

Agenda

Prosper Town Council Meeting

Council Chambers
Prosper Town Hall
250 W. First Street, Prosper, Texas
Tuesday, September 27, 2022
5:45 PM

Notice Regarding Public Participation

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

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

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

Enter Meeting ID: 870 4743 2329

Addressing the Town Council:

Those wishing to address the Town Council must complete the located on the Town website or in Council Chambers.

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

If you are attending online/virtually, please submit this form to the Town Secretary prior to 4:00 p.m. on the day of the meeting. Please ensure your full name appears on the screen and you are unmuted so the meeting moderator can recognize you and allow you to speak. The Chat feature is not monitored during the meeting. The Town assumes no responsibility for technical issues that are beyond our control.

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

Call to Order/ Roll Call.

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

Announcements of recent and upcoming events.

Presentations.

- 1. Presentation of a Proclamation declaring the month of October 2022 as National Breast Cancer Awareness month. (MLS)
- 2. Presentation of a Proclamation to members of the Prosper Police and Fire Departments declaring October 4, 2022, as National Night Out. (MLS)
- 3. Presentation of a Proclamation to members of the Prosper Fire Rescue declaring the month of October 2022 as Fire Prevention month. (MLS)

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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.

- 4. Consider and act upon the minutes of the September 13, 2022, Town Council work session meeting. (MLS)
- Consider and act upon the minutes of the September 13, 2022, Town Council meeting.
 (MLS)
- 6. Consider and act upon approving a renewal to a Microsoft Enterprise Agreement, from SHI Government Solutions, Inc., through a Texas Department of Information Resources (DIR) Purchasing Contract; and authorizing the Town Manager to execute all related documents for the same. (LJ)
- Consider and act upon approving the purchase of network switches, from CDWG, Inc., through a Sourcewell Purchasing Contract. (LJ)
- 8. Consider and act upon authorizing the Interim Town Manager to execute a Park Dedication and Park Maintenance Agreement between PR LADERA, LLC, and the Town of Prosper, Texas, related to the dedication of public park property within the Ladera development. (DB)
- Oconsider and act upon an ordinance for a Specific Use Permit (SUP) for a Private Street Development, on 16.4± acres, located on the south side of First Street, east of Coit Road. (S22-0008). (DS)
- 10. Consider and act upon an ordinance request to rezone 5.6± acres from PD-21 and Single Family-15 (SF-15) to a new Planned Development-Office/Retail (PD-O/R) for office and retail uses, located on the west side of Preston Road north of Broadway Street. (Z22-0014). (DS)
- 11. Consider and act upon authorizing the Interim Town Manager to execute a Development Agreement between Prosper Texas Capital LLC, and the Town of Prosper, Texas, related to the Winikates North development, located on the west side of Preston Road north of Broadway Street. (DS)
- 12. Consider and act upon an ordinance to rezone 11.3+- acres of Commercial (C) to Planned Development-Commercial (PD-C) to allow uses such as luxury office/warehouse, automobile storage, and recreational vehicle parking, located on the west side of Coleman Street, south of Prosper Trail. (Z22-0008). (DS)
- 13. Consider and act upon authorizing the Interim Town Manager to execute a Development Agreement between AMR Prosper Premium Storage LLC, and the Town of Prosper, Texas, related to the Premium Garages development, located on the west side of Coleman Street south of Prosper Trail. (DS)
- 14. Consider and act upon an ordinance amending the no parking zone on Prince William Lane from Coleman Street to south of Highbridge Lane. (HW)
- 15. Consider and act upon approving a Services Agreement with Strategies 360, Inc., for Strategic Communications Planning and Crisis Communications Services, and authorizing the Interim Town Manager to execute the same. (RB)

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- Consider and act upon an ordinance amending Section 1.04.039 of Division 3, "Community Engagement Committee" (CEC) of Article 1.04 of the Town's Code of Ordinances by providing for the appointment of an alternate to the Community Engagement Committee (CEC). (MLS)
- 17. Consider and act upon an ordinance amending Division 1 of Article 1.04, "Board, Commissions, and Committees", of Chapter 1 of the Town's Code of Ordinances by providing for term limits for members of Town Boards, Commissions, and Committees. (MLS)
- 18. Consider and act upon a resolution designating The Prosper Press as the official newspaper of the Town of Prosper, and The Dallas Morning News and The Frisco Enterprise as alternative advertising sources, for Fiscal Year 2022-2023. (MLS)
- Consider and act upon approving a Development Agreement by and between the Town of Prosper ("Town"), Texas, 310 Prosper, L.P. and 55 Prosper, L.P. (collectively "Owners") regarding the dedication of park land and a hike & bike trail easement; and authorizing the Interim Town Manager to approve final exhibits and execute all related documents for the same. (RKP)
- 20. 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, including Star Trail West Amenity Center. (DS)

CITIZEN COMMENTS

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a "Public Comment Request Form" and present it to the Town Secretary prior to the meeting.

REGULAR AGENDA:

If you wish to address the Council, please fill out a "Public Comment Request Form" and present it to the Town Secretary, preferably before the meeting begins. Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Council for items listed as public hearings will be recognized when the public hearing is opened. For individuals wishing to speak on a non-public hearing item, they may either address the Council during the Citizen Comments portion of the meeting or when the item is considered by the Town Council.

Items for Individual Consideration:

- 21. Conduct a public hearing and act upon a request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through coffee shop as a permitted use, located on the northwest corner of Preston Road and Coleman Road. (Z21-0013). (DS)
- Consider all matters incident and related to the issuance and sale of "Town of Prosper, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022", including the adoption of an ordinance authorizing the issuance of such obligations and establishing procedures and delegating authority for the sale and delivery of such obligations. (RBS)

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Consider and act upon a resolution to deny the application of Oncor Electric Delivery Company LLC, for approval to increase system-wide transmission and distribution rates within the Town. (RBS)

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

- 24. Discuss the Collin County Bond Program Call for Projects. (PA)
- 25. Discussion regarding establishing a Downtown Committee. (RB)
- 26. Discuss the Town Logo. (RB)

EXECUTIVE SESSION:

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

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

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

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

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with independent contractors, and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with Chapter 551 and 552 of the Texas Government Code, and all matters incident and related thereto.

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

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

Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, September 23, 2022, and remained so posted at least 72 hours before said meeting was convened.

Date Not	ico Por	novod	

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.

Item 4.



MINUTES

Prosper Town Council Work Session

Prosper Town Hall – Executive Conference Room 250 W. First Street, Prosper, Texas Tuesday, September 13, 2022

Prosper is a place where everyone matters.

Call to Order/ Roll Call.

The meeting was called to order at 5:20 p.m.

Council Members Present:

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

Staff Members Present:

Ron K. Patterson, Interim Town Manager
Terry Welch, Town Attorney
Michelle Lewis Sirianni, Town Secretary
Robyn Battle, Executive Director of Community Services
Hulon Webb, Interim Executive Director of Development and Infrastructure Services
Bob Scott, Executive Director of Administrative Services
Mary Ann Moon, EDC Executive Director
Leslie Scott, Director of Library Services
James Edwards, Human Resources Director
Todd Rice, Communications Manager
Frank Jaromin, Public Works Director
Dan Baker, Parks and Recreation Director
Stuart Blasingame, Fire Chief
Doug Kowalski, Police Chief

Items for Individual Consideration

1. Media Relations Training. (RB)

Marc Rylander with Strategies 360 presented principles for public servants to aid in managing messages within various media platforms.

Adjourn.

The meeting was adjourned at 5:57 p.m.

These minutes approved on the 27th day of September 2022.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary



Item 5.



MINUTES

Prosper Town Council Meeting

Council Chambers Prosper Town Hall 250 W. First Street, Prosper, Texas Tuesday, September 13, 2022

Prosper is a place where everyone matters.

Call to Order/ Roll Call.

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

Council Members Present:

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

Staff Members Present:

Leigh Johnson, IT Director

Doug Kowalski, Police Chief Stuart Blasingame, Fire Chief

Ron K. Patterson, Interim Town Manager Terry Welch, Town Attorney Michelle Lewis Sirianni, Town Secretary Bob Scott, Executive Director of Administrative Services Sandy Mattick, Interim Finance Director Robyn Battle, Executive Director of Community Services Hulon Webb, Interim Executive Director of Development and Infrastructure Services Pete Anaya, Assistant Director of Engineering Services / CIP David Soto, Planning Manager Todd Rice, Communications Manager James Edwards, Human Resources Director Dan Baker, Parks and Recreation Director Paul Naughton, Senior Park Planner Trevor Helton, Recreation Supervisor Frank Jaromin, Public Works Director Leslie Scott, Director of Library Services

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

Mary Ann Moon, Executive Director of Economic Development

Jason McConnell with Prosper United Methodist Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

Announcements of recent and upcoming events.

Councilmember Kern made the following announcements:

Thank you to all those who attended including the staff and volunteers for making Paws on Broadway a great event this past Saturday. A fun time was had by all.

Thanks to everyone who attended the annual 9/11 remembrance ceremony held by the Prosper Fire Rescue and Prosper ISD this past Sunday. The joint event was a very special remembrance of the many lives lost, and those affected by this tragic day.

A new resident mixer is being held by the Town for those who have moved to Prosper in the last six months on Thursday, September 15 from 6:00 to 8:00 p.m. on the south lawn of Town Hall. Residents will get an opportunity to meet staff and their neighbors. There will be entertainment for the kids and refreshments for the family.

Join us for a Moonlight Movie featuring the family film "Encanto" as part of the Discover Downtown event series on Saturday, September 24. The event kicks off with strolling movie characters, lawn games, balloon artists, shaved ice, and popcorn. Games will open at 7:00 p.m. with movie beginning at 8:30 p.m. Visit the Town's website for more information.

A Mayor's Luncheon for Active Adults 55+ will take place on Wednesday, October 5 from 11:00 a.m. to 1:00 p.m. at the Church of Jesus Christ for Latter-day Saints. Reserve your spot today by contacting Brant Holland in the Parks and Recreation Department.

Join us for "Celebrate Prosper BBQ & Blues" on Saturday, October 8 at Frontier Park from 5:00 p.m. to 9:00 p.m. This fun community celebration will feature live music and BBQ. The event is presented by the Parks and Recreation Department with support of Sponsors and community partners. Visit the Town's website for more information.

Presentations.

1. Presentation of a Proclamation to members of the Shawnee Trail Chapter of the National Society of the Daughters of the American Revolution (DAR) declaring September 17-23, 2022, as Constitution Week. (MLS)

Mayor Bristol read and presented the Proclamation to Beverly Werner from the Shawnee Trail Chapter of DAR.

2. Receive an update regarding the Pickleball Tournament. (TH)

Mr. Helton provided an update regarding the upcoming tournament to be held on November 5. Prosper Independent School District (PISD) has agreed to allow the Town to utilize Reynold Middle School for the tournament site. There will be several categories and prizes for first and second place finishers along with local food vendors for those in attendance.

3. Receive an update from the IT Department. (LJ)

Mr. Johnson presented an update that included completed and upcoming projects along with connectivity with Town facilities, and the state mandated Cyber Security training.

CONSENT AGENDA:

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4. Consider and act upon the minutes of the August 23, 2022, Town Council meeting. (MLS)

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- 5. Consider and act upon the minutes of the August 29, 2022, Town Council special meeting. (MLS)
- 6. Consider and act upon the minutes of the August 30, 2022, Town Council special meeting. (MLS)
- 7. Receive the Quarterly Investment Report. (RBS)
- 8. Consider and act upon Resolution 2022-51 approving the Town of Prosper and Prosper Economic Development Corporation (PEDC) Investment Policy and Investment Strategy and approving the list of qualified brokers/dealers and financial institutions that are authorized to engage in investment transactions with the Town of Prosper and the PEDC. (RBS)
- 9. Consider and act upon Resolution 2022-52 authorizing various individuals as signers of specific accounts and certain investment matters. (RBS)
- 10. Consider authorizing the Town Manager to amend an existing contract by changing the scope of services with Pattillo, Brown Hill L.L.P. (PBH) from external audit services to professional services for an amount not to exceed \$45,000.00. (RBS)
- 11. Consider and act upon adopting the FY 2022-2023 Prosper Economic Development Corporation budget. (MM)
- 12. Consider and act upon approving Amendment Sixteen to the Interlocal Agreements between Collin County and the Town of Prosper, Texas, for Animal Sheltering Services and Animal Control Services; and authorizing the Interim Town Manager to execute the same. (MB)
- 13. Consider and act upon the appointment of a Municipal Judge, and authorize the Mayor to execute an agreement for same. (MLS)
- 14. Consider and act upon awarding CSP No. 2022-54-B to Ratliff Hardscape, Ltd. related to construction services for the Pecan Grove Park, Ph 2 (2145-PK), and authorizing the Interim Town Manager to execute a construction agreement for same. (DB)
- 15. Consider and act upon authorizing the Interim Town Manager to execute a Professional Engineering Services Agreement between Kimley Horn and Associates, Inc., and the Town of Prosper, Texas, related to the development of the Town of Prosper ADA Transition Plan. (HW)
- 16. Consider and act upon awarding CSP No. 2022-48-B to Mario Sinacola & Sons Excavating, Inc., related to construction services for the First Street (Coit to Custer) 4 lanes project; and authorizing the Interim Town Manager to execute a construction agreement for same. (HW)
- 17. Consider and act upon authorizing the Interim Town Manager to execute a Professional Services Agreement between Freese and Nichols, Inc., and the Town of Prosper, Texas, related to the update of the Comprehensive Plan. (DS)
- 18. Consider and act upon Resolution 2022-53 authorizing the Interim Town Manager, and/or his/her designee, to apply for the Office of the Governor, Criminal Justice Division, Bullet-Resistant Shield Grant Program, FY2023. (DK)

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- Consider an act upon approval of the Prosper Youth Sports Commission (PYSC) Bylaw amendments. (DB)
- 20. Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Site Plans and Preliminary Site Plans, including Lighthouse Church, First Baptist Church, and PISD Bryant Elementary School. (DS)

Deputy Mayor Pro-Tem Andres requested to pull item #14.

Councilmember Cotten requested to pull item #16.

Mayor Pro-Tem Hodges made a motion to approve consent agenda items 4 thru 13, 15, and 17 thru 20. Councilmember Cotten seconded the motion, and the motion was unanimously approved.

In regard to item #14, Deputy Mayor Pro-Tem Andres asked if the staff had concerns regarding flooding or drainage problems related to the park. Mr. Naughton replied that the Park Department is working with Engineering to resolve any previous issues and/or concern regarding the lot drainage.

Deputy Mayor Pro-Tem Andres made a motion to approve awarding CSP No. 2022-54-B to Ratliff Hardscape, Ltd. related to construction services for the Pecan Grove Park, Ph 2 (2145-PK), and authorizing the Interim Town Manager to execute a construction agreement for same. Councilmember Ray seconded that motion, and the motion was unanimously approved.

In regard to item #16, Councilmember Cotten stated in the previous meeting that the Town Council had requested staff to find additional cost savings regarding the project and indicated Prosper Independent School District (PISD) has agreed to participate and provide funding for the construction of First Street adjacent to the new high school.

Councilmember Cotten made a motion to approve awarding CSP No. 2022-48-B to Mario Sinacola & Sons Excavating, Inc., related to construction services for the First Street (Coit to Custer) - 4 lanes project; and authorizing the Interim Town Manager to execute a construction agreement for same. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

CITIZEN COMMENTS

Eric Ericson, 2700 Gentle Creek Trail, asked if the Town was considering placing soccer fields at the park located at First and Coit.

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

21. Conduct a public hearing and consider and act upon a request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through coffee shop as a permitted use, located on the northwest corner of Preston Road and Coleman Road. (Z21-0013). (DS)

Mr. Soto presented the item and indicated staff has concerns allowing additional drivethroughs to be constructed consecutively on the adjacent lot. The proposed request conforms to the Future Land Use Plan with the Comprehensive Plan. Staff received no public comments and was approved by the Planning and Zoning Commission with a 4-0 vote. Staff recommends approval.

The Town Council discussed the permitted uses allowable by right, building height, and the drive-through use as part of the request.

Matt Donnell with Victory Real Estate Group stated the hotel use is no longer being considered and will be a multi-tenant building of at least 9,000 square feet.

The Town Council further discussed the uses, building materials proposed, and the likeness of the proposed project to the surrounding properties.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

The Town Council discussed the following development standards and/or conditions to be addressed in the ordinance or listed within the Development Agreement: removal of the hotel, Lots 1 and 2 to be at least 5,000 square foot or greater, Lots 3 and 4 for office use only, the building height of two stories or less should consist of 60% masonry and more than two stories with minimum 40% masonry and include family friendly businesses.

Councilmember Cotten made a motion to approve a request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through restaurant as a permitted use, located on the northwest corner of Preston Road and Coleman Road with the conditions as outlined. Councilmember Ray seconded that motion. Motion failed by a vote of 2-6. All other members were opposed.

The Town Council discussed the percentages of masonry versus other materials.

Mayor Pro-Tem Hodges made a motion to table to September 27, 2022, a request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through restaurant as a permitted use, located on the northwest corner of Preston Road and Coleman Road. Deputy Mayor Pro-Tem seconded that motion. Motion carried by a vote of 6-1. Councilmember Ray voting in opposition.

22. Conduct a public hearing and consider and act upon a request to rezone 5.6± acres from PD-21 and Single Family-15 (SF-15) to a new Planned Development-Office/Retail (PD-O/R) for office and retail uses, located on the west side of Preston Road north of Broadway Street. (Z22-0014). (DS)

Mr. Soto stated the applicant is proposing to rezone the entire tract to develop the property with four buildings to include office/medical use and retail on the easternmost tract of land. The site provides for adequate parking and stacking. The landscaping meets the minimum standards, and the proposed request conforms to the Future Land Use Plan within the Comprehensive Plan. Staff received one letter of opposition. The Planning and Zoning Commission recommended approval of the request by a vote of 4-0 at their August 16, 2022, meeting. Staff recommends approval.

The Town Council discussed the meaning of Wet Under Ground Detention Area as listed on the plan. Mr. Bond explained the area could be done underground or wet. He added the retail building could end up being office use.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

Councilmember Cotten made a motion to approve a request to rezone 5.6± acres from PD-21 and Single Family-15 (SF-15) to a new Planned Development-Office/Retail (PD-O/R) for office and retail uses, located on the west side of Preston Road north of Broadway Street and limiting the retail component of the development to family-friendly businesses. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

23. Conduct a public hearing and consider and act upon a request to rezone 11.3+acres of Commercial (C) to Planned Development-Commercial (PD-C) to allow
uses such as luxury office/warehouse, automobile storage, and recreational
vehicle parking, located on the west side of Coleman Street, south of Prosper
Trail. (Z22-0008). (DS)

Mr. Soto stated the applicant is proposing to update to the uses, design standards, and architectural standards for the proposed uses. All uses shall be enclosed within a building and no open storage will be permitted. The site provides for adequate parking and stacking. The office/warehouse will be primarily made of brick with the other buildings being metal with masonry veneer. The landscaping meets the minimum standards, and the proposed request conforms to the Future Land Use Plan within the Comprehensive Plan. The Planning and Zoning Commission recommended approval by a 4-0 vote at their August 16, 2022, meeting. Staff recommends approval.

The Town Council discussed the parking ratio and fencing on the south side of the property.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

Deputy Mayor Pro-Tem Andres stepped away from the dais.

Mayor Pro-Tem Hodges made a motion to approve a request to rezone 11.3+- acres of Commercial (C) to Planned Development-Commercial (PD-C) to allow uses such as luxury office/warehouse, automobile storage, and recreational vehicle parking, located on the west side of Coleman Street, south of Prosper Trail and limiting the retail component of the development to family-friendly businesses. Councilmember Bartely seconded that motion, and the motion passed by a 6-0 vote.

24. Conduct a public hearing and consider and act upon a request for a Specific Use Permit (SUP) for a Private Street Development, on 16.4± acres, located on the south side of First Street, east of Coit Road (S22-0008). (DS)

Mr. Soto stated the Zoning Ordinance allows for a Private Street Development subject to approval of a Specific Use Permit (SUP), in accordance with the Conditional

Development Standards. The applicant has satisfied all requirements with no negative impacts to the surrounding properties. The request conforms to the Future Land Use Plan within the Comprehensive Plan. Staff did not receive any forms in response to the request. The Planning and Zoning Commission recommended approval by a 4-0 vote at their August 16, 2022, meeting. Staff recommends approval.

Mat Moore with ClayMoore Engineering indicated this will be a gated community consisting of 26 to 27 lots.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

Councilmember Bartley made a motion to approve a request for a Specific Use Permit (SUP) for a Private Street Development, on 16.4± acres, located on the south side of First Street, east of Coit Road. Mayor Pro-Tem Hodges seconded that motion, and the motion was unanimously approved.

25. Consider and act upon Ordinance 2022-54 adopting the fiscal year (FY) 2022-2023 Annual Budget and Capital Improvement Program for the fiscal year beginning October 1, 2022 and ending September 30, 2023. (RBS)

Mr. Scott provided an overview of the proposed budget including the assessed valuation and tax rate, revenue funds, dedicated capital levy, property tax distributions, and the fiscal year 2023 initiatives.

Councilmember Ray made a motion to approve Ordinance 2022-54 adopting the fiscal year (FY) 2022-2023 Annual Budget and Capital Improvement Program for the fiscal year beginning October 1, 2022, and ending September 30, 2023. Councilmember Cotten seconded that motion and was unanimously approved by a roll call vote of 7-0.

26. Conduct a public hearing to consider and act upon Ordinance 2022-55 adopting a tax rate of \$0.51 per \$100 valuation for fiscal year 2022-2023. (RBS)

Mr. Scott stated the proposed tax rate requires a record vote, and at least 60% of the members of the governing body voting in favor.

Mayor Bristol stated this is only a public hearing to discuss the FY 2022-2023 proposed tax rate.

Mayor Bristol opened the public hearing and encouraged the public to express their views.

No comments were made.

Mayor Bristol closed the public hearing.

Councilmember Cotten made a motion to move that the property tax rate be increased by the adoption of a tax rate of \$0.51, which is effectively a 16.38% increase in the tax rate. Councilmember Ray seconded that motion and was unanimously approved by a roll call vote of 7-0.

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27. Make a motion to ratify the property tax increase in the budget for fiscal year (FY) 2022-2023. (RBS)

Mr. Scott stated it is required by state law that adoption of a budget that will raise more revenue from property taxes than in the previous years requires a separate vote of the governing body to ratify the property tax increase reflected in the budget.

Mayor Pro-Tem Hodges made a motion to ratify the property tax increase in the budget for fiscal year (FY) 2022-2023. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

28. Consider and act upon Ordinance 2022-56 amending Article 1.04, "Boards, Commissions and Committee," of Chapter 1, "General Provisions," of the Code of Ordinances establishing the Community Engagement Committee as a standing advisory committee to the Town Council. (RB)

Ms. Battle reviewed the current structure of the Community Engagement Committee (CEC) and the proposed structure if the Town Council should approve the ordinance. The proposed structure would include eleven (11) members, a Chair and Vice-Chair selected annually by the Committee, two-year staggered terms beginning October 1, 2022, and would follow the eligibility, application and appointment process of the Town's Board and Commission Appointment Policy, as well as subject to the Open Meetings Act.

Councilmember Bartley made a motion to approve Ordinance 2022-56 amending Article 1.04, "Boards, Commissions and Committee," of Chapter 1, "General Provisions," of the Code of Ordinances establishing the Community Engagement Committee as a standing advisory committee to the Town Council. Mayor Pro-Tem Hodges seconded that motion, and the motion was unanimously approved.

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

29. Discuss update to the Thoroughfare Plan. (HW)

Mr. Webb outlined administrative updates to the plan highlighting Teel Parkway, the intersection at Coleman and First Street, and the Dallas North Tollway (DNT) collector with and/or without Frontier Park Access Alternative. Mr. Webb stated any updates would follow a formalized process beginning with a public hearing at Planning and Zoning (P&Z). If the Town Council wishes to move forward, it would start October 18 with P&Z and to the Town Council on November 8. Staff is seeking direction as well as their preference on whether to include the Frontier Park Access Alternative.

Councilmember Ray commented that he would like to see the Lakes of Prosper subdivision notified regarding the road location.

The consensus of the Town Council was to move forward with the update and to include the Frontier Park Access Alternative.

30. Discussion regarding a potential Capital Improvements Sub-Committee. (RKP)

Mr. Patterson recommended the Town Council consider formalizing a sub-committee for Capital Improvement projects that would become part of the budget process.

Councilmember Cotten asked if they can add citizens. Mr. Patterson indicated that the sub-committee would have the ability to call meetings with the community. Therefore, recommended it be selected Councilmembers.

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The consensus of the Town Council was to move forward with this item.

Councilmember Cotten as part of a future agenda item, would like to add the reevaluating of the process to select contractors as part of the CSP process.

Councilmember Kern requested to review the process of short-term rentals.

EXECUTIVE SESSION:

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

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

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

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

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

The Town Council recessed into Executive Session at 8:59 p.m.

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

The Town Council reconvened into Regular Session at 10:34 p.m.

Mayor Pro-Tem Hodges made a motion to approve a First Amendment to the Interim Town Manager Agreement. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

Adjourn.

The meeting was adjourned at 10:34 p.m.

These minutes approved on the 27th day of September 2022.

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

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INFORMATION TECHNOLOGY

To: Mayor and Town Council

From: Leigh Johnson, Director of Information Technology

Through: Ron Patterson, Interim Town Manager

Re: Microsoft Enterprise Agreement Renewal

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon approving a renewal to a Microsoft Enterprise Agreement, from SHI Government Solutions, Inc., through a Texas Department of Information Resources (DIR) Purchasing Contract; and authorizing the Town Manager to execute all related documents for the same. (LJ)

Description of Agenda Item:

On or about June 25, 2019, the Town Council approved the establishment of a Microsoft Enterprise Agreement (MSEA) with a term of three years. The current agreement expires on August 31, 2022.

Upon approval of this item, the Town will enter into another three-year MSEA term, and will be billed annually based on the size of staff and infrastructure at the time of billing. The MSEA pricing is calculated annually and is not affected by mid-year staffing or infrastructure changes until the following year, when any increases are applied to the next annual payment.

Local governments are authorized by the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791, to enter into joint contracts and agreements for the performance of governmental functions and services, including administrative functions normally associated with the operation of government (such as purchasing necessary materials and equipment).

The Town of Prosper entered into an interlocal agreement with the Texas Comptroller of Public Accounts Cooperative Purchasing Program (formerly, Texas Building and Procurement Commission) on March 14, 2006. Participation in the program allows our local government to purchase goods and services through the cooperative contract, DIR contracts included, while satisfying all competitive bidding requirements.

Budget Impact:

The FY 2021-2022 cost of the agreement is \$94,878.76, and the full cost of the three year contract is \$284,631.63. The purchase will be funded from 100-5419-10-05 IT Licenses. Subsequent annual expenditures will be subject to appropriations granted in future fiscal years.

Legal Obligations and Review:

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

Attached Documents:

- 1. SHI quote 1
- 2. SHI quote 2
- 3. Microsoft Business and Services Agreement
- 4. Microsoft Enterprise Enrollment
- 5. Microsoft Supplemental Contact Information Form
- 6. Microsoft Program Signature Form
- 7. Microsoft Qualifying Government Entity Addendum
- 8. Microsoft Previous Enrollment Agreement Form
- 9. Microsoft Enterprise Subscription Enrollment Product Selection Form
- **10.** Microsoft Enterprise Agreement

Town Staff Recommendation:

Town staff recommends approving the renewal to a Microsoft Enterprise Agreement, from SHI Government Solutions, Inc., through a Texas Department of Information Resources (DIR) Purchasing Contract; and authorizing the Town Manager to execute all related documents for the same.

Proposed Motion:

I move to approve the renewal to a Microsoft Enterprise Agreement, from SHI Government Solutions, Inc., through a Texas Department of Information Resources (DIR) Purchasing Contract; and authorizing the Town Manager to execute all related documents for the same.

Page 2 of 2



Pricing Proposal

Quotation #: 22117956 Reference #: 47645384 Created On: Jun-07-2022 Valid Until: Sep-30-2022

TX-Town of Prosper

Senior Inside Account Executive

Leigh Johnson

Phone: Fax:

Email: Ijohnson@prospertx.gov

Jessica Vos

P.O. Box 847434 Dallas, TX 75284-7434

Phone: 800-870-6079 x6527657

Fax: 512-732-0232 Email: Jessica_Vos@shi.com

Click here to order this quote

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	Office Professional Plus ALng LSA Microsoft - Part#: 269-05704 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	50	\$108.06	\$5,403.00
2	SQL CAL ALng LSA User CAL Microsoft - Part#: 359-00961 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	60	\$33.56	\$2,013.60
3	SQL Server Standard ALng SA Microsoft - Part#: 228-04433 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	1	\$144.89	\$144.89
4	Win Server DC Core ALng SA 2L Microsoft - Part#: 9EA-00278 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	32	\$124.43	\$3,981.76

5 AzureprepaymentG ShrdSvr ALNG SubsVL MVL Commit Provision

Microsoft - Part#: J5U-00004

Contract Name: Microsoft Software VAR

Contract #: DIR-TSO-4092

Coverage Term: Sep-01-2022 - Aug-31-2023

Note: Year 1 of 3

\$0.00

\$0.00

6	M365 G3 Unified FUSL GCC Sub Per User Microsoft - Part#: AAD-34704 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092	158	\$381.12	\$6 <u>11000</u>
	Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3			
7	O365 G1 GCC Sub Per User Microsoft - Part#: U4S-00002 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	236	\$85.44	\$20,163.84
8	Power BI Pro GCC Sub Per User Microsoft - Part#: DDJ-00001 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	2	\$92.28	\$184.56
9	Visio P2 GCC Sub Per User Microsoft - Part#: P3U-00001 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	20	\$138.48	\$2,769.60
10	Teams AC with Dial Out US/CA GCC Sub Addon Microsoft - Part#: NYH-00001 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: Sep-01-2022 – Aug-31-2023 Note: Year 1 of 3	394	\$0.00	\$0.00
		-	Subtotal Shipping Total	\$94,878.21 \$0.00 \$94,878.21

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

Thank you for choosing SHI-GS! The pricing offered on this quote proposal is valid through the expiration date set above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order.

SHI Government Solutions, Inc. is 100% Minority Owned, Woman Owned Business. TAX ID# 22-3695478; DUNS# 14-724-3096

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.

Microsoft Volume Licensing

Discount Transparency Disclosure Form

Date: 9/2/2022

Program: Enterprise 6

Enrollment Number: Renewal

Quote Number: 1236943.003

Partner Name: SHI International Corp.

Reseller Address: 290 Davidson Ave

Somerset, NJ, United States, 08873-4145

Discount Details

For this enrollment, Microsoft provided the Customer's Partner an additional discount off of the Partner's Net Price. The Partner is required, by Microsoft, to pass on the additional discount to the Customer by reducing the Microsoft Product resale price by an amount equal to or greater then the discount.

Listed in the table below is the maximum price the partner may charge for the Microsoft Products to be ordered under this enrollment. The Maximum Resale Price (MRP) is calculated by subtracting the additional discount provided to the Partner, from the total estimated resale price for the Microsoft Products.

The requirement to pass through the additional discount, does not mean that Microsoft is setting the Customer's actual price. Partners remain free to set the price charged for Microsoft Products at any point equal to or below MRP. The Customer's actual price will be established by a separate agreement between Customer and its Partner.

Ordered Products			
Currency	Maximum Resale Price		
US Dollar	ollar 346,522		

Note: The Maximum Resale Price listed in the table above only pertains to the Microsoft Products to be ordered under this Enrollment. The content of this form has no impact on the Customer's price for Non-Microsoft products and services.

In this form, the following definitions apply:

"Customer" means the entity that may enter or has entered into a Contract with the Partner.

"Contract" means a binding agreement between the Partner and Affiliate, under which Customer orders Products from Partner.

"Microsoft" means (1) the entity that has entered into an agreement with Partner under which Partner may place orders for Microsoft Products for use by the Customer and (2) the affiliates of such entity, as appropriate.

"Maximum Resale Price" means the sum of the Estimated Retail Price for all Microsoft Products ordered under the Customer Contract minus the aggregated discount off of the Partner's Net Price provided by Microsoft listed in the currency in which the Partner or Partner's reseller transacts with Microsoft.

"Product" means all Microsoft Products identified in the Product Terms, such as all Software, Online Services, and other webbased services, including pre-release or beta version. Microsoft product availability may vary by region.

Partner:
Customer:
Signature of Customer's authorized representative:
Printed name:
Printed title:
Interim Town Manager

Date:

Item 6.





Enterprise Enrollment

State and Local

Enterprise Enrollment number (Microsoft to complete)	80587239	Framework ID (if applicable)	
Previous Enrollment number (Reseller to complete)	47645384		

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at http://www.microsoft.com/licensing/contracts. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means http://www.microsoft.com/licensing/contracts or a successor site.

2. Order requirements.

- **a. Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
 - (i) Enterprise commitment. Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
 - (ii) Enterprise Online Services only. If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- **b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products. For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- **d.** Country of usage. Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers. Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

f. Adding Products.

(i) Adding new Products not previously ordered. New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) Adding Licenses for previously ordered Products. Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- **g.** True-up requirements. Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
 - (i) Enterprise Products. For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
 - (ii) Additional Products. For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
 - (iii) Online Services. For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.
 - **(iv) Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
 - 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

- (v) Update statement. An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
- (vi) True-up order period. The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii)Late true-up order. If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- **h. Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. Clerical errors. Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- **j. Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. Pricing.

- **a. Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. Setting Prices. Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. Payment terms.

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. End of Enrollment term and termination.

- **a. General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. Renewal option. At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

- (i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
- (ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
 - 1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
 - 2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.
- (iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- **e. Early termination.** Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

- a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- b. All terms and conditions applicable to non-Government Community Cloud Services also apply

- to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- **c.** Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- **d.** Use Rights for Government Community Cloud Services. For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

Enrollment Details

1. Enrolled Affiliate's Enterprise.

a.	Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:
	■ Enrolled Affiliate only
	☐ Enrolled Affiliate and all Affiliates
	☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included

☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

if fewer than all Affiliates are to be included in the Enterprise):

b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at https://www.microsoft.com/licensing/servicecenter.

a. Primary contact. This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* Town of Prosper Contact name* First Leigh Last Johnson Contact email address* leigh_johnson@prospertx.gov Street address* 200 S. Main St.
City* Prosper State* TX
Postal code* 75078-2742(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 972-569-1150
Tax ID

b. Notices contact and Online Administrator. This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Servies, including adding or reassigning Licenses and stepping-up prior to a true-up order.

* indicates required fields

☐ Same as primary contact (default if no information is provided below, even if the box is no checked).
Contact email address* leigh_johnson@prospertx.gov Street address* 200 S. Main St. City* Prosper State* TX Postal code* 75078-2742- (Please provide the zip + 4, e.g. xxxxx-xxxx) Country* United States Phone* 972-569-1150 Language preference. Choose the language for notices. English This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates. * indicates required fields
Online Services Manager. This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Contact name*: First Leigh Last Johnson

Contact email address* leigh_johnson@prospertx.gov

Phone* 972-569-1150

even if box is not checked)

☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

Same as notices contact and Online Administrator (default if no information is provided below,

d. Reseller information. Reseller contact for this Enrollment is:

Reseller company name* SHI International Corp.

Street address (PO boxes will not be accepted)* 290 Davidson Ave

City* Somerset-

State* NJ

C.

Postal code* 08873-4145

Country* United States

Contact name* Brandon Barkley

Phone* 888-764-8888

Contact email address* Brandon_Barkley@SHI.com

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature*		
Printed name*		
Printed title*		
Date*		

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

^{*} indicates required fields

^{*} indicates required fields

^{*} indicates required fields

other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

- **e.** If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
 - (i) Additional notices contact
 - (ii) Software Assurance manager
 - (iii) Subscriptions manager
 - (iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.





Volume Licensing

Amendment to Contract Documents

|--|

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Enrollment (Indirect) Invoice for Quoted Price Amendment ID M97

The price quoted to Enrolled Affiliate's Reseller is a fixed price based on an estimated order submission date. Microsoft will invoice Enrolled Affiliate's Reseller based on this fixed price quote. If this order is submitted later than the estimated order submission date, Enrolled Affiliate's Reseller will be charged for net new Monthly Subscriptions (including Online Services) for the period during which these services were not provided. Pricing to Enrolled Affiliate is agreed between Enrolled Affiliate and Enrolled Affiliate's Reseller.

SKU Number	SKU Description	Existing Quantity	Incremental quantities	
AAD-34704	M365 G3 Unified FUSL GCC Sub Per User	158		
U4S-00002	O365 G1 GCC Sub Per User	236		
P3U-00001	Visio P2 GCC Sub Per User	20	m 18	
DDJ-00001	Power BI Pro GCC Sub Per User	2	W.P. 1968	
NYH-00001	Teams AC with Dial Out US/CA GCC Sub Add on		394	

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

(M97)EnrAmend(Ind)(InvoiceforQuotedPrice)(M97	В
WW)(ENG)(Oct2020)(IU).docx		



Microsoft Volume Licensing

Proposal ID	Enrollment Number
1236943.003	
Language, English (United States)	

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:					
Profile	Qualified Devices	Qualified Users	Device / User Ratio	Enterprise Product Platform	CAL Licensing Model
Enterprise	158	394	1.0	No	User Licenses
Worker Kiosk Device	50	50	1.0	No	None
Total	208	444			

Products	Enterprise Quantity	Worker Kiosk Device Quantity		
Office Professional Plus				
Office Professional Plus	-	50		
Office 365 Plans				
O365 G1 GCC	236	-		
Microsoft 365 Enterprise				
M365 G3 GCC USL Unified	158	-		

Enrolled Affiliate's Product Quantities:					
Price Group	1	2	3	4	
	Apps for Enterprise + Office 365	Office 365 (Plans E1, E3	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	Win VDA + Microsoft	
Quantity	208	394	158	158	

Enrolled Affiliate's Price Level:			
Product Offering / Pool	Price Level		
Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D		
Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D		
Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D		

Enterprise Enrollment Product Selection Form

Microsoft Volume Licensing

Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using	
quantity from Group 4.	D

NOTES

Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	А
2,400 to 5,999	В
6,000 to 14,999	С
15,000 and above	D

Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.

Note 2: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.





Volume Licensing

Enterprise

Sub 250 Program Amendment ID W29

The parties agree that the Enrollment is amended as follows:

1. On the first page of the Enrollment, the following is added after the second paragraph:

By entering into this Enrollment, the Enrolled Affiliate agrees that (1) it also has 25 or more Qualified Devices or Qualified Users; or (2) as a condition of entering into this Enrollment with 25-249 Qualified Devices or Qualified Users, Enrolled Affiliate has elected not to receive CD ROMs as part of the Enrollment and therefore no CD ROMs will automatically be shipped. If Enrolled Affiliate is enrolling with 25-249 Qualified Devices or Qualified Users and it would like to receive CD ROM Kits and updates, Enrolled Affiliate may order these through its Reseller for a fee.

The submission of this Amendment can only be placed against a 2011 Enterprise Agreement or an Enrollment that has the Updated EA Amendment terms and conditions applied. The submittal of this Amendment may not be contingent on submittal of a new Enterprise Agreement.

2. Section 2a of the Enrollment titled "Order Requirements", is hereby amended and restated in its entirety with the following:

- **a. Minimum Order Requirements.** Enrolled Affiliate's Enterprise must have a minimum of 25 Qualified Users or Qualified Devices.
 - (i) Initial Order. Initial order must include at least 25 Licenses from one of the four groups outlined in the Product Selection Form.
 - (ii) If choosing Enterprise Products. If choosing Enterprise Products in a specific group outlined in the Product Selection Form, Enrolled Affiliate's initial order must include an Enterprise-wide selection of one or more Enterprise Products or a mix of Enterprise Products and corresponding Enterprise Online Services for that group.
 - (iii) Additional Products. Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
 - (iv) Country of Usage. Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
 - (v) Enterprise Online Services only. If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 25 Subscription Licenses for Enterprise Online Services.

3. Software Assurance renewal.

Renewing Software Assurance: If Enrolled Affiliate will be renewing Produ	ucts	
Software Assurance coverage from a separate agreement, check this box.		

By checking the above box, a new section is added to the Enrollment entitled "Software Assurance Addition."

Software Assurance Addition. Enrolled Affiliate is permitted to and will include in its initial order under this Enrollment Software Assurance quantities from eligible Program's identified in the table below, even though Enrolled Affiliate is not otherwise eligible to order such Software Assurance without simultaneously ordering a License.

Enrolled Affiliate agrees that any perpetual Licenses received through the New Software Assurance shall supersede and replace the underlying Licenses, and the underlying Licenses are not to be transferred separately from any Licenses received through the New Software Assurance. Any remaining payment obligations with respect to the underlying Licenses shall continue in effect.

Program	License ID Number	Expiration Date	
Enterprise	47645384	8/31/2022	

Volume Licensing



Program Signature Form

MBA/MBSA number	
Agreement number	01E73535

5-0000009094209

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Enterprise Enrollment (Indirect)	X20-10635
Sub250 Form	W29
Discount Transparency Disclosure Form	1236943.003_DTF
Product Selection Form	1236943.003_PSF
Enterprise Amendment	M97 (NEW)

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer		
Name of Entity (must be legal entity name)* Town of Prosper		
Signature*		
Printed First and Last Name*		
Printed Title		
Signature Date*		
Tax ID		

^{*} indicates required field

Microsoft Affiliate
Microsoft Corporation
Signature
Printed First and Last Name
Printed Title
Signature Date (date Microsoft Affiliate countersigns)
Agreement Effective Date (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer		
Name of Entity (must be legal entity name)*		
Signature*		
Printed First and Last Name*		
Printed Title		
Signature Date*		

Outsourcer		
Name of Entity (must be legal entity name)*		
Signature*		
Printed First and Last Name*		
Printed Title		
Signature Date*		
* ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' ' '		

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation

Dept. 551, Volume Licensing 6880 Sierra Center Parkway Reno, Nevada 89511 USA

^{*} indicates required field

^{*} indicates required field

Volume Licensing



Previous Enrollment(s)/Agreement(s) Form

Entity Name: Town of Prosper

Contract that this form is attached to: State Local Government

For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

Please provide a description of the previous Enrollment(s), Agreement(s), Purchasing Account(s), and/or Affiliate Registration(s) being renewed or consolidated into the new contract identified above.

