.
Provided: (4) trees, 3" cal. (5) ornamentals, 10' ht.

OPEN SPACE REQUIREMENTS
Requirements: 7% OF TOTAL SITE AREA TO BE OPEN SPACE.
less required interior landscape, perimeter buffers / landscape setbacks

TOTAL SITE AREA: 658,690
OPEN SPACE REQUIRED: 46,178 S.F. (7%)
OPEN SPACE PROVIDED: 70,507 S.F. (10.7%)

Notes:

- Total Open Space Required = 55,689 Sq. Ft.
Total Open Space Provided = 84,431 Sq. Ft.
- Lot 1 detention pond was designed to accommodate single family developed flows from Lot 2. Any additional detention required at the time of Lot 2 development shall be provided on Lot 2 or via adjustment to facilities on Lot 1.



Site Data

Ex. Zoning
Proposed Use
Lot Area
Building Area
Building Height
Lot Coverage
Floor Area Ratio
Parking Required
Customer/Employee Parking Provided
Inventory Parking Provided
Total Parking Provided
Total Impervious Surface
Required Open Space (7%)
Provided Open Space
Required Landscape Area
Provided Landscape Area

Lot 1, Block A

CC PD-43
Automobile Sales/ Leasing
15,121 AC. (659,690 S.F.) - Net
45,436 Sq. Ft. Total
1 Story, 40' Max.
8.93%
0.08931:1
1 Sp/500 Sq. Ft.=118 Spaces
118 Spaces (Incl. 6 HC)
663 Spaces
781 Spaces (Incl. 6 HC)
3,714,099 Sq. Ft.
46,178 Sq. Ft.
78,863 Sq. Ft.
15 Sq. Ft. Per Pkg Sp.=13,395 Sq. Ft.
16,353 Sq. Ft.

Lot 2, Block A

SF (Single Family) PD-65
Auto Repair Center
3,119 Ac. (135,867 Sq. Ft.)
29,972 Sq. Ft. Total
1 Story, 40' Max.
22.06%
0.221:1
3 per Bay (10 Bays) + 1 per Employee
(20 Emp) = 50 Spaces
145 Spaces
99,103 Sq. Ft.
9,511 Sq. Ft.
2,568 Sq. Ft.
15 Sq. Ft. Per Pkg Sp.= 2,115 Sq. Ft.
2,130 Sq. Ft.

LANDSCAPE TABULATIONS: LOT 2 BLOCK A

STREET REQUIREMENTS
Requirements: (1) tree, 3" cal., per 30 l.f. of frontage
(15) shrubs, 5 gal., per 30 l.f. of frontage or 3' ht. berm

MAHARD PKWY: (200 l.f.)
Required: (7) trees, 3" cal. (100) shrubs
Provided: (7) trees, 3" cal. (100) shrubs

PARKING LOT (142 spaces)
Requirements: (1) tree, 3" cal., per 15 parking spaces and 15 s.f. of landscape per each parking space tree within 150' of any space

HEADLIGHT SCREEN PROVIDED
Required: (10) trees, 3" cal. 2,130 s.f.
Provided: (103) trees, 3" cal. 16,353 s.f.

PERIMETER LANDSCAPE
Requirements: 5' width; (1) small tree and (1) shrub, 5 gallon, per 15 l.f.
West Property Line: (200 l.f.)
Required: (13) small trees (13) shrubs, 5 gal.
Provided: (103) small trees (45) shrubs, 5 gal.

South Property Line: (679.34 l.f.)
Required: (45) small trees (45) shrubs, 5 gal.
Provided: (74) small trees (45) shrubs, added to west and bar island

North Property Line: (274 l.f.)
Required: (18) small trees (18) shrubs, 5 gal.
Provided: (18) small trees (18) shrubs, 4 ht. in 15' buffer

PERIMETER LANDSCAPE
Requirements: 15' width; (1) large tree per 30' and (1) shrub, 5 gallon, per 15 l.f.
North Property Line: (405.34 l.f.)
Required: (14) trees, 3" cal. (27) shrubs, 5 gal.
Provided: (16) trees, 3" cal. (27) shrubs, 4 ht.

BUILDING LANDSCAPE
Requirements: (1) tree, 3" cal., per 10,000 s.f. of Gross Floor Area within 30' of building. Ornamentals can be used at a ratio of 5:1
Gross Floor Area: 29,972 s.f.
Required: NA
Provided: NA

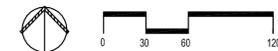
OPEN SPACE REQUIREMENTS
Requirements: 7% OF TOTAL SITE AREA TO BE OPEN SPACE.
less required interior landscape, perimeter buffers / landscape setbacks

TOTAL SITE AREA: 135,867
OPEN SPACE REQUIRED: 9,518 S.F. (7%)
OPEN SPACE PROVIDED: 2,568 S.F. (11.9%)

PLANT LEGEND

- BALD CYPRESS, 3" CAL., 12' HT.
- LIVE OAK, 3" CAL., 12' HT.
- CHINESE PISTACHE, 3" CAL., 12' HT.
- RED OAK, 3" CAL., 12' HT.
- CREPE MYRTLE, 2" CAL., 10' HT. MIN.
- REDBUD, 3" CAL., 10' HT. MIN.
- EASTERN RED CEDAR, 2" CAL. 8' HT.
- NELLIE R. STEVENS HOLLY, 4' HT.
- DWARF BURFORD HOLLY, 5 GAL.
- GROUNDCOVER, TYPE 'A', 4" POTS
- LAWN, BERMUDAGRASS, SOLID SOD

01 SUP LANDSCAPE PLAN
SCALE: 1"=60'-0"



Town Case No. Z20-0002
EXHIBIT "E"

GST PROSPER

BLOCK A, LOT 1 & 2
IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS
COLLIN CO. SCHOOL LAND SURVEY, ABST. NO. 147
18.240 Acres

SUPL.1



smr
landscape architects, inc.
1708 N. Griffin Street
Dallas, Texas 75202
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Fax: 214-871-0545
Email: smr@smr-ls.com



To: Mayor and Town Council
From: Chuck Springer, Executive Director of Administrative Services
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – February 25, 2020

Agenda Item:

Consider and act upon a resolution creating a Special Citizens Bond Advisory Committee for the proposed 2020 bond election and establishing a charge for the Committee; and the appointment of Committee members.