- **a.** Entity may select below any previous contract(s) from which to transfer MSDN subscribers to this new contract. Entity shall ensure that each MSDN subscriber transferred is either properly licensed under the new contract or is removed.
- **b.** Entity may select below only one previous contract from which to transfer the Software Assurance (SA) Benefit contact details, i.e., benefits contact (*not* the SA manager) and the program codes, to this new contract.
- **c.** An Open License cannot be used to transfer either the SA Benefit details or MSDN subscribers.
- **d.** The date of the earliest expiring Enrollment/Agreement that contains SA or Online Services will be the effective date of the new contract (or SA coverage period for Select Plus).
- **e.** Please insert the number of the earliest expiring Enrollment/Agreement with SA or Online Services in the appropriate fields of the new contract.

Enrollment/Agreement/ Purchasing Account/Affiliate Registration Description	Enrollment/Agreement/ Purchasing Account/Affiliate Registration Public Customer Number	Transfer SA Benefit Contact	Transfer MSDN Subscribers
Standard Enrollment	47645384	X	X



INFORMATION TECHNOLOGY

To: Mayor and Town Council

From: Leigh Johnson, Director of Information Technology

Through: Ron Patterson, Interim Town Manager

Re: Central Fire Station Network Equipment Purchase

Town Council Meeting - September 27, 2022

Agenda Item:

Consider and act upon approving the purchase of network switches, from CDWG, Inc., through a Sourcewell Purchasing Contract. (LJ)

Description of Agenda Item:

The new Central Fire Station facility will require network switches for the daily operation of all connected hardware in the building. This purchase covers the switch hardware and installation services for all core network fabric devices, both wired and wireless.

Local governments are authorized by the Interlocal Cooperation Act, V.T.C.A. Government Code, Chapter 791, to enter into joint contracts and agreements for the performance of governmental functions and services, including administrative functions normally associated with the operation of government (such as purchasing necessary materials and equipment).

The Town of Prosper entered into an Interlocal Agreement with the Sourcewell Purchasing Program in September 14 of 2014. Participation in the program allows our local government to purchase goods and services through the cooperative contract while satisfying all competitive bidding requirements.

Budget Impact:

The cost of the purchase is \$60,619.79 and will be funded from 750-6610-10-00-2113-FC (FF&E). Subsequent annual expenditures will be subject to appropriations granted in future fiscal years.

Legal Obligations and Review:

This item does not require legal review.

Attached Documents:

1. CDWG Quote

Town Staff Recommendation:

Town staff recommends approving the purchase of network switches, from CDWG, Inc., through a Sourcewell Purchasing Contract.

Proposed Motion:

I move to approve the purchase of network switches, from CDWG, Inc., through a Sourcewell Purchasing Contract.

Page 2 of 2



Hardware

Software

Services

IT Solutions

Brands

Research Hub

QUOTE CONFIRMATION

LEIGH JOHNSON,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. Click here to convert your quote to an order.

Convert Quote to Order

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
MZHQ451	9/15/2022	EXTREME 5420	9637526	\$60,619.79

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
Extreme Networks 5420F 48-Port PoE+ Switch Mfg. Part#: 5420F-48P-4XE Contract: Sourcewell 081419-CDW Tech Catalog (081419#CDW)	10	6385617	\$2,888.37	\$28,883.70
Extreme Networks - power supply - 920 Watt Mfg. Part#: XN-ACPWR-920W Contract: Sourcewell 081419-CDW Tech Catalog (081419#CDW)	10	6313876	\$420.09	\$4,200.90
Extreme Networks power cable Mfg. Part#: 10099 UNSPSC: 26121636 Contract: Sourcewell 081419-CDW Tech Catalog (081419#CDW)	20	3533481	\$9.32	\$186.40
Extreme Networks 10GBase direct attach cable - 0.5 m Mfg. Part#: 10G-DACP-SFPZ5M Contract: Sourcewell 081419-CDW Tech Catalog (081419#CDW)	10	6747388	\$51.66	\$516.60
ETREME EW NBD AHR 5420F-48P-4XE 5YR Mfg. Part#: 97004-5420F-48P-4XE-5YR Electronic distribution - NO MEDIA Contract: Sourcewell 081419-CDW Tech Catalog (081419#CDW)	10	7175230	\$1,742.56	\$17,425.60
Extreme Networks ExtremeCloud IQ Pilot - subscription license + ExtremeWork Mfg. Part#: XIQ-PIL-S-C-EW-DELAY-4YR Electronic distribution - NO MEDIA Contract: Sourcewell 081419-CDW Tech Catalog - Software (081419-CDW)	10	6502066	\$182.94	\$1,829.40
Extreme Networks Service Units 1 - extended service agreement - 1 year - on Mfg. Part#: PS-ESU-1 UNSPSC: 81111812	3	4868113	\$2,525.73	\$7,577.19

UNSPSC: 81111812

Electronic distribution - NO MEDIA

Contract: Sourcewell 081419-CDW Tech Catalog (081419#CDW)

These services are considered Third Party Services, and this purchase is subject to CDW's Third Party Cloud Services Terms and Condition unless you have a written agreement with CDW covering your purchase of products and services, in which case this purchase is subject to s other written agreement.

The third-party Service Provider will provide these services directly to you pursuant to the Service Provider's standard terms and conditions such other terms as agreed upon directly between you and the Service Provider. The Service Provider, not CDW, will be responsible to you for delivery and performance of these services. Except as otherwise set forth in the Service Provider's agreement, these services are non-cancellable, and all fees are non-refundable.

SUBTOTAL \$60,619.79 SHIPPING \$0.00 SALES TAX \$0.00
SUBTOTAL \$60,619.79

PURCHASER BILLING INFO	DELIVER TO
Billing Address: TOWN OF PROSPER ACCOUNTS PAYABLE PO BOX 307 PROSPER, TX 75078-0307 Phone: (972) 346-2640 Payment Terms: Master Card	Shipping Address: TOWN OF PROSPER JANUARY COOK 151 S. MAIN ST PROSPER, TX 75078-2731 Shipping Method: DROP SHIP-GROUND
	Please remit payments to:
	CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515



Sales Contact Info

Nick Trapani | (877) 325-2502 | nick.trapani@cdwg.com

LEASE OPTIONS		
FMV TOTAL	FMV LEASE OPTION	BO LEASE OPTION
\$60,619.79	\$1,625.22/Month	\$1,877.39/Month

Monthly payment based on 36 month lease. Other terms and options are available. Contact your Account Manager for details. Payment quoted is subject to change.

Why finance?

- Lower Upfront Costs. Get the products you need without impacting cash flow. Preserve your working capital and existing credit line.
- Flexible Payment Terms. 100% financing with no money down, payment deferrals and payment schedules that match your company's business cycles.
- Predictable, Low Monthly Payments. Pay over time. Lease payments are fixed and can be tailored to your budget levels or revenue streams.
- Technology Refresh. Keep current technology with minimal financial impact or risk. Add-on or upgrade during the lease term and choose to return or purchase the equipment at end of lease.
- Bundle Costs. You can combine hardware, software, and services into a single transaction and pay for your software licenses over time! We know your challenges and understand the need for flexibility.

General Terms and Conditions:

This quote is not legally binding and is for discussion purposes only. The rates are estimate only and are based on a collection of industry data from numerous sources. All rates and financial quotes are subject to final review, approval, and documentation by our leasing partners. Payments above exclude all applicable taxes. Financing is subject to credit approval and review of final equipment and services configuration. Fair Market Value leases are structured with the assumption that the equipment has a residual value at the end of the lease term.

Need Help?



My Account



Support



Call 800.800.4239

About Us | Privacy Policy | Terms and Conditions

This order is subject to CDW's Terms and Conditions of Sales and Service Projects at $\underline{\text{http://www.cdwg.com/content/terms-conditions/product-sales.aspx}}$

For more information, contact a CDW account manager

© 2022 CDW•G LLC, 200 N. Milwaukee Avenue, Vernon Hills, IL 60061 | 800.808.4239



PARKS AND RECREATION

To: Mayor and Town Council

From: Dan Baker, Parks and Recreation Director

Through: Ron K. Patterson, Interim Town Manager

Robyn Battle, Executive Director of Community Services

Re: Park Dedication and Park Maintenance Agreement - Ladera

Town Council Meeting – September 27, 2022

Agenda Item:

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

Description of Agenda Item:

The Ladera development is proposing to dedicate 5.172 acres of public park property along the southwestern edge of their development to be used for park and recreation purposes. Proposed improvements include a hike and bike trail, active adult exercise stations, playground structure and/or other active and/or passive amenity improvements that will provide benefit to the residents of the Ladera development as well as residents of the Town. While the Town will be responsible for the maintenance obligations for the hike and bike trail, the construction of the hike and bike trail and maintenance obligations for all other improvements, as well as the park property, are to be the responsibility of PR LADERA, LLC.

Budget Impact:

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

Legal Obligations and Review:

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

Attachments:

1. Park Dedication and Park Maintenance Agreement

Town Staff Recommendation:

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

Proposed Motion:

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

PARK DEDICATION AND PARK MAINTENANCE AGREEMENT

THIS PARK DEDICATION AND PARK MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of this ____ day of ______, 2022 ("Effective Date"), by and between PR LADERA, LLC ("Owner") and the TOWN OF PROSPER, TEXAS, a Texas home-rule municipality ("Town"), on the terms and conditions hereinafter set forth.

WHEREAS, Owner owns approximately 63.3 acres of land in the Town, as more particularly described in and depicted on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner has obtained zoning approval from the Town and is developing the Property for residential purposes and wishes to dedicate to the Town 5.172 acres for park and recreation purposes ("Park Property"), which Park Property is more particularly described in and depicted on Exhibit B, attached hereto and incorporated by reference; and

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

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

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

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

- 1. <u>Park Property Conveyance and Dedication</u>. Owner shall, at its sole cost and expense, dedicate and convey to Town the Park Property, by conveyance plat or separate instrument, as of the Effective Date of this Agreement. The Town shall receive fee simple title to the Park Property.
- 2. <u>Hike and Bike Trail</u>. The Owner shall construct a Hike and Bike Trail ("Trail") on the Park Property and the Trail shall be constructed according to the Town's Trail Standards. It is anticipated that any Trail constructed by the Owner on the Park Property shall be five inches (5") thick, poured with 3500 PSI at 28 days concrete. The Trail shall have #4 rebar spaced at 16" O.C. both ways. The expansion joints shall be every forty feet (40') (or every 4 panels) with dowels at 18" O.C. and sealed with a urethane sealant to be flush with the concrete surface. The Trail shall have a medium broom finish and shall not exceed 5% longitudinal slope or a 2% cross slope. Town hereby grants to the Owner a temporary construction easement over and across the Property during the construction of the Trail on the Park Property.

- 3. <u>Trail Maintenance Obligations of the Town</u>. The Town agrees to maintain the hard surface of the Trail on the Park Property at its expense, utilizing Town employees or if the Town determines that it is in the best interests of Town, the Town may utilize third party contractors to perform all or a portion of its Trail maintenance obligations. Owner further grants to the Town an access easement over the Property so the Town may fulfill its maintenance obligations under this Agreement.
- 4. <u>Owner's Park Property Maintenance Obligations</u>. Except to the extent referenced in Paragraph 3, above, Owner shall be responsible in perpetuity for all maintenance, repairs, upkeep, renovation, and replacement costs and expenses of the Park Property together with any active and passive amenity improvements thereto. The obligation to perform maintenance obligations referenced herein may be assigned by Owner to any homeowner's e4association created for or on behalf of Owner's residential development on the Property.
- 5. <u>Town Approval of Amenities</u>. Owner agrees that the Town shall approve the installation or construction of the Owner supplied Active Adult exercise stations along the Trail, playground structure and/or any other active and/or passive amenity improvements on the Park Property by Owner prior to such installation or construction of same. Any such amenity improvements so installed and/or constructed on the Park Property shall be consistent with any applicable Town standards, guidelines and specifications for such amenity improvements.
- 6. <u>Covenant Running with Land</u>. The obligations set forth in this Agreement and the covenants, rights, privileges, benefits, duties, liabilities and encumbrances created by this Agreement shall run with the land, shall burden the Property, and shall be binding upon Owner and the Town, as applicable, and their respective successors, assignees, and grantees. In addition, the Parties shall cause this Agreement to be filed in the Real Property Records of Collin County, Texas.
- 7. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt or refusal at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to the Town: Town of Prosper

Attention: Town Manager

P. O. Box 307

Prosper, Texas 75078

If to Owner: PR Ladera, LLC

c/o Integrity Companies, LLC

361 W. Byron Nelson Parkway, Suite 104

Roanoke, Texas 76262

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

- 9. Application of Texas Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in Collin County, Texas.
- 10. <u>Prevailing Party in Event of Legal Action</u>. In the event any Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees of any appeal) from the unsuccessful Party or Parties.
- 11. <u>Entire Agreement</u>. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- 12. <u>Invalidation and Severability</u>. Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.
- 13. <u>Electronic Copy</u>. An electronic copy of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms herein.
- 14. <u>Mayor Authorized to Execute</u>. The Town represents and warrants that the Mayor of the Town of Prosper is authorized to execute this Agreement on behalf of the Town.
- 15. <u>Binding Obligation</u>. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town and Owner each warrant and represents to the other Party that the individual executing this Agreement on behalf of such warranting Party has full authority to execute this Agreement and bind such warranting Party to the same.

- 16. <u>Mediation</u>. In the event of any disagreement or conflict concerning the interpretation of this Agreement that cannot be resolved by the Parties hereto, the Parties agree to submit such disagreement to non-binding mediation, whether or not an action or proceeding has been commenced.
- 17. **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.
- 18. <u>Amendment</u>. This Agreement may only be amended by a written agreement executed by the Parties.
- 19. **Sovereign Immunity.** The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing the obligations under this Agreement.
- 20. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
- 21. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.
- 22. <u>Assignment</u>. This Agreement may not be assigned by Owner, in whole or in part, without the prior written consent of the Town. Notwithstanding anything to the contrary, without the consent of the Town, Owner may assign its right, title, and interest in and to this Agreement to a homeowner's association created for the residential development on the Property, in accordance with those requirements referenced in applicable Town ordinances for such homeowners association.
- 23. <u>Default</u>. If Owner fails to comply with the provisions of this Agreement and does not cure such failure following the expiration of thirty (30) days from the date the Town provides Owner with notice of such failure7, the Town shall have any remedy at law, including specific performance, in addition to any other rights and remedies.
- 24. <u>Consideration</u>. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 25. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

- 26. <u>Conveyances</u>. All conveyances required herein shall be made in a form acceptable to Town and free and clear of any and all liens and encumbrances.
- 27. <u>Waiver</u>. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

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

THE TOWN OF PROSPER, TEXAS

			· · · · · · · · · · · · · · · · · · ·
		By:	
		Name: Ron K. Pat	terson
		Title: Interim Town	Manager
STATE OF TEXAS	S)		
COUNTY OF COL	LIN)		
		vledged before me or atterson, Interim Town Ma	
Prosper, Texas, or	behalf of the Town	of Prosper.	_
		Notary Public Stat	e of Texas

OWNER:

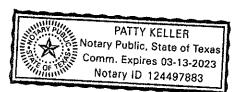
PR LADERA, LLC a Texas limited liability company

By: Integrity Companies, LLC, a Texas limited liability company, its Day-to-Day Member Manager

Name: John Delin Title: Managing Member

STATE OF TEXAS **COUNTY OF DENTON**

This instrument was acknowledged before me on the 19th day of September , 20221, by John Delin in his capacity as Managing Member of Integrity Companies, 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.



Item 8.

EXHIBIT A

(Property Description)

Next 3 Pages

PROJECT SITE

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PRELIMINARY PLAT LOT 1, BLOCK A LADERA PROSPER 63.272 Acres

JOB# D21-0074

IN 100

J HORN SURVEY, AUSTRACT NO. 411

LARKIN MCCARTY SURVEY, AUSTRACT NO. 600

LOWN OF PROSER

COLLIN COUNTY, TEXAS



Item 8.

EXHIBIT B

(Park Property Description)

Next 2 Pages

STATE OF TEXAS

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CONVEYANCE PLAT
LOTS 1 & 1X, BLOCK A,
LADERA PROSPER, PHASE 1
63.307 Acres

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TOWN OF PROSPER

COLLIN COUNTY, TEXAS

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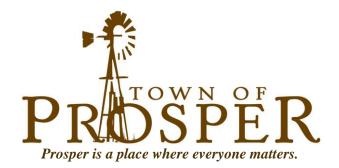
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PLANNING



To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Specific Use Permit SEC Coit & First Street

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon an ordinance for a Specific Use Permit (SUP) for a Private Street Development, on 16.4± acres, located on the south side of First Street, east of Coit Road. (S22-0008).

Description of Agenda Item:

On September 13, 2022, the Town Council approved the proposed request, by a vote of 6-0.

A Specific Use Permit 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.

Attachments:

- 1. Ordinance
- 2. Ordinance Exhibits

Town Staff Recommendation:

Town staff recommends approval of an ordinance for a Specific Use Permit (SUP) for a Private Street Development, on 16.4± acres, located on the south side of First Street, east of Coit Road. (S22-0008).

Proposed Motion:

I move to approve an ordinance for a Specific Use Permit (SUP) for a Private Street Development, on 16.4± acres, located on the south side of First Street, east of Coit Road. (S22-0008).

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE BY GRANTING A SPECIFIC USE PERMIT (SUP) FOR PRIVATE STREETS LOCATED ON A TRACT OF LAND CONSISTING OF 16.41 ACRES, MORE OR LESS, SITUATED IN THE JAMES STONE SURVEY, ABSTRACT NUMBER 847, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS; DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request (Case S22-0008) from the Mohan Kilaru ("Applicant") for a Specific Use Permit (SUP) for Private Streets, located on a tract of land consisting of 16.41 acres of land, more or less, in the James Stone Survey, Abstract Number 847, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes: and

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

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

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

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

SECTION 1

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

SECTION 2

Specific Use Permit Granted. The Town's Zoning Ordinance is amended as follows: Applicant is granted a Specific Use Permit (SUP) for Private Streets, located on a tract of land consisting of 16.41 acres of land, more or less, in the James Stone Survey, Abstract Number 847, in the Town of Prosper, Collin County, Texas, and being more particularly described in Exhibit "A," attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans and uses for the Property in this Specific Use Permit shall conform to, and comply with the conceptual development plans, attached hereto as Exhibit "B", 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

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

SECTION 4

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

SECTION 5

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

SECTION 6

<u>Severability.</u> Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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

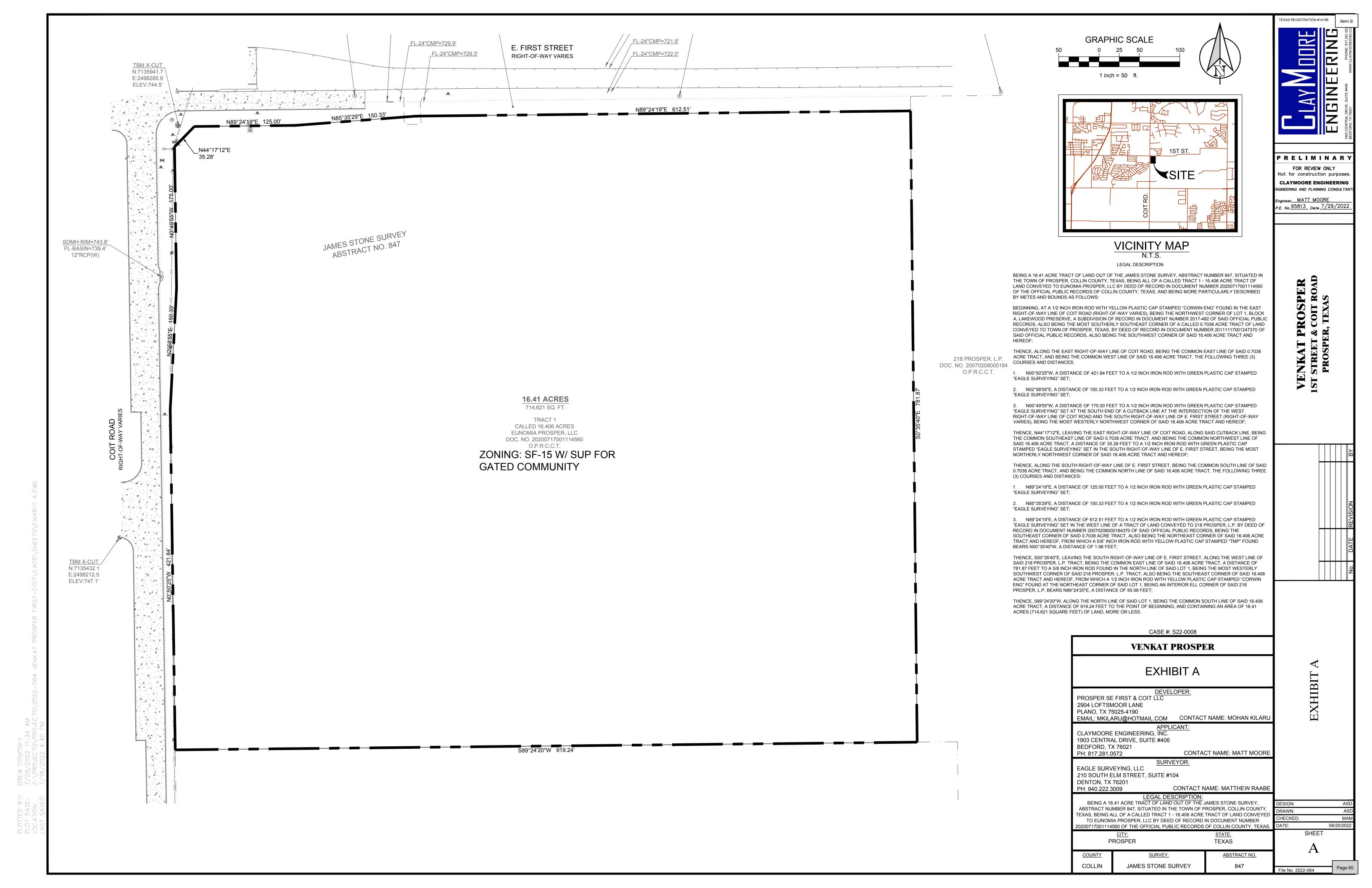
<u>Savings/Repealing Clause.</u> Prosper's Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not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

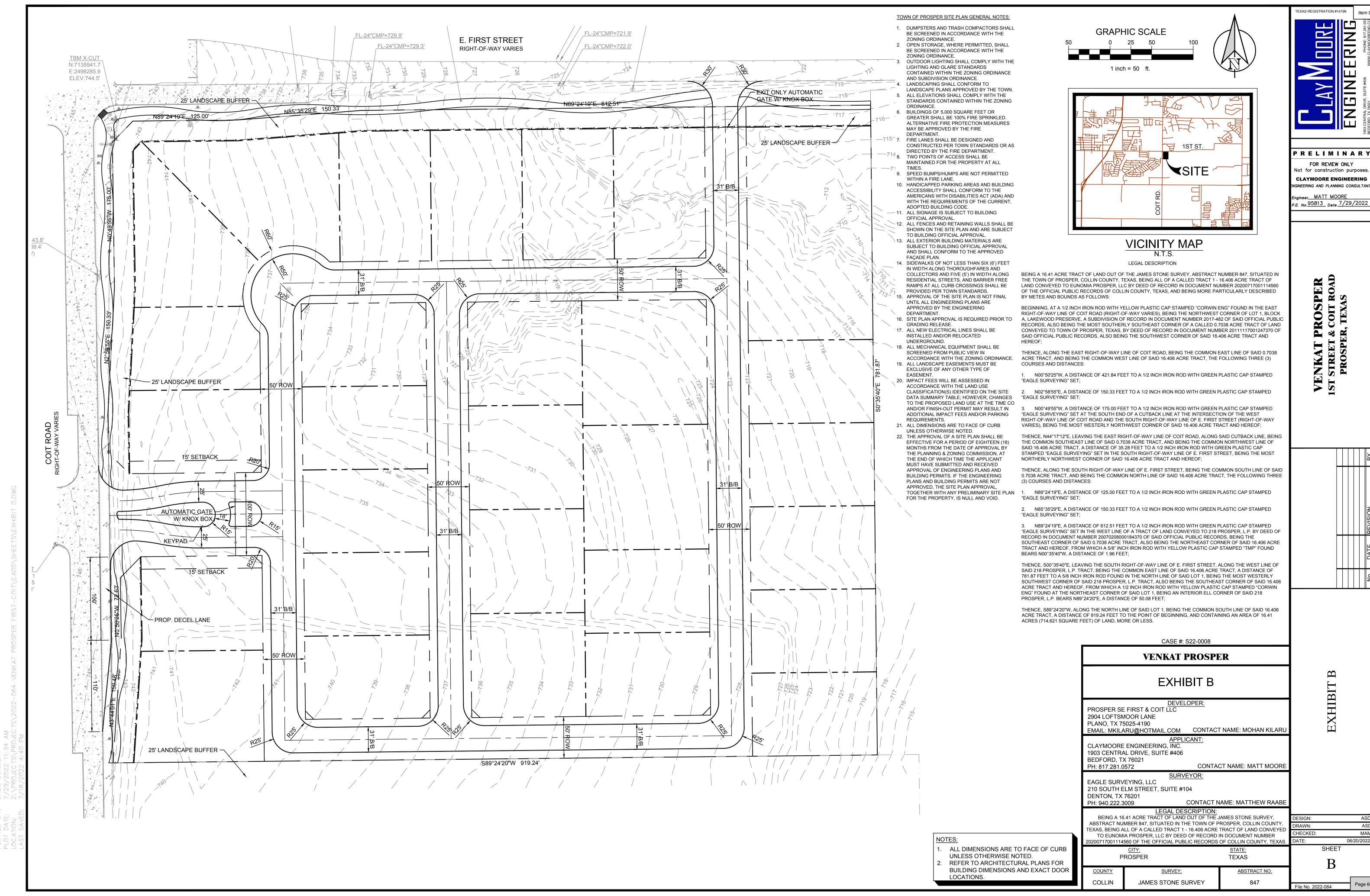
SECTION 8

<u>Effective Date.</u> This Ordinance shall become effective from and after its adoption and publication as required by law.

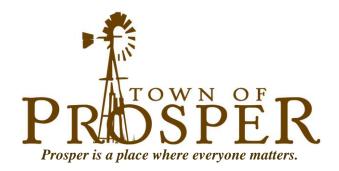
DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 27TH DAY OF SEPTEMBER 2022.

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





PLANNING



To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Zoning Winikates North

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon an ordinance request to rezone 5.6± acres from PD-21 and Single Family-15 (SF-15) to a new Planned Development-Office/Retail (PD-O/R) for office and retail uses, located on the west side of Preston Road north of Broadway Street. (Z22-0014).

Description of Agenda Item:

On September 13, 2022, the Town Council approved the proposed request, by a vote of 7-0.

A Planned Development 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.

Attachments:

- 1. Ordinance
- 2. Ordinance Exhibits

Town Staff Recommendation:

Town staff recommends approval of an ordinance to rezone 5.6± acres from PD-21 and Single Family-15 (SF-15) to a new Planned Development-Office/Retail (PD-O/R) for office and retail uses, located on the west side of Preston Road north of Broadway Street. (Z22-0014).

Proposed Motion:

I move to approve an ordinance to rezone 5.6± acres from PD-21 and Single Family-15 (SF-15) to a new Planned Development-Office/Retail (PD-O/R) for office and retail uses, located on the west side of Preston Road north of Broadway Street. (Z22-0014).

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 5.6 ACRES MORE OR LESS, SITUATED IN COLLIN COUNTY SCHOOL SURVEY ABSTRACT NO. 147, TOWN OF PROSPER, COLLIN COUNTY, TEXAS, FROM PLANNED DEVELOPMENT-21 (PD21) & SINGLE FAMILY-15 (SF15) TO PLANNED DEVELOPMENT-118 (PD118); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town 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 Z22-0014) from Jack Patel ("Applicant"), to rezone 5.6 acres of land, more or less, situated in Collin County School Survey, Abstract No. 147, Town of Prosper, Collin County, Texas, from Planned Development-21 (PD21) & Single Family-15 (SF15) To Planned Development-118 (PD118) 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

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

SECTION 2

Amendment to the Town's Zoning Ordinance. The Town's Zoning Ordinance, as amended, is hereby amended as follows: The zoning designation of the below described property containing 5.6 acres of land, more or less, situated in Collin County School Survey, Abstract No. 147, Town of Prosper, Collin County, Texas, and all streets, roads, and alleyways contiguous and/or adjacent thereto are hereby zoned as Planned Development-118 (PD118) 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 Concept Plan, attached hereto as Exhibit D; (4) the Development Schedule, attached hereto as Exhibit E; and (5) the Façade Plans, attached hereto as Exhibit F; and (6) the Landscape Plans, attached here to as Exhibit G, all of 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

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

SECTION 4

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

SECTION 5

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

SECTION 6

<u>Severability.</u> Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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

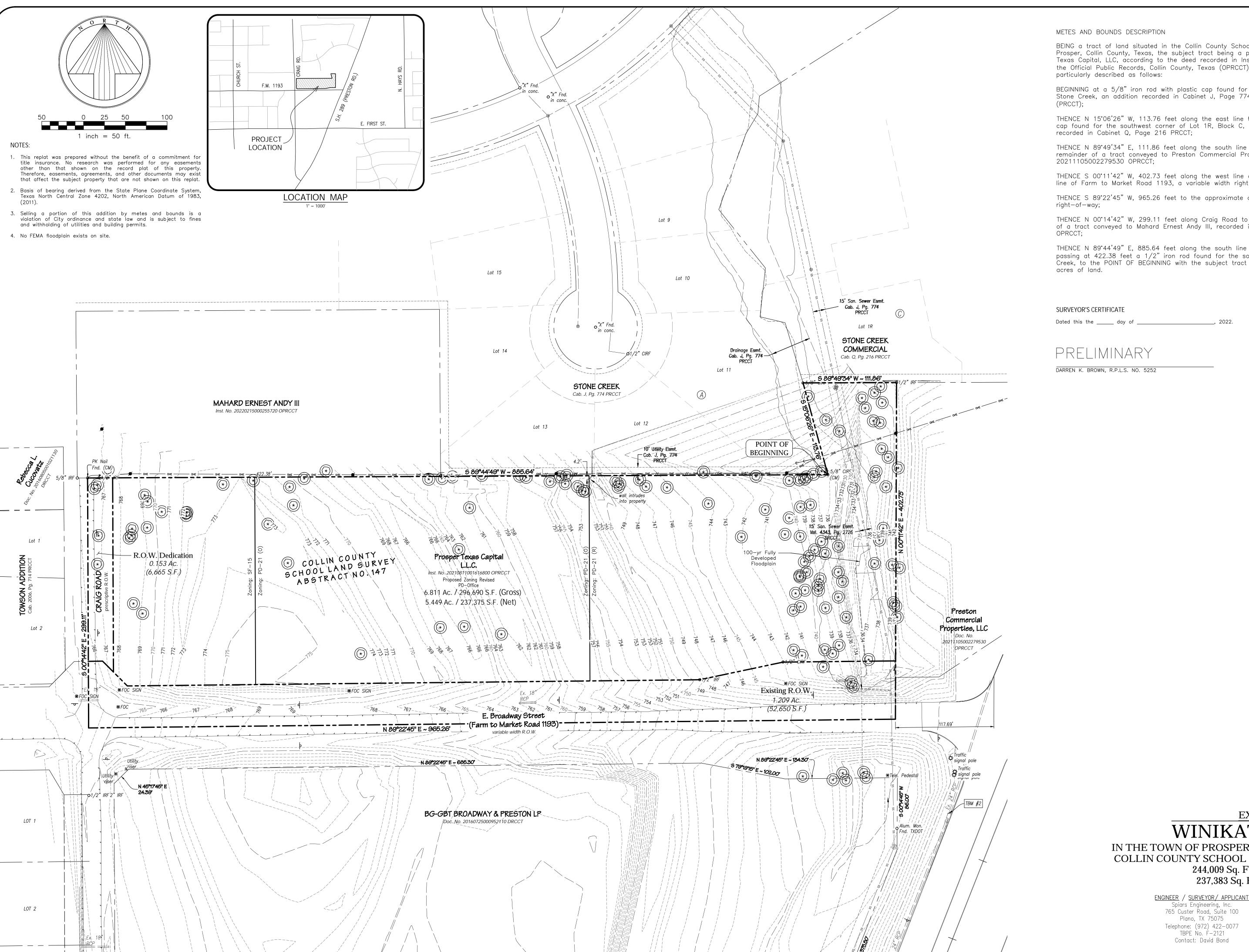
<u>Savings/Repealing Clause.</u> Prosper's Zoning Ordinance, as amended, shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal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

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 27TH DAY OF SEPTEMBER, 2022.

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



BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Town of Prosper, Collin County, Texas, the subject tract being a portion of a tract conveyed to Prosper Texas Capital, LLC, according to the deed recorded in Instrument Number 20210811001616800 of the Official Public Records, Collin County, Texas (OPRCCT), with the subject tract being more

BEGINNING at a 5/8" iron rod with plastic cap found for the southeast corner of Lot 11, Block A, Stone Creek, an addition recorded in Cabinet J, Page 774, Plat Records, Collin County, Texas

THENCE N 15°06'26" W, 113.76 feet along the east line thereof to a 5/8" iron rod with plastic cap found for the southwest corner of Lot 1R, Block C, Stone Creek Commercial, an addition

THENCE N 89°49'34" E, 111.86 feet along the south line thereof to a 1/2" iron rod found for the remainder of a tract conveyed to Preston Commercial Properties, LLC, recorded in Document No.

THENCE S 00°11'42" W, 402.73 feet along the west line of said remainder to a point on the north line of Farm to Market Road 1193, a variable width right—of—way;

THENCE S 89°22'45" W, 965.26 feet to the approximate centerline of Craig Road, a prescriptive

THENCE N 00°14'42" W, 299.11 feet along Craig Road to a PK nail found for the southwest corner of a tract conveyed to Mahard Ernest Andy III, recorded in Instrument No. 20220215000255720

THENCE N 89°44'49" E, 885.64 feet along the south line of said Mahard Ernest Andy III tract, passing at 422.38 feet a 1/2" iron rod found for the southwest corner of Lot 13, Block A, Stone Creek, to the POINT OF BEGINNING with the subject tract containing 296,690 square feet or 6.811

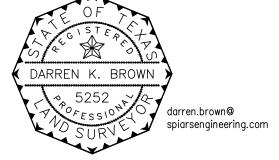


EXHIBIT A WINIKATES NORTH

IN THE TOWN OF PROSPER, TEXAS, COLLIN COUNTY, TEXAS COLLIN COUNTY SCHOOL LAND SURVEY ABSTRACT NO. 147 244,009 Sq. Ft./5.602 Acres (Gross) 237,383 Sq. Ft./5.450 Acres (Net)

> Spiars Engineering, Inc. 765 Custer Road, Suite 100 Plano, TX 75075

OWNER/DEVELOPER Prosper Texas Capital LLC 1225 Baynes Dr. McKinney, TX 75071-0034 Telephone: (214) 278-4804 Contact: Jason Patel

Sheet 1 of 1 Scale: 1"=50' Jul-22 SEI Job No. 21-121

July 5th, 2022 Exhibit B

Mr. David Soto Town of Prosper – Development Services 250 W. First Street Prosper, Texas 75078

RE: Winikates North PD Amendment Statement of Intent and Purpose

Dear Mr. Soto:

Enclosed herewith, please find our application for a Planned Development revision associated with the proposed development at the northeast corner of Preston/Craig. The purpose of this submittal is to revise the existing PD to establish an underlying office district along the Craig Road Frontage into the existing PD district. The proposed plan calls for office and medical office developments on the western portion of the site in the existing single family zoning area, with retail occurring in the easternmost building, in accordance with the comprehensive plan and the existing Planned Development.

The developers of this site are committed to providing the community with an office/retail development that will be a credit to the Town of Prosper, and compliment the adjacent residences and we appreciate your consideration in this request.

If you have any questions, please do not hesitate to contact me.

Sincerely,

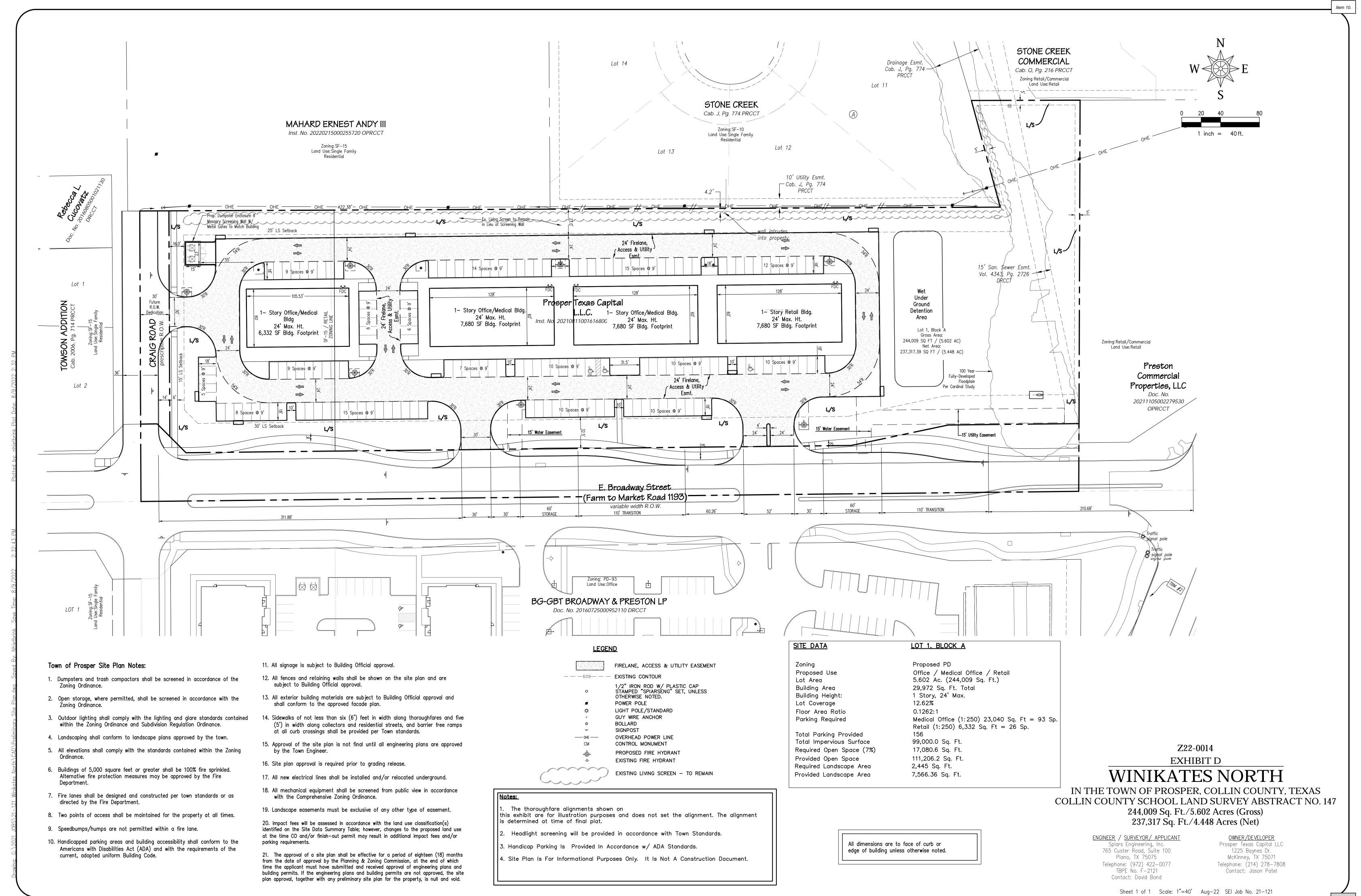
Case Z22-0014

EXHIBIT C

PLANNED DEVELOPMENT STANDARDS

The proposed development will conform to the development standards of the Office District of the Town of Prosper's Zoning Ordinance, as it exists or may be amended, and Subdivision Ordinance, as it exists or may be amended, except as otherwise set forth in these Development Standards.

- 1. Except as noted below, the Tract shall develop in accordance with the Office District requirements of the Town of Prosper's Zoning Ordinance, 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 Exhibits D.
 - b) Elevations: The tracts shall be developed in general accordance with the attached elevations, set forth in Exhibits F.
 - c) Landscape Plan: The tract shall be developed in general accordance with the attached landscape plan, set forth in Exhibit G.
- 3. Uses shall be permitted in accordance with the Office District exception as follows:
 - a) Retail shall be restricted to the easternmost building per exhibit D.
- 4. Screening:
 - a) Existing living screen to remain in lieu of Screening Wall on the northern boundary as indicated on the Exhibit G. Living screening shall be well kept and maintained.



Page

Exhibit E - Conceptual Development Schedule

A conceptual development schedule for the Winikates North Tract is as follows:

- September 2022 Obtain Zoning Approval
- October 2022 Begin Infrastructure Design and Submission
- December 2022 Begin Infrastructure Construction
- February 2023 Begin Building Construction
- April 2023 Completion of infrastructure construction



(C-1)

C-3

TYPICAL SIDE ELEVATION

DOUBLE ENCLOSURE FRONT ELEVATION

5 DUMPSTER ELEVATION

SCALE: 1/8"=1'-0"

(C-I)

C-2

C-3

SINGLE ENCLOSURE

REAR ELEVATION

(C-I)

_C-3

C-2

DOUBLE ELEVATION REAR ELEVATION

PAINT AT INTERIOR OF THE DUMPSTER

COLOR TO MATCH EXTERIOR MASONRY

SINGLE ENCLOSURE

FRONT ELEVATION

NORTH ELEVATION EAST ELEVATION <u>WEST ELEVATION</u> SOUTH ELEVATION 2,864 SQ. FT.(100%) | 1,258 SQ. FT. (100%) | 1,258 SQ. FT. (100%) | 2,864 SQ. FT.(100%) MATERIALS EXCEPT GLAZING | 2,084 SQ. FT.(73%) 1,084 SQ. FT. (86%) 2,603 SQ. FT.(91%) 579 SQ. FT. (20%) 480 SQ. FT. (38%) | 811 SQ. FT. (28%) 674 SQ. FT. (24%) 340 SQ. FT. (27%) 958 SQ. FT. (34%) 169 SQ. FT. (6%) 166 SQ. FT. (6%) 665 SQ. FT. (23%) 665 SQ. FT. (23%) 174 SQ. FT. (14%) 261 SQ. FT. (9%) 174 SQ. FT. (14%)

BRICK - ACME BRICK
(CHURCHILL)

BORAL PRO-FIT
LEDGESTONE SOUTHWEST

C-3

CAST STONE- COTTON WHITE
(SW 7104)

CAST STONE & PAINTED PASCIA
WESTCHESTER GRAY (SW 2849)

FACADE NOTES

PURPOSES ONLY. ALL BUILDING PLANS
REQUIRE REVIEW AND APPROVAL FROM
THE BUILDING INSPECTIONS DIVISION.
ALL MECHANICAL EQUIPMENT SHALL BE
SCREENED FROM PUBLIC VIEW. ROOFTOP
MOUNTED EQUIPMENT SHALL BE SCREED
BY A PARAPET WALL OR SCREENING
WALL. SCREENING WALLS SHALL BE THE
SPECIFICATIONS OF THE ZONING
ORDINANCE.
WHEN REPMITTED EXPOSED UTILITY

THIS FACADE PLAN IS FOR CONCEPTUAL

- WHEN PERMITTED, EXPOSED UTILITY
 BOXES AND CONDUITS SHALL BE
 PAINTED TO MATCH THE BUILDING.
 ALL SIGNAGE AREAS AND LOCATIONS
 ARE SUBJECT TO APPROVAL BY THE
 BUILDING INSPECTIONS DIVISION.
 WINDOWS SHALL HAVE A MAXIMUM
 EXTERIOR VISIBLE REFLECTIVITY OF TEN
- (IO) PERCENT.
 ANY DEVIATION FROM THE APPROVED
 FACADE PLAN WILL REQUIRE
 RE-APPROVAL BY THE TOWN OF
 PROSPER.

SITE PLAN KEY

1.193

F.M. 1193

PROJECT LOCATION

PROJECT LOCATION

City Project No.

MEDICAL - RETAIL OFFICES

WINIKATES NORTH S.H. 289 PRESTON RD. TOWN OF PROSPER, TEXAS Preparation Date: 08/11/21

OWNER
Prosper Texas CapitsI LLC

1225 Baynes Drive
McKinney, TX 75071,0034
Telephone: (214) 278-4808

Email: j_patel22@yahoo.com

ENGINEER

APPLICANT

ADR-DESIGNS-LLC

TOTAL DESIGN MANAGERS

TOTAL DESIGN MANAGERS

601 SADDLE HILL DRIVE,
GRAND PRAIRIE, TX 75050
PH: 972-262-1333
FAX: 214-272-2987
E-Mail: adrdesignsllc@adrdesigns.com

JOB NUMBER:

SHEET NUMBER
A310

PROJECT STATUS:

PROJECT MANAGER:

DESIGN MANAGER

PROJECT DATE:

REVISION DATE:

PRELIMINARY

DBR

RCM

122121

081122

apitsl

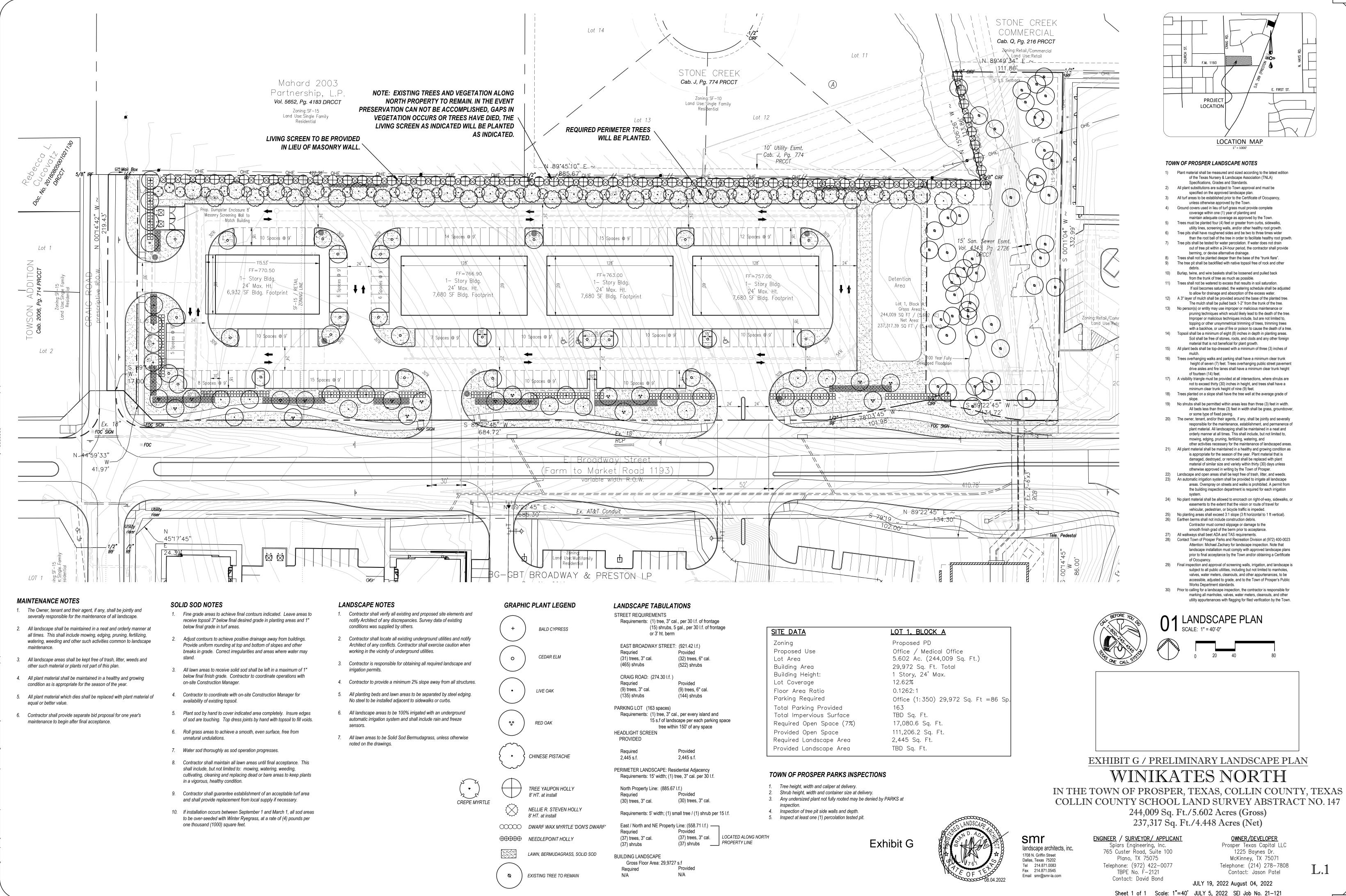
sper

0

MEDICAL -OFFICI

 \Box

r Texas
1225 Bayne
McKinney, TX 7
Telephone: (214
Email: j_patel22@



Page 77



PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Development Agreement Winikates North

Town Council Meeting - September 27, 2022

Agenda Item:

Consider and act upon authorizing the Interim Town Manager to execute a Development Agreement between Prosper Texas Capital LLC, and the Town of Prosper, Texas, related to the Winikates North development, located on the west side of Preston Road north of Broadway Street.

Description of Agenda Item:

On September 13, 2022, the Town Council approved the proposed request, by a vote of 7-0. The purpose of the Development Agreement is for the architectural building materials and certain business establishments prohibited on the property.

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.

Attachments:

1. Development Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Interim Town Manager to execute a Development Agreement between Prosper Texas Capital LLC, and the Town of Prosper, Texas, related to the Winikates North development, located on the west side of Preston Road north of Broadway Street.

Proposed Motion:

I move to authorize the Interim Town Manager to execute a Development Agreement between Prosper Texas Capital LLC, and the Town of Prosper, Texas, related to the Winikates North development, located on the west side of Preston Road north of Broadway Street.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Prosper Texas Capital LLC ("Owner"), with the Town and Owner collectively referred to as "Parties," to be effective on the date last executed by any of the Parties (the "Effective Date").

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 developing an approximate 5.602-acre tract of land generally located at the northeast corner of East Broadway Street and Craig Road, more particularly described and depicted in Exhibit A, attached hereto and incorporated by reference (the "Property"); and

WHEREAS, the Property was rezoned by the Town Council on or about September 13, 2022, by Ordinance No. 2022-___, and this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in said Ordinance, as may be amended, and/or this Development Agreement, to recognize Owner's reasonable investment-backed expectations in the development of 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 not lease, sell or otherwise permit or authorize on the Property any business enterprises engaging in those businesses referenced in Paragraph 1, below.

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:

Certain Business Establishments Prohibited on the Property. Owner 1. agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any of the following business establishments: (1) credit access businesses, as defined in Texas Finance Code § 393.601, as amended, including but not limited to payday lending businesses, "cash for title" lenders, and credit services businesses, as defined in Texas Finance Code § 393.001, as amended); (2) body art facilities; (3) smoke or vape shops; (4) any business entity that sells drug paraphernalia; (5) any business establishment offering gaming or slot machines; (6) sex shops, including but not limited to business entities whose primary purpose is the sale of lewd merchandise; (7) pawn shops; and (8) business entities which primarily utilize outdoor storage or displays. Additionally, Owner agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property a package liquor store, which for purposes of this Agreement is defined as any business entity that is currently required to obtain a Package Store Permit (P) from the Texas Alcoholic Beverage Commission for the offpremises consumption of alcohol.

- 2. <u>Building Materials and Architectural Features</u>. For any structure built on the Property following the Effective Date, it shall comply with the requirements contained in Exhibit B, the elevations for the Property, attached hereto and incorporated herein. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement.
- 3. <u>Covenant Running with the Land</u>. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of 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. <u>Applicability of Town Ordinances</u>. Owner shall construct all structures on the Property in accordance with all applicable Town ordinances and building/construction codes, whether now existing or arising prior to such construction in the future.
- 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.** <u>Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.
- 7. <u>Notice</u>. Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: 250 W. First Street

P.O. Box 307

Prosper, Texas 75078 Attention: Town Manager

If to Owner: Prosper Texas Capital LLC

1225 Baynes Drive

McKinney, Texas 75071-0034

Attention: Jack Patel

8. <u>Prevailing Party</u>. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

- 9. <u>Entire Agreement.</u> This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.
- 10. <u>Savings/Severability</u>. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- 11. <u>Binding Agreement</u>. A telecopied facsimile or pdf of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.
- 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 Interim Town Manager of the Town to execute this Agreement on behalf of the Town.
- 13. <u>Mediation</u>. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

- Notification of Sale or Transfer; Assignment of Agreement. Owner has 14. 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 any Assignee, 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.
- 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. <u>Consideration</u>. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 18. <u>Counterparts</u>. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or pdf 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, if any, required by the Town in this

Agreement are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves any 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, if any, imposed by this Agreement as of the Effective Date.

- 20. <u>Waiver of Texas Government Code § 3000.001 et seq</u>. With respect to the improvements constructed on the Property pursuant to this Agreement and the building materials and architectural features referenced in Paragraph 2, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005.
- 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 infrastructure requirements, if any, imposed by this Agreement as of the Effective Date. 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 infrastructure requirements, if any, imposed by this Agreement as of the Effective Date.
- 22. INDEMNIFICATION. TO THE EXTENT ALLOWED BY LAW, OWNER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM OWNER'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ANY OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM OWNER IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.
- 23. Approval of Counsel. In its reasonable discretion, the Town shall have the right to approve counsel to be retained by Owner 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 is not to be construed as a waiver of Owner's obligation to defend the Town or as a waiver of Owner's obligation to indemnify the Town pursuant to this Agreement. Owner shall retain Town-approved defense counsel within ten (10)

business days of the Town's written notice that the Town is invoking its right to indemnification under this Agreement.

- **24.** Survival. Paragraph 22, "Indemnification," and Paragraph 23, "Approval of Counsel," shall survive the termination of this Agreement.
- 25. <u>Third Party Beneficiaries</u>. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- **26.** <u>Amendment</u>. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Owner of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.
- 27. <u>Miscellaneous Drafting Provisions</u>. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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: Ron Patterson
STATE OF TEXAS)	Title: Interim Town Manager, Town of Prosper
COUNTY OF COLLIN)	wledged before me on the day of
	vledged before me on the day of tterson, Interim Town Manager of the Town of of Prosper, Texas.
	Notary Public, State of Texas My Commission Expires:

OWNER:

PROPSER TEXAS GAPITAL LLC

Jack Patel

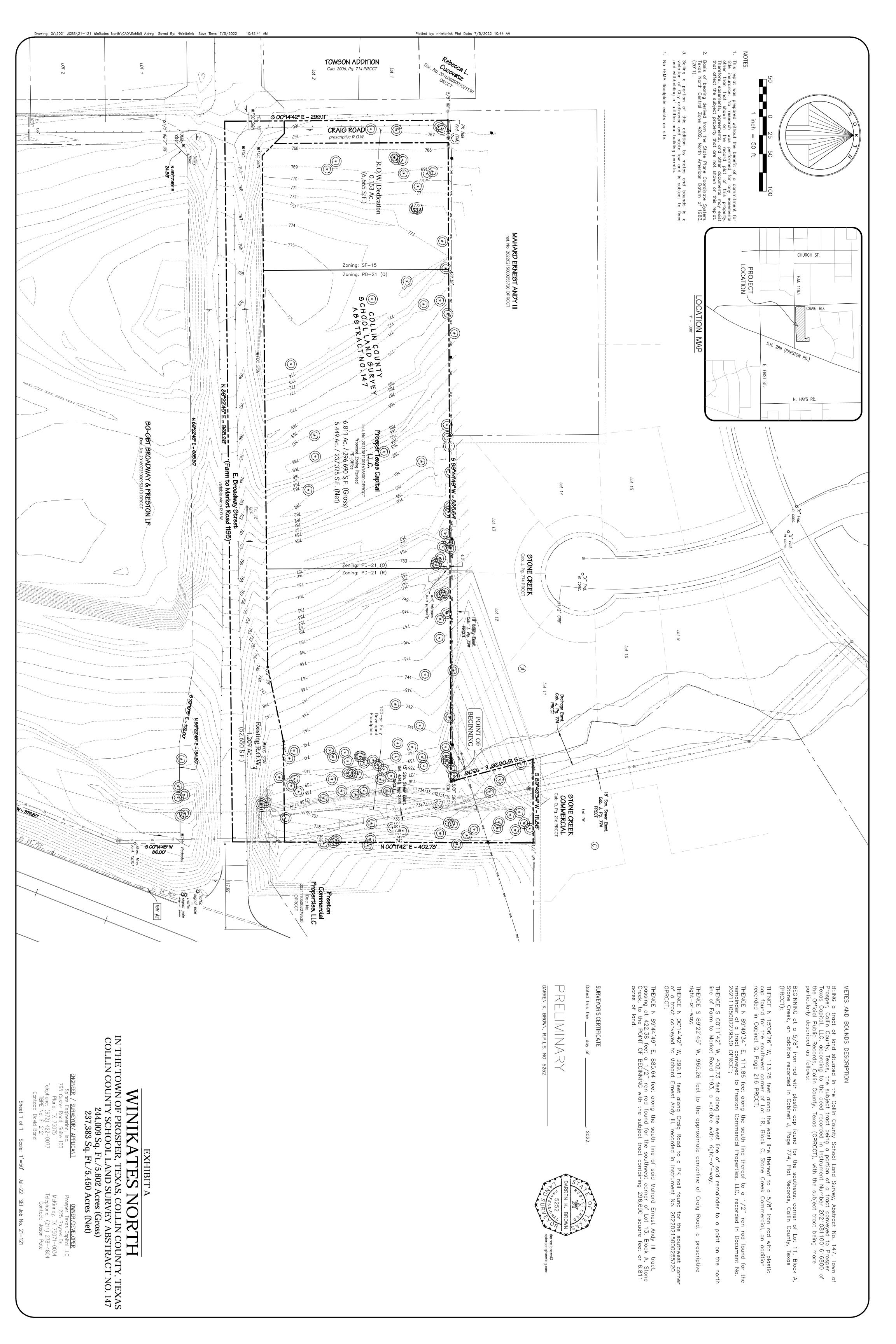
STATE OF TEXAS)
COUNTY OF COLLIN)

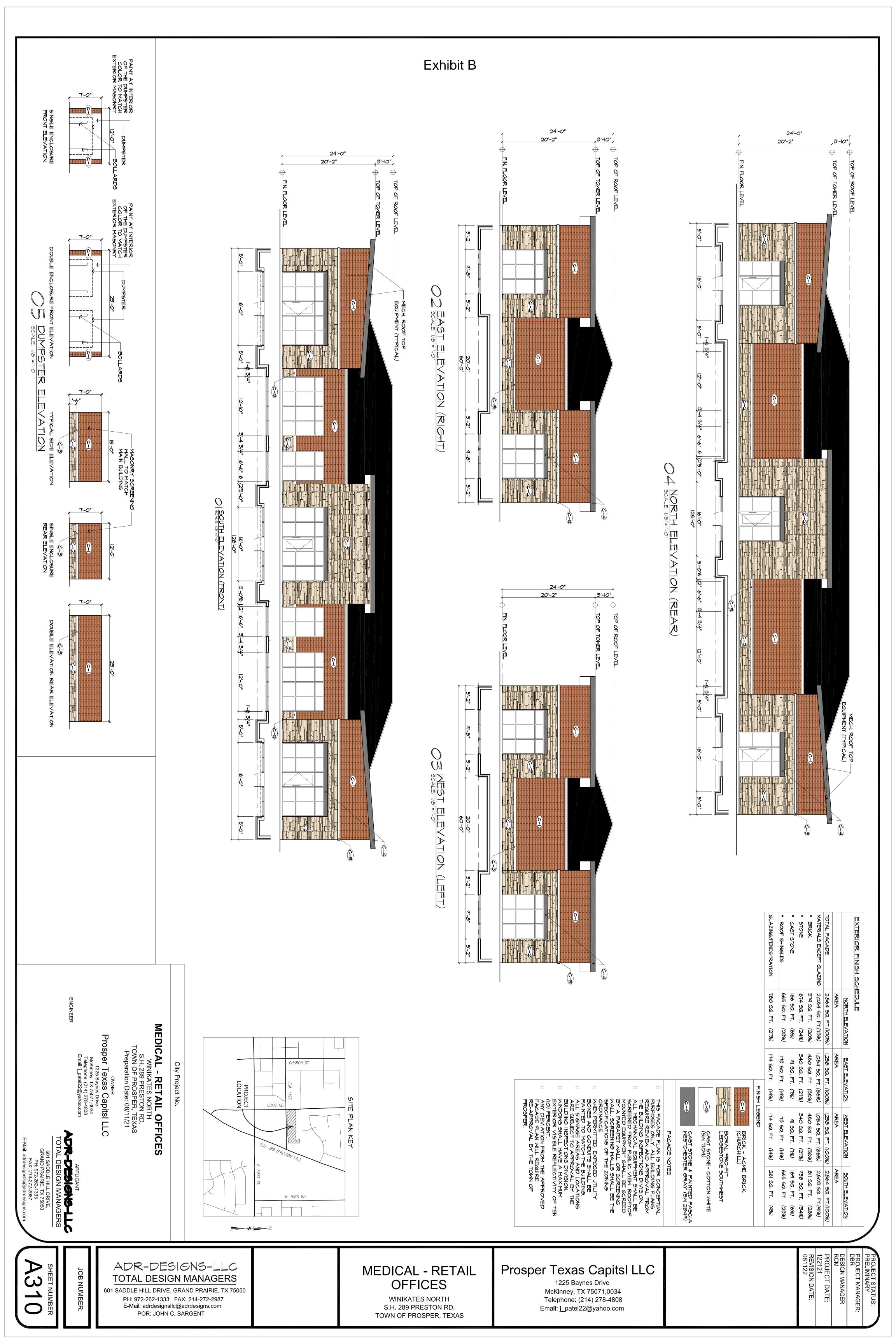
This instrument was acknowledged before me on the 15 day of Settember, 2022, by Jack Patel, in his capacity as resident of Prosper Texas Capital LLC, a Texas limited liability company, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Owner.

Notary Public, State of Texas

My Commission Expires: 02/14/2026







PLANNING



To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Zoning Premium Garages

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon an ordinance to rezone 11.3+- acres of Commercial (C) to Planned Development-Commercial (PD-C) to allow uses such as luxury office/warehouse, automobile storage, and recreational vehicle parking, located on the west side of Coleman Street, south of Prosper Trail. (Z22-0008).

Description of Agenda Item:

On September 13, 2022, the Town Council approved the proposed request, by a vote of 6-0.

A Planned Development 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.

Attachments:

- 1. Ordinance
- 2. Ordinance Exhibits

Town Staff Recommendation:

Town staff recommends approval of an ordinance to rezone 11.3+- acres of Commercial (C) to Planned Development-Commercial (PD-C) to allow uses such as luxury office/warehouse, automobile storage, and recreational vehicle parking, located on the west side of Coleman Street, south of Prosper Trail. (Z22-0008).

Proposed Motion:

I move to approve an ordinance to rezone 11.3+- acres of Commercial (C) to Planned Development-Commercial (PD-C) to allow uses such as luxury office/warehouse, automobile storage, and recreational vehicle parking, located on the west side of Coleman Street, south of Prosper Trail. (Z22-0008).

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING THE ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 11.29 ACRES MORE OR LESS, SITUATED IN COLLIN COUNTY SCHOOL SURVEY ABSTRACT NO. 147, TOWN OF PROSPER, COLLIN COUNTY, TEXAS, FROM COMMERCIAL TO PLANNED DEVELOPMENT-117 (PD117); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town 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 Z22-0008) from Michael Beaty ("Applicant"), to rezone 11.29 acres of land, more or less, situated in Collin County School Survey, Abstract No. 147, Town of Prosper, Collin County, Texas, from Commercial to Planned Development-117 (PD117) 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

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

SECTION 2

Amendment to the Town's Zoning Ordinance. The Town's Zoning Ordinance, as amended, is hereby amended as follows: The zoning designation of the below described property containing 11.29 acres of land, more or less, situated in Collin County School Survey No. 12, Abstract No. 147, Town of Prosper, Collin County, Texas, and all streets, roads, and alleyways contiguous and/or adjacent thereto are hereby zoned as Planned Development-117 (PD117) 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 Concept Plan, attached hereto as Exhibit D; (4) the Development Schedule, attached hereto as Exhibit E; and (5) the Façade Plans, attached hereto as Exhibit F; and (6) the Landscape Plans, attached here to as Exhibit G, all of 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

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

SECTION 5

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

SECTION 6

<u>Severability.</u> Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that 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

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

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 27TH DAY OF SEPTEMBER, 2022.

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

LEGAL DESCRIPTION

BEING an 11.29 acre tract of land out of the Collin County School Land Survey, Abstract Number 147, situated in the Town of Prosper, Collin County, Texas, being all of a called 11.296 acre tract of land conveyed to Coleman Street 11 Acre Partners, LLC, by deed of record in Document Number 20191007001251960 of the Official Public Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a PK Nail found in Coleman Street (right-of-way varies), being the Northeast corner of a called 9.2956 acre tract of land conveyed to James E. Rowland by deed of record in Volume 3402, Page 451 of said Official Public Records, also being the Southeast corner of said 11.296 acre tract and hereof;

THENCE, S89°57'38"W, leaving Coleman Street, along the South line of said 11.296 acre tract, being in part, the common North line of said 9.2956 acre tract, and in part, the common North line of a called 4.00 acre tract of land conveyed to Dairy Manufacturers, Inc. by deed of record in Volume 3510, Page 179 of said Official Public Records, a distance of 1028.72 feet to a 3/8 inch iron rod found in the East right-of-way line of the Burlington Northern Santa Fe Railroad (100-foot right-of-way), being the Northwest corner of said 4.00 acre tract, also being the Southwest corner of said 11.296 acre tract and hereof;

THENCE, N11°24'21"E, along the East right-of-way line of said Burlington Northern Santa Fe Railroad and the common West line of said 11.296 acre tract, a distance of 509.85 feet to a 1/2 inch iron rod found at the Southwest corner of Lot 3, Block A of Eagles Crossing Addition, a subdivision of record in Volume 2011, Page 245 of the Plat Records of Collin County, Texas, being the Northwest corner of said 11.296 acre tract and hereof:

THENCE, N89°54'48"E, leaving the East right-of-way line of said Burlington Northern Santa Fe Railroad, along the North line of said 11.296 acre tract, being in part, the common South line of said Lot 3, and in part, the common South line of Lot 2 of said Block A, passing at a distance of 891.93 feet a 1/2 inch iron rod with red plastic cap stamped "GEER 4117" found at the Southeast corner of said Lot 2, and continuing for a total distance of 937.81 feet to a PK Nail found in Coleman Street, being the Northeast corner of said 11.296 acre tract and hereof:

THENCE, along Coleman Street and the East line of said 11.296 acre tract, the following two (2) courses and distances:

- 1. S00°16'52"W, a distance of 23.04 feet to a PK Nail found;
- 2. S01°10'33"W, a distance of 477.56 feet to the **POINT OF BEGINNING**, and containing an area of 11.29 acres (491,797 square feet) of land, more or less.



EAGLE SURVEYING, LLC

210 S. ELM STREET SUITE: 104 DENTON, TX 76201 (940) 222-3009

TX FIRM # 10194177

 JOB NUMBER
 DRAWN BY
 DATE

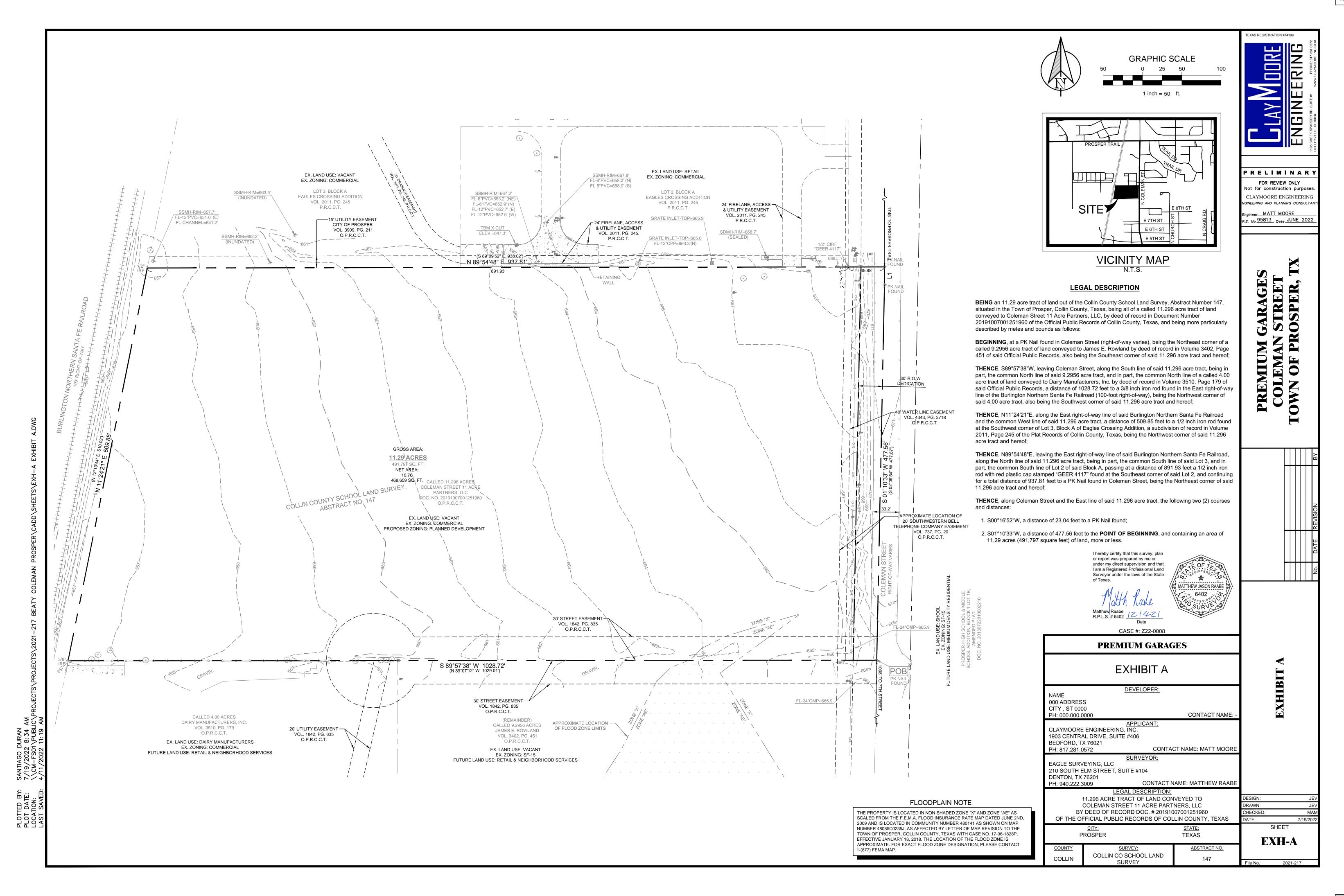
 2110.068-02
 MJR
 12/02/2021

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a Registered Professional Land Surveyor under the laws of the State of Texas.

Matthew Raabe R.P.L.S. # 6402



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CASE # Z 22-0008

Prosper Coleman Maker Space / Luxury Warehouses / Artisan Suites

EXHIBIT B

Statement of Intent and Purpose

The Intent and Purpose of the Proposed Planned Development District is to add two uses that normally require an SUP to the approved uses under the existing Commercial Zoning and to add restrictions to the additional proposed use further defined as Luxury Office / Warehouse spaces to be constructed within the Proposed Planned Development District.

CASE # Z 22-0008

Prosper Coleman Maker Space / Luxury Warehouses / Artisan Suites

EXHIBIT C

PLANNED DEVELOPMENT STANDARDS

The proposed development will conform to the development standards of the Commercial District of the Town of Prosper's Zoning Ordinance, as it exists or may be amended, and Subdivision Ordinance, as it exists or may be amended, except as otherwise set forth in these Development Standards.

- 1) Except as noted below, the Tract shall develop in accordance with the Commercial District requirements of the Town of Prosper's Zoning Ordinance, 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 Exhibits D.
 - b) Elevations: The tract shall be developed in general accordance with the attached elevations, set forth in Exhibits F.
 - c) Landscape Plan: The tract shall be developed in general accordance with the attached landscape plan, set forth in Exhibit G.
- 3) Uses. Uses shall be permitted in accordance with the Commercial District with the following additions:
 - a) Automobile Storage
 - b) Recreational Vehicle / Truck Parking Lot or Garage (RV Parking)
 - c) Luxury Office / Warehouse to be defined as:
 - i) Individual Office / Warehouse Suites to be located within the interior of the development
 - ii) No Suite shall exceed two stories in height, and no greater than thirty feet (30.0' above final grade level.

CASE # Z 22-0008

Prosper Coleman Maker Space / Luxury Warehouses / Artisan Suites

- v) Roof-mounted mechanical equipment, if utilized, shall be screened in a manner such that no equipment is visible from Coleman Street.
- vi) Luxury Office / Warehouse suites may be utilized to conduct business in the form of Personal Office uses by the Tenants. Storefront retail uses will not be permitted within the Luxury Office / Warehouse Suites and is constrained to buildings Directly facing Coleman Street and/or Buildings fronting on to the Mutual Access Easement along the southern portion of the property.
- vii) No portion of the Property may be used for residential purposes.

4) Regulations:

- a) All Luxury Office / Warehouse spaces to be subject to typical Commercial Occupancy Requirements, including no overnight stays or habitation.
- b) No further subdivision of enclosed RV Parking in to smaller Storage units to be permitted
- All Buildings to be constructed of Metal with Masonry Veneers as applicable under the approved elevations and Concept Plan.
- d) Auctions: Auctions related to the sale of private property held in Storage Units and / or Luxury Office / Warehouse Suites for the purposes of recovering unpaid units as authorized by law shall be permitted to be held on-site no more than two (2) times per calendar year subject to an application to the Town of Prosper for a Temporary Use / Special Event Permit.
- e) No landscape setback required along Southern property line.
- f) Automobile storage, recreational vehicle/ truck parking lot or garage (RV parking) will be enclosed within a building.

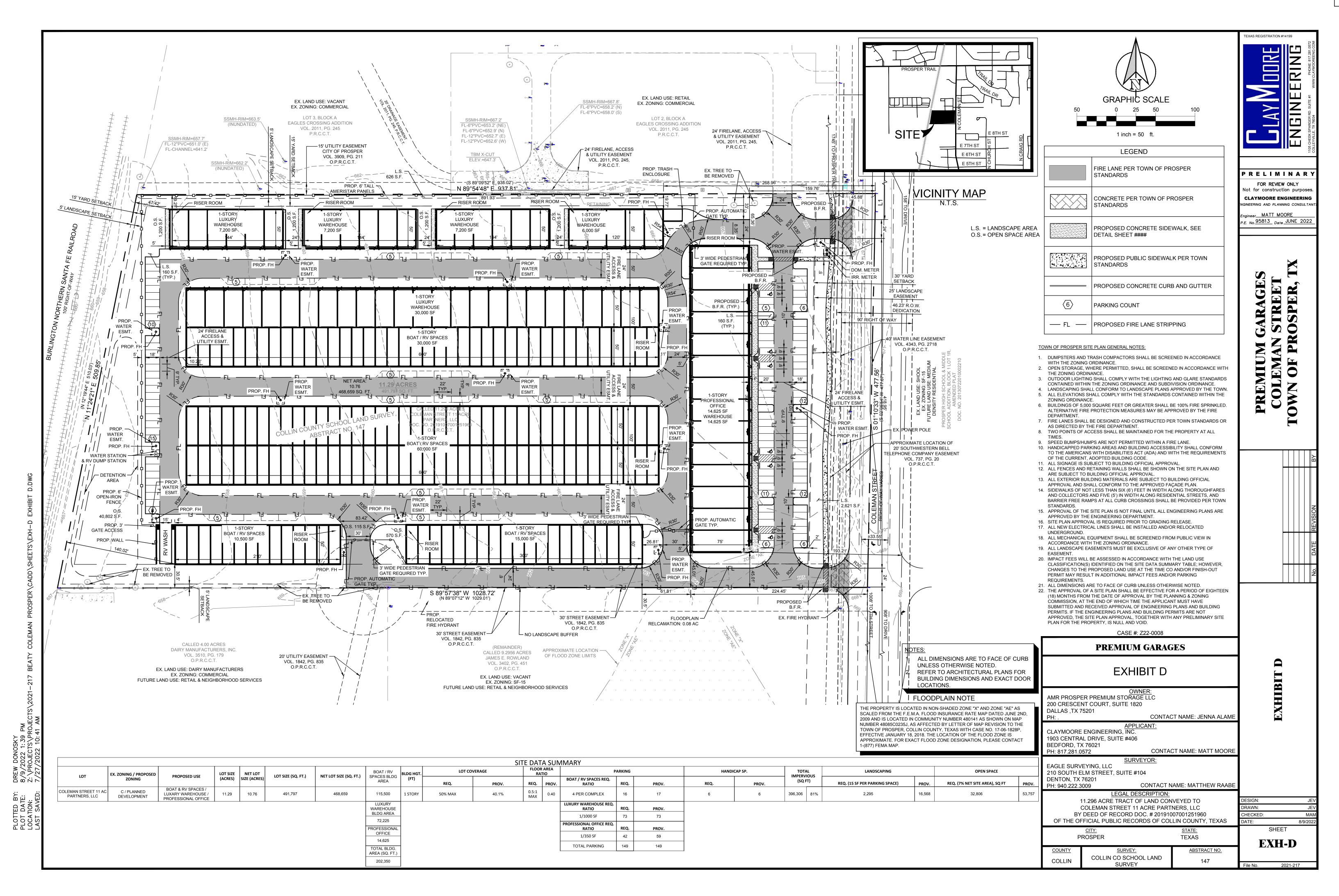




Exhibit E – Premier Storage Development Schedule

Below is an anticipated project schedule for the proposed storage development located along Coleman. This schedule is conceptual and subject to change based on permitting/entitlements. Once obtained, then the permitting approvals will start with the Town.

Zoning Submittal to Town – March 2022 Zoning Approval from Town – September 2022 Start Construction – December 2022 Construction Complete – December 2023

Thank you and please call if you have any comments or need additional information.

Sincerely,

Drew Donosky, P.E.

LUXURY OFFICE / WAREHOUSE OVERALL STREET ELEVATION



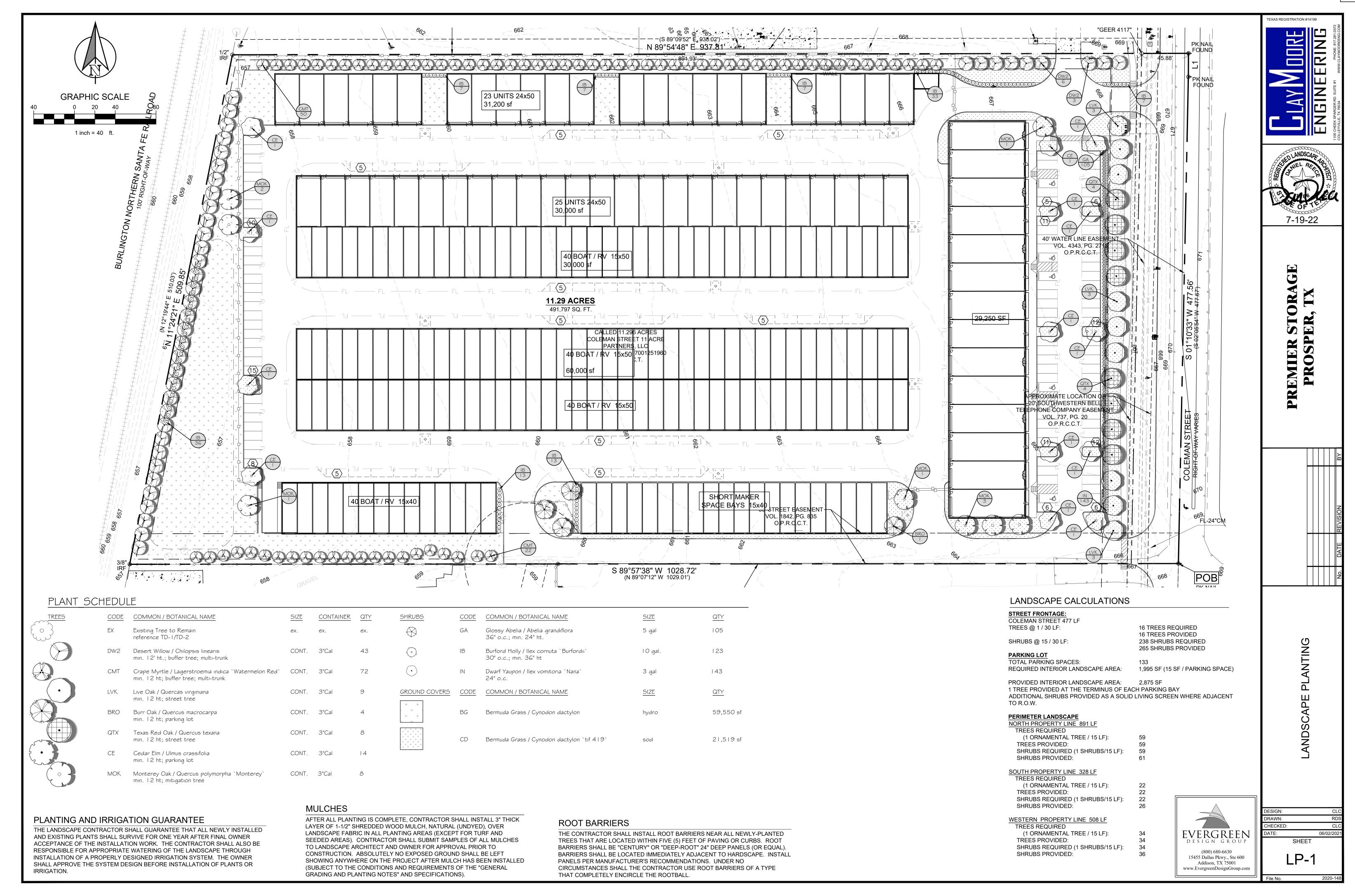


LUXURY OFFICE / WAREHOUSE 6 THRU 10 STREET ELEVATION

3 3/16"=1'-0"

A1.3

LUXURY OFFICE / WAREHOUSE TYPICAL BUILDING SECTION



- A. QUALIFICATIONS OF LANDSCAPE CONTRACTOR
- ALL LANDSCAPE WORK SHOWN ON THESE PLANS SHALL BE PERFORMED BY A SINGLE FIRM SPECIALIZING IN LANDSCAPE PLANTING.
- 2. A LIST OF SUCCESSFULLY COMPLETED PROJECTS OF THIS TYPE, SIZE AND NATURE MAY BE REQUESTED BY THE OWNER FOR FURTHER QUALIFICATION MEASURES.
- 3. THE LANDSCAPE CONTRACTOR MUST HOLD A VALID NURSERY AND FLORAL CERTIFICATE ISSUED BY THE TEXAS DEPARTMENT OF AGRICULTURE, AS WELL AS OPERATE UNDER A COMMERCIAL PESTICIDE APPLICATOR LICENSE ISSUED BY EITHER THE TEXAS DEPARTMENT OF AGRICULTURE OR THE TEXAS STRUCTURAL PEST CONTROL BOARD.
- B. SCOPE OF WORK 1. WORK COVERED BY THESE SECTIONS INCLUDES THE FURNISHING AND PAYMENT OF ALL MATERIALS, LABOR, SERVICES, EQUIPMENT, LICENSES, TAXES AND ANY OTHER ITEMS THAT ARE NECESSARY FOR THE EXECUTION, INSTALLATION AND COMPLETION OF ALL WORK, SPECIFIED HEREIN AND / OR SHOWN ON THE LANDSCAPE PLANS, NOTES, AND DETAILS.
- ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH ALL APPLICABLE LAWS, CODES AND REGULATIONS REQUIRED BY AUTHORITIES HAVING JURISDICTION OVER SUCH WORK, INCLUDING ALL INSPECTIONS AND PERMITS REQUIRED BY FEDERAL, STATE AND LOCAL AUTHORITIES IN
- SUPPLY, TRANSPORTATION AND INSTALLATION OF MATERIALS. 3. THE LANDSCAPE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UNDERGROUND UTILITY LINES (WATER, SEWER, ELECTRICAL, TELEPHONE, GAS, CABLE, TELEVISION, ETC.) PRIOR TO THE START OF ANY WORK.

PRODUCTS

- A. ALL MANUFACTURED PRODUCTS SHALL BE NEW B. CONTAINER AND BALLED-AND-BURLAPPED PLANTS:
- 1. FURNISH NURSERY-GROWN PLANTS COMPLYING WITH ANSI Z60.1-2004. PROVIDE WELL-SHAPED, FULLY BRANCHED, HEALTHY, VIGOROUS STOCK FREE OF DISEASE, INSECTS, EGGS, LARVAE, AND DEFECTS SUCH AS KNOTS, SUN SCALD, INJURIES, ABRASIONS, AND DISFIGUREMENT. ALL PLANTS WITHIN A SPECIES SHALL HAVE SIMILAR SIZE. AND SHALL BE OF A FORM TYPICAL FOR THE SPECIES. ALL TREES SHALL BE OBTAINED FROM SOURCES WITHIN 200 MILES OF THE PROJECT SITE, AND WITH SIMILAR CLIMACTIC CONDITIONS.
- 2. ROOT SYSTEMS SHALL BE HEALTHY, DENSELY BRANCHED, FIBROUS ROOT SYSTEMS, NON-POT-BOUND, FREE FROM ENCIRCLING AND/OR GIRDLING ROOTS, AND FREE FROM ANY OTHER ROOT DEFECTS (SUCH AS J-SHAPED ROOTS).
- ANY PLANT DEEMED UNACCEPTABLE BY THE LANDSCAPE ARCHITECT OR OWNER SHALL BE IMMEDIATELY REMOVED FROM THE SITE AND SHALL BE REPLACED WITH AN ACCEPTBLE PLANT OF LIKE TYPE AND SIZE AT THE CONTRACTOR'S OWN EXPENSE. ANY PLANTS APPEARING TO BE UNHEALTHY, EVEN IF DETERMINED TO STILL BE ALIVE, SHALL NOT BE ACCEPTED. THE LANDSCAPE ARCHITECT AND OWNER SHALL BE THE SOLE JUDGES AS TO THE ACCEPTABILITY OF PLANT MATERIAL
- 4. ALL TREES SHALL BE STANDARD IN FORM, UNLESS OTHERWISE SPECIFIED. TREES WITH CENTRAL LEADERS WILL NOT BE ACCEPTED IF LEADER IS DAMAGED OR REMOVED. PRUNE ALL DAMAGED TWIGS AFTER PLANTING
- 5. CALIPER MEASUREMENTS FOR STANDARD (SINGLE TRUNK) TREES SHALL BE AS FOLLOWS: SIX INCHES ABOVE THE ROOT FLARE FOR TREES UP TO AND INCLUDING FOUR INCHES IN CALIPER, AND TWELVE INCHES ABOVE THE ROOT FLARE FOR TREES EXCEEDING FOUR INCHES IN CALIPER. MULTI-TRUNK TREES SHALL BE MEASURED BY THEIR OVERALL HEIGHT, MEASURED FROM THE TOP
- OF THE ROOT BALL ANY TREE OR SHRUB SHOWN TO HAVE EXCESS SOIL PLACED ON TOP OF THE ROOT BALL, SO THAT
- THE ROOT FLARE HAS BEEN COMPLETELY COVERED, SHALL BE REJECTED SOD: PROVIDE WELL-ROOTED SOD OF THE VARIETY NOTED ON THE PLANS. SOD SHALL BE CUT FROM
- HEALTHY, MATURE TURF WITH SOIL THICKNESS OF 3/4" TO 1". EACH PALLET OF SOD SHALL BE ACCOMPANIED BY A CERTIFICATE FROM SUPPLIER STATING THE COMPOSITION OF THE SOD. D. SEED: PROVIDE BLEND OF SPECIES AND VARIETIES AS NOTED ON THE PLANS, WITH MAXIMUM
- PERCENTAGES OF PURITY, GERMINATION, AND MINIMUM PERCENTAGE OF WEED SEED AS INDICATED ON PLANS. EACH BAG OF SEED SHALL BE ACCOMPANIED BY A TAG FROM THE SUPPLIER INDICATING THE COMPOSITION OF THE SEED.
- TOPSOIL: SANDY TO CLAY LOAM TOPSOIL, FREE OF STONES LARGER THAN ½ INCH, FOREIGN MATTER, PLANTS, ROOTS, AND SEEDS. COMPOST: WELL-COMPOSTED, STABLE, AND WEED-FREE ORGANIC MATTER, pH RANGE OF 5.5 TO 8;
- MOISTURE CONTENT 35 TO 55 PERCENT BY WEIGHT; 100 PERCENT PASSING THROUGH 3/4-INCH SIEVE; SOLUBLE SALT CONTENT OF 5 TO 10 DECISIEMENS/M; NOT EXCEEDING 0.5 PERCENT INERT CONTAMINANTS AND FREE OF SUBSTANCES TOXIC TO PLANTINGS. NO MANURE OR ANIMAL-BASED PRODUCTS SHALL BE USED.
- G. PLANTING MIX: AN EQUAL PART MIXTURE OF TOPSOIL, SAND AND COMPOST.
- H. FERTILIZER: GRANULAR FERTILIZER CONSISTING OF NITROGEN, PHOSPHORUS, POTASSIUM, AND OTHER NUTRIENTS IN PROPORTIONS, AMOUNTS, AND RELEASE RATES RECOMMENDED IN A SOIL REPORT FROM A QUALIFIED SOIL-TESTING AGENCY (SEE BELOW).
- MULCH: SIZE AND TYPE AS INDICATED ON PLANS, FREE FROM DELETERIOUS MATERIALS AND SUITABLE AS A TOP DRESSING OF TREES AND SHRUBS.
- WEED FABRIC: 5 OUNCE, WOVEN, NEEDLE-PUNCHED FABRIC, SUCH AS DEWITT PRO5 LANDSCAPE
- FABRIC (OR APPROVED EQUAL). K. TREE STAKING AND GUYING
- 1. STAKES: 6' LONG GREEN METAL T-POSTS.
- 2. GUY AND TIE WIRE: ASTM A 641, CLASS 1, GALVANIZED-STEEL WIRE, 2-STRAND, TWISTED, 0,106
- 3. STRAP CHAFING GUARD: REINFORCED NYLON OR CANVAS AT LEAST 1-1/2 INCH WIDE, WITH GROMMETS TO PROTECT TREE TRUNKS FROM DAMAGE.
- STEEL EDGING: PROFESSIONAL STEEL EDGING, 14 GAUGE THICK X 4 INCHES WIDE, FACTORY PAINTED DARK GREEN. ACCEPTABLE MANUFACTURERS INCLUDE COL-MET OR APPROVED EQUAL.
- PRE-EMERGENT HERBICIDES: ANY GRANULAR, NON-STAINING PRE-EMERGENT HERBICIDE THAT IS LABELED FOR THE SPECIFIC ORNAMENTALS OR TURF ON WHICH IT WILL BE UTILIZED. PRE-EMERGENT HERBICIDES SHALL BE APPLIED PER THE MANUFACTURER'S LABELED RATES.

<u>METHODS</u>

- A. SOIL PREPARATION
- 1. BEFORE STARTING WORK, THE LANDSCAPE CONTRACTOR SHALL VERIFY THAT THE GRADE OF ALL LANDSCAPE AREAS ARE WITHIN +/-0.1' OF FINISH GRADE. THE CONTRACTOR SHALL NOTIFY THE OWNER IMMEDIATELY SHOULD ANY DISCREPANCIES EXIST.
- SOIL TESTING: AFTER FINISH GRADES HAVE BEEN ESTABLISHED, CONTRACTOR SHALL HAVE SOIL SAMPLES TESTED BY AN ESTABLISHED SOIL TESTING LABORATORY FOR THE FOLLOWING: SOIL TEXTURAL CLASS, GENERAL SOIL FERTILITY, pH, ORGANIC MATTER CONTENT, SALT (CEC), LIME, SODIUM ADSORPTION RATIO (SAR) AND BORON CONTENT. EACH SAMPLE SUBMITTED
 - SHALL CONTAIN NO LESS THAN ONE QUART OF SOIL CONTRACTOR SHALL ALSO SUBMIT THE PROJECT'S PLANT LIST TO THE LABORATORY ALONG
 - WITH THE SOIL SAMPLES. c. THE SOIL REPORT PRODUCED BY THE LABORATORY SHALL CONTAIN RECOMMENDATIONS FOR THE FOLLOWING (AS APPROPRIATE): GENERAL SOIL PREPARATION AND BACKFILL MIXES, PRE-PLANT FERTILIZER APPLICATIONS, AND ANY OTHER SOIL RELATED ISSUES. THE REPORT SHALL ALSO PROVIDE A FERTILIZER PROGRAM FOR THE ESTABLISHMENT PERIOD AND FOR LONG-TERM MAINTENANCE.
- 3. THE CONTRACTOR SHALL INSTALL SOIL AMENDMENTS AND FERTILIZERS PER THE SOILS REPORT RECOMMENDATIONS. ANY CHANGE IN COST DUE TO THE SOIL REPORT RECOMMENDATIONS,
- EITHER INCREASE OR DECREASE, SHALL BE SUBMITTED TO THE OWNER WITH THE REPORT. FOR BIDDING PURPOSES ONLY, THE SOIL PREPARATION SHALL CONSIST OF THE FOLLOWING: a. TURF: INCORPORATE THE FOLLOWING AMENDMENTS INTO THE TOP 8" OF SOIL BY MEANS OF
- ROTOTILLING AFTER CROSS-RIPPING: i. NITROGEN STABILIZED ORGANIC AMENDMENT - 4 CU. YDS. PER 1,000 S.F.
- ii. AMMONIUM PHOSPHATE 16-20-0 15 LBS PER 1,000 S.F.
- iii. AGRICULTURAL GYPSUM 100 LBS PER 1,000 S.F. b. TREES, SHRUBS, AND PERENNIALS: INCORPORATE THE FOLLOWING AMENDMENTS INTO THE TOP 8" OF SOIL BY MEANS OF ROTOTILLING AFTER CROSS-RIPPING:
- i. NITROGEN STABILIZED ORGANIC AMENDMENT 4 CU. YDS. PER 1,000 S.F. ii. 12-12-12 FERTILIZER - 10 LBS. PER CU. YD.
- iii. AGRICULTURAL GYPSUM 10 LBS. PER CU. YD.
- iv. IRON SULPHATE 2 LBS. PER CU. YD.
- CONTRACTOR SHALL ENSURE THAT THE GRADE IN SOD AREAS SHALL BE 1" BELOW FINISH GRADE AFTER INSTALLING SOIL AMENDMENTS, AND 2" BELOW FINISH GRADE IN SHRUB AREAS AFTER INSTALLING SOIL AMENDMENTS. MULCH COVER WITHIN 6" OF CONCRETE WALKS AND CURBS SHALL NOT PROTRUDE ABOVE THE FINISH SURFACE OF THE WALKS AND CURBS. MULCH COVER WITHIN 12" OF WALLS SHALL BE AT LEAST 3" LOWER THAN THE TOP OF WALL.
- ONCE SOIL PREPARATION IS COMPLETE, THE LANDSCAPE CONTRACTOR SHALL ENSURE THAT THERE ARE NO DEBRIS, TRASH, OR STONES LARGER THAN 1" REMAINING IN THE TOP 6" OF SOIL.

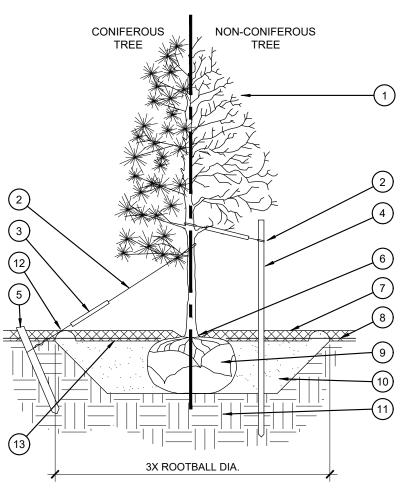
- B. GENERAL PLANTING
- REMOVE ALL NURSERY TAGS AND STAKES FROM PLANTS.
- 2. EXCEPT IN AREAS TO BE PLANTED WITH ORNAMENTAL GRASSES, APPLY PRE-EMERGENT HERBICIDES AT THE MANUFACTURER'S RECOMMENDED RATE.
- 3. TRENCHING NEAR EXISTING TREES:
- a. CONTRACTOR SHALL NOT DISTURB ROOTS 1-1/2" AND LARGER IN DIAMETER WITHIN THE CRITICAL ROOT ZONE (CRZ) OF EXISTING TREES, AND SHALL EXERCISE ALL POSSIBLE CARE AND PRECAUTIONS TO AVOID INJURY TO TREE ROOTS, TRUNKS, AND BRANCHES. THE CRZ IS DEFINED AS A CIRCULAR AREA EXTENDING OUTWARD FROM THE TREE TRUNK, WITH A RADIUS EQUAL TO 1' FOR EVERY 1" OF TRUNK DIAMETER-AT-BREAST-HEIGHT (4.5' ABOVE THE AVERAGE GRADE AT THE TRUNK).
- b. ALL EXCAVATION WITHIN THE CRZ SHALL BE PERFORMED USING HAND TOOLS. NO MACHINE EXCAVATION OR TRENCHING OF ANY KIND SHALL BE ALLOWED WITHIN THE CRZ.
- c. ALTER ALIGNMENT OF PIPE TO AVOID TREE ROOTS 1-1/2" AND LARGER IN DIAMETER. WHERE TREE ROOTS 1-1/2" AND LARGER IN DIAMETER ARE ENCOUNTERED IN THE FIELD, TUNNEL UNDER SUCH ROOTS. WRAP EXPOSED ROOTS WITH SEVERAL LAYERS OF BURLAP AND KEEP MOIST. CLOSE ALL TRENCHES WITHIN THE CANOPY DRIP LINES WITHIN 24 HOURS.
- d. ALL SEVERED ROOTS SHALL BE HAND PRUNED WITH SHARP TOOLS AND ALLOWED TO AIR-DRY. DO NOT USE ANY SORT OF SEALERS OR WOUND PAINTS.
- TREE PLANTING TREE PLANTING HOLES SHALL BE EXCAVATED TO MINIMUM WIDTH OF TWO TIMES THE WIDTH OF THE ROOTBALL, AND TO A DEPTH EQUAL TO THE DEPTH OF THE ROOTBALL LESS TWO INCHES.
- SCARIFY THE SIDES AND BOTTOM OF THE PLANTING HOLE PRIOR TO THE PLACEMENT OF THE TREE. REMOVE ANY GLAZING THAT MAY HAVE BEEN CAUSED DURING THE EXCAVATION OF THE HOLE. FOR CONTAINER TREES, TO REMOVE ANY POTENTIALLY GIRDLING ROOTS AND OTHER ROOT
- DEFECTS. THE CONTRACTOR SHALL SHAVE A 1" LAYER OFF OF THE SIDES AND BOTTOM OF THE ROOTBALL OF ALL TREES JUST BEFORE PLACING INTO THE PLANTING PIT. DO NOT "TEASE" ROOTS OUT FROM THE ROOTBALL.
- 4. INSTALL THE TREE ON UNDISTURBED SUBGRADE SO THAT THE TOP OF THE ROOTBALL IS TWO TO THREE INCHES ABOVE THE SURROUNDING GRADE.
- 5. BACKFILL THE TREE HOLE UTILIZING THE EXISTING TOPSOIL FROM ON-SITE. ROCKS LARGER THAN 1" DIA. AND ALL OTHER DEBRIS SHALL BE REMOVED FROM THE SOIL PRIOR TO THE BACKFILL. SHOULD ADDITIONAL SOIL BE REQUIRED TO ACCOMPLISH THIS TASK, IMPORT ADDITIONAL TOPSOIL FROM OFF-SITE AT NO ADDITIONAL COST TO THE OWNER.
- THE TOTAL NUMBER OF TREE STAKES (BEYOND THE MINIMUMS LISTED BELOW) WILL BE LEFT TO THE LANDSCAPE CONTRACTOR'S DISCRETION. SHOULD ANY TREES FALL OR LEAN, THE LANDSCAPE CONTRACTOR SHALL STRAIGHTEN THE TREE, OR REPLACE IT SHOULD IT BECOME DAMAGED. TREE STAKING SHALL ADHERE TO THE FOLLOWING GUIDELINES:
- a. 15 30 GAL TREES TWO STAKES PER TREE THREE STAKES PER TREE b. 45 - 100 GAL TREES
- MULTI-TRUNK TREES THREE STAKES PER TREE MINIMUM, POSITIONED AS NEEDED TO STABILZE THE TREE
- 7. UPON COMPLETION OF PLANTING, CONSTRUCT AN EARTH WATERING BASIN AROUND THE TREE. COVER THE INTERIOR OF THE TREE RING WITH THE WEED BARRIER CLOTH AND TOPDRESS WITH MULCH (TYPE AND DEPTH PER PLANS).
- D. SHRUB, PERENNIAL, AND GROUNDCOVER PLANTING DIG THE PLANTING HOLES TWICE AS WIDE AND 2" LESS DEEP THAN EACH PLANT'S ROOTBALL.
- INSTALL THE PLANT IN THE HOLE. BACKFILL AROUND THE PLANT WITH SOIL AMENDED PER SOIL TEST RECOMMENDATIONS.
- INSTALL THE WEED BARRIER CLOTH, OVERLAPPING IT AT THE ENDS. UTILIZE STEEL STAPLES TO KEEP THE WEED BARRIER CLOTH IN PLACE. WHEN PLANTING IS COMPLETE, INSTALL MULCH (TYPE AND DEPTH PER PLANS) OVER ALL PLANTING
- SODDING SOD VARIETY TO BE AS SPECIFIED ON THE LANDSCAPE PLAN.

BEDS, COVERING THE ENTIRE PLANTING AREA.

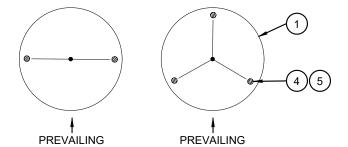
- LAY SOD WITHIN 24 HOURS FROM THE TIME OF STRIPPING. DO NOT LAY IF THE GROUND IS FROZEN. LAY THE SOD TO FORM A SOLID MASS WITH TIGHTLY FITTED JOINTS. BUTT ENDS AND SIDES OF SOD
- STRIPS DO NOT OVERLAP. STAGGER STRIPS TO OFFSET JOINTS IN ADJACENT COURSES. 4. ROLL THE SOD TO ENSURE GOOD CONTACT OF THE SOD'S ROOT SYSTEM WITH THE SOIL
- WATER THE SOD THOROUGHLY WITH A FINE SPRAY IMMEDIATELY AFTER PLANTING TO OBTAIN AT LEAST SIX INCHES OF PENETRATION INTO THE SOIL BELOW THE SOD.
- HYDROMULCHING
- 1. THE HYDROMULCH MIX (PER 1,000 SF) SHALL BE AS FOLLOWS:
 - a. WINTER MIX (OCTOBER 1 MARCH 31) 50# CELLULOSE FIBER MULCH
 - 2# UNHULLED BERMUDA SEED 2# ANNUAL RYE SEED
 - 15# 15-15-15 WATER SOLUBLE FERTILIZER b. SUMMER MIX (APRIL 1 - SEPTEMBER 30)
 - 50# CELLULOSE FIBER MULCH 2# HULLED BERMUDA SEED
- 15# 15-15-15 WATER SOLUBLE FERTILIZER
- G. CLEAN UP 1. DURING LANDSCAPE PREPARATION AND PLANTING, KEEP ALL PAVEMENT CLEAN AND ALL WORK
- AREAS IN A NEAT, ORDERLY CONDITION. 2. DISPOSED LEGALLY OF ALL EXCAVATED MATERIALS OFF THE PROJECT SITE.
- H. INSPECTION AND ACCEPTANCE UPON COMPLETION OF THE WORK, THE LANDSCAPE CONTRACTOR SHALL PROVIDE THE SITE CLEAN, FREE OF DEBRIS AND TRASH, AND SUITABLE FOR USE AS INTENDED. THE LANDSCAPE CONTRACTOR SHALL THEN REQUEST AN INSPECTION BY THE OWNER TO DETERMINE FINAL ACCEPTABILITY.
- 3. WHEN THE INSPECTED PLANTING WORK DOES NOT COMPLY WITH THE CONTRACT DOCUMENTS. THE LANDSCAPE CONTRACTOR SHALL REPLACE AND/OR REPAIR THE REJECTED WORK TO THE OWNER'S SATISFACTION WITHIN 24 HOURS. 4. THE LANDSCAPE MAINTENANCE PERIOD WILL NOT COMMENCE UNTIL THE LANDSCAPE WORK HAS
- BEEN RE-INSPECTED BY THE OWNER AND FOUND TO BE ACCEPTABLE. AT THAT TIME, A WRITTEN NOTICE OF FINAL ACCEPTANCE WILL BE ISSUED BY THE OWNER, AND THE MAINTENANCE AND GUARANTEE PERIODS WILL COMMENCE. LANDSCAPE MAINTENANCE
- 1. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL WORK SHOWN ON THESE PLANS FOR 90 DAYS BEYOND FINAL ACCEPTANCE OF ALL LANDSCAPE WORK BY THE OWNER. LANDSCAPE MAINTENANCE SHALL INCLUDE WEEKLY SITE VISITS FOR THE FOLLOWING ACTIONS (AS APPROPRIATE): PROPER PRUNING, RESTAKING OF TREES, RESETTING OF PLANTS THAT HAVE SETTLED, MOWING AND AERATION OF LAWNS, WEEDING, RESEEDING AREAS WHICH HAVE NOT GERMINATED WELL, TREATING FOR INSECTS AND DISEASES, REPLACEMENT OF MULCH, REMOVAL OF LITTER, REPAIRS TO THE IRRIGATION SYSTEM DUE TO FAULTY PARTS AND/OR WORKMANSHIP, AND THE APPROPRIATE WATERING OF ALL PLANTINGS. THE LANDSCAPE CONTRACTOR SHALL MAINTAIN THE IRRIGATION SYSTEM IN PROPER WORKING ORDER, WITH SCHEDULING ADJUSTMENTS BY SEASON TO MAXIMIZE WATER CONSERVATION.
- SHOULD SEEDED AND/OR SODDED AREAS NOT BE COVERED BY AN AUTOMATIC IRRIGATION SYSTEM. THE LANDSCAPE CONTRACTOR SHAL BE RESPONSIBLE FOR WATERING THESE AREAS AND OBTAINING A FULL, HEALTHY STAND OF GRASS AT NO ADDITIONAL COST TO THE OWNER. TO ACHIEVE FINAL ACCEPTANCE AT THE END OF THE MAINTENANCE PERIOD, ALL OF THE
- FOLLOWING CONDITIONS MUST OCCUR: a. THE LANDSCAPE SHALL SHOW ACTIVE, HEALTHY GROWTH (WITH EXCEPTIONS MADE FOR SEASONAL DORMANCY). ALL PLANTS NOT MEETING THIS CONDITION SHALL BE REJECTED AND
- REPLACED BY HEALTHY PLANT MATERIAL PRIOR TO FINAL ACCEPTANCE. b. ALL HARDSCAPE SHALL BE CLEANED PRIOR TO FINAL ACCEPTANCE. SODDED AREAS MUST BE ACTIVELY GROWING AND MUST REACH A MINIMUM HEIGHT OF 1 1/2
- INCHES BEFORE FIRST MOWING. HYDROMULCHED AREAS SHALL SHOW ACTIVE, HEALTHY GROWTH. BARE AREAS LARGER THAN TWELVE SQUARE INCHES MUST BE RESODDED OR RESEEDED (AS APPROPRIATE) PRIOR TO FINAL ACCEPTANCE. ALL SODDED TURF SHALL BE NEATLY MOWED.
- J. WARRANTY PERIOD, PLANT GUARANTEE AND REPLACEMENTS

MARKUPS.

- THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL TREES, SHRUBS, PERENNIALS, SOD, SEEDED/HYDROMULCHED AREAS, AND IRRIGATION SYSTEMS FOR A PERIOD OF ONE YEAR FROM THE DATE OF THE OWNER'S FINAL ACCEPTANCE (90 DAYS FOR ANNUAL PLANTS). THE CONTRACTOR SHALL REPLACE, AT HIS OWN EXPENSE AND TO THE SATISFACTION OF THE OWNER, ANY PLANTS WHICH DIE IN THAT TIME, OR REPAIR ANY PORTIONS OF THE IRRIGATION SYSTEM WHICH OPERATE
- AFTER THE INITIAL MAINTENANCE PERIOD AND DURING THE GUARANTEE PERIOD, THE LANDSCAPE CONTRACTOR SHALL ONLY BE RESPONSIBLE FOR REPLACEMENT OF PLANTS WHEN PLANT DEATH CANNOT BE ATTRIBUTED DIRECTLY TO OVERWATERING OR OTHER DAMAGE BY HUMAN ACTIONS. PROVIDE A MINIMUM OF (2) COPIES OF RECORD DRAWINGS TO THE OWNER UPON COMPLETION OF WORK. A RECORD DRAWING IS A RECORD OF ALL CHANGES THAT OCCURRED IN THE FIELD AND THAT ARE DOCUMENTED THROUGH CHANGE ORDERS, ADDENDA, OR CONTRACTOR/CONSULTANT DRAWING

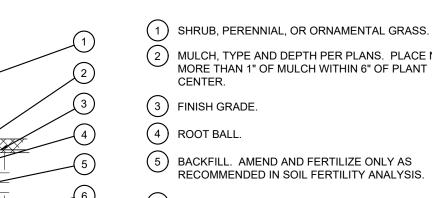


STAKING EXAMPLES (PLAN VIEW)



WINDS WINDS TREE PLANTING

SCALE: NOT TO SCALE



- (2) MULCH, TYPE AND DEPTH PER PLANS. PLACE NO MORE THAN 1" OF MULCH WITHIN 6" OF PLANT CENTER.
- (3) FINISH GRADE

(1) TREE CANOPY.

(2) CINCH-TIES (24" BOX TREES AND SMALLER) OR 12

LOWEST MAJOR BRANCHES.

UNDISTURBED SOIL.

(6) TRUNK FLARE.

(9) ROOT BALL.

(13) FINISH GRADE.

(3) 24" X 3/4" P.V.C. MARKERS OVER WIRES.

18" MIN. INTO UNDISTURBED SOIL.

PLACE MULCH WITHIN 6" OF TRUNK

(10) BACKFILL. AMEND AND FERTILIZE ONLY AS

RECOMMENDED IN SOIL FERTILITY ANALYSIS.

<u>OTES:</u>
SCARIFY SIDES OF PLANTING PIT PRIOR TO SETTING TREE.

REMOVE EXCESS SOIL APPLIED ON TOP OF THE ROOTBALL THAT

3. FOR BALLED-AND-BURLAPPED TREES, REMOVE WIRE BASKET AND

6. STAKING SHALL BE TIGHT ENOUGH TO PREVENT TRUNK FROM

COVERS THE ROOT FLARE. THE PLANTING HOLE DEPTH SHALL BE

SUCH THAT THE ROOTBALL RESTS ON UNDISTURBED SOIL. AND THE

FOR TREES OVER 3" CALIPER AND TREES 36" BOX AND LARGER, USE

THREE STAKES OR DEADMEN (AS APPROPRIATE), SPACED EVENLY

BENDING, BUT LOOSE ENOUGH TO ALLOW SOME TRUNK MOVEMENT

(8) WEED FABRIC UNDER MULCH

(11) UNDISTURBED NATIVE SOIL.

(12) 4" HIGH EARTHEN WATERING BASIN.

ROOT FLARE IS 2"-3" ABOVE FINISH GRADE.

REMOVE ALL NURSERY STAKES AFTER PLANTING.

BURLAP BEFORE BACKFILLING.

GAUGE GALVANIZED WIRE WITH NYLON TREE STRAPS

AT TREE AND STAKE (36" BOX TREES AND LARGER).

SECURE TIES OR STRAPS TO TRUNK JUST ABOVE

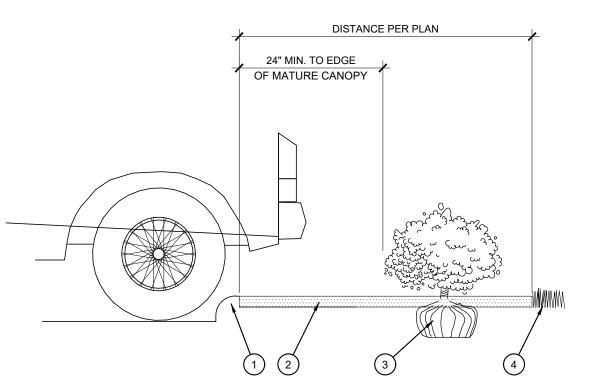
(4) GREEN STEEL T-POSTS. EXTEND POSTS 12" MIN. INTO

TREE (MIN.). BURY OUTSIDE OF PLANTING PIT AND

(5) PRESSURE-TREATED WOOD DEADMAN, TWO PER

(7) MULCH, TYPE AND DEPTH PER PLANS. DO NOT

- (4) ROOT BALL
- (5) BACKFILL. AMEND AND FERTILIZE ONLY AS RECOMMENDED IN SOIL FERTILITY ANALYSIS.
- 6 UNDISTURBED NATIVE SOIL
- (7) 3" HIGH EARTHEN WATERING BASIN.
- (8) WEED FABRIC UNDER MULCH.
- SHRUB AND PERENNIAL PLANTING



SCALE: NTS

(1) CURB. (2) MULCH LAYER. (3) PLANT. (4) TURF (WHERE SHOWN ON PLAN).



TOWN OF PROSPER GENERAL LANDSCAPE NOTES

- 1) Plant material shall be measured and sized according to the latest edition of the Texas Nursery & Landscape Association (TNLA) Specifications, Grades and
- 2) All plant substitutions are subject to Town approval and must be specified on the approved landscape plan
- 3) All turf areas to be established prior to the Certificate of Occupancy, unless otherwise approved by the Town.
- 5) Trees must be planted four (4) feet or greater from curbs sidewalks utility lines screening walls and/or other healthy root growth 6) 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
- 7) Tree pits shall be tested for water percolation. If water does not drain out of tree pit within a 24-hour period, the contractor shall provide berming, or devise alternative drainage.

4) 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.

- 8) Trees shall not be planted deeper than the base of the "trunk flare" 9) The tree pit shall be backfilled with native topsoil free of rock and other debris
- 10) Burlan, twine, and wire baskets shall be loosened and pulled back from the trunk of tree as much as possible.
- 11) 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. 12) 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.
- 13) 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
- 14) Topsoil shall be a minimum of eight (8) inches in depth in planting areas. Soil shall be free of stones, roots, and clods and any other foreign material that is not beneficial for plant growth.
- 15) All plant beds shall be top-dressed with a minimum of three (3) inches of mulch. 16)Trees overhanging walks and parking shall have a minimum clear trunk height of seven (7) feet. Trees overhanging public street pavement drive aisles and fire lanes shall have a minimum clear trunk height of fourteen (14) feet
- 17) A visibility triangle must be provided at all intersections, where shrubs are not to exceed thirty (30) inches in height, and trees shall have a minimum clear trunk height of nine (9) feet.
- 18) Trees planted on a slope shall have the tree well at the average grad of slope.
- 19) No shrubs shall be permitted within areas less than three (3) feet in width. All beds less than three (3) feet in width shall be grass, groundcover, or some type of 20) 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
- other activities necessary for the maintenance of landscaped areas 21) 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 thirty (30) days unless otherwise approved in writing by the Town of Prosper.

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

- 22) Landscape and open areas shall be kept free of trash, litter, and weeds. 23) 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
- Division is required for each irrigation system 24) 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. 25) No planting areas shall exceed 3:1 slope (3 ft Horizontal to 1 ft Vertical). 26) Earthen berms shall not include construction debris. Contractor must correct slippage or damage to the smooth finish grad of the berm prior to acceptance.
- 27) All walkways shall meet ADA and TAS requirements. 28) Contact Town of Prosper Parks and Recreation Division at (972) 569-1160 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
- 29) 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. 30) Prior to calling for a landscape inspection, the contractor is responsible for marking all manholes, valves,

TOWN OF PROSPER MAINTENANCE STANDARDS

water meters, cleanouts, and other utility appurtenances with flagging for field verification by the Town.

- A. THE OWNER, TENANT AND/OR THEIR AGENT, IF ANY, SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR THE MAINTENANCE OF ALL LANDSCAPING REQUIRED BY THIS ORDINANCE. ALL PLANT MATERIAL SHALL BE PERPETUALLY MAINTAINED IN A HEALTHY AND GROWING CONDITION AS IS APPROPRIATE FOR THE SEASON OF THE YEAR. PLANT MATERIALS THAT DIE SHALL BE REPLACED BY PROPERTY OWNER, TENANT OR AGENT WITH PLANT MATERIAL OF SIMILAR VARIETY AND SIZE, WITHIN THIRTY (30) DAYS OF NOTIFICATION BY THE TOWN OR A DATE APPROVED BY THE TOWN.
- B. ALL TREES LOCATED ON TOWN PROPERTY SHALL BE CARED FOR BY THE TOWN UNLESS THAT RESPONSIBILITY IS TRANSFERRED TO ANOTHER ENTITY THROUGH A COUNCIL-APPROVED AGREEMENT THE DIRECTOR OF THE PARKS AND RECREATION DEPARTMENT SHALL ENSURE THAT THE TOWN, OR ITS CONTRACTOR MONITORS AND CARES FOR TREES IN A WAY THAT PROMOTES A HEALTHY AND GROWING URBAN FOREST, IS PERFORMED ACCORDING TO ANSI A300, "STANDARDS FOR TREE CARE OPERATIONS," AND TREE CARE BEST MANAGEMENT PRACTICES PUBLISHED BY THE INTERNATIONAL SOCIETY OF ARBORICULTURE. IT SHALL BE UNLAWFUL TO REMOVE, PRUNE, DAMAGE OR OTHERWISE HARM TREES ON TOWN PROPERTY WITHOUT PERMISSION FROM THE DIRECTOR OF THE PARKS AND RECREATION DEPARTMENT. THE PARKS AND RECREATION DEPARTMENT SHALL BE RESPONSIBLE FOR DEVELOPING AND UPDATING AN ANNUAL WORK PLAN. THIS WORK PLAN SHALL DOCUMENT WHAT MAINTENANCE ACTIVITIES ARE BEING PERFORMED AND SCHEDULED EACH YEAR. THE PARKS AND RECREATION BOARD MAY APPOINT AN ADVISORY COMMITTEE TO FOCUS ON ISSUES AND INITIATIVES THAT PERTAIN TO ANY URBAN FOREST THAT IS LOCATED ON PUBLIC LANDS.

GENERAL GRADING AND PLANTING NOTES

- BY SUBMITTING A PROPOSAL FOR THE LANDSCAPE PLANTING SCOPE OF WORK, THE CONTRACTOR CONFIRMS THAT HE
- HAS READ, AND WILL COMPLY WITH, THE ASSOCIATED NOTES, SPECIFICATIONS, AND DETAILS WITH THIS PROJECT. THE GENERAL CONTRACTOR IS RESPONSIBLE FOR REMOVING ALL EXISTING VEGETATION (EXCEPT WHERE NOTED TO
- 3. IN THE CONTEXT OF THESE PLANS, NOTES, AND SPECIFICATIONS, "FINISH GRADE" REFERS TO THE FINAL ELEVATION OF THE SOIL SURFACE (NOT TOP OF MULCH) AS INDICATED ON THE GRADING PLANS. a. BEFORE STARTING WORK, THE LANDSCAPE CONTRACTOR SHALL VERIFY THAT THE ROUGH GRADES OF ALL LANDSCAPE AREAS ARE WITHIN +/-0.1' OF FINISH GRADE. SEE SPECIFICATIONS FOR MORE DETAILED INSTRUCTION
- ON TURF AREA AND PLANTING BED PREPARATION. CONSTRUCT AND MAINTAIN FINISH GRADES AS SHOWN ON GRADING PLANS, AND CONSTRUCT AND MAINTAIN SLOPES AS RECOMMENDED BY THE GEOTECHNICAL REPORT. ALL LANDSCAPE AREAS SHALL HAVE POSITIVE DRAINAGE AWAY FROM STRUCTURES AT THE MINIMUM SLOPE SPECIFIED IN THE REPORT AND ON THE GRADING PLANS, AND AREAS OF POTENTIAL PONDING SHALL BE REGRADED TO BLEND IN WITH THE SURROUNDING GRADES
- AND ELIMINATE PONDING POTENTIAL. THE LANDSCAPE CONTRACTOR SHALL DETERMINE WHETHER OR NOT THE EXPORT OF ANY SOIL WILL BE NEEDED, TAKING INTO ACCOUNT THE ROUGH GRADE PROVIDED, THE AMOUNT OF SOIL AMENDMENTS TO BE ADDED (BASED ON A SOIL TEST, PER SPECIFICATIONS), AND THE FINISH GRADES TO BE ESTABLISHED.
- AFTER INSTALLING SOIL AMENDMENTS IN SHRUB AREAS, AND IN ORDER TO ALLOW FOR PROPER MULCH DEPTH, ENSURE THAT THE FINISH GRADE IMMEDIATELY ADJACENT TO WALKS AND OTHER WALKING SURFACES IS 3" BELOW FINISH GRADE, TAPERING TO MEET FINISH GRADE AT APPROXIMATELY 18" AWAY FROM THE SURFACE.
- IMMEDIATELY ADJACENT TO WALKS AND OTHER WALKING SURFACES IS 1" BELOW FINISH GRADE, TAPERING TO MEET FINISH GRADE AT APPROXIMATELY 18" AWAY FROM THE SURFACE. SHOULD ANY CONFLICTS AND/OR DISCREPANCIES ARISE BETWEEN THE GRADING PLANS, GEOTECHNICAL REPORT,

THESE NOTES AND PLANS, AND ACTUAL CONDITIONS, THE CONTRACTOR SHALL IMMEDIATELY BRING SUCH ITEMS

AFTER INSTALLING SOIL AMENDMENTS IN TURF AREAS, ENSURE THAT THE FINISH GRADE IN TURF AREAS

- TO THE ATTENTION OF THE LANDSCAPE ARCHITECT, GENERAL CONTRACTOR, AND OWNER 4. ALL PLANT LOCATIONS ARE DIAGRAMMATIC. ACTUAL LOCATIONS SHALL BE VERIFIED WITH THE LANDSCAPE ARCHITECT OR DESIGNER PRIOR TO PLANTING. THE LANDSCAPE CONTRACTOR SHALL ENSURE THAT ALL REQUIREMENTS OF THE PERMITTING AUTHORITY ARE MET (I.E., MINIMUM PLANT QUANTITIES, PLANTING METHODS, TREE PROTECTION METHODS,
- a. THE LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR DETERMINING PLANT QUANTITIES; PLANT QUANTITIES SHOWN ON LEGENDS AND CALLOUTS ARE FOR GENERAL INFORMATION ONLY. IN THE EVENT OF A DISCREPANCY BETWEEN THE PLAN AND THE PLANT LEGEND, THE PLANT QUANTITY AS SHOWN ON THE PLAN (FOR INDIVIDUAL
- SYMBOLS) OR CALLOUT (FOR GROUNDCOVER PATTERNS) SHALL TAKE PRECEDENCE. NO SUBSTITUTIONS OF PLANT MATERIALS SHALL BE ALLOWED WITHOUT THE WRITTEN PERMISSION OF THE L**ANDSCAPE ARCHITECT**. IF SOME OF THE PLANTS ARE NOT AVAILABLE, THE LANDSCAPE CONTRACTOR SHALL NOTIFY THE LANDSCAPE ARCHITECT IN WRITING (VIA PROPER CHANNELS).

THE CONTRACTOR SHALL, AT A MINIMUM, PROVIDE REPRESENTATIVE PHOTOS OF ALL PLANTS PROPOSED FOR

- THE PROJECT. THE CONTRACTOR SHALL ALLOW THE LANDSCAPE ARCHITECT AND THE OWNER/OWNER'S REPRESENTATIVE TO INSPECT, AND APPROVE OR REJECT, ALL PLANTS DELIVERED TO THE JOBSITE. REFER TO SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS FOR SUBMITTALS.
- 5. THE CONTRACTOR SHALL MAINTAIN THE LANDSCAPE IN A HEALTHY CONDITION FOR 90 DAYS AFTER ACCEPTANCE BY THE OWNER. REFER TO SPECIFICATIONS FOR CONDITIONS OF ACCEPTANCE FOR THE START OF THE MAINTENANCE PERIOD, AND FOR FINAL ACCEPTANCE AT THE END OF THE MAINTENANCE PERIOD.
- PROVIDE HYDROMULCH FOR ALL DISTURBED LANDSCAPE AREAS OUTSIDE PROPERTY LIMITS. SEE SPECIFICATIONS AND DETAILS FOR FURTHER REQUIREMENTS.



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EXAS REGISTRATION #14199



7 2

DETAIL ATIONS ANDSCAPE SPECIFICA

SHEET



PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Development Agreement Premium Garages

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon authorizing the Interim Town Manager to execute a Development Agreement between AMR Prosper Premium Storage LLC, and the Town of Prosper, Texas, related to the Premium Garages development, located on the west side of Coleman Street south of Prosper Trail.

Description of Agenda Item:

On September 13, 2022, the Town Council approved the proposed request, by a vote of 6-0. The purpose of the Development Agreement is for the architectural building materials and certain business establishments prohibited on the property.

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.

Attachments:

1. Development Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Interim Town Manager to execute a Development Agreement between AMR Prosper Premium Storage LLC, and the Town of Prosper, Texas, related to the Premium Garages development, located on the west side of Coleman Street south of Prosper Trail.

Proposed Motion:

I move to authorize the Interim Town Manager to execute a Development Agreement between AMR Prosper Premium Storage LLC, and the Town of Prosper, Texas, related to the Premium Garages development, located on the west side of Coleman Street south of Prosper Trail.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and AMR Prosper Premium Storage LLC ("Owner"), with the Town and Owner collectively referred to as "Parties", and each, a "Party", to be effective on the date last executed by any of the Parties (the "Effective Date").

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 developing an approximate 11.286-acre tract of land generally located at the west of Coleman Street and south of Prosper Trail, more particularly described and depicted in Exhibit A, attached hereto and incorporated by reference (the "Property"); and

WHEREAS, the Property was rezoned by the Town Council on or about September 13, 2022, by Ordinance No. 2022-____, and this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in said Ordinance, as may be amended, and/or this Development Agreement, to recognize Owner's reasonable investment-backed expectations in the development of 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 not lease, sell or otherwise permit or authorize on the Property any business enterprises engaging in those businesses referenced in Paragraph 1, below.

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. Certain Business Establishments Prohibited on the Property. Owner agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any of the following business establishments: (1) credit access businesses, as defined in Texas Finance Code § 393.601, as amended, including but not limited to payday lending businesses, "cash for title" lenders, and credit services businesses, as defined in Texas Finance Code § 393.001, as amended); (2) body art facilities; (3) smoke or vape shops; (4) any business entity that sells drug paraphernalia; (5) any business establishment offering gaming or slot machines; (6) sex shops, including but not limited to business entities whose primary purpose is the sale of lewd merchandise; (7) pawn shops; and (8) business entities which primarily utilize outdoor storage or displays. Additionally, Owner agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property a package liquor store, which for purposes of this Agreement is defined as any business entity that is currently required to obtain a

Package Store Permit (P) from the Texas Alcoholic Beverage Commission for the offpremises consumption of alcohol.

- **2.** Building Materials and Architectural Features. For any structure built on the Property following the Effective Date, it shall comply with the requirements contained in Exhibit B (i.e., the elevations for the Property) attached hereto and incorporated herein. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement.
- 3. <u>Covenant Running with the Land</u>. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of 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.** <u>Applicability of Town Ordinances</u>. Owner shall construct all structures on the Property in accordance with all applicable Town ordinances and building/construction codes, whether now existing or arising prior to such construction in the future.
- 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.** <u>Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.
- **7.** <u>Notice</u>. Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: 250 W. First Street

P.O. Box 307

Prosper, Texas 75078 Attention: Town Manager

If to Owner: AMR Prosper Premium Storage LLC

200 Crescent Court, Suite 240

Dallas, Texas 75201

Attention: Rush Graves and Jenna Alame

- **8.** <u>Prevailing Party</u>. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).
- **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.** <u>Savings/Severability</u>. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- 11. <u>Binding Agreement</u>. A telecopied facsimile or pdf of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.
- 12. <u>Authority to Execute</u>. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. 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 Interim Town Manager of the Town to execute this Agreement on behalf of the Town.
- **13.** <u>Mediation</u>. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

- Notification of Sale or Transfer; Assignment of Agreement. 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 any Assignee, 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.** <u>Consideration</u>. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- **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 or pdf signature will also be deemed to constitute an original.
- 19. <u>Exactions/Infrastructure Costs</u>. 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, if any, required by the Town in this

Agreement are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves any 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, if any, imposed by this Agreement as of the Effective Date.

- **20.** Waiver of Texas Government Code § 3000.001 et seq. With respect to the improvements constructed on the Property pursuant to this Agreement and the building materials and architectural features referenced in Paragraph 2, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005.
- 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 infrastructure requirements, if any, imposed by this Agreement as of the Effective Date. 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 infrastructure requirements, if any, imposed by this Agreement as of the Effective Date.
- 22. INDEMNIFICATION. TO THE EXTENT ALLOWED BY LAW. OWNER AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM OWNER'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ANY OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM OWNER IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT, UNLESS SUCH CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND/OR ANY OTHER LOSSES, DEMAND, SUITS, JUDGMENTS AND COSTS AROSE FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE TOWN AND/OR ITS OFFICERS, AGENTS, AND/OR EMPLOYEES.

- 23. Approval of Counsel. In its reasonable discretion, the Town shall have the right to approve counsel to be retained by Owner 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 is not to be construed as a waiver of Owner's obligation to defend the Town or as a waiver of Owner's obligation to indemnify the Town pursuant to this Agreement. Owner shall retain Town-approved defense counsel within ten (10) business days of the Town's written notice that the Town is invoking its right to indemnification under this Agreement.
- **24.** Survival. Paragraph 22, "Indemnification," and Paragraph 23, "Approval of Counsel," shall survive the termination of this Agreement.
- **25.** Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- **26.** <u>Amendment</u>. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Owner of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.
- **27.** <u>Miscellaneous Drafting Provisions</u>. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties have caused this document to be executed as of the date referenced herein.

	TOWN:
	THE TOWN OF PROSPER, TEXAS
STATE OF TEXAS)) COUNTY OF COLLIN)	By: Name: Ron Patterson Title: Interim Town Manager, Town of Prosper
	vledged before me on the day of terson, Interim Town Manager of the Town of of Prosper, Texas.
	Notary Public, State of Texas My Commission Expires:

OWNER:

AMR PROSPER PREMIUM STORAGE LLC

	By: Name: Gordon Rush Graves, Jr.
STATE OF TEXAS)	Title: Manager
OUNTY OF DALLAS)	
	nowledged before me on the day of on Rush Graves, Jr., Manager of AMR Prosper
	nited liability company, on behalf of the foregoing
	Notary Public, State of Texas My Commission Expires:

EXHIBIT A (Property Description)

TRACT 1: (Fee Simple)

BEING an 11.29 acre tract of land out of the Collin County School Land Survey, Abstract Number 147, situated in the Town of Prosper, Collin County, Texas,

being all of a called 11.296 acre tract of land conveyed to Coleman Street 11 Acre Partners, LLC, by deed of record in Document Number 20191007001251960

of the Official Public Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING, at a PK Nail found in Coleman Street (right-of-way varies), being the Northeast corner of a called 9.2956 acre tract of land conveyed to James E.

Rowland by deed of record in Volume 3402, Page 451 of said Official Public Records, also being the Southeast corner of said 11.296 acre tract and hereof;

THENCE, S89°57'38"W, leaving Coleman Street, along the South line of said 11.296 acre tract, being in part, the common North line of said 9.2956 acre tract,

and in part, the common North line of a called 4.00 acre tract of land conveyed to Dairy Manufacturers, Inc. by deed of record in Volume 3510, Page 179 of said

Official Public Records, a distance of 1028.72 feet to a 3/8 inch iron rod found in the East right-of-way line of the Burlington Northern Santa Fe Railroad (100-foot

right-of-way), being the Northwest corner of said 4.00 acre tract, also being the Southwest corner of said 11.296 acre tract and hereof;

THENCE, N11°24'21"E, along the East right-of-way line of said Burlington Northern Santa Fe Railroad and the common West line of said 11.296 acre tract, a

distance of 509.85 feet to a 1/2 inch iron rod found at the Southwest corner of Lot 3, Block A of Eagles Crossing Addition, a subdivision of record in Volume 2011,

Page 245 of the Plat Records of Collin County, Texas, being the Northwest corner of said 11.296 acre tract and hereof;

THENCE, N89°54'48"E, leaving the East right-of-way line of said Burlington Northern Santa Fe Railroad, along the North line of said 11.296 acre tract, being in

part, the common South line of said Lot 3, and in part, the common South line of Lot 2 of said Block A, passing at a distance of 891.93 feet a 1/2 inch iron rod with red plastic cap stamped "GEER 4117" found at the Southeast corner of said Lot 2, and continuing for a total distance of 937.81 feet to a PK Nail found in Coleman Street, being the Northeast corner of said 11.296 acre tract and hereof;

THENCE, along Coleman Street and the East line of said 11.296 acre tract, the following two (2) courses and distances:

- 1. S00°16'52"W, a distance of 23.04 feet to a PK Nail found;
- S01°10'33"W, a distance of 477.56 feet to the POINT OF BEGINNING, and containing an area of 11.29 acres (491,797 square feet) of land, more or less.

TRACT 2: (Easement Estate)

Easement Estate as created in Warranty Deed executed by Prosper Development Corporation to Charles J. Winikates and Frederick A. Eichorn, dated March 2, 1984 filed for record March 7, 1984, in Volume 1842, Page 835, Real Property Records, Collin County, Texas.

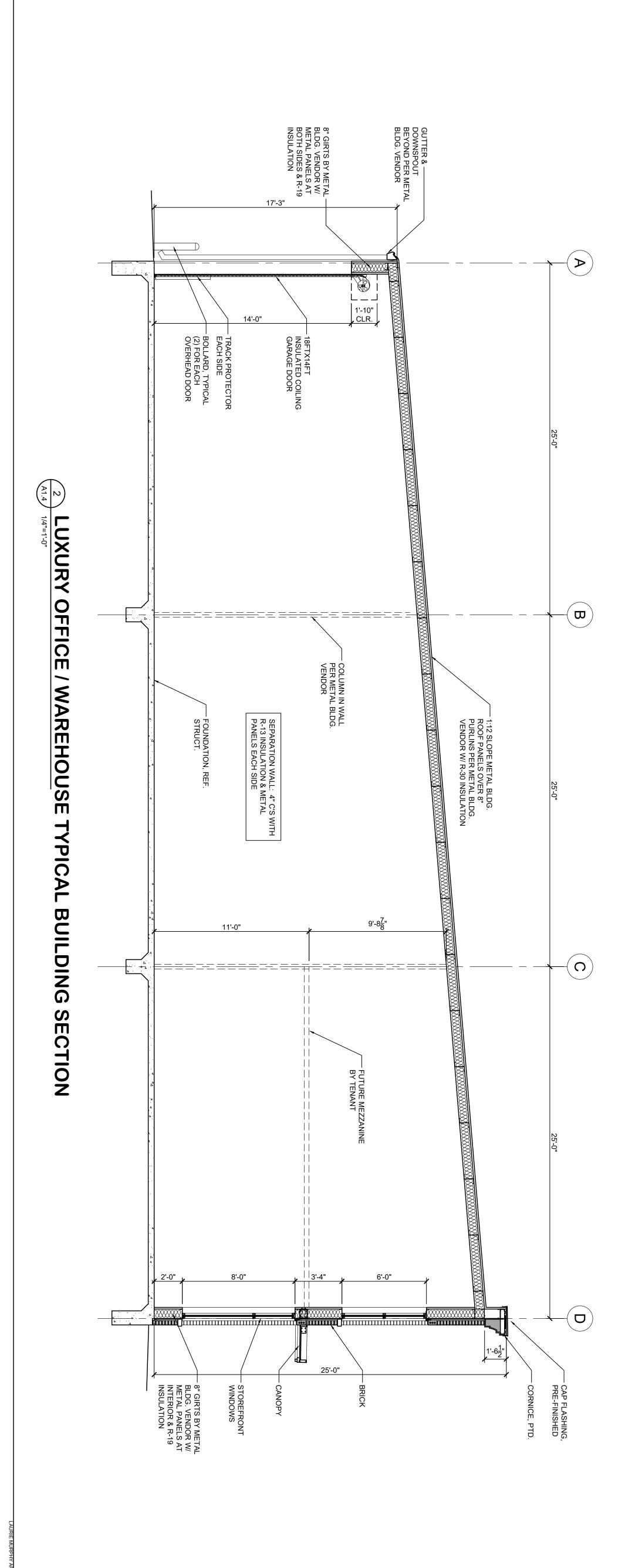


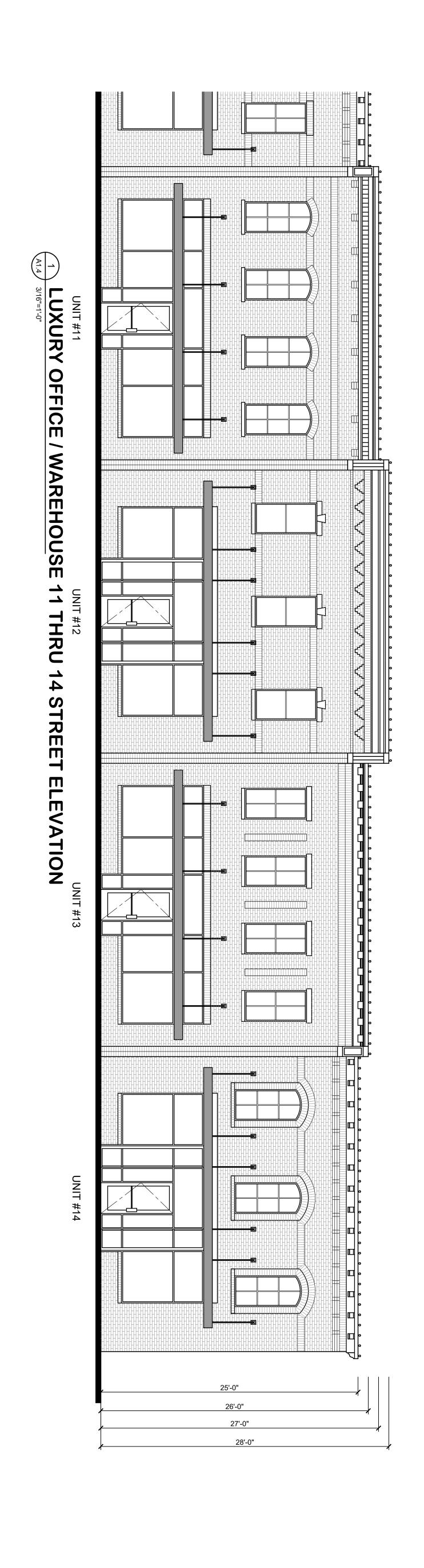
Project No: 2291-000 02/24/2022 Drawn By: LM Checked By: LM

AMR PREMIUM STORAGE

COLEMAN STREET PROSPER, TEXAS 75078







A1.4

Project Name: AMR PREM.
Project No: 2291-000

Date: 02/24/2022

Drawn By: LM

Checked By: LM

Revisions:

AMR PREMIUM STORAGE

COLEMAN STREET PROSPER, TEXAS 75078





ENGINEERING SERVICES

To: Mayor and Town Council

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

Infrastructure Services

Through: Ron K. Patterson, Interim Town Manager

Re: No Parking – Prince William Lane

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon an ordinance amending the no parking zone on Prince William Lane from Coleman Street to south of Highbridge Lane.

Description of Agenda Item:

At the July 26, 2022, Town Council meeting, the Town Council adopted an ordinance that established a no parking zone on Prince William Lane from Coleman Street to Highbridge Lane. The establishment of the no parking zone was in response to complaints received regarding parents parking along Prince William Lane south of Coleman Street near Prosper High School, blocking traffic. However, the parking restriction times from 7AM-9AM and 2PM-4PM, were based on the school hours at a middle school campus and not at a high school campus.

To adequately address the issue at Prosper High School, the no parking zone restriction times need to be changed to 7:30AM-9:30AM and 2:45PM-4:45PM. In addition, to provide increased visibility and safety at the intersection of Prince William Lane and Highbridge Lane, the limits of the no parking zone will be extended 100 feet south of Highbridge Lane.

Budget Impact:

The estimated cost for signs and poles is \$600 and will be purchased from the Streets Department FY2022 Adopted Budget (Account Number 100-5640-50-01).

Legal Obligations and Review:

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

Attachments:

- 1. Location Map
- 2. No Parking Ordinance

Town Staff Recommendation:

Town staff recommends that the Town Council adopt an ordinance amending the no parking zone on Prince William Lane from Coleman Street to south of Highbridge Lane.

Proposed Motion:

I move to adopt an ordinance amending the no parking zone on Prince William Lane from Coleman Street to south of Highbridge Lane.

Location Map



TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2022-

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING DIVISION 2, "NO-PARKING ZONES," OF ARTICLE 12.05, "PARKING, STOPPING AND STANDING," OF CHAPTER 12, "TRAFFIC AND VEHICLES," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY AMENDING SECTION 12.05.035, "PRINCE WILLIAM LANE," TO PROHIBIT PARKING ON A PORTION OF PRINCE WILLIAM LANE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

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

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

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

SECTION 1

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

SECTION 2

Existing Division 2, "No-Parking Zones," of Article 12.05, "Parking, Stopping and Standing," of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances is hereby amended by amending Section 12.05.035, "Prince William Lane," to read as follows:

"ARTICLE 12.05 PARKING, STOPPING AND STANDING

* * *

Division 2. No-Parking Zones

* * *

Sec. 12.05.035 Prince William Lane

There shall be no parking on both sides of Prince William Lane from its intersection with Coleman Street one-hundred feet (100') south of the intersection of Highbridge Lane, from 7:30 a.m. until 9:30 a.m. and from 2:45 p.m. until 4:45 p.m. on school days. A person commits an offense by violating any provision of this section."

SECTION 3

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

SECTION 4

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

SECTION 5

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

SECTION 6

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 27TH DAY OF SEPTEMBER, 2022.

APPROVED.

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



COMMUNICATIONS

To: Mayor and Town Council

From: Robyn Battle, Executive Director of Community Services

Through: Ron K. Patterson, Interim Town Manager

Re: Crisis Communications Services

Town Council Meeting - September 27, 2022

Agenda Item:

Consider and act upon approving a Services Agreement with Strategies 360, Inc., for Strategic Communications Planning and Crisis Communications Services, and authorizing the Interim Town Manager to execute the same.

Description of Agenda Item:

The Town engaged Strategies 360, Inc., for Crisis Communications Services in May 2022 for an initial term of five months. The proposed Services Agreement will provide for continued services from October 1, 2022, through September 30, 2023, with an option to renew annually.

Strategies 360 supports the current Communications staff by providing the Town with crisis communication consulting services, media training, and on-call media relations services as needed. The firm has demonstrated a high level of responsiveness and has established a positive relationship with Town staff and officials.

Budget Impact:

The cost of services is \$5,000 per month (\$60,000 annually). Funding is available in the Communications Professional Services account 100-5410-10-06 or Non-Departmental Contracted Services 100-5480-10-99.

Legal Obligations and Review:

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

Attached Documents:

1. Services Agreement

Town Staff Recommendation:

Town staff recommends the Town Council approve a Services Agreement with Strategies 360, Inc., for Strategic Communications Planning and Crisis Communications Services, and authorizing the Interim Town Manager to execute the same.

Proposed Motion:

I move to approve a Services Agreement with Strategies 360, Inc., for Strategic Communications Planning and Crisis Communications Services, and authorize the Interim Town Manager to execute the same.



SERVICES AGREEMENT Town of Prosper, Texas

This services agreement ("Agreement") is entered into by and between Strategies 360, Inc. ("Consultant") with its principal offices at 1505 Westlake Ave N, Suite 1000, Seattle, Washington, 98109, and **The Town of Prosper**, **Texas** ("Client"), with its principal address being **P.O. Box 307 Prosper**, **Texas** 75078, hereinafter sometimes referred to collectively as the ("Parties").

RECITALS

- A. Client wishes to contract with Consultant to provide services in the field of **Strategic Communications Planning and Crisis Communications Services** on the terms and conditions set forth herein.
- B. Consultant is willing to perform such services in accordance with this Agreement.

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

- 1. <u>Scope of Services</u>. Consultant is retained and appointed to implement the services outlined in the attached Appendix A ("Services"), which are designed to accomplish the objectives of the Client. Consultant shall use Consultant's best efforts to perform the Services such that the results are satisfactory to Client.
- 2. <u>Contract Administration; Communications</u>. Consultant's employees will be responsible for performing the Services under this Agreement. Client and Consultant shall identify and maintain a mutually agreeable communication process to keep Client fully and currently informed about activities of Consultant on behalf of Client. Consultant will work closely with other consultants, team members, and related organizations and individuals as designated by Client, and as necessary to accomplish the objectives of the Client.
 - Primary Strategies 360 Contact: Marc Rylander (MarcR@Strategies360.com])
 - Primary Client Contact: Robyn Battle, Executive Director of Community Services (RBattle@ProsperTX.gov)
- 3. <u>Compensation</u>. Consultant will perform the Services described in this Agreement for a fee of \$5,000 per month from October 1, 2022 ("Effective Date") through September 30, 2023 ("Termination Date") with option for annual renewal.

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

4. Expenses. In addition to compensation payable to Consultant pursuant to this Agreement, Client will reimburse Consultant for costs and disbursements incurred in performing the Agreement including, but not limited to, transportation and travel costs, food, lodging and automobile mileage at the applicable federal rate per business mile, and for necessary entertainment. Consultant shall include an accounting of costs and disbursements and the amount owed on the periodic statements rendered to Client. Total monthly charges to Client under this section of the Agreement will not exceed 10% of monthly service retainer without advance approval from Client.

5. Payment.

Consultant shall send monthly invoices to the Client on the first day of each month of service for the fees jointly agreed by the Parties. Client shall pay Consultant's fees in full within 30 days of receipt ("Due Date").

- Strategies 360 Billing Contact: Janice Leevin [janicel@strategies360.com]
- Town of Prosper, Texas Billing Contact: Ivonne Ruiz [ap@prospertx.gov]

Payment terms are Net 30. If any invoiced amount is not received by Consultant by the Due Date, those charges may accrue late interest at the rate of 2% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

Consultant will not exercise these rights if Client disagrees with the applicable charges reasonably and in good faith and is cooperating diligently to resolve the disagreement.

- 6. <u>Terms of Service and Termination</u>. This Agreement will commence on the Effective Date. Either Party may terminate this Agreement without cause by providing the other Party 30 days' notice in writing. Upon termination, Consultant will render Client an invoice and within 15 days after receipt of said invoice, Client shall pay Consultant in full whatever sums may be due for work performed.
- 7. Confidential Matters and Proprietary Information. The Consultant shall keep in confidence all information that may be acquired in connection with or as a result of the Agreement. The Consultant shall not publish, communicate, divulge, disclose or use any of such information, which has been designated by Client as proprietary or confidential or which from the surrounding circumstances in good conscience ought to be treated by the Consultant as proprietary or confidential, without the prior written consent of Client. Upon termination or expiration of the Agreement, the Consultant shall deliver all relevant records, data, information, and other documents and all copies thereof requested by Client, which shall remain the property of Client.

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- 8. <u>Conflict of Interest</u>. The Consultant has performed an internal conflict of interest check and determined that there is not a conflict of interest under Consultant policy as between the work to be performed under this Agreement and that work performed for other clients of the Consultant's state or local branch office which is managing this Agreement. Consultant shall advise if such a conflict arises in the future.
- 9. Intellectual Property. To the extent Consultant's work includes the creation or modification of any intellectual property in any medium including print, design, video, audio, digital or otherwise, upon completion of the work and expressly conditioned upon full payment of all fees and costs due, Consultant grants to Client limited usage rights of the final content as provided to Client. These rights shall include the right for Client to modify such work. All other rights, including copyrights, are reserved by Consultant. In the event the Consultant's work is for creation or modification of Client's trademark content, conditioned upon full payment of all fees and costs due, Consultant assigns to Client all rights to such trademarks except that Consultant may utilize such trademark in its own marketing and educational materials. Consultant shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall be solely responsible for ensuring any trademarks or domain names do not conflict with the rights of any third party. Client shall also be solely responsible for registering all such trademark or domain names and for any other steps necessary to protect such trademark or domain name along with any related regulatory compliance. The costs of such screening of trademarks or domain names, registration, and other measures shall be born solely by Client. Client shall have sole responsibility for ensuring that trademarks, intellectual property or other content provided by Client to Consultant do not infringe the rights of third parties, and Client shall indemnify, save and hold harmless Consultant from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party alleging such infringement.
- 10. <u>Independent Contractor</u>. In all matters relating to this Agreement, the Consultant shall be acting as an independent contractor. The Consultant is not an employee of Client under the meaning or application of any federal or state unemployment insurance or workers' compensation laws, and the Consultant shall assume all liabilities and obligations imposed by any one or more of such laws. Consultant will work with the Client to determine the time, the place and the manner in which it will accomplish its services.
- 11. Entire Agreement. This Agreement constitutes the entire agreement between Client and the Consultant in regard to the subject matter hereof and supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect thereto. No agreements hereafter made between the parties shall be binding on either party unless reduced to writing and signed by authorized representatives of the parties.
- 12. <u>Governing Law and Venue</u>. This Agreement will be governed by and construed in accordance with the laws of the State of Washington applicable to agreements made and to

be entirely performed within the State of Washington, without resort to its conflict of law provisions. The state or federal court in King County, Washington will be the jurisdiction in which any suits should be filed if they relate to this Agreement.

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

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

Executed in the County of King, Washington:

For: **STRATEGIES 360, INC.** 1505 Westlake Ave N, Suite 1000 Seattle, Washington 98109

TEL: 206/282-1990 FAX: 206/282-2704

By: Date: September 21, 2022
Ron Dotzauer, CEO

For: **Town of Prosper**

250 W. First Street Prosper, TX 75078

TEL: 972-569-1011 FAX: [972-346-9335]

By: _____ Date: ____

[Ron K. Patterson, Interim Town Manager]

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Appendix A

TOWN OF PROSPER, TEXAS Communications Services Scope of Work

Conduct ongoing assessment of the Town's current communication readiness, training, and processes, and make recommendations for action and improvement:

Strategies 360 SVP for Communications for Texas, Marc Rylander, will meet individually or collectively with the Mayor, Council, Town Manager, Executive Director(s), Police Chief, Fire Chief, Communications Manager, and others, as needed, to maintain strong and open communications which will help develop communication processes as the Town continues its exponential growth. From these meetings/discussions, an assessment will be made of current overall communications readiness and recommendations for improvement will follow.

Conduct strategic consultation meetings with Town officials on crisis communication/issues management mitigation and response and prepare a minimum of one (1) annual tabletop exercise to expose staff and elected officials to different crisis scenarios.:

Strategies 360 will meet individually or collectively with the Town Manager, Executive Directors, Police Chief, Fire Chief, Communications Manager, and others to identify current crisis communications protocol and, from that, work towards developing a comprehensive crisis communications strategy that will have immediate implementation.

Strategies 360 will continually review crisis response as the Town experiences such occurrences and will conduct a minimum of one (1) annual crisis response exercise by September 30, 2023 to expose staff and elected officials to potential crisis threats or situations that could occur and might include mass casualties, loss of life, major structural damage, or loss of normal communications mediums.

Maintain a media contact database for the Town of Prosper:

Strategies 360 will regularly review and update the media database for the Town of Prosper. While anyone is welcome to join this distribution list, a concerted effort will be placed on maintaining email information for correspondents, reporters, and writers who cover Collin County stories for the four network television affiliate stations, the two largest Spanish-speaking affiliates, the news radio stations in the area, and for the major Dallas and Collin County newspapers. Furthermore, this list will include elected officials and staff in their district offices, as well as any state or national media/press representatives who tend to cover news stories in this region.

Training for Town staff and elected officials on non-crisis interaction with the media and on social media platforms (two or more sessions by September 30, 2023):

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Strategies 360 will prepare and present materials for ongoing media and social media training sessions for all Town officials who have such interaction in their official capacities. This will include training sessions for elected officials, the Town manager, Directors, Chiefs, and departmental communicators. These trainings will take place at a time determined by the Town Manager, and/or Executive Director of Community Services.

On-call media relations services in the event of a crisis:

Strategies 360 SVP for Communications for Texas, Marc Rylander, will serve as the backup on-call communications contact for the Town at all times. He will be ready to engage during any unplanned activity in the Town that could be press-worthy when contacted. In the event that the Communications Manager is off-duty, he will serve as the primary person on-call. He will work with the Town Manager and Fire and Police Chiefs in Prosper (and surrounding communities, if applicable) during such situations to create and execute an immediate crisis communications strategy—within the structure of the newly-updated Town Crisis Communications Policy.

In-person or virtual presence in the Town's Emergency Operations Center (EOC):

Strategies 360 will be available to coordinate with Town officials and assist with any media activity on the scene or in an Emergency Operations location in the immediate aftermath any major police or fire event, catastrophic event, or natural disaster in the Town.

Preparing and distributing public statements and media releases:

Strategies 360 will review and/or edit initial drafts of all press releases, media advisories, and statements issued by the Town during a crisis situation. They will work collectively with the Mayor and Council, Town Manager, Chiefs, and/or Directors to maintain accuracy and consistency in statements that are issued for public distribution or as response to inquiries from credentialed media/press agencies.

Coordinating press conferences and preparing Town spokespersons or elected officials for media interviews and/or press conferences:

Strategies 360 will organize, alert the press, and conduct press conferences for any acute newsworthy activities in the Town. They will communicate with Town, Police, and Fire Administration to coordinate and carry-out these meetings with the media/press. They will also be available to assist with any media activity on the scene at any police and/or fire event in the Town.

Strategies 360 will train existing staff that currently functions or will function as the Public Information Officer(s), as well as anyone from the Town who would speak at a

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press conference on behalf of the Town of Prosper during the contracted period of this agreement. They will have ongoing communications with the media, organize media activity in the Town, determine what information will be distributed from the Town and to whom it will be distributed, and will monitor and provide input on any/all social media activity by the Town.

Evaluate regular scheduled press/media, social media, and newsletter articles:

Strategies 360 will obtain Town events scheduling at a regularly scheduled meeting with the Communications team and will evaluate messaging and media strategy related to Town events, as needed.

Review websites and monitoring social media for updates and changes:

The Strategies 360 team will monitor and offer update suggestions of all electronic platforms of the Town. This includes but is not limited to websites and social media platforms.



TOWN SECRETARY

To: Mayor and Town Council

From: Michelle Lewis Sirianni, Town Secretary

Through: Ron K. Patterson, Interim Town Manager

Robyn Battle, Executive Director of Community Services

Re: Community Engagement Committee Alternate Member

Town Council Meeting - September 27, 2022

Agenda Item:

Consider and act upon an ordinance amending Section 1.04.039 of Division 3, "Community Engagement Committee" (CEC) of Article 1.04 of the Town's Code of Ordinances by providing for the appointment of an alternate to the Community Engagement Committee (CEC).

Description of Agenda Item:

The Town Council approved an ordinance at its September 13, 2022, meeting establishing the Community Engagement Committee (CEC) as a formal standing advisory committee to the Town Council. The Committee is composed of eleven members with staggering terms.

The proposed ordinance would provide for the appointment of an alternate member to serve in absence of a regular member. The alternate member would serve for the same period and be subject to removal in the same manner as the regular member. A vacancy is also filled in the same manner as a regular member, and the alternate may attend, participate, and serve in any meeting of the Committee.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

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

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town staff recommends the Town Council approve an ordinance amending Section 1.04.039 of Division 3, "Community Engagement Committee" (CEC), of Article 1.04 of the Town's Code of Ordinances by providing for the appointment of an alternate to the Community Engagement Committee (CEC).

Proposed Motion:

I move to approve an ordinance amending Section 1.04.039 of Division 3, "Community Engagement Committee" (CEC), of Article 1.04 of the Town's Code of Ordinances by providing for the appointment of an alternate to the Community Engagement Committee (CEC).

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2022-

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SECTION 1.04.039, "NUMBER OF MEMBERS," OF DIVISION 3, "COMMUNITY ENGAGEMENT COMMITTEE," OF ARTICLE 1.04, "BOARDS, COMMISSIONS AND COMMITTEES," OF CHAPTER 1, "GENERAL PROVISIONS," OF THE TOWN'S CODE OF ORDINANCES BY PROVIDING FOR THE APPOINTMENT OF AN ALTERNATE TO THE COMMUNITY ENGAGEMENT COMMITTEE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Prosper Town Council appointed the Community Engagement Committee in December 2020 as an ad hoc committee for the purpose of enhancing the Town's community engagement efforts; and

WHEREAS, the Community Engagement Committee has held monthly meetings since March 2021 and has made continual progress in developing new initiatives to engage and inform Town residents; and

WHEREAS, on or about September 13, 2022, the Prosper Town Council established the Community Engagement Committee as a formal standing advisory committee to the Town Council; and

WHEREAS, the Town Council wishes to provide for the appointment of an alternate to the Community Engagement Committee, as more fully described herein.

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Section 1.04.039, "Number of Members," of Division 3, "Community Engagement Committee," of Article 1.04, "Boards, Commissions and Committees," of Chapter 1, "General Provisions," of the Town of Prosper Code of Ordinances, is hereby amended to read as follows:

"DIVISION 3. COMMUNITY ENGAGEMENT COMMITTEE

* * *

Sec. 1.04.039 Number of members.

- (a) The Community Engagement Committee shall be composed of eleven members appointed by the Town Council. Members of the Community Engagement Committee shall be a resident of the town or reside within the town's extraterritorial jurisdiction.
- (b) The members shall serve at the pleasure of the Town Council and may be removed at the discretion of the Town Council.
- (c) The Community Engagement Committee shall have one (1) alternate member appointed by the Town Council to serve in the absence of a regular member. The alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy in the alternate member position is filled in the same manner as a vacancy among the regular members. An alternate member nevertheless may attend and participate in any meeting of the Committee and serves upon the same terms and conditions as a regular member.

* * *"

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

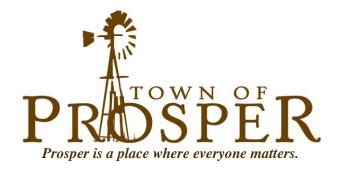
This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 27TH DAY OF SEPTEMBER, 2022.

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

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



TOWN SECRETARY

To: Mayor and Town Council

From: Michelle Lewis Sirianni, Town Secretary

Through: Ron K. Patterson, Interim Town Manager

Robyn Battle, Executive Director of Community Services

Re: Board and Commission Term Limits

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon an ordinance amending Division 1 of Article 1.04, "Board, Commissions, and Committees", of Chapter 1 of the Town's Code of Ordinances by providing for term limits for members of Town Boards, Commissions, and Committees.

Description of Agenda Item:

The Town's Boards, Commissions, and Committees upon appointment currently serve two (2) year terms. If the Town Council desires, the proposed ordinance would provide for terms limits for members of the Town Boards, Commissions, and Committees. A member would be limited to serve three (3) consecutive two (2) year terms. If approved by the Town Council, everyone currently with a term would have three (3) full two (2) year terms to serve beginning October 1, 2022.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

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

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town staff recommends the Town Council approve an ordinance amending Division 1 of Article 1.04, "Board, Commissions, and Committees", of Chapter 1 of the Town's Code of Ordinances by providing for term limits for members of Town Boards, Commissions, and Committees.

Proposed Motion:

I move to approve an ordinance amending Division 1 of Article 1.04, "Board, Commissions, and Committees", of Chapter 1 of the Town's Code of Ordinances by providing for term limits for members of Town Boards, Commissions, and Committees.

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2022-

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING DIVISION 1, "GENERALLY," OF ARTICLE 1.04, "BOARDS, COMMISSIONS AND COMMITTEES," OF CHAPTER 1, "GENERAL PROVISIONS," OF THE TOWN'S CODE OF ORDINANCES BY PROVIDING FOR TERM LIMITS FOR MEMBERS OF TOWN BOARDS, COMMISSIONS AND COMMITTEES; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Charter, the Town's Code of Ordinance as well as certain provisions of state law allow for the appointment of residents and others to boards, commissions and committees established by the Town; and

WEHREAS, not unlike Town Councilmembers who are subject to Town Charter-imposed term limitations, it is the desire of the Prosper Town Council to provide for term limits for members appointed to Town boards, commissions and committees; and

WHEREAS, the Town Council believes that term limitations serve a valuable community and public interest and are therefore advisable.

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, Division 1, "Generally," of Article 1.04, "Boards, Commissions and Committees," of Chapter 1, "General Provisions," of the Town of Prosper Code of Ordinances, is hereby amended to read as follows:

"DIVISION 1. GENERALLY

Sec. 1.04.001 Term Limits for Members of Town Boards, Commissions and Committees.

- (a) No person shall serve as a member of a Town board, commission or committee for more than three (3) consecutive appointive terms.
- (b) For purposes of this section and computing the limitations on terms:
 - (1) A Town board, commission or committee member, who vacates, for any reason, his or her office before the end of the term for which he or she was appointed, shall be considered to have completed that term.

- (2) An appointment to fulfill an unexpired Town board, commission or committee term shall be computed as follows:
 - (i) if fifty percent (50%) or more of the term is remaining, it shall be included in the computation of term limits; or
 - (ii) if less than fifty percent (50%) of the term is remaining, it shall not be included in the computation of term limits.
- (c) Any Town board, commission or committee member who is ineligible for appointment to the Town board, commission or committee to which he or she was appointed due to the limitations on terms as provided herein, shall remain ineligible to be appointed to that same Town board, commission or committee for a period of ten (10) months following the expiration of the most recent term of office for which he or she was appointed.
- (d) To account for the transition to term limits, the term that each person on a Town board, commission or committee is filling as of September 30, 2022, and all terms consecutively served prior to that current term, shall not count for purposes of determining whether three (3) consecutive terms have been served.

Sec. 1.04.002 Exclusions to Term Limitation Provisions

- (a) The provisions of Section 1.04.001 shall not apply to any Town board, commission or committee member who is a Town Council member, an elected county official or who is appointed pursuant to a state law mandating the appointment of individuals with certain statutorily defined qualifications for appointment.
- (b) The provisions of Section 1.04.001 shall not apply to any person appointed to a Town *ad hoc* committee that has not been established by the Town Council as a standing Town board, commission or committee.

Sec. 1.04.003—1.04.030 Reserved"

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 27TH DAY OF SEPTEMBER, 2022.

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



TOWN SECRETARY

To: Mayor and Town Council

From: Michelle Lewis Sirianni, Town Secretary

Through: Ron K. Patterson, Interim Town Manager

Robyn Battle, Executive Director of Community Services

Re: Official Newspaper Designation

Town Council Meeting - September 27, 2022

Agenda Item:

Consider and act upon a resolution designating *The Prosper Press* as the official newspaper of the Town of Prosper, and *The Dallas Morning News* and *The Frisco Enterprise* as alternative advertising sources, for Fiscal Year 2022-2023.

Description of Agenda Item:

Section 2051.049 of the Texas Government Code provides that the Town Council shall select one or more newspapers to publish notices, and Section 11.02 of the Town Charter states that the Town Council shall annually declare an official newspaper of general circulation in the Town. *The Prosper Press* meets these requirements for the purpose of publishing ordinances, election notices, public hearing notices, and other notices required by ordinance, the Town Charter and state law. Town staff recommends the continued use of *The Dallas Morning News* and *The Frisco Enterprise* as alternate advertising sources in the event that the Town encounters a situation where an advertising or public notice deadline could not be timely met by *The Prosper Press*.

Legal Obligations and Review:

The proposed resolution is a standard format previously approved by the Town Attorney, Terrence Welch of Brown & Hofmeister, L.L.P.

Attached Documents:

1. Resolution

Town Staff Recommendation:

Town staff recommends the Town Council adopt a resolution designating *The Prosper Press* as the official newspaper of the Town of Prosper, and *The Dallas Morning News* and *The Frisco Enterprise* as alternative advertising sources, for Fiscal Year 2022-2023.

Proposed Motion:

I move to adopt a resolution designating *The Prosper Press* as the official newspaper of the Town of Prosper, and *The Dallas Morning News* and *The Frisco Enterprise* as alternative advertising sources, for Fiscal Year 2022-2023.

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2022-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, DESIGNATING THE PROSPER PRESS AS THE OFFICIAL NEWSPAPER OF THE TOWN OF PROSPER, AND THE DALLAS MORNING NEWS AND THE FRISCO ENTERPRISE AS ALTERNATE ADVERTISING SOURCES, FOR FISCAL YEAR 2022-2023.

WHEREAS, Section 11.02 of the Prosper Town Charter provides that the Town Council shall declare annually an official newspaper of general circulation in the Town. All ordinances, notices and other matters required by the Charter, Town ordinance, or the Constitution and laws of the State of Texas shall be published in the official newspaper; and

WHEREAS, Section 2051.049 of the Texas Government Code provides that the Town Council shall select one or more newspapers to publish notices; and

WHEREAS, Resolution No. 15-31, approved by the Prosper Town Council on May 26, 2015, provides that *The Dallas Morning News* is authorized as an alternate advertising source in the event that the Town encounters a situation where an advertising or public notice deadline could not be timely met by *The Prosper Press*; and

WHEREAS, the Town Council of the Town of Prosper desires to designate the *The Frisco Enterprise* as a secondary alternate newspaper of the Town; and,

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

SECTION 1

The Town Council of the Town of Prosper hereby designates *The Prosper Press*, a public newspaper in and of the Town of Prosper, Texas, as the official newspaper of said Town, the same to continue as such until another is selected, and shall cause to be published therein all ordinances, notices and other matters required by law or by ordinance to be published. The *Dallas Morning News* and *The Frisco Enterprise* are hereby designated as authorized advertising sources in the event that the Town encounters a situation where an advertising or public notice deadline cannot be timely met by *The Prosper Press*.

SECTION 2

This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS THE 27TH DAY OF SEPTEMBER 2022.

David F. Bristol, Mayor

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



INTERIM TOWN MANAGER

To: Mayor and Town Council

From: Ron K. Patterson, Interim Town Manager

Through: NA

Re: Development Agreement for Park Land and Hike & Bike Trail Easement

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon approving a Development Agreement by and between the Town of Prosper ("Town"), Texas, 310 Prosper, L.P. and 55 Prosper, L.P. (collectively "Owners") regarding the dedication of park land and a hike & bike trail easement; and authorizing the Interim Town Manager to approval final exhibits and execute all related documents for the same. (RKP)

Description of Agenda Item:

The Town has been working for some time to create a park/recreation presence on the far east side of the community with the following goals in mind:

- Creation of a useable Town park and recreational area;
- Creation of bona fide plan for such park and recreational area that can be formally adopted;
- Submission of adopted plan to TxDOT triggering the requirement for a "4f Environmental Assessment" related to the proposed alignment of the U.S. 380 Bypass.

The staff has been working with the representative of the property on which the proposed park land and hike & bike trail easement would be located for the creation of the above referenced park/trail. We have arrived at a proposed Development Agreement ("Agreement") which is being presented herein for the Council's consideration. The general terms of the proposed Agreement are as follows:

- Property Owner(s) to convey 3.5± acres of useable land for park / recreational uses (the "Park Property") – Exhibit A of Agreement
- Property Owners to convey an additional 2.3± acre easement for a hike & bike trail –
 Exhibit B of Agreement
- Park Property will be restricted to Park/Recreational uses as defined within the Agreement
 Section 3 of Agreement and 4th paragraph of Deed (Exhibit C)
- Owners & Town agree on property and easement value of \$1,754,000 5th WHEREAS of Agreement

- Town to convey Park Dedication Credits [no cash] equal to the above value (\$100,000 per acre equates to 17.54 acres of credit – split between the two owners) – 6th WHEREAS of Agreement
- Town will cap the Park Dedication to current requirements; this cap is limited to only properties owned as of the date of the Agreement and with the defined area within the Agreement – Section 2 of Agreement
- Owners may transfer Park Dedication Credits; such transfer is limited to only area defined within the Agreement – Exhibit D of Agreement
- Owners to develop, at its expense and in coordination with Town staff, a park and Hike / Bike Trail Concept Plan; this will be the document the Town can adopt to formalize the Park – Section 4 of Agreement

Staff believes this proposed Agreement meets the goals outlined above. The Agreement accomplishes these goals while –

- Resolving
 - Town will not own the pond located on property adjacent to the park property.
 - Cut and fill issue related to road development.

In full transparency this proposed Agreement does NOT guarantee –

- (i) The TxDOT realignment of the proposed U.S. 380 Bypass. There is no way for staff to provide such a guarantee, but it is believed this Agreement provides a significance step towards seeking the "4f Environmental Assessment". The Agreement also provides for the future development of a park and trail system around the adjacent pond assuming the Bypass is rerouted; and
- (ii) The Collin Storm Water Control District (CSWD) and/or TCEQ will approve the trail across the dam portion. However, in my discussions with the CSWD they are open to the possibility and simply want to see plans and specifications when the time is appropriate.

NOTE: You will note in your review of the proposed Agreement there are some exhibits inserted that are "Placeholders". This is due to the fact that the Owners need time to have them created by surveyors, etc. –

- Exhibit A Property Description (this is for park tract)
- **Easement Exhibits** Legal Description and Depiction (this is hike and bike trail easement around the pond)
- **Deed Exhibits** Legal Description and Permitted Exceptions (this is for the park tract)
- Exhibit D Park Dedication Credit Assignment Area
- **Exhibit E** Park Dedication Cap Properties
- Agreement and Exhibits the final acreages and values will be determined once the surveys are complete.

Due to the need for some time to prepare these final documents, Town staff will recommend approval of the proposed Agreement subject to authorizing the Interim Town Manager and Town Attorney to review and approve the final exhibits to the Agreement subject to such exhibits substantially conforming to the place holder exhibits currently in the attached Agreement and further authorizing the Interim Town Manager to execute such Agreement.

Budget Impact:

There is no direct cash or debt outlay related to the proposed Agreement. There will be an opportunity cost related to the Park Dedication Credits which has a value of \$1,754,000. Additionally, once the Town is ready to begin development of this park and trail it will need to allocate funds for this project.

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

Town Staff Recommendation:

Town staff recommends approval of the proposed Agreement subject to authorizing the Interim Town Manager and Town Attorney to review and approve the final Exhibits to the Agreement further subject to such Exhibits substantially conform to the place holders currently in the attached Agreement.

Proposed Motion:

I move to authorize the Interim Town Manager to execute a Development Agreement by and between the Town of Prosper, Texas, 310 Prosper, L.P. and 55 Prosper, L.P. regarding the dedication of park land and a hike & bike trail easement and authorizing the Interim Town Manager and Town Attorney to review and approve the final exhibits to the Agreement subject to such exhibits substantially conforming to the place holder exhibits currently in the attached Agreement and further authorizing the Interim Town Manager to execute such Agreement.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Prosper, Texas ("<u>Town</u>"), and 310 Prosper, L.P., and 55 Prosper, L.P., are collectively referred to as "<u>Owners</u>"), with the Town and Owners collectively referred to as "Parties," to be effective on the date last executed by any of the Parties (the "<u>Effective Date</u>").

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, 310 Prosper, L.P., owns approximately three and one-half (3.5) acres of property generally located north of U.S. Highway 380 and west of Custer Road in the Town, and the Parties have agreed that said Property is to be conveyed to the Town, said Property more particularly described and depicted in **Exhibit A**, attached hereto and incorporated by reference (the "**Property**"); and

WHEREAS, Owners agree to additionally dedicate to the Town a twenty foot (20') wide permanent hike and bike trail easement to extend to and from the Property around the Soil Conservation Service Site No. 1-B reservoir on properties owned by Owners, and said easement is more particularly described and depicted in **Exhibit B**, attached hereto and incorporated by reference (the "**Easement**"); and

WHEREAS, in exchange for the dedication of the Property and the Easement to the Town at no cost to the Town, the Parties agree Owners shall receive a credit to apply toward the Town's park dedication requirements; and

WHEREAS, the Parties acknowledge and agree that the value of the Property is One Million Five Hundred Twenty-Four Thousand Six Hundred Dollars and 00/100 (\$1,524,600.00) and the agreed value of the Easement is Two Hundred Thirty Thousand Dollars and 00/100 (\$230,000.00); and

WHEREAS, the resulting park dedication credit is 17.54 acres, which, based on the rate of one acre of land per thirty-five (35) residential units, results in a credit for six hundred fourteen (614) residential units.

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. Conveyance of Property and Easement; Park Dedication Fee Credit.

Upon the Effective Date of this Agreement by the Parties, Owners shall convey the Property by deed to the Town in fee simple, with the special warranty deed attached hereto as **Exhibit C** and incorporated by reference, and further, Owners shall convey the Easement to the Town with the Easement document attached hereto as **Exhibit B**. As of the date of the conveyance of the Property and the Easement, the Town shall provide

Owners with a credit of 17.54 acres to apply toward the park dedication requirements (the "Park Dedication Credit"), contained in Section 10.03.150, "Park Land Designs, Dedications, and Fees," of the Town's Code of Ordinances, as amended (the "Park Dedication Requirements"). The Park Dedication Credit shall be allocated to Owners as follows: 16.54 acres to 310 Prosper, L.P., and 1.00 acre to 55 Prosper, L.P. The Park Dedication Credit is only assignable to and may only be applied to the Park Dedication Requirements of other entities or properties that are physically located within the area of the Town bounded on the north by First Street, on the south by U.S. Highway 380, on the east by Custer Road, and on the west by Coit Road (the "Park Dedication Credit Assignment Area"), which is generally depicted on Exhibit D, attached hereto and incorporated by reference. The Town agrees to cooperate with any reasonable request by Owners to provide documentation to facilitate the assignment of all or any portion of the Park Dedication Credit to entities or properties located within the Park Dedication Credit Assignment Area.

- 2. <u>Capping of Park Dedication Requirements</u>. Park dedication requirements for all properties owned as of the effective date of this Agreement by 310 Prosper, L.P., 104 Prosper, L.P. or 55 Prosper, L.P., located in the Park Dedication Credit Assignment Area shall be fixed at the rate of one (1) acre of land per thirty-five (35) residential units regardless of any future amendments to the Town's Park Dedication Requirements (the "Park Dedication Cap"). The properties that are subject to the Park Dedication Cap are generally depicted in <u>Exhibit E</u>, attached hereto and incorporated by reference (the "<u>Park Dedication Cap Properties</u>").
- **3.** <u>Use of the Property</u>. The Property will be used by the Town for park and recreation purposes. This provision in no way limits the Town's right to utilize the Property for auxiliary purposes including, but not limited to, recreation facilities, food services/trucks, event/entertainment venues, bathrooms, and similar purposes.
- 4. Park and Hike / Bike Trail Concept Plan. Owner shall prepare, at its sole expense, a Park and Hike/Bike Trail concept plan on behalf of the Town that generally shows the following park uses: open space, trail head (including parking), restrooms, covered outdoor pavilion, and a hike/bike trail with at least two (2) bench seating locations within the Easement described above (the "Park Concept Plan"). The Park Concept Plan shall be developed with input from the Town and shall be delivered to the Town in both hard copy and an editable digital format no later than ten (10) business days after the Effective Date of this Agreement.
- 5. <u>Covenant Running with the Land</u>. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the Owners and their 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.

- 6. <u>Default</u>. No Party shall be in default under this Agreement until written 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 thirty (30) days to cure the alleged failure; provide that if such default is not curable within such 30-day period, 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 any Party is in default under this Agreement, any 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.
- **7.** <u>Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.
- **8.** <u>Notice</u>. Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: 250 W. First Street

P.O. Box 307

Prosper, Texas 75078 Attention: Town Manager

If to 310 Prosper, L.P.: 5850 Granite Parkway, Suite 100

Plano, Texas 75024 Attention: Jim Williams

Douglas C. Mousel

If to 55 Prosper, L.P.: 3794-C Highway 67 West

Glen Rose, Texas 76043

Attention: B.F. Hill

- **9.** 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).
- **10.** 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.

- **11.** <u>Savings/Severability</u>. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- **12.** <u>Binding Agreement</u>. A telecopied facsimile or pdf of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.
- 13. <u>Authority to Execute</u>. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owners warrant and represent that the individual executing this Agreement on behalf of each Owner has full authority to execute this Agreement and bind each Owner to the same. The Town Council hereby authorizes the Mayor of the Town to execute this Agreement on behalf of the Town.
- **14.** <u>Mediation</u>. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.
- 15. Notification of Sale or Transfer; Assignment of Agreement. Owners have 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 any 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 said 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 any Owner shall release said Owner from any liability that resulted from an act or omission by said Owner that occurred prior to the effective date of the assignment. Each Owner shall maintain true and correct copies of all assignments made by said Owner to any Assignee, 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.
- and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.
- **18.** <u>Consideration</u>. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- **19.** <u>Counterparts</u>. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or pdf signature will also be deemed to constitute an original.
- **20.** Time. Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.
- **21.** Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- **22.** <u>Amendment</u>. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Owners of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.
- **23.** <u>Miscellaneous Drafting Provisions</u>. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

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: Ron K. Patterson
	Title: Interim Town Manager
STATE OF TEXAS)	
COUNTY OF COLLIN)	
	vledged before me on the day of tterson, Interim Town Manager, Texas, on behalf
of the Town of Prosper, Texas.	
	Notary Public, State of Texas
	My Commission Expires:

	OWN	IERS:
		PROSPER, L.P., a Texas limited ership
	Ву:	Texas Land Management, L.L.C., a Texas limited liability company, its General Partner
	Ву: _	Jim Williams, Jr., Chairman
STATE OF TEXAS) COUNTY OF COLLIN)		
day of, 2022,	by Jim ability c	ore me, the undersigned authority, on the n Williams, Jr., Chairman of Texas Land company, General Partner of 310 Prosper, ehalf of said limited partnership.
		ry Public, State of Texas ommission Expires:

	55 PF partne	ROSPER, L.P., a Texas limited ership
	Ву:	One Prosper Holdings, L.L.C., a Texas limited liability company, its General Partner
	Ву:	B.F. Hill, President
STATE OF TEXAS) COUNTY OF)		
day of, 2022, b	y B.F. y, Gen	ore me, the undersigned authority, on the Hill, President of One Prosper Holdings, eral Partner of 55 Prosper, L.P., a Texas nited partnership.
		y Public, State of Texas

EXHIBIT A (Property Description)

PLACEHOLDER ONLY



EXHIBIT B (Easement Document)

AFTER RECORDING, RETURN TO:

TOWN OF PROSPER P.O. Box 307 Prosper, Texas 75078

HIKE	AND	BIKE	TRAIL	EASEMENT
------	-----	------	-------	----------

STATE OF TEXAS)	
)	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN)	

That **310 PROSPER**, **L.P.**, **and 55 PROSPER**, **L.P.**, collectively hereinafter referred to as "Grantor," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by the **TOWN OF PROSPER**, a Texas municipal corporation, hereinafter referred to as "Grantee," the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, GIVE, and CONVEY unto the said Grantee the right to construct, reconstruct, and perpetually maintain public access to and over, and repair hike and bike trail facilities and related incidental improvements (collectively, "Facilities") in, upon, across, and under the following real property:

Being ___ square feet or ___ acres of land and being part of Parcel ___, in the ____ Survey, Abstract No. ___, Collin County, Texas, and being more particularly described in Exhibit A and depicted on Exhibit B, attached hereto and made a part hereof.

And it is further agreed that in consideration of the benefits above set out, Grantee, its agents, employees, workmen and representatives shall have rights of ingress, egress, and regress in, upon, across, and under said premises for the purpose of making improvements on and repairs to the said Facilities or any part thereof.

Grantee further agrees to maintain, at its expense, and keep in force at all times, a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, through its insurer Texas Municipal League Intergovernmental Risk Pool (the "Insurer"), which shall include coverage against claims for any injury, death, or damage to persons or property occurring on, in, or about the said Facilities with a combined single limit of not less than \$2,000,000 with respect to the Facilities and Grantee's use therein. Grantor shall be provided an Indemnification Under Contract Endorsement (EL217) through its Insurer. Prior to making any entry onto the said Facilities, Grantee shall furnish to Grantor: (a) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to Grantor; and (b) proof of payment of the insurance premium.

TO HAVE AND TO HOLD unto the Grantee for the purposes herein set forth, Grantor hereby binds Grantor, its heirs, executors, administrators, and assigns, to warrant and forever defend the easement and rights granted herein unto the said Grantee, Grantee's successors, and assigns forever against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof.

WITNESS THE GRANTOR'S HAND effective as of the ____ day of _____, 2022.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

310 PROSPER, L.P. , a Texas limited partnership	
Ву:	Texas Land Management, L.L.C., a Texas limited liability company, its General Partner
Ву: _	Jim Williams, Jr., Chairman
by Jin ability ond on b	fore me, the undersigned authority, on the Williams, Jr., Charmain of Texas Land company, General Partner of 310 Prospersehalf of said limited partnership. Ty Public, State of Texas commission Expires:
	ged before by Jing ability on bota

		ROSPER, L.P., a Texas limited ership
	Ву:	One Prosper Holdings, L.L.C., a Texas limited liability company, its General Partner
	Ву: _	B.F. Hill, President
STATE OF TEXAS) COUNTY OF)		
COUNTY OF		
day of, 2022,	by B.F. ny, Ger	fore me, the undersigned authority, on the Hill, President of One Prosper Holdings, neral Partner of 55 Prosper, L.P., a Texas mited partnership.
		ry Public, State of Texas
	My C	Commission Expires:

EXHIBIT A to Easement (Legal Description of Easement)

EXHIBIT B to Easement (Depiction of Easement)

PLACEHOLDER

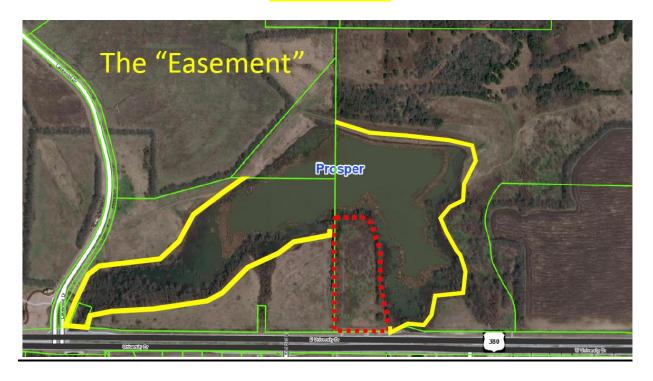


EXHIBIT C
(Special Warranty Deed with attached Exhibits A and B)

AFTER RECORDING RETURN TO:

Republic Title of Texas, Inc. 2626 Howell Street, 10th Floor Dallas, Texas 75204 Attention: Russell Dickson

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN §

That 310 PROSPER, L.P., a Texas limited partnership ("<u>Grantor</u>"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration to the undersigned paid by the TOWN OF PROSPER, a Texas home rule municipality ("<u>Grantee</u>"), whose address is 250 W. First Street, Prosper, Texas 75078, the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee, that certain tract of real property located in Collin County, Texas, containing ______ acres of land, more or less, as more particularly described on <u>Exhibit A</u> attached hereto and incorporated herein by reference, together with all rights of Grantor whatsoever relating to such tract of real property, including (i) all of Grantor's right, title, and interest in and to adjacent streets, alleys, rights-of-way, privileges, easements, interests and appurtenances thereto, and (ii) any improvements situated thereon (hereinafter collectively referred to as the "<u>Property</u>").

Notwithstanding anything contained herein to the contrary, Grantor RETAINS and RESERVES from conveyance all oil, gas, and other minerals in, on, and under the Property that are owned by Grantor; provided that Grantor forever expressly releases and waives, on behalf of itself and its successors and assigns, all rights of ingress and egress to enter upon the surface of the Property for purposes of exploring for, developing, drilling, producing, transporting, mining, treating, storing or any other purposes incident to the development or production of the oil, gas and other minerals reserved to Grantor (or owned or held by any other persons or entities owned or controlled, directly or indirectly, by Grantor) in, on, and under the Property. Grantor and its contractors, agents and

affiliated entities shall have the limited right to enter the subsurface of the Property with a subsurface horizontal or directional wellbore in an effort to explore for and develop oil and gas under the Property, provided that any drilling beneath the surface of the Property shall be at a depth of at least 500 feet beneath the surface of the Property and any subsurface production shall be at least 2,000 feet beneath the surface of the Property.

This conveyance is made and accepted subject to the exceptions, items and matters described on **Exhibit B** attached hereto, and incorporated herein by reference, to the extent the same are valid and subsisting and affect title to the property conveyed hereby (collectively, the "**Permitted Exceptions**").

No part of the Property shall be used for any purpose other than for park and recreation purposes. This restrictive covenant in no way limits the Town's right to use the Property for auxiliary uses including, but not limited to, recreation facilities, food services/trucks, event/entertainment venues, bathrooms, and similar purposes. This restrictive covenant may be removed only by a written release agreement executed by Texas Land Management, L.L.C., the general partner of Grantor, or its successors or assigns. This restrictive covenant shall run with the land.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind itself and its successors and assigns, to WARRANT and FOREVER DEFEND, subject to the Permitted Exceptions, all and singular the Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS WHERE IS" AND "WITH ALL FAULTS" BASIS, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT, FOR THE CONSIDERATION RECITED HEREIN, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE SET FORTH HEREIN, GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY OR GUARANTY WITH RESPECT TO THE PROPERTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY AS TO THE PROPERTY'S CONDITION. FITNESS FOR A PARTICULAR QUALITY, FREEDOM FROM DEFECTS OR CONTAMINATION (WHETHER OR NOT DETECTABLE BY INSPECTION), COMPLIANCE WITH ZONING OR OTHER LEGAL REQUIREMENTS OR AS TO THE AVAILABILITY OR EXISTENCE OF ANY UTILITY OR OTHER GOVERNMENTAL OR PRIVATE SERVICES OR AS TO THE AMOUNT OF TAXES ASSESSED TO THE PROPERTY. GRANTEE, ON BEHALF OF ITSELF AND ALL FUTURE OWNERS AND OCCUPANTS OF THE PROPERTY, HEREBY WAIVES AND RELEASES GRANTOR FROM ANY CLAIMS FOR RECOVERY OF COSTS ASSOCIATED WITH CONDUCT OF ANY VOLUNTARY ACTION OR ANY REMEDIAL RESPONSES, CORRECTIVE ACTION OR CLOSURE UNDER ANY APPLICABLE FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAWS.

EXECUTED TO BE EFFECTIVE as	of the	day of	, 2022.
	GRA	NTOR:	
		PROSPER, L.P., ership	, a Texas limited
	Ву:		nagement, L.L.C., a ability company, its
		By: Jim William	s, Chairman
<u>AC</u>	KNOWLE	<u>DGMENT</u>	
STATE OF TEXAS § COUNTY OF COLLIN §			
COUNTY OF COLLIN §			
This instrument was acknown day of, 20 Management, L.L.C., a Texas line PROSPER, L.P., a Texas limited parts	022, by Jii mited liab	m Williams, Jr, Cha pility company, Ger	irman of Texas Land neral Partner of 310
	Nota	ry Public, State of Te	exas
	МуС	commission Expires:	

EXHIBIT A to Deed (Legal Description)

EXHIBIT B to Deed (Permitted Exceptions)

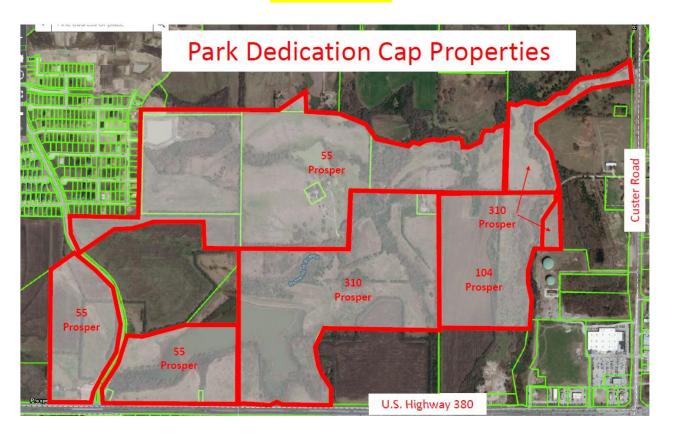
<u>EXHIBIT D</u> (Park Dedication Credit Assignment Area)

PLACEHOLDER



<u>EXHIBIT E</u> (Park Dedication Cap Properties)

PLACEHOLDER





PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Notice of Appeal

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Site Plan, including Star Trail West Amenity Center.

Description of Agenda Item:

Attached is the site plan that was acted on by the Planning & Zoning Commission at their September 6, 2022 meeting. Per the Zoning Ordinance, the Town Council has the ability to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department for any Site Plan acted on by the Planning & Zoning Commission.

Attachments:

1. Star Trail West Amenity Center Site Plan

Planning & Zoning Recommendations:

At their September 6, 2022, meeting, the Planning & Zoning Commission approved the following items:

1. Star Trail West Amenity Center Site Plan (Approved)

Town Staff Recommendation:

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

SITE PLAN NOTES:

* DUMPSTERS NOT REQUIRED FOR THIS SITE. TRASH TO BE CARTED OFF-SITE BY OPERATIONS.

- NO DUMPSTERS ARE REQUIRED TO BE SCREENED. * NO 100-YEAR FLOODPLAIN EXISTS ON THE SITE.

* NO EXISTING TREES EXIST ON THIS SITE.

TOWN OF PROSPER NOTES

ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE REVISIONS TO ANY CORRESPONDING PLANS TO AVOID CONFLICTS BETWEEN PLANS.

1) DUMPSTERS AND TRASH COMPACTORS SHALL BE SCREENED PER THE ZONING ORDINANCE. 2) OPEN STORAGE, WHERE PERMITTED, SHALL BE SCREENED PER THE ZONING ORDINANCE.

3) OUTDOOR LIGHTING SHALL COMPLY WITH THE LIGHTING AND GLARE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE.

4) LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN. 5) ALL ELEVATIONS SHALL COMPLY WITH THE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE.

6) BUILDINGS OF 5,000 SQUARE FEET OR GREATER SHALL BE 100% FIRE SPRINKLED. ALTERNATIVE FIRE PROTECTION MEASURES MAY BE APPROVED BY THE FIRE DEPARTMENT.

7) OCCUPANT NOTIFICATION PER THIS SECTION AND 907.5 SHALL BE REQUIRED FOR ALL NEW CONSTRUCTION, OR EXISTING CONSTRUCTION COMPLYING WITH THE INTERNATIONAL BUILDING CODE, FOR RENOVATIONS TO EXISTING BUILDINGS, TENANTSPACES, CHANGES IN OCCUPANCY, REPLACEMENT, OR MODIFICATION OF THE

PROVIDED WITH AN APPROVED AUTOMATIC SPRINKLER SYSTEM. 8) FIRE LANES SHALL BE DESIGNED AND CONSTRUCTED PER TOWN STANDARDS OR AS DIRECTED BY THE FIRE

EXISTING FIRE ALARM SYSTEM, OR AS REQUIRED BY THE FIRE CODE OFFICIAL, FOR ALL BUILDINGS OR SPACES

9) TWO POINTS OF ACCESS SHALL BE ALWAYS MAINTAINED FOR THE PROPERTY.

10) SPEED BUMPS/HUMPS ARE NOT PERMITTED WITHIN A FIRE LANE. 11) FIRE LANES SHALL BE PROVIDED WITHIN 150 FEET OF ALL EXTERIOR WALLS OF ANY BUILDING FOR HOSE LAY REQUIREMENTS. AMENDMENT 503.1.1

12) THE FIRE LANE SHALL BE A MINIMUM OF 24 FEET WIDE. AMENDMENT 503.2.1

13) BUILDINGS MORE THAN 30 FEET IN HEIGHT ARE REQUIRED TO HAVE A MINIMUM OF A 26-FOOT-WIDE FIRE LANE IN THE IMMEDIATE VICINITY FOR FIREFIGHTING OPERATIONS OF THE BUILDING. ONE OF THE

26-FOOT-WIDE FIRE LANES SHALL BE LOCATED A MINIMUM OF 15 FEET FROM THE BUILDING AND NO MORE THAN 30 FEET. APPENDIX D105

14) THE INSIDE TURNING RADIUS OF THE 24-FOOT FIRE LANE SHALL BE A MINIMUM OF 30 FEET. AMENDMENT

15) THE INSIDE TURNING RADIUS OF THE 26-FOOT FIRE LANE SHALL BE A MINIMUM OF 30 FEET. AMENDMENT

16) DEAD-END FIRE LANES ARE ONLY PERMITTED WITH APPROVED HAMMERHEADS.

17) FIRE HYDRANTS SHALL BE PROVIDED AT THE ENTRANCES AND INTERSECTIONS. AMENDMENT 507.5.1 18) AS PROPERTIES DEVELOP, FIRE HYDRANTS SHALL BE LOCATED AT ALL INTERSECTING STREETS AND THE MAXIMUM SPACING SHALL BE EVERY 300 FEET (300') FOR ALL DEVELOPMENTS, AND FACILITIES OTHER THAN R3. R-3 DEVELOPMENTS SHALL BE EVERY 500 FEET (500'). DISTANCES BETWEEN HYDRANTS SHALL BE MEASURED ALONG THE ROUTE THAT FIRE HOSE IS LAID BY A FIRE APPARATUS FROM HYDRANT-TO-HYDRANT, NOT AS THE "CROW FLIES." AMENDMENT 507.5.1

19) FIRE DEPARTMENT CONNECTION (FDC) FOR THE FIRE SPRINKLER SYSTEM SHALL BE LOCATED WITHIN 50 FEET OF A FIRE HYDRANT AND 50 FEET OF A FIRE LANE. 5" STORZ, 30-DEGREE DOWNWARD TURN WITH LOCKING

20) FIRE HYDRANTS SHALL BE LOCATED 2 FOOT (2') TO 6 FOOT (6') BACK FROM THE CURB OR FIRE LANE AND

SHALL NOT BE LOCATED IN THE BULB OF A CUL-DE-SAC. AMENDMENT 507.5.1 21) THERE SHALL BE A MINIMUM OF TWO (2) FIRE HYDRANTS SERVING EACH PROPERTY WITHIN THE

PRESCRIBED DISTANCES LISTED ABOVE. A MINIMUM OF ONE FIRE HYDRANT SHALL BE LOCATED ON EACH LOT. AMENDMENT 507.5.1

22) A MINIMUM 10-FOOT UNOBSTRUCTED WIDTH SHALL BE PROVIDED AROUND A BUILDING FOR ADEQUATE FIRE DEPARTMENT ACCESS. A CONTINUOUS ROW OF PARKING AND LANDSCAPING SHALL BE CONSIDERED A BARRIER. AMENDMENT 503.1.1

23) THE MAXIMUM DEAD-END CUL-DE-SAC LENGTH SHALL NOT EXCEED SIX HUNDRED FEET (600') AS MEASURED FROM THE CENTERLINE OF THE INTERSECTION STREET TO THE CENTER POINT OF THE RADIUS. AMENDMENT

24) ONE-AND TWO-FAMILY DWELLINGS AUTOMATIC FIRE SYSTEMS. AUTOMATIC FIRE PROTECTION SYSTEMS PÉR NFPA 13D OR NFPA 13R SHALL BE PROVIDED IN ALL ONE-AND TWO-FAMILY DWELLINGS WITH A CONDITIONED FLOOR AREA OF 5,500 SQUARE FEET (511 M2) OR GREATER, DWELLINGS THREE (3) STORIES OR GREATER, OR DWELLINGS WITH ROOF HEIGHTSEXCEEDING THIRTY-FIVE FEET (35') FROM GRADE. IRC-2015

25) HANDICAPPED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM TO THE AMERICANS WITH

DISABILITIES ACT (ADA) AND WITH THE REQUIREMENTS OF THE CURRENT, ADOPTED BUILDING CODE. 26) ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL. 27) ALL FENCES AND RETAINING WALLS SHALL BE SHOWN ON THE SITE PLAN AND ARE SUBJECT TO BUILDING

28) ALL EXTERIOR BUILDING MATERIALS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL AND SHALL CONFORM

TO THE APPROVED FAÇADE PLAN. 29) SIDEWALKS OF NOT LESS THAN SIX (6) FEET IN WIDTH ALONG THOROUGHFARES AND COLLECTORS AND FIVE

(5) FEET IN WIDTH ALONG RESIDENTIAL STREETS AND BARRIER-FREE RAMPS AT ALL CURB CROSSINGS SHALL BE PROVIDED PER TOWN STANDARDS.

30) APPROVAL OF THE SITE PLAN IS NOT FINAL UNTIL ALL ENGINEERING PLANS ARE APPROVED BY THE ENGINEERING SERVICES DEPARTMENT.

31) SITE PLAN APPROVAL IS REQUIRED BEFORE THE GRADING RELEASE.

32) ALL NEW ELECTRICAL LINES SHALL BE INSTALLED AND/OR RELOCATED UNDERGROUND. 33) ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW PER THE ZONING ORDINANCE.

34) ALL LANDSCAPE EASEMENTS MUST BE EXCLUSIVE OF ANY OTHER TYPE OF EASEMENT.

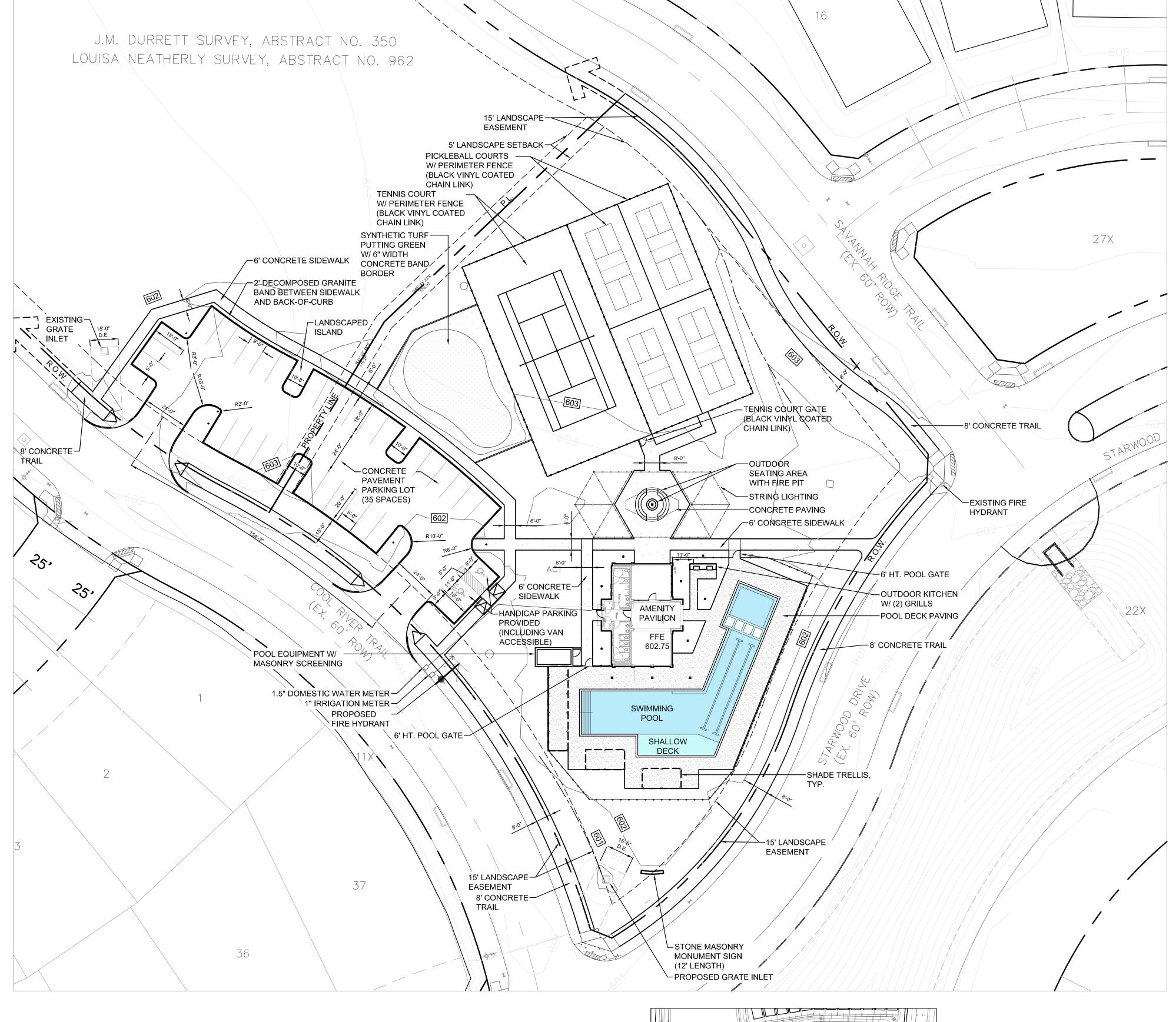
35) IMPACT FEES WILL BE ASSESSED PER THE LAND USE CLASSIFICATION(S) IDENTIFIED ON THE SITE DATA SUMMARY TABLE; HOWEVER, CHANGES TO THE PROPOSED LAND USE AT THE TIME OF CO AND/OR FINISH-OUT

PERMIT MAY RESULT IN ADDITIONAL IMPACT FEES AND/OR PARKING REQUIREMENTS. 36) THE APPROVAL OF A SITE PLAN SHALL BE EFFECTIVE FOR EIGHTEEN (18) MONTHS FROM THE DATE OF

APPROVAL BY THE PLANNING & ZONING COMMISSION, AT THE END OF WHICH TIME THE APPLICANT MUST HAVE SUBMITTED AND RECEIVED THE APPROVAL OF ENGINEERING PLANS AND BUILDING PERMITS. IF THE ENGINEERING PLANS AND BUILDING PERMITS ARE NOT APPROVED, THE SITE PLAN APPROVAL, TOGETHER WITH ANY PRELIMINARY SITE PLAN FOR THE PROPERTY, IS NULL AND VOID.

37) THE TOWN CURRENTLY CONTRACTS WITH CWD FOR WASTE DISPOSAL SERVICES. THEY MAY BE CONTACTED AT 972-392-9300.

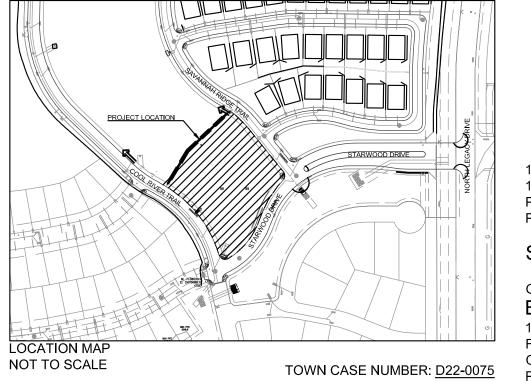
SITE DATA SUMMARY TABLE	
ZONING	SINGLE-FAMILY
PROPOSED USE	AMENITY CENTER
LOT AREA	80,644 SF (1.85 ACRES)
BUILDING AREA	1956 SF
BUILDING HEIGHT	27' HT.
LOT COVERAGE	2.4%
TOTAL PARKING REQUIRED (WITH RATIO)	N/A
TOTAL PARKING PROVIDED	19
HANDICAP PARKING REQUIRED	2
HANDICAP PARKING PROVIDED	2
INTERIOR PARKING LANDSCAPING REQUIRED	320 SF
INTERIOR PARKING LANDSCAPING PROVIDED	498 SF
SQUARE FOOTAGE OF IMPERVIOUS SURFACE	36,820 SF
OPEN SPACE REQUIRED	20,000 SF
OPEN SPACE PROVIDED	29,213 SF

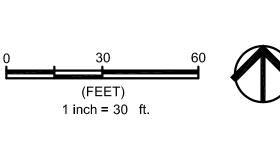




PLAN

CONTOURS LEGEND		
ABBREVIATION	DESCRIPTION	
600	PROPOSED CONTOUR	
600	EXISTING CONTOURS	





1 AMENITY LOT 1.85 ACRES PD-66 ;SINGLE FAMILY-ZONING ORDINANCE #14-31 D21-0060 PRELIMINARY SITE PLAN

STAR TRAIL WEST AMENITY CENTER

OWNER/DEVELOPER: BLUE STAR ALLEN LAND, L.P. 1 COWBOYS WAY FRISCO, TX 75034 CONTACT: SCOTT SHIPP PHONE: 972-543-2412

PLANNING | LANDSCAPE ARCHITECTURE 2150 South Central Expressway | Suite 380 | McKinney, Texas 75070 Phone 214.620.2800

CIVIL ENGINEER LJA Engineering, Inc.

SURVEY BENCHMARKS

2150 S Central Expressway Suite 100

McKinney 75070

BENCHMARKS:

SQUARE WITH "X" CUT ON SOUTHWEST CORNER OF INLET ON THE EAST SIDE OF HALLMARK COURT, APPROXIMATELY 75' NORTH OF CENTERLINE OF VANDERBILT DRIVE.

ELEVATION=628.88'

"X" CUT ON SOUTHEASTERLY CORNER OF INLET ON THE EASTERLY SIDE OF STAR TRAIL PARKWAY, ADJACENT TO THE NORMANDY CIRCLE CUL-DE-SAC.

ELEVATION=627.92'

BLUE STAR

8000 Warren Parkway, Suite 100 Frisco, TX 75034 Phone: 972.543.2414

PROJECT NUMBER NTX0092

PRELIMINARY THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF REVIEW UNDER THE AUTHORITY OF EVAN M. HUNT, TEXAS REGISTERED LANDSCAPE ARCHITECT #3307 ON 09/01/2022. THIS DOCUMENT IS NOT TO BE USED FOR THE PURPOSES OF CONSTRUCTION.

September 01, 2022

09/01/2022

SITE PLAN SUBMITTAL

PROJECT MANAGER: DRAWN BY:

PROJECT DESIGNER: RM/EH

SITE PLAN



PLANNING

To: Mayor and Town Council

From: David Soto, Planning Manager

Through: Ron K. Patterson, Interim Town Manager

Hulon T. Webb, Jr., Interim Executive Director of Development and

Infrastructure Services

Re: Zoning Victory at Frontier South

Town Council Meeting – September 27, 2022

Agenda Item:

Conduct a public hearing and consider and act upon a request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through coffee shop as a permitted use, located on the northwest corner of Preston Road and Coleman Road. (Z21-0013).

History:

The item was tabled at the September 13, 2022 Town Council meeting. The applicant has made modifications to the development standards as well as Exhibit F (Elevations). The following modifications have been made:

- 1. Uses permitted by right:
 - a. Modified language regarding Restaurant with Drive-Through and included that it shall be built within a multi-tenant building only on Lot 2.
 - Added the use Restaurant to be allowed on all lots.
- 2. Uses permitted upon approval of a Specific Use Permit:
 - a. Removed all uses within this section.
- 3. Architectural Regulations:
 - a. Increased the masonry percentage on the development standards as well as Exhibit F for Lots 3 and 4 from 40% to 60%.

Description of Agenda Item:

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

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Office	Undeveloped	Retail & Neighborhood Services District
North	Planned Development-10	Victory at Frontier	Retail & Neighborhood Services District
East	Planned Development-15	Undeveloped / Retail	Retail & Neighborhood Services District
South	Single Family-12.5 & S-34	Prosper United Methodist Church	Medium Density Residential
West	Planned Development-10	Undeveloped	Medium Density Residential

Requested Zoning – The purpose of this request is to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through coffee shop as a permitted use. The applicant is proposing updates to uses, design standards, and architectural standards as mentioned below.

- a. Uses Permitted by Right
 - Restaurant with Drive-Through on Lot 2 within a multi-tenant building.
 - Retail Stores and Shops
 - Gymnastics/Dance Studio
 - Restaurant
 - Veterinarian Clinic and/or Kennel, Indoor
 - Office/Showroom

Staff has no objections with the other proposed uses.

The applicant has also made modifications to the development standards including architectural regulations as shown below:

	Office District	New Planned Development	
Minimum Front Yard	30 Feet	30 Feet	
Minimum Side Yard	 Twenty-five (25) feet for a one story building adjacent to any residential district. Forty (40) feet for a two-story building adjacent to any residential district Ten (10) feet adjacent to any nonresidential district. 	 Ten (10) feet adjacent to any residential district. No Side yard adjacent to any nonresidential district 	
Minimum Rear Yard	 Twenty-five (25) feet for a one story building adjacent to any residential district. Forty (40) feet for a two-story building adjacent to any residential district Ten (10) feet adjacent to any nonresidential district. 	 Ten (10) feet adjacent to any residential district. No Side yard adjacent to any nonresidential district. 	
Maximum Height	Two stories, no greater than 40 feet.	Four stories, no greater than 60 feet	
Maximum Floor Area	Maximum 0.5:1.	No Maximum Floor Area.	
Building Materials on all Lots (1-4)	 100 % masonry (which includes clay fired brick, natural and manufactured stone, granite, marble, and stucco) The use of stucco and EIFS are only permitted as secondary or accent materials (10% maximum allowance). 	 Masonry 60% Architectural Panel 20% Awnings 10% Stucco 10% 	

As shown on Exhibit D, the site provides adequate parking and stacking. Exhibit F shows a conceptual rendering of the architectural look and style of the building. The applicant has agreed to enter a development agreement regarding the building materials. Exhibit G is a conceptual landscape plan, which depicts the location of required landscaping. The landscaping meets the minimum standards of the Town's Zoning Ordinance.

<u>Future Land Use Plan</u> – The Future Land Use Plan recommends Retail & Neighborhood Services District for the subject property. The proposed zoning request conforms to the Future Land Use Plan.

Retail and Neighborhood Services

Neighborhood services typically include retail establishments that provide merchandise for retail sale, banks, neighborhood office and small medical offices. Retail uses are particularly important because they contribute to Prosper's tax base through both property and sales taxes, making their inclusion attractive and often times competitive. Within Prosper, neighborhood service uses will likely occur at major intersections along the Dallas North Tollway, Highway 380 and Preston Road corridors. Neighborhood service uses should also be strategically placed along the Town's perimeter in order to attract patrons from neighboring communities, enhancing sales tax revenue opportunities. The majority of neighborhood service activity within Prosper will likely be included within the Dallas North Tollway, Highway 380, Town Center and Old Town districts.



<u>Thoroughfare Plan</u> – The property has direct access to the Preston Road, an existing six-lane divided thoroughfare. This request conforms to the Thoroughfare Plan.

<u>Parks Master Plan</u> – The Parks Master Plan does not indicate a park is needed on the subject property; however, a hike and bike trail has been constructed along Preston Road.

Legal Obligations and Review:

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

Attachments:

- 1. Aerial and Zoning Maps
- 2. Proposed Exhibits

Planning & Zoning Recommendation:

At their August 16, 2022, meeting, the Planning & Zoning Commission recommended the Town Council approve the request, by a vote of 4-0.

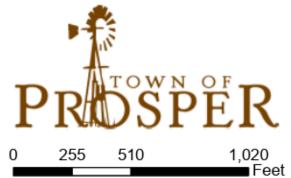
Town Staff Recommendation:

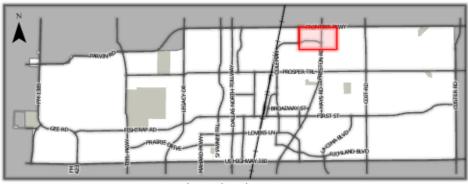
Town staff recommends that the Town Council approve the approval of the request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through coffee shop as a permitted use, located on the northwest corner of Preston Road and Coleman Road.

Proposed Motion:

I move to approve a request to rezone 7.9± acres from Office (O) to Planned Development-Office (PD-O), generally to modify the development standards to facilitate an office/retail development, including drive-through coffee shop as a permitted use, located on the northwest corner of Preston Road and Coleman Road.





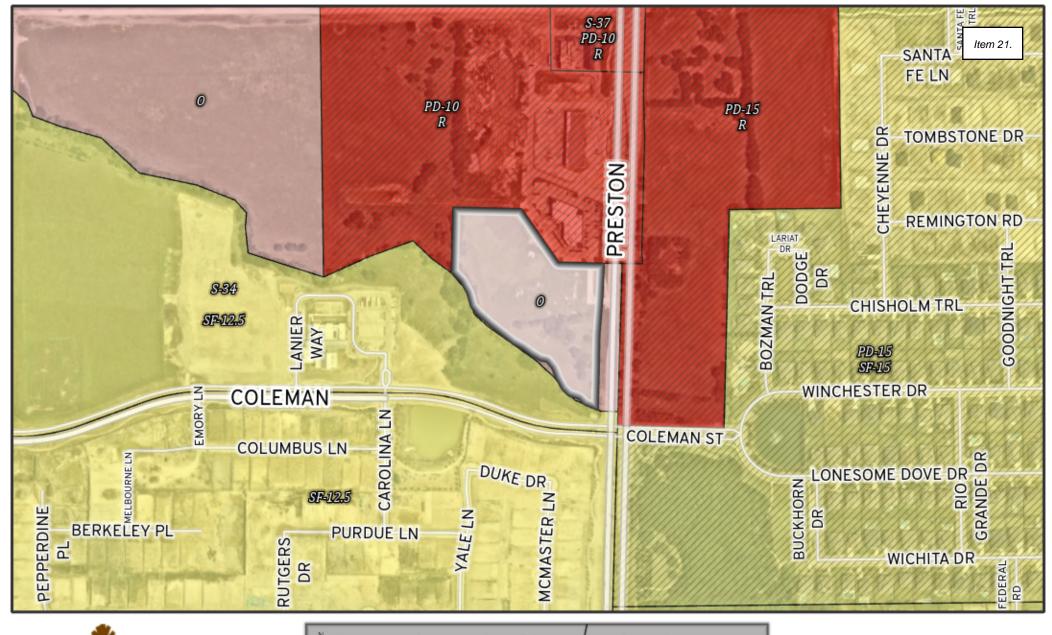


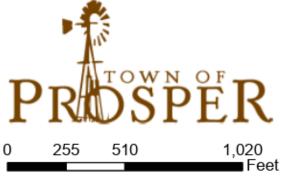
Z21-0013

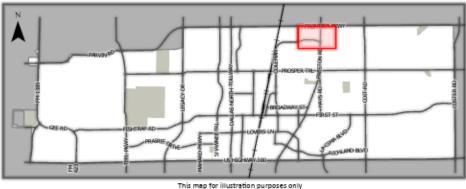
Victory at Frontier South

Page 177

Planned Development







Z21-0013

Victory at Frontier South

Page 178 Planned Development

SCALE: 1" = 50' SURVEYOR'S NOTES:

- Bearings and distances are based on the State Plane Coordinate System, Texas North Central Zone (4202) North American Datum of 1983 (NAD 83)(US Foot) with a combined scale factor of
- Elevations, are referenced to The North American Vertical Datum of 1988 (NAVD88).
- This property lies within Zone "A" and Zone "X" (Unshaded), of the Flood Insurance Rate Map for Collin County, Texas and Incorporated Areas, map no. 48085C0120 J, with an effective date of June 2, 2009 via scaled map location and graphic plotting.
- Monuments are found unless specifically designated as set.
- There was no observed evidence of any structures on the subject property at the time of survey.

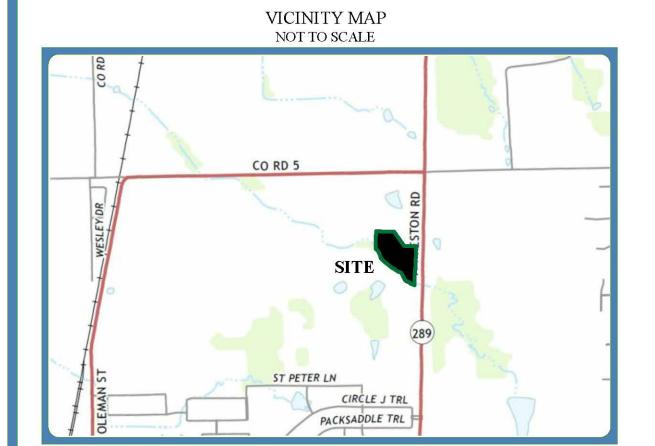
NOTE REGARDING UTILITIES

Utility locations are per observed evidence only.

LEGEND CATV O cable tv _{EM} ○ electric meter ——fence or guardrail FDC ofire dept. connection FH Ofire hydrant gv ⋈ gas valve _{BOL} ○ bollard _{GI} grate inlet _{см 🖸} gas meter Ssanitary sewer manhole ©storm water manhole Otelephone manhole TFL Otank fill lid TPED□telephone pedestar - ''''traffic signal pole co ⊙ utility clean out uc□utility cabinet uv□utility vault Mutility markings UP Outility pole ∜owater shutoff w ⋈ water valve ®water manhole wm ⊞ water meter n shrub/decorative tree 🥨 or tree with diameter < 4 in. ___ contour lines

LEGEND OF ABBREVIATIONS

- D.R.C.C.T. DEED RECORDS, COLLIN COUNTY, TEXAS
- O.P.R.C.C.T. OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS
- PLAT RECORDS, COLLIN COUNTY, TEXAS RIGHT OF WAY
- IRS
- 1/2 INCH CAPPED REBAR STAMPED "ASC" SET
- C.M. CONTROLLING MONUMENT



SITE BENCHMARKS:

- 1. An "X" set on a concrete storm sewer inlet within Preston Road (State Highway 289), approximately 20' east and 82' south of the Northeast corner of the subject property. Elevation=708.16'
- 2. A 60D Nail set on natural ground within that tract of land described to Victory at Frontier, LLC by deed recorded in Document No. 20161122001590950, O.P.R.C.C.T., approximately 131' west and 77' north of its most easterly Southeast corner. Elevation=709.34'

「ag #	Description	Tag #	Description	Tag #	Description
254	12" ELM	#1181	11" HACK	#1209	12" UNKN
233	15" ELM	#1182	19" HACK	#1206	8" HACK
235	12" ELM	#1183	12" HACK	#1205	11" HACK
234	7" ELM	#1184	10" HACK	#1221	10" UNKN
237	7" ELM	#1185	12" HACK	#1222	12" TREE
236	18" ELM	#1186	11" HACK	#1227	16" ELM
258	6" ELM	#1218	17" HACK	#1230	14" TREE
255	8" ELM	#1217	12" TREE	#1231	10" UNKN
1256	11" ELM	#1219	11" TREE	#1232	12" UNKN
1257	9" HACK	#1220	21" TREE	#9000	12" BOIS DARG
1259	7" HACK	#1187	11" HACK	#1228	7" TREE
1260	6" ELM	#1188	18" HACK	#1229	11" TREE
1262	15" HACK	#1189	19" HACK	#1223	23" TREE
1261	7" HACK	#1190	10" HACK	#1214	13" BOIS DARG
1263	6" CEDAR	#1191	15" HACK	#1213	9" TREE
253	9" HACK	#1192	22" HACK	#1212	7" BOIS DARC
252	7" LOCUST	#1193	14" TREE	#1211	13" BOIS DARG
1251	13" ELM	#1194	12" HACK	#1210	9" BOIS DARC
1250	14" ELM	#1195	11" HACK	#1216	23" BOIS DARG
1248	9" ELM	#1196	17' HACK	#1276	8" HACK
1247	17" ELM	#1197	17' HACK	#1277	15" HACK
1249	10" ASH	#1198	11' HACK	#1278	6" HACK
1246	12" ELM	#1201	20' HACK	#1279	6" HACK
1245	8" ELM	#1200	8" HACK	#1280	20" HACK
1244	14" WILLOW	#1199	16" HACK	#1265	9" HACK
¥200	17" TREE	#1202	10" HACK	#1266	8" HACK
201	8" TREE	#1203	12" HACK	#1267	7" HACK
269	13" TREE	#1204	10" HACK	#1268	6" HACK
¥270	9" TREE	#1207	7" UNKN	#1269	7" HACK
#271	8" TREE	#1208	9" HACK	<u>, </u>	Sit.

#269

VICTORY AT FRONTIER, LLC

DOC. NO. 20161122001590950

O.P.R.C.C.T.

#283

N44°07'47"W

N28°54'13#W5

N15°56'22"W

N39°13'51"W

#1261_{#1262}

N48°22'22"W

REMAINDER OF

GANAPATHY LTD.

VOLUME 5894, PAGE 1749 D.R.C.C.T.

Tree Table

N61°53'52"W

Tree Table

6" TREE

13" TREE

Tag # Description

#272

S88°38'52"E 298.00'

			#= 90
#274	20" TREE		169.88
#274	20" TREE	N29°04'28"W	16
#275	10" TREE	55 OC!	96 / ≥
#277	12" TREE	60 00 RM=695.5'	S01°23'34"W
#278	8" TREE	SSMK 696	23.
#279	11" TREE	N45°00'26"W	1,00
#280	11" TREE	38.46'	7 2
#281	11" TREE	6.96	4
#282	9" TREE	N72°37'11"W	
#283	10" TREE	45.61'	1
#284	8" TREE	N44°47'36"W	693 690
#1179	24" HACK	36.02'	est.
#1180	11" HACK	20,0	NCRETE
		N68°26'59"W 695,	INCRETE
		1 26 1	/
		67.52'	1
		703	
		N. COLEMAN CONCRETE PAVING	RIM=703.
		GUTTER	
		90' RIGHT-OF-WAY (DOC. NO. 20151223001600670, O.P.R.C.C.T.)	_
	-	S RIM= 703.7'	-

REMAINDER OF

GANAPATHY LTD.

VOLUME 5894, PAGE 1749

D.R.C.C.T.

38.60'

N21°45'04"W

N78°37'23"

27.75'

345,433 SQ.FT.

7.930 ACRES

PART OF GANAPATHY LTD.

VOLUME 5894, PAGE 1749

D.R.C.C.T.

PROPERTY DESCRIPTION:

RIM=717.7' FL 24" RCP=711.9'

RIM=712.9 - FL 24" RCP=707.1

POINT OF

CONCRETE CURB & GUTTER RIM=708.1 FL 24"

_ RIM=701.3' FL 24" RCP=696.0'

RIM=700.9' FL 24" RCP=695.3'

CONCRETE CURB & ~ GUTTER

RCP=695.2

CONCRETE

(UNABLE TO OPEN)

GINNING

CONCRETA A CURB & TOURB

∕− RIM=704.4

~ RIM=701.4°

-RIM = 701.4

- RIM=701.4

CONCRETE CURB & GUTTER

CONCRETE CURB &~ GUTTER

VICTORY AT FRONTIER, LLC

S88°36'03"E 199.57

STATE OF TEXAS

L=74.93', R=505.04'

S05°39'43"W~74.86'

TOWN OF PROSPER

O.P.R.C.C.T.

(BOLTED SHUT)

DOC. NO. 20151223001600670

Δ=8°30'01"

DOC. NO. 201109

DOC. NO. 20161122001590950

Being a 7.930 acre tract of land situated in the Spencer Rice Survey, Abstract No. 787, in the Town of Prosper, Collin County, Texas, being a part of that same tract of land described to Ganapathy, Ltd. by deed recorded in Volume 5894, Page 1749, of the Deed Records of Collin County, Texas (D.R.C.C.T.), and being more particularly described by metes and bounds as follows (Bearings and distances are based on the State Plane Coordinate System, Texas North Central Zone (4202) North American Datum of 1983 (NAD 83)(US Foot) with a combined scale factor of 1.000152710):

BEGINNING at a 5/8 inch rebar found for the Southeast corner of a tract of land described to Victory at Frontier, LLC by deed recorded in Document No. 20161122001590950, of the Official Public Records of Collin County, Texas, same being the Northeast corner of said Ganapathy, Ltd. tract, and lying on the West right-of-way line of Preston Road (State Highway 289) (variable width right-of-way);

THENCE South 01 Degrees 24 Minutes 24 Seconds West, with the West right-of-way line of said Preston Road, a distance of 160.30 feet to a Brass Monument found for the North corner of a tract of land described to the State of Texas by deed recorded in Document No. 20110909000955640, O.P.R.C.C.T.;

THENCE South 04 Degrees 40 Minutes 02 Seconds West, continuing with the West right-of-way line of said Preston Road, and with the West line of said State of Texas tract, a distance of 100.17 feet to a Brass Monument found for corner;

THENCE South 01 Degrees 19 Minutes 04 Seconds West, continuing with the West right-of-way line of said Preston Road, and with the West line of said State of Texas tract, a distance of 136.65 feet to a point for corner on the Northwest line of a tract of land described to the Town of Prosper, Texas by deed recorded in Document No. 20151223001600670, O.P.R.C.C.T., and being the beginning of a non-tangent curve to the left, having a central angle of 8 Degrees 30 Minutes 01 Seconds, a radius of 505.04 feet, and a chord bearing and distance of South 05 Degrees 39 Minutes 43 Seconds West, 74.86 feet;

THENCE, in a southerly direction, with the West line of said Town of Prosper tract, continuing with the West right-of-way line of said Preston Road, and along said non-tangent curve to the left, an arc length of 74.93 feet to a point for corner;

THENCE South 01 Degrees 23 Minutes 34 Seconds West, continuing with the West line of said Town of Prosper tract and the West right-of-way line of said Preston Road, a distance of 169.88 feet to a point for the Southeast corner of the herein described tract, said point lying near the center of a concrete drainage rip rap;

THENCE, departing the West right-of-way line of said Preston Road, and the West line of said Town of Prosper tract, over, across, and through said Ganapathy, Ltd. tract, along a creek, the following courses and distances:

- 1. North 68 Degrees 26 Minutes 59 Seconds West, a distance of 67.52 feet to a point for corner;
- 2. North 44 Degrees 47 Minutes 36 Seconds West, a distance of 36.02 feet to a point for corner;
- 3. North 72 Degrees 37 Minutes 11 Seconds West, a distance of 45.61 feet to a point for corner;
- 4. North 45 Degrees 00 Minutes 26 Seconds West, a distance of 38.46 feet to a point for corner;
- 5. North 29 Degrees 04 Minutes 28 Seconds West, a distance of 55.96 feet to a point for corner;
- 6. North 21 Degrees 45 Minutes 04 Seconds West, a distance of 43.98 feet to a point for corner;
- 7. North 39 Degrees 20 Minutes 23 Seconds West, a distance of 38.60 feet to a point for corner;
- 8. North 78 Degrees 37 Minutes 23 Seconds West, a distance of 27.75 feet to a point for corner;
- 9. North 60 Degrees 14 Minutes 43 Seconds West, a distance of 43.86 feet to a point for corner;
- 10. North 53 Degrees 46 Minutes 59 Seconds West, a distance of 50.60 feet to a point for corner;
- 11. North 61 Degrees 53 Minutes 52 Seconds West, a distance of 46.24 feet to a point for corner;
- 12. North 51 Degrees 21 Minutes 56 Seconds West, a distance of 52.18 feet to a point for corner;
- 13. North 51 Degrees 36 Minutes 52 Seconds West, a distance of 83.26 feet to a point for corner;
- 14. North 48 Degrees 22 Minutes 22 Seconds West, a distance of 65.47 feet to a point for corner;
- 15. North 39 Degrees 13 Minutes 51 Seconds West, a distance of 41.96 feet to a point for corner; 16. North 15 Degrees 56 Minutes 22 Seconds West, a distance of 61.19 feet to a point for corner;
- 17. North 28 Degrees 54 Minutes 13 Seconds West, a distance of 57.30 feet to a point for corner;
- 18. THENCE North 44 Degrees 07 Minutes 47 Seconds West, continuing through said Ganapathy, Ltd. tract, a distance of 56.24 feet to a point in a creek for corner, said point being the westernmost Southeast corner of said Victory at Frontier, LLC tract, same being the Northwest corner of the herein described tract;

THENCE North 01 Degrees 21 Minutes 08 Seconds East, with the westernmost East line of said Victory at Frontier, LLC tract, a distance of 284.91 feet to a 5/8 inch rebar found for the easternmost Northwest corner of said Ganapathy, Ltd. tract, same being an interior "ell" corner of said Victory at Frontier, LLC tract;

THENCE South 88 Degrees 38 Minutes 52 Seconds East, with a South line of said Victory at Frontier, LLC tract, a distance of 298.00 feet to a 1/2 inch rebar with a cap stamped "ASC" set for corner;

THENCE South 34 Degrees 54 Minutes 47 Seconds East, with the easternmost Southwest line of said Victory at Frontier, LLC tract, passing a 1/2 inch rebar with a cap stamped "CBG" found at a distance of 49.06 feet and continuing for a total distance of 282.07 feet to a 5/8 inch rebar found for the easternmost Southwest corner of said Victory at Frontier, LLC tract;

THENCE South 88 Degrees 36 Minutes 03 Seconds East, with the easternmost South line of said Victory at Frontier, LLC tract, a distance of 199.57 feet to the POINT OF BEGINNING and containing 345,433 square feet or 7.930 acres of land, more or less.

TITLE COMMITMENT NOTES

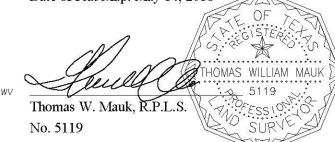
This survey was prepared without the benefit of a commitment for title insurance. Therefore, easements, agreements, or other documents, either recorded, or unrecorded may exist that affect the subject property that are not shown on this survey.

BOUNDARY TOPOGRAPHIC SURVEY

SURVEYOR'S CERTIFICATE

This is to certify that I, Thomas W. Mauk, a Registered Professional Land Surveyor of the State of Texas, have prepared this map from an actual survey on the ground, and that this map correctly represents that survey made by me or under my direction and supervision. This survey meets the minimum requirements for a Category 1A, Condition II Land Title Survey. Fieldwork was completed on May 11, 2018.

Date of Plat/Map: May 14, 2018



7.793 ACRES

Spencer Rice Survey, Abstract No. 787, Town of Prosper, Collin County, Texas

DRAWN: E.R. CHECKED: T.M. DATE: 05/14/2018 JOB NO.: C1706220





4821 Merlot Avenue, Suite 210 Grapevine, Texas 76051 Phone: 817-488-4960

V:\Engineering\Kirkman Engineering\C1708220 — Frontier 29\Drawings



Kirkman Engineering 5200 State Highway 121 Colleyville, TX 76034 PH 817.488.4960

RE: Victory at Frontier South

The proposed project is anticipated to provide for the orderly development the platted 7.793-acre tract at the Northwest corner of Preston Road and N Coleman Street. As part of this submittal, we are submitting a Concept PD for the Overall tract.

A mixture of uses is anticipated on this tract with potential Offices, Retail, Restaurant, and Restaurant with a drive thru. These uses are depicted on the Concept Plan. The natural buffer of the existing creek and flood play will provide sufficient barrier between this development and the residential zoned property to the south. The natural grade of this property is such that the buildings will be lower than the existing Preston Road elevation. The PD request an addition to the maximum building height to three stories and 60' tall. This plan is representative of what we feel is reasonable for the site, however, is not meant to establish a final site plan, it is intended to depict conceptual layouts only. Some of the uses shown on the concept plan may require a Specific Use Permit as described in the development standards.

The property is currently zoned Office (O). The proposal is to establish a PD to address the overall project continuity as well as provide for several deviations from the City Standards within the Office (O) district, and to allow uses that will be consistent with the overall development.

Kind Regards,

Patrick Filson, P.E.

Patrick Filson



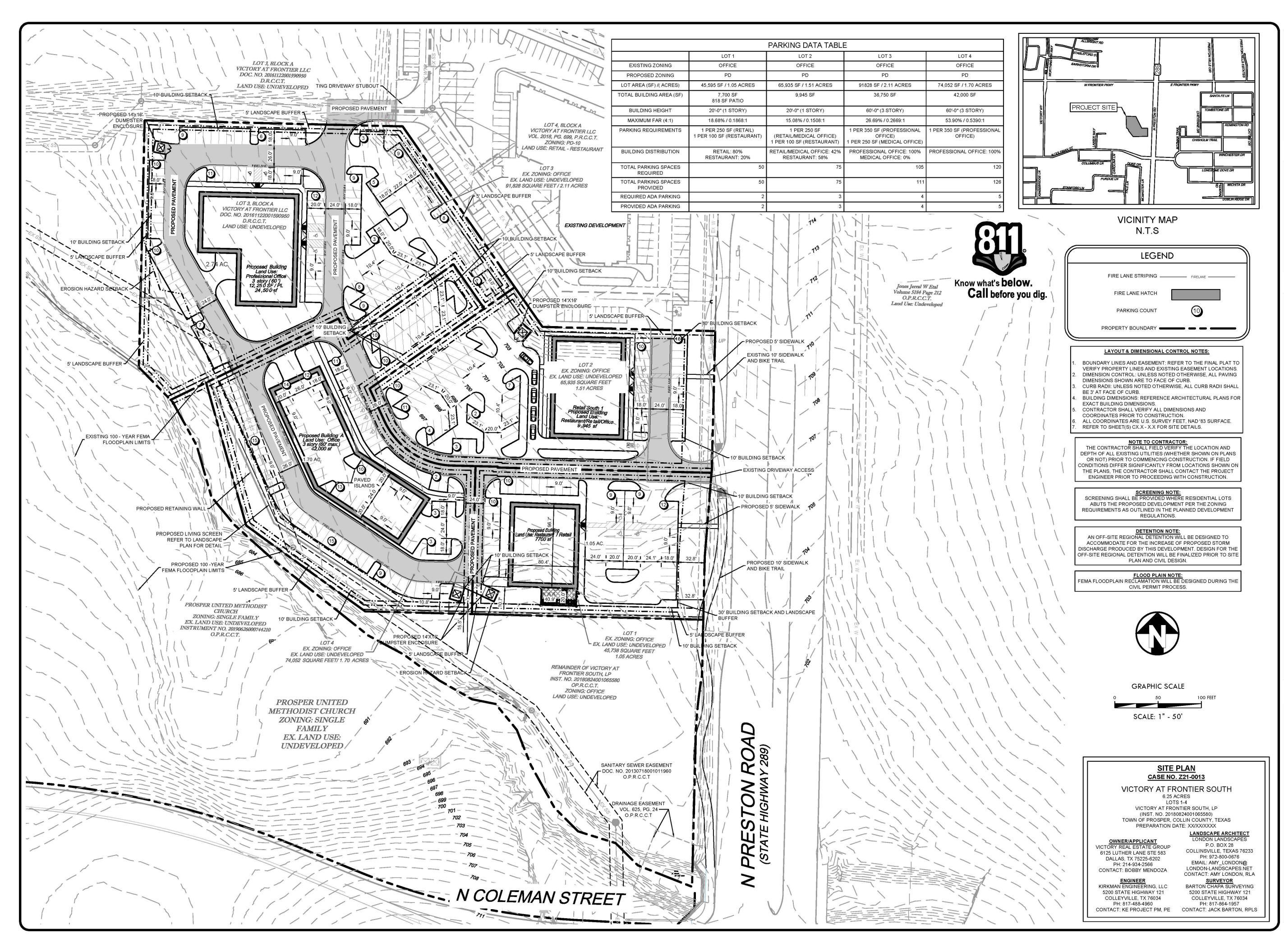
EXHIBIT C DEVELOPMENT STANDARDS

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

- 1. Except as noted below, the tract shall develop in accordance with the Office (O) Districts, as it exists or may be amended.
 - 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
- 2. Uses. All the permitted uses in the office (O) District shall be allowed with the same provisions and restrictions, including uses permitted by a Specific Use Permit (SUP) and Conditional Use Permit (C), except as noted below:
 - a. Uses Permitted by Right
 - Restaurant with Drive-Through on Lot 2 within a multi-tenant building.
 - Retail Stores and Shops
 - Gymnastics/Dance Studio
 - Restaurant
 - Veterinarian Clinic and/or Kennel, Indoor
 - Office/Showroom
- 3. Size of Yards:
 - a. Minimum Front yard: 30 Feet
 - b. Minimum Side Yard:
 - Ten Feet Adjacent to any residential district.
 - No Side yard adjacent to any nonresidential district.
 - c. Minimum Rear Yard.
 - Ten Feet Adjacent to any residential district.
 - No Side yard adjacent to any nonresidential district.
 - d. Maximum Height: Four Stories, no greater than 60 feet above the primary entry level. (Height calculations do not include partially below grade levels)
 - e. Maximum Floor Area: No Maximum Floor Area.



- 4. Architectural Regulations:
 - a. All buildings on Lots 1, 2, 3, and 4 shall be consistent architecturally with the elevations provided within this PD.
 - Masonry 60%
 - Architectural Panel 20%
 - Awnings 10%
 - Stucco 10%
 - b. All mechanical equipment shall be screened from public view. Rooftop mounted equipment shall be screened by a parapet wall or screening wall.
 - c. Windows shall have a maximum exterior visible reflectivity of ten (10) percent.



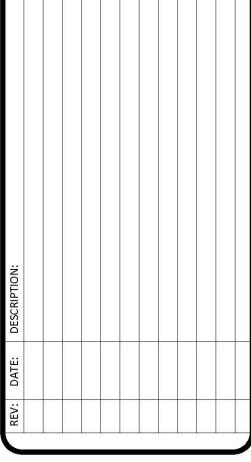
THESE DOCUMENTS ARE FO DESIGN REVIEW ONLY AN NOT INTENDED FOR THE PURPOSES OF CONSTRUCTION, BIDDIN OR PERMIT. THEY WERE PREPARE BY, OR UNDER THE SUPERVISION OF

JOHN D. GARDNER P.E.# 138295 DATE: August 10, 2022

VICTORY GROUP Victory Real Estate Group

6125 LUTHER LANE SUITE 583 DALLAS, TX 75225-6202

214-934-2566



ENGINEERING

JOB NUMBER: VIC21021

SSUE DATE: 6/28/2022

CONCEPT PLAN



EXHIBIT E DEVELOPMENT SCHEDULE

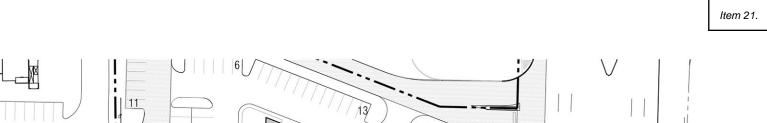
The development schedule critical path is through the Flood Plain reclamation and FEMA permitting process and assumes the PD Zoning Process will be complete by the 3rd Quarter 2022

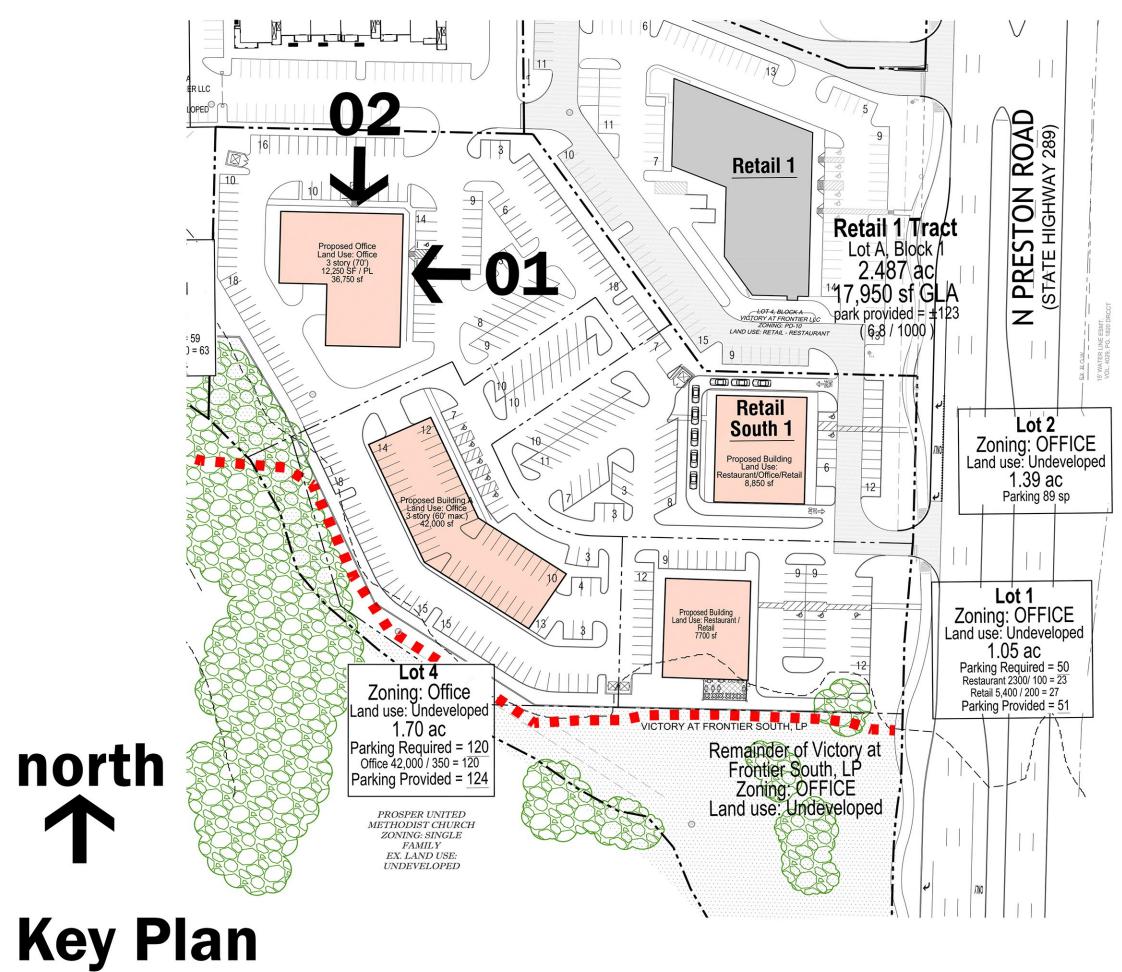
- 1. FEMA Flood Plain Permitting and Reclamation 1st Quarter of 2023
- 2. PSP, Site Plan and Building Permits for the infrastructure to serve each lot 3rd Quarter of 2023
- 3. Building Permits for Building on Lots 1, 2, and 3. Complete 4th Quarter of 2023
- 4. The remaining lots will developed as demand dictates.

Kind Regards,

Patrick Filson

Patrick Filson, P.E.





EAST TOTAL FACADE: 7465 SF DOORS/GLAZING: 2980 SF NET FACADE: 4485 SF 100% MASONRY (STONE): 1072 SF MASONRY (BRICK): 591 SF MASONRY (THIN SET): 1260 SF 28% TOTAL MASONRY: 65% STUCCO: 538 SF PANELS: 391 SF 9% METAL AWNING: 633 SF

NORTH TOTAL FACADE: 6201 SF DOORS/GLAZING: 2523 SF NET FACADE: 3678 SF 100% MASONRY (STONE): 1268 SF MASONRY (BRICK): 262 SF MASONRY (THÌN SET): 900 SF 24% TOTAL MASONRY: 66% STUCCO: 495 SF PANELS: 154 SF METAL AWNING: 599 SF 4%



FACADE NOTES

This Façade Plan is for conceptual purposes only. All building plans require review and approval from the **Building Inspections Division.**

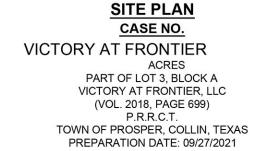
All mechanical equipment shall be screened from public view. Rooftop mounted equipment shall be screed by a parapet wall or screening wall. Screening walls shall be the specifications of the Zoning Ordinance.

When permitted, exposed utility boxes and conduits shall be painted to match the building.

All signage areas and locations are subject to approval by the Building Inspections Division.

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

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



LANDSCAPE ARCHITECT LONDON LANDSCAPES 6125 LUTHER LANE STE 583

DALLAS, TX 75225-6202 PH: 214-934-2566 CONTACT: BOBBY MENDOZA

P.O. BOX 28 COLLINSVILLE, TS 76233 CONTACT: AMY LONDON, RLA

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

5200 STATE HIGHWAY 121 COLLEYVILLE, TX 76034 PH: 817-864-1957 CONTACT: JACK BARTON, RPLS

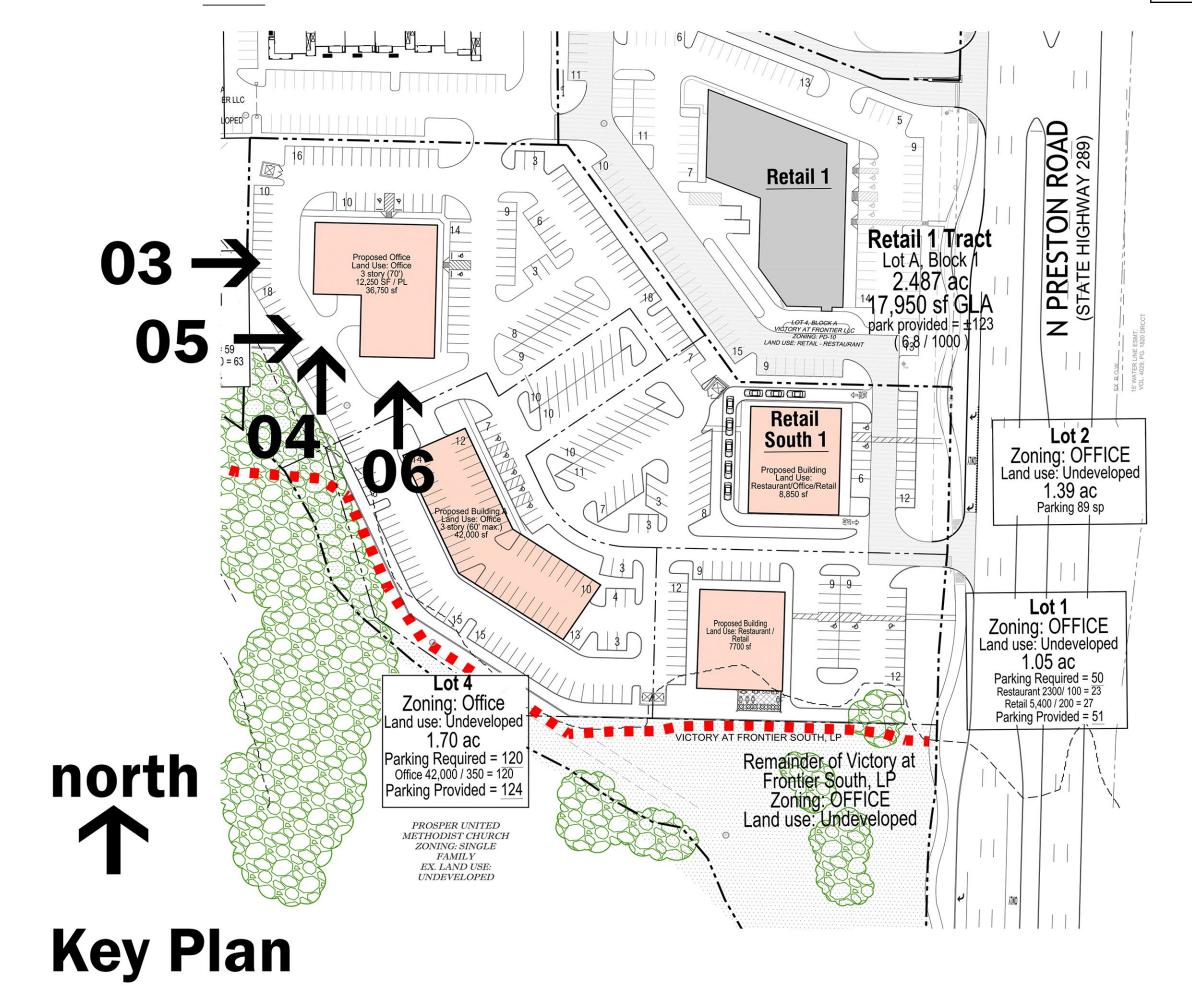
HODGES

LOT3 OFFICE

VICTORY at FRONTIER

Prosper, Texas
Page 185





05 west elevation

06 south elevation



03 west elevation

04 south elevation

WEST 05

TOTAL FACADE: 3772 SF
DOORS/GLAZING: 736 SF

NET FACADE: 3036 SF 100%
MASONRY (STONE): 784 SF 26%
MASONRY (BRICK): 1431 SF 47%
MASONRY (THIN SET): 114 SF 4%
TOTAL MASONRY: 77%

TEXTURE/PAINT TILTWALL: 397 SF 13%
STUCCO: 254 SF 8%

WEST 03

TOTAL FACADE: 3423 SF
DOORS/GLAZING: 714 SF

NET FACADE: 2709 SF 100%
MASONRY (STONE): 910 SF 34%
MASONRY (BRICK): 705 SF 26%
TOTAL MASONRY: 60%

TEXTURE/PAINT TILTWALL: 1023 SF 38%
STUCCO: 34 SF 1%
PANELS: 0 SF 0%
METAL AWNING: 37 SF 1%

METAL AWNING: 56 SF

SOUTH 06

TOTAL FACADE: 3423 SF
DOORS/GLAZING: 714 SF

NET FACADE: 2709 SF 100%
MASONRY (STONE): 910 SF 34%
MASONRY (BRICK): 705 SF 26%
TOTAL MASONRY: 60%

TEXTURE/PAINT TILTWALL: 1023 SF 38%
STUCCO: 34 SF 1%
PANELS: 0 SF 0%
METAL AWNING: 37 SF 1%

SOUTH 04

TOTAL FACADE: 2526 SF
DOORS/GLAZING: 214 SF

NET FACADE: 2312 SF
MASONRY (STONE): 924 SF
MASONRY (BRICK): 437 SF
TOTAL MASONRY: 60%

TEXTURE/PAINT TILTWALL: 808 SF
STUCCO: 83 SF
PANELS:
METAL AWNING: 60 SF
2%

FACADE NOTES

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When permitted, exposed utility boxes and conduits shall be painted to match the building.

All signage areas and locations are subject to approval by the Building Inspections Division.

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

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

SITE PLAN VICTORY AT FRONTIER ACRES
PART OF LOT 3, BLOCK A
VICTORY AT FRONTIER, LLC (VOL. 2018, PAGE 699) TOWN OF PROSPER, COLLIN, TEXAS PREPARATION DATE: 09/27/2021 OWNER/APPLICANT
VICTORY AT FRONTIER, LLC
6125 LUTHER LANE STE 583 P.O. BOX 28 DALLAS, TX 75225-6202 COLLINSVILLE, TS 76233 PH: 214-934-2566 CONTACT: AMY LONDON, RLA CONTACT: BOBBY MENDOZA ENGINEER KIRKMAN ENGINEERING, LLC <u>SURVEYOR</u> BARTON CHAPA SURVEYING 5200 STATE HIGHWAY 121 5200 STATE HIGHWAY 121 COLLEYVILLE, TX 76034 COLLEYVILLE, TX 76034 PH: 817-864-1957 PH: 817-488-4960 CONTACT: PATRICK FILSON, PE CONTACT: JACK BARTON, RPLS

LOT3 OFFICE

VICTORY at FRONTIER

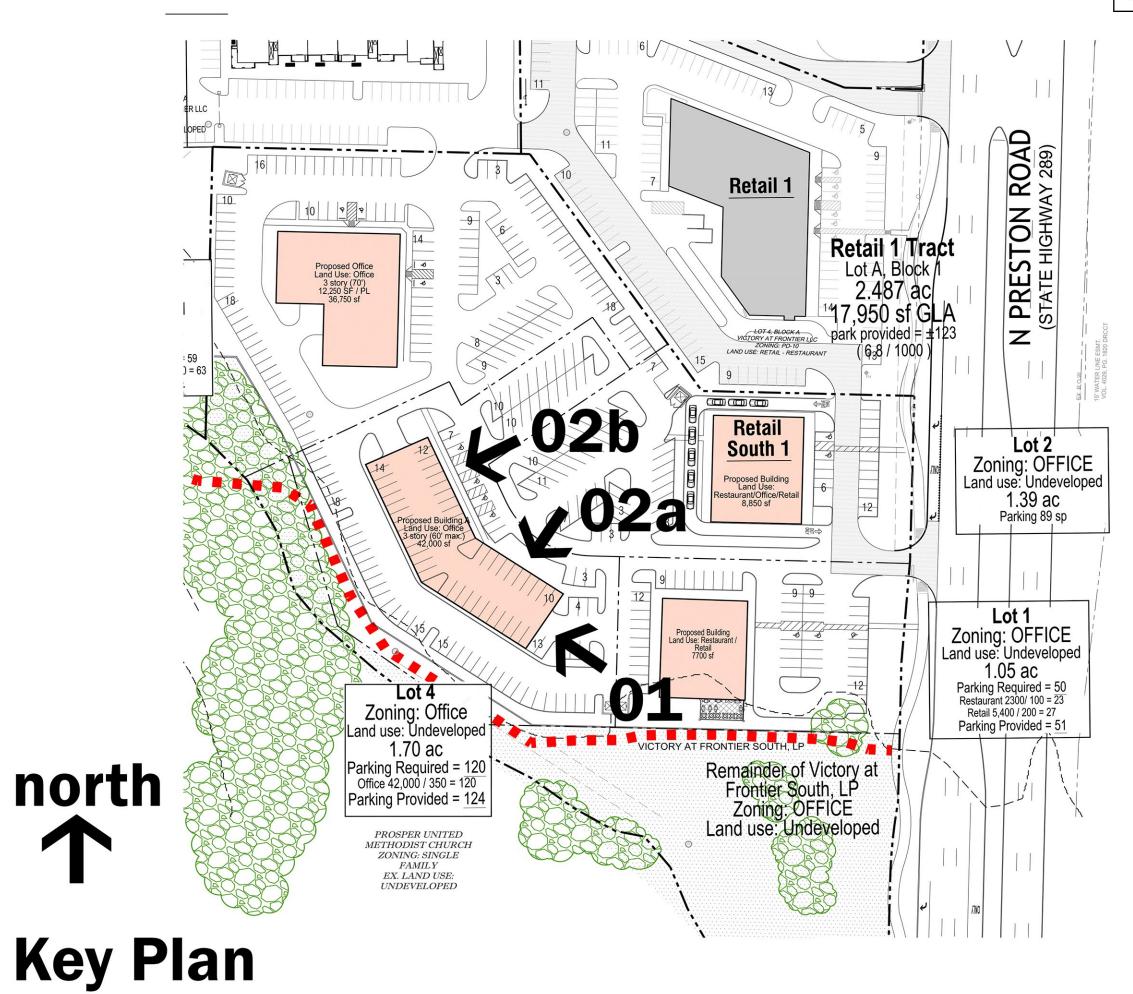
HODGES

Architecture



SOUTHEAST 3,846 SF TOTAL FACADE: DOOR/GLAZING: 674 SF **NET FACADE:** 3,172 SF 100% MASONRY (STONE): 890 SF 28 % MASONRY (BRICK): 1428 SF 45 % 73 % TOTAL MASONRY: 476 SF 15 % TEXTURE/PAINT: BATTEN: 25 SF 1 % **METAL AWNING:** 10 % 320 SF

02a NORTHEAST 3,216 SF TOTAL FACADE: DOOR/GLAZING: 1,220 SF 1,996 SF **NET FACADE:** 100% 856 SF 43% MASONRY (STONE): 28% MASONRY (THIN SET): 595 SF TOTAL MASONRY: 71% 220 SF PANEL: 11% TEXTURE/PAINT: 55 SF 3% 35 SF 2% BATTEN: 70 SF **METAL AWNING:** 4% STUCCO: 165 SF 9%



01 southeast elevation



02b NORTHEAST

	TOTAL FACADE: DOOR/GLAZING:	7,348 SF 3,002 SF	
	NET FACADE:	4,345 SF	100 %
	MASONRY (STONE):	1,448 SF	33 %
	MASONRY (BRICK):	231 SF	6 %
	MASONRY (THIN SET	907 SF	21 %
	TOTAL MASONRY:		60 %
	PANEL:	415 SF	10 %
	TEXTURE/PAINT:	874 SF	20 %
	BATTEN:	60 SF	1 %
t	METAL AWNING:	375 SF	9 %

450 SF

FACADE NOTES

This Façade Plan is for conceptual purposes only. All building plans require review and approval from the Building Inspections Division. All mechanical equipment shall be screened from public view. Rooftop mounted equipment shall be screed by a parapet wall or screening wall. Screening walls

When permitted, exposed utility boxes and conduits shall be painted to match the building.

shall be the specifications of the Zoning Ordinance.

All signage areas and locations are subject to approval by the Building Inspections Division.

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

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



02a northeast elevation 02b northeast elevation



LOT4 OFFICE

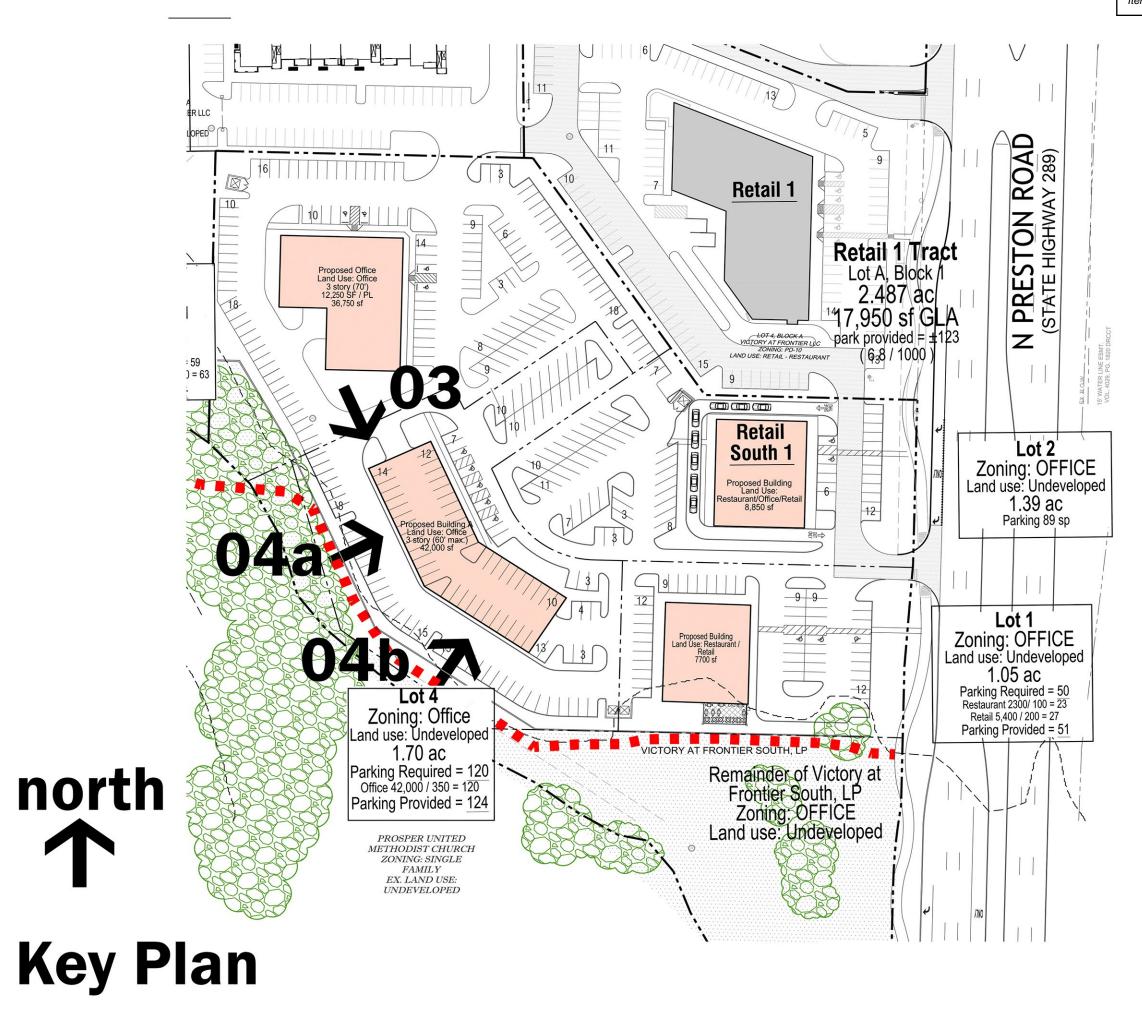
VICTORY at FRONTIER



03 northwest

03 NORTWEST TOTAL FACADE: 3,853 SF DOOR/GLAZING: 722 SF **NET FACADE:** 2,131 SF 100 % 28 % MASONRY (STONE): 600 SF 35 % 725 SF MASONRY (BRICK): MASONRY (THIN SET): 341 SF 17% 80 % TOTAL MASONRY: 18 % TEXTURE/PAINT: 400 SF BATTEN: 10 SF 55 SF 2 % METAL AWNING:

04a SOUTHWE	ST	
TOTAL FACADE: DOOR/GLAZING:	7,326 SF 1,227 SF	
NET FACADE: MASONRY (STONE): MASONRY (BRICK): MASONRY (THIN SETOTAL MASONRY:	•	100% 31 % 34 % 10 % 75 %
PANEL: TEXTURE/PAINT: BATTEN: METAL AWNING:	1,391 SF 24 SF 64 SF	23% 0.5 % 1.5 %



Alum. Storefront 62'-5"AFF. Brick Brick 60'-5"AFF. 60'-5"AFF. **Metal Coping** Texture/Paint Tiltwall -Stone

04b SOUTHWEST

TOTAL FACADE:	6,782 SF	
DOOR/GLAZING:	1,120 SF	
NET FACADE:	5,662 SF	100%
MASONRY (STONE):	1,810 SF	32 %
MASONRY (BRICK):	2,000 SF	35 %
MASONRY (THIN SET):	610 SF	11 %
TOTAL MASONRY:		78 %
DANIEL		
PANEL:		
TEXTURE/PAINT:	1,154 SF	20%
BATTEN:	24 SF	0.5 %
METAL AWNING:	64 SF	1.5 %

All mechanical equipment shall be screened from public view. Rooftop mounted equipment shall be screed by a parapet wall or screening wall. Screening walls

All building plans require review and approval from the

This Façade Plan is for conceptual purposes only

FACADE NOTES

Building Inspections Division.

shall be the specifications of the Zoning Ordinance. When permitted, exposed utility boxes and conduits

shall be painted to match the building.

All signage areas and locations are subject to approval by the Building Inspections Division.

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

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

SITE PLAN CASE NO. VICTORY AT FRONTIER TRACT D PART OF LOT 3, BLOCK A VICTORY AT FRONTIER, LLC (VOL. 2018, PAGE 699) TOWN OF PROSPER, COLLIN, TEXAS PREPARATION DATE: 09/27/2021 LANDSCAPE ARCHITECT LONDON LANDSCAPES 6125 LUTHER LANE STE 583 P.O. BOX 28 COLLINSVILLE, TS 76233 DALLAS, TX 75225-6202 PH: 214-934-2566 CONTACT: AMY LONDON, RLA

CONTACT: BOBBY MENDOZA KIRKMAN ENGINEERING, LLC 5200 STATE HIGHWAY 121 COLLEYVILLE, TX 76034

<u>SURVEYOR</u> BARTON CHAPA SURVEYING 5200 STATE HIGHWAY 121 COLLEYVILLE, TX 76034

PH: 817-488-4960 CONTACT: PATRICK FILSON, PE

PH: 817-864-1957 CONTACT: JACK BARTON, RPLS

04b southwest elevation



LOT4 OFFICE

VICTORY at FRONTIER

04a southwest elevation

Architectural Panel **Architectural Panel Rooftop HVAC** Rooftop HVAC 21'-6"aff (exact location may vary) (exact location may vary) Metal Coping 23'-0"aff -Metal Coping 21'-6 "aff - Stone **∑Stone** Alum. Storefront LBrick-Brick -Brick Stone-**Screen Wall DRIVE THRU WINDOW WILL REQUIRE APPROVAL**

FACADE NOTES

This Façade Plan is for conceptual purposes only.
All building plans require review and approval from the Building Inspections Division.

All mechanical equipment shall be screened from public view. Rooftop mounted equipment shall be screed by a parapet wall or screening wall. Screening walls shall be the specifications of the Zoning Ordinance.

When permitted, exposed utility boxes and conduits shall be painted to match the building.

All signage areas and locations are subject to approval by the Building Inspections Division.

WEST

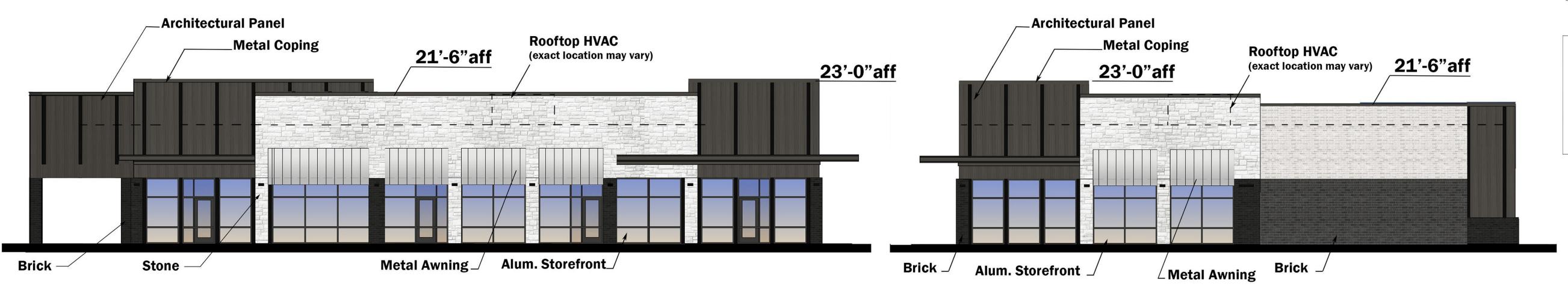
Windows shall have a maximum exterior visible reflectivity of ten (10) percent.

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

south elevation

FROM A SPECITIC USE PERMIT

west elevation



east elevation

north elevation

SOUTH	
TOTAL FACADE: DOORS/GLAZING:	,
NET FACADE:	1,790 SF 100%
MASONRY (STONE):	354 SF 20%
MASONRY (BRICK):	741 SF 41%
TOTAL MASONRY:	61%
PANELS :	671 SF 38%
METAL AWNING:	24 SF 1%

Screen

Wall

TOTAL FACADE:	2,236 SF
DOORS/GLAZING:	313 SF
NET FACADE:	1,923 SF 100%
MASONRY (BRICK):	813 SF 42%
MASONRY (STONE):	350 SF 18%
TOTAL MÁSONRÝ:	60%
PANELS :	272 SF 15%
METAL AWNING:	48 SF 2%
STUCCO:	440 SF 23%

EAST	
TOTAL FACADE: DOORS/GLAZING:	
NET FACADE: MASONRY (STONE): MASONRY (BRICK): TOTAL MASONRY:	1,909 SF 100% 620 SF 33% 238 SF 12% 45%
PANELS:	731 SF 38%
METAL AWNING:	320 SF 17%

TOTAL MASONRY:

NORTH		
TOTAL FACADE: DOORS/GLAZING:	1,938 SF 357 SF	
NET FACADE: MASONRY (STONE): MASONRY (BRICK): TOTAL MASONRY:	1,680 SF 398 SF 861 SF 75%	24%
PANELS : METAL AWNING:		

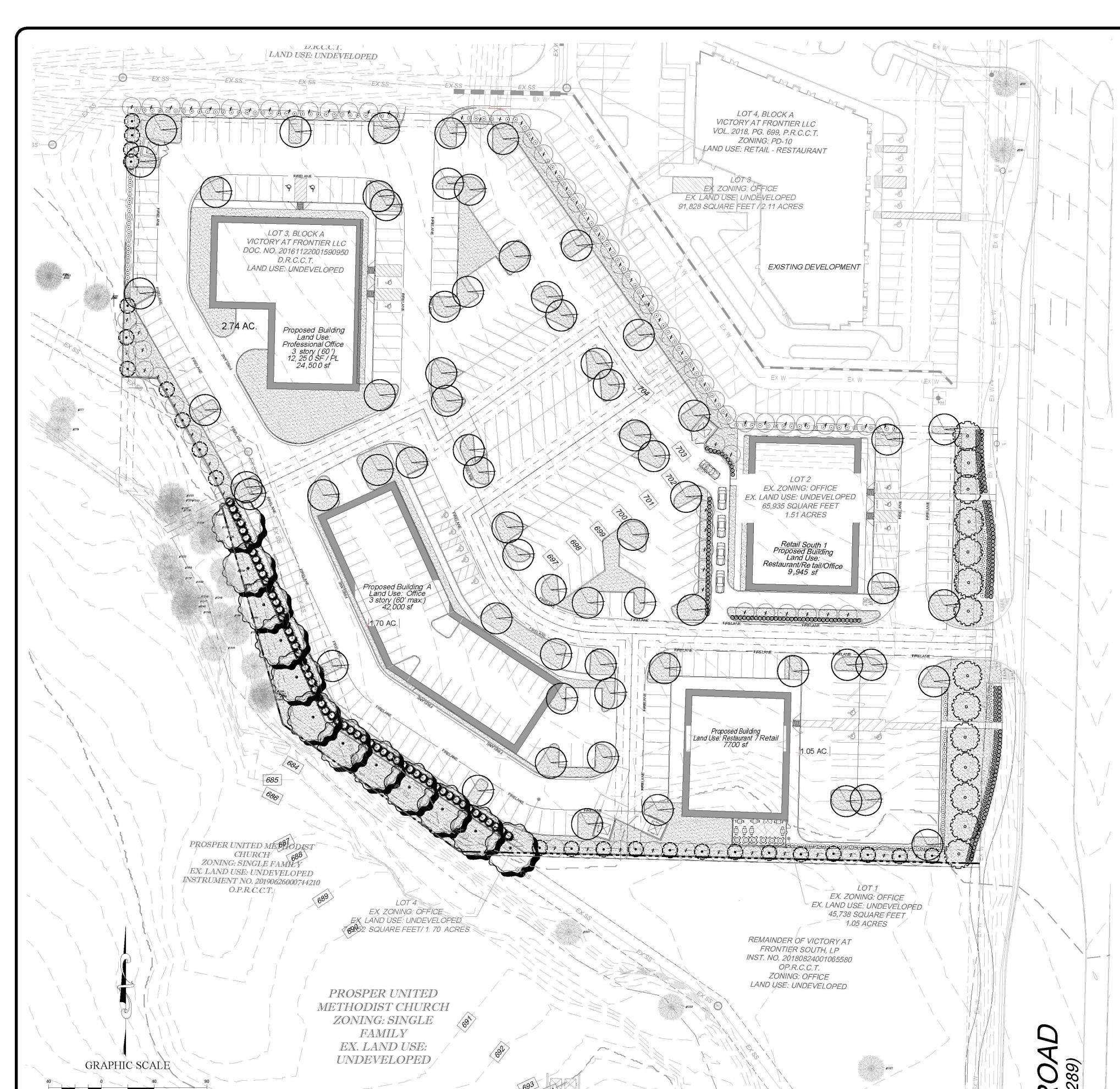
4,375 SF 60%

8,858 SF **TOTAL FACADE:** TOTAL DOORS/GLAZING: 1,655 SF **NET FACADE:** 7,302 SF 100%

1,974 SF 27% **TOTAL ARCHITECTURAL PANELS:** 513 SF 7% TOTAL AWNING: TOTAL STUCCO:

440 SF 6%





(IN FEET) 1 INCH = 40 FEET



TRE					
	66	UL	Ulmus crassifolia	Cedar Elm	3" Cal. Min. Cont. Grown—65 Gal. 12'—15' Height, 6'—8' Spread Specimen
0	12	QV	Quercus virginiana	Live Oak	3" Cal. Min. Cont. Grown—65 Gal. 12'—15' Height, 6'—8' Spread Specimen
	14	QT	Quercus texana	Texas Red Oak	3" Cal. Min. Cont. Grown—65 Gal. 12'—15' Height, 6'—8' Spread Specimen
×	82	СН	Chilopsis linearis	Desert Willow	3" Trunk Min. 30 Gal. Cont. Grown 1" Cal. Per Trunk, 4—5 Canes 8' Height, 5' Spread, Specimen
0	24	CL	llex opaca	Foster Holly	3" Cal. Min. Cont. Grown — 15 Gal. Full Crown, Min. 1" Canes, Min. 7' ht Healthy, Plant as Shown
SHR	UBS				
	58	ILE	llex 'Nellie R. Stevens'	Nellie R. Stevens Holly	45 Gal. 8' Tall 6' O.C.
•	283	VIB	Viburnum v. davidii 'White'	Viburnum	3 Gal. Minimum 24" — 36" Minimum height at plantir Spaced per plan, matching
\otimes	83	NER	Abelia x grandiflora	Glossy Abelia	3 Gal. Minimum 30" Minimum height at planting Spaced per plan, matching
\oplus	164	NDL	Nandina domestica 'Lemon Lime'	Lemon Lime Nandina	3 Gal. Minimum 4' Height at Planting Spaced per plan, matching
GRO	UNDC	OVER	-		
		DG	Decomposed Granite		
2019 V	52,602 SF	SOD	Common Bermuda Grass	Bermuda Grass	Solid sod Sand fill joints and provide uniform

LANDSCAPE CALCULATIONS

A MINIMUM 10% OF PLATTED AREA TO BE LANDSCAPED

REQUIRED LANDSCAPE AREA:

PROVIDED LANDSCAPE AREA:

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

REQUIRED: 1 CANOPY TREE FOR EVERY 30 LINEAR FEET

397.1 LF / 30 = 14 TREES PROVIDED: 14 TREES

• REQUIRED: A MINIMUM OF 15 SHRUBS WITH A MINIMUM SIZE OF FIVE (5) GALLONS EACH WILL BE

PLANTED IN THE LANDSCAPE AREA FOR EVERY 30 LINEAR FEET OF FRONTAGE

397.1 LF / 30 = 14 X 15 SHRUBS = 210 SHRUBS PROVIDED: 279 SHRUBS

5' LANDSCAPE BUFFER AROUND THE PERIMETERS OF THE PROPERTY

• REQUIRED: ONE SMALL TREE AND ONE FIVE-GALLON SHRUB SHALL BE PLANTED EVERY 15

SOUTH: 350 LF / 15 = 23 TREES AND 23 SHRUBS WEST: 332 LF / 15 = 22 TREES AND 22 SHRUBS

NORTH: 769.35 LF / 15 = 52 TREES AND 52 SHRUBS

PROVIDED:

SOUTH: 27 TREES AND 39 SHRUBS WEST: 22 TREES AND 32 SHRUBS NORTH: 45 TREES AND 99 SHRUBS

 BORDERING CHURCH PROPERTY: REQUIRED: 347 LF / 1 EVERGREEN TREE/ 30' = 12 TREES 1 NELLIE R STEVENS EVERY 6' = 58 SHRUBS

PROVIDED: 12 TREES AND 58 SHRUBS

INTERIOR PARKING LANDSCAPING (ALL REQUIRED AND PROVIDED)

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

PROVIDED: YES

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

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

PROVIDED: YES

PROVIDED : YES

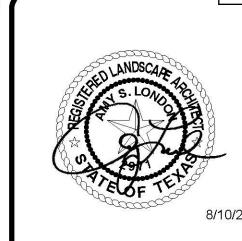
REQUIRED: A CANOPY TREE WITHIN 150 FEET OF EVERY PARKING SPACE

PROVIDED: YES

DRIVE THRU LANDSCAPING

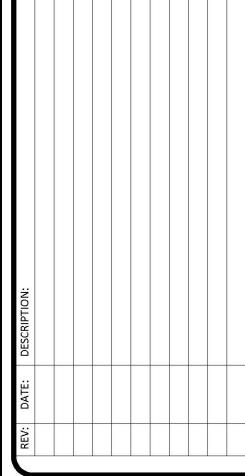
REQUIRED: 1 TREE PER 15 LF AND SHRUBS 3' O.C.

PROVIDED: 1 TREE 15 LF AND SHRUBS 3' O.C.



Victory Real Estate Group

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





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

JOB NUMBER: VIC21021

ISSUE DATE: 8/10/22

EXHIBIT C LANDSCAPE **PLAN**



FINANCE DEPARTMENT

To: Mayor and Town Council

From: Sandy Mattick, Interim Finance Director

Through: Ron K. Patterson, Interim Town Manager

Robert B. Scott, Executive Director of Administrative Services

Re: Certificates of Obligation

Town Council Meeting – September 27, 2022

Agenda Item:

Consider all matters incident and related to the issuance and sale of "Town of Prosper, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022", including the adoption of an ordinance authorizing the issuance of such obligations and establishing procedures and delegating authority for the sale and delivery of such obligations.

Description of Agenda Item:

Town Council at the July 26, 2022, meeting approved beginning the required process for issuance of certificates of obligations through a Notice of Intent, required advertising and setting a timetable for issuance. The attached ordinance establishes the parameters for issuance of certificates of obligation for the projects:

Water Distribution \$12,746,000 Stormwater Drainage \$ 685,000

The Town has historically sold debt through a competitive sale on the Tuesday morning of a Town Council meeting and then completed the sale with Town Council approval that evening. Due to the challenging circumstances in the current year (uncertain market conditions), it is recommended that Town Council pass an Ordinance on September 27, 2022 authorizing issuance of the certificates of obligation with delegated authority to the Town Manager or Executive Director of Administrative Services, to complete final pricing of the debt. This method is commonly used in refunding debt issues or during uncertain market conditions. The ordinance would allow for delegation to the Town Manager that meets the following conditions:

- Issue the certificates through a competitive or negotiated sale;
- for an amount not to exceed \$13,700,000;
- at a maximum interest rate of 4.75%;
- with a final maturity of August 15, 2042.

This will allow greater flexibility.

Budget Impact:

The debt service payments for the Certificates will be funded from the Water and Sewer Fund and the Stormwater Drainage Fund.

Item 22.

Legal Obligations and Review:

Chris Settle of McCall, Parkhurst and Horton, the Town's bond counsel, prepared the attached Ordinance, and Terrence Welch of Brown & Hofmeister, L.L.P. has reviewed the ordinance as to form and legality.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town staff recommends adoption of the Ordinance authorizing issuance of certificates of obligation within the specified parameters to finance the obligations associated with the aforementioned projects.

Proposed Motion:

I move to adopt an ordinance authorizing the issuance and sale of "Town of Prosper, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Series 2022" and approving all other matters related thereto.

Page 2 of 2

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 2022-XX

ORDINANCE AUTHORIZING THE ISSUANCE OF TOWN OF PROSPER, TEXAS, COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022; ESTABLISHING SALE PARAMETERS; PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID CERTIFICATES; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT.

THE STATE OF TEXAS

COLLIN AND DENTON COUNTIES

TOWN OF PROSPER

\$

WHEREAS, the Town Council (the "Council") of the Town of Prosper, Texas (the "Town"), deems it advisable to issue Certificates of Obligation in the amount of up to \$13,700,000 for the purposes hereinafter set forth; and

WHEREAS, the Certificates of Obligation hereinafter authorized and designated are to be issued and delivered for cash pursuant to Subchapter C of Chapter 271, Texas Local Government Code, Subchapter B, Chapter 1502, Texas Government Code and Chapter 1371, Texas Government Code; and

WHEREAS, the Council has heretofore passed a resolution authorizing and directing the Town Secretary to give notice of intention to issue Certificates of Obligation, and said notice has been duly published in a newspaper of general circulation in said Town, said newspaper being a "newspaper" as defined in Section 2051.044, Texas Government Code, and posted to the Town's Internet website, all in timing and manner provided in Section 271.049, Texas Local Government Code; and

WHEREAS, the Town received no petition from the qualified electors of the Town protesting the issuance of such Certificates of Obligation; and

WHEREAS, no bond proposition to authorize the issuance of bonds for the same purpose as any of the projects being financed with the proceeds of the Certificates was submitted to the voters of the Town during the preceding three years and failed to be approved; and

WHEREAS, the Town is an "issuer" within the meaning of Section 1371.001(4)(P), Texas Government Code, having (i) a principal amount of at least \$100 million in outstanding long term indebtedness, in long term indebtedness proposed to be issued, or in a combination of outstanding or proposed long term indebtedness and (ii) some amount of long term indebtedness outstanding or proposed to be issued that is rated in one of the four highest rating categories for long term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this

Ordinance, was given, all as required by the applicable provisions of Texas Government Code, Chapter 551;

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

SECTION 1

RECITALS, AMOUNT, PURPOSE AND DESIGNATION OF THE CERTIFICATES.
(a) The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

- (b) The Certificates are hereby authorized to be issued and delivered in the maximum aggregate principal amount hereinafter set forth for the Projects (defined below).
- (c) Each Certificate issued pursuant to this Ordinance shall be designated (unless otherwise provided in the Pricing Certificate): "TOWN OF PROSPER, TEXAS, COMBINATION TAX AND SURPLUS REVENUE CERTIFICATE OF OBLIGATION, SERIES 2022," and initially there shall be issued, sold and delivered hereunder fully registered Certificates, without interest coupons, payable to the respective registered owners thereof (with the initial Certificate being made payable to the Underwriter as described herein), or to the registered assignee or assignees of said Certificates or any portion or portions thereof (in each case, the "Registered Owner"). The Certificates shall be in the respective denominations and principal amounts, shall be numbered, shall mature and be payable on the date or dates in each of the years and in the principal amounts or amounts due at maturity, as applicable, and shall bear interest to their respective dates of maturity or redemption, if applicable, prior to maturity at the rates per annum, as set forth in the Pricing Certificate.

SECTION 2

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

"Attorney General" shall mean the Attorney General of the State.

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

"Code" means the Internal Revenue Code of 1986, as amended.

"Comptroller" shall mean the Comptroller of Public Accounts of the State.

"Issuance Date" shall mean the date or dates of delivery of the Certificates to the Underwriter against payment therefor, as determined by the Pricing Officer in the Pricing Certificate.

"Projects" shall mean (i) acquiring, constructing, installing and equipping additions, improvements, extensions and equipment for the Town's waterworks and sewer system and the acquisition of land and rights-of-way therefor; (ii) acquiring, constructing and installing stormwater drainage and flood control improvements in the Town, including dredging, channel improvements and related infrastructure and utility relocation and the acquisition of land and interests in land necessary for said improvements; and (iii) paying legal, fiscal and engineering fees in connection with such projects, including payment of costs of issuance of the Certificates.

"State" shall mean the State of Texas.

"Underwriter" shall mean the initial purchaser(s) of the Certificates designated by the Pricing Officer in the Pricing Certificate.

SECTION 3

DELEGATION TO PRICING OFFICER. (a) As authorized by Section 1371.053, Texas Government Code, as amended, the Executive Director of Administrative Services and the Town Manager of the Town are each individually authorized to act on behalf of the Town in selling and delivering the Certificates (of which officers, the officer executing the Pricing Certificate shall be hereinafter referred to as, and shall for all purposes be, the "Pricing Officer"), carrying out the procedures specified in this Ordinance, including determining the principal amount of Certificates to be issued, the amount to be applied against each proposition, the date or dates of the Certificates, any additional or different designation or title by which the Certificates shall be known, the price at which the Certificates will be sold, the years in which the Certificates will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment and record dates, the price and terms, if any, upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the Town, as well as any mandatory sinking fund redemption provisions, whether the Certificates shall be designated as "qualified taxexempt obligations" as defined in section 265(b)(3) of the Code, approving modifications or additions to the Rule 15c2-12 continuing disclosure undertaking, and all other matters relating to the issuance, sale and delivery of the Certificates, including, without limitation, procuring municipal bond insurance and approving modifications to this Ordinance and executing such instruments, documents and agreements as may be necessary with respect thereto, if it is determined that such insurance would be financially desirable and advantageous, all of which shall be specified in the Pricing Certificate, provided that:

- (i) the aggregate original principal amount of the Certificates shall not exceed \$13,700,000;
 - (ii) no Certificate shall mature after August 15, 2042; and
 - (iii) the true interest cost of the Certificates shall not exceed 4.75%.
- (b) In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount not exceeding the amount authorized in subsection (a) above, which shall be sufficient in amount to provide for the purposes for which the Certificates are authorized and to pay costs of issuing the Certificates. The delegations made hereby shall expire if not exercised by the Pricing Officer on or prior to the ninetieth (90th) day following the adoption

of this Ordinance. The Certificates shall be sold at such price, with and subject to such terms as set forth in the Pricing Certificate.

- (c) The Certificates may be sold by public offering (either through a negotiated or competitive offering) or by private placement. If the Certificates are sold by private placement, the Pricing Certificate shall so state, and the Pricing Certificate may make changes to this Ordinance to effect such private placement, including the provisions hereof that pertain to the book-entry-only procedures (including eliminating the book-entry-only system of registrations, payment and transfers) and to the provisions herein relating to the Rule 15c2-12 undertaking (including eliminating or replacing such undertaking with an agreement to provide alternative disclosure information).
- (d) In satisfaction of Section 1201.022(a)(3)(B), Texas Government Code, the Council hereby determines that the delegation of the authority to the Pricing Officer to approve the final terms of the Certificates set forth in this Ordinance is, and the decisions made by the Pricing Officer pursuant to such delegated authority and incorporated into the Pricing Certificate will be, in the Town's best interests, and the Pricing Officer is hereby authorized to make and include in the Pricing Certificate a finding to that effect.

SECTION 4

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

(b) <u>Authentication</u>. Except as provided in subsection (e) of this Section, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate, date and manually sign said Certificate, and no such Certificate shall be deemed to be issued or

outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates and Certificates surrendered for conversion and exchange. No additional ordinances, orders or resolutions need be passed or adopted by the governing body of the Town or any other body or person so as to accomplish the foregoing conversion and exchange of any Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Certificates in the manner prescribed herein. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of conversion and exchange of Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Certificate, the converted and exchanged Certificate shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates which initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General and registered by the Comptroller.

- Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Town and the Paying Agent/Registrar with respect to the Certificates, and of all conversions and exchanges of Certificates, and all replacements of Certificates, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each registered owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.
- Substitute Paying Agent/Registrar. The Town covenants with the registered (d) owners of the Certificates that at all times while the Certificates are outstanding the Town will provide a competent and legally qualified bank, trust company, financial institution or other agency to act as and perform the services of Paying Agent/Registrar for the Certificates under this Ordinance, and that the Paying Agent/Registrar will be one entity. The Town reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 50 days written notice to the Paying Agent/Registrar, to be effective not later than 45 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Town covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Certificates, to the new Paying Agent/Registrar designated and appointed by the Town. Upon any change in the Paying Agent/Registrar, the Town promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Certificates, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar

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shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

- General Characteristics of the Certificates. The Certificates (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates to be payable only to the Registered Owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the Town at least 35 days prior to any such redemption date), (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Certificates, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Certificates shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Town shall have certain duties and responsibilities with respect to the Certificates, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF CERTIFICATE set forth as Exhibit A of this Ordinance. The Certificates initially issued and delivered pursuant to this Ordinance are not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Certificate issued in conversion of and exchange for any Certificate or Certificates issued under this Ordinance the Paying Agent/Registrar shall execute the Paying Agent/registrar's Authentication Certificate, in the FORM OF CERTIFICATE set forth as Exhibit A of this Ordinance.
- (f) <u>Book-Entry-Only System</u>. Unless the Certificates are sold by private placement, the Certificates issued in exchange for the Certificates initially issued to the Underwriter shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company of New York ("DTC"), and except as provided in subsection (g) of this Section, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

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

- Successor Securities Depository; Transfers Outside Book-Entry-Only System. If (g) the Certificates are subject to the DTC book-entry system, and in the event that the Town determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Town to DTC or that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the Town shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates and transfer one or more separate Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.
- (h) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Certificate and all notices with respect to such Certificate shall be made and given, respectively, in the manner provided in the representation letter of the Town to DTC.
- (i) <u>Cancellation of Initial Certificate</u>. On the Issuance Date, one initial Certificate representing the entire principal amount of the Certificates, payable in stated installments to the order of the Underwriter or its designee, executed by manual or facsimile signature of the Mayor and the Town Secretary, approved by the Attorney General and registered and manually signed by the Comptroller, will be delivered to the Underwriter or its designee. If the Certificates are sold subject to the book-entry system of DTC, then upon payment for the initial Certificate, the Paying Agent/Registrar shall insert the Issuance Date on Certificate No. T-1, cancel the initial Certificate and deliver to DTC on behalf of the Underwriter one registered definitive Certificate for each year of maturity of the Certificates, in the aggregate principal amount of all of the Certificates for such maturity, registered in the name of Cede & Co., as nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC's FAST System, pursuant to an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Certificates in safekeeping for DTC.

Certificates, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption may, at the option of the Town, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5

FORM OF CERTIFICATES. The form of the Certificate, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State to be attached only to the Certificates initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially in the form provided in **Exhibit A**, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance. The Form of Certificate as it appears in **Exhibit A** shall be completed, amended and modified by Bond Counsel to incorporate the information set forth in the Pricing Certificate, but it is not required for the Form of Certificate to be reproduced as an exhibit to the Pricing Certificate.

SECTION 6

INTEREST AND SINKING FUND: SURPLUS REVENUES

A special "Interest and Sinking Fund" is hereby created and shall be established and (a) maintained by the Town at an official depository bank of said Town. Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of said Town, and shall be used only for paying the interest on and principal of said Certificates. All amounts received from the sale of the Certificates as accrued interest shall be deposited upon receipt to the Interest and Sinking Fund, and all ad valorem taxes levied and collected for and on account of said Certificates shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while any of said Certificates are outstanding and unpaid, the governing body of said Town shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on said Certificates as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of said Certificates as such principal matures (but never less than 2% of the original amount of said Certificates as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of said Town, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in said Town, for each year while any of said Certificates are outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of said Certificates, as such

interest comes due and such principal matures, are hereby pledged for such payment, within the limits prescribed by law.

- (b) The Certificates are additionally secured by and payable from a pledge of the revenues of the Town's combined Waterworks and Sewer Systems remaining after payment of all operation and maintenance expenses thereof (the "Net Revenues"), and all debt service, reserve and other requirements in connection with all of the Town's revenue obligations (now or hereafter outstanding) that are payable from all or part of the Net Revenues of the Town's Waterworks and Sewer Systems, constituting "Surplus Revenues." The Town shall deposit such Surplus Revenues to the credit of the Interest and Sinking Fund created pursuant to Section 6, to the extent necessary to pay