Description of Agenda Item:

This resolution creates a Special Citizens Bond Advisory Committee with the following parameters and charges for the Committee:

- Two appointments of Town residents per Town Council member.
- The Committee chair or co-chairs to be decided by the Committee.
- The Committee to be formally dissolved on November 4, 2020.
- The Committee will make recommendations on the dollar amounts and capital projects to the Town Council for a November 2020 election.
- The Committee to consider inclusion of street projects in an amount not to exceed 150 million dollars including, but not limited, to Fishtrap Road from Stuber Elementary to Dallas Parkway and East First Street from Coit Road to North Custer Road.
- The Committee to consider inclusion of Public Safety Facilities in an amount not to exceed 30 million dollars.
- The Committee to consider inclusion of parks, recreation and leisure facilities in an amount not to exceed 30 million dollars.
- The Committee to recommend a 2020 ten-year bond program not to exceed \$210 million in capital projects costs.
- The bond program should take into account the Town’s planned debt issuance over the next three years adopted in the Town’s FY 2019-2020 budget that will be separate and apart from the proposed General Obligation Bonds.

The proposed resolution gives each Town Councilmember the authority to appoint two residents to the Committee. The Committee chair, or co-chairs, will be appointed by the Committee membership.

Attached Documents:

1. Resolution

Town Staff Recommendation:

Town staff recommends approval of a resolution creating a Special Citizens Bond Advisory Committee for the proposed 2020 bond election and establishing a charge for the Committee; and the appointment of Committee members.

Proposed Motion:

I move to approve a resolution creating a Special Citizens Bond Advisory Committee for the proposed 2020 bond election and establishing a charge for the Committee; and the appointment of the following Committee members:

Mayor Ray Smith: _____

Mayor Pro-Tem Vogelsang: _____

Deputy Mayor Pro-Tem Dixon: _____

Councilmember Marcus Ray: _____

Councilmember Andres: _____

Councilmember Miller: _____

Councilmember Hodges: _____

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2020-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, CREATING A SPECIAL CITIZENS BOND ADVISORY COMMITTEE FOR THE PROPOSED 2020 BOND ELECTION; ESTABLISHING A CHARGE FOR THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper wishes to ask the citizens to consider authorizing General Obligation bonds in November 2020 for the purpose of public improvements in the community over the next ten years; and

WHEREAS, the Town Council has determined that it would be advisable to create a Special Citizens Bond Advisory Committee to provide recommendations on the specific projects that may be financed with the General Obligation bonds; and

WHEREAS, the Town Council requests that the Committee focus on public safety facilities, major and local street construction, and purchase and development of parks, recreation and leisure facilities; and

WHEREAS, the Town Council has asked staff to develop a prioritized list of projects that addresses the Town Council's goals and strategies as a beginning point for committee evaluation and consideration.

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

SECTION 1

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

SECTION 2

A Special Citizens Bond Advisory Committee is hereby created and shall be composed of residents of the Town of Prosper appointed by Town Council. Each Town Council member shall appoint two (2) Committee members. The Committee chair, or co-chairs, shall be appointed by the Committee membership. Appointments made on February 25, 2020, and on any subsequent Town Council meeting are hereby confirmed and accepted. The Committee shall perform its functions in accordance with this Resolution.

SECTION 3

A Special Citizens Bond Advisory Committee shall make recommendations to the Town Council on the dollar amounts and capital projects to be considered by the public in the November 2020 election.

SECTION 4

The Town Council requests the Special Citizens Bond Advisory Committee to consider inclusion of the construction, reconstruction or expansion of Town Streets in an amount not to exceed 150 million dollars including, but not limited, to Fishtrap Road from

Stuber Elementary to Dallas Parkway and East First Street from Coit Road to North Custer Road in their recommended capital projects for the November 2020 election.

SECTION 5

The Town Council requests the Special Citizens Bond Advisory Committee to consider inclusion of the construction or expansion of Public Safety Facilities in an amount not to exceed 30 million dollars.

SECTION 6

The Town Council requests the Special Citizens Bond Advisory Committee to consider inclusion of the construction, reconstruction, expansion or purchase of land for parks, recreation and leisure facilities in an amount not to exceed 30 million dollars.

SECTION 7

The Town Council requests the Special Citizens Bond Advisory Committee to recommend a 2020 ten-year bond program not to exceed \$210 million in capital projects costs. The bond program should take into account the Town’s planned debt issuance over the next three years adopted in the Town’s FY 2019-2020 budget that will be separate and apart from the proposed General Obligation Bonds.

SECTION 8

This Resolution shall become effective immediately upon its passage and approval. The Special Citizens Bond Advisory Committee appointments will end, and the Special Citizens Bond Advisory Committee shall be formally dissolved on November 4, 2020.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 25TH DAY OF FEBRUARY, 2020.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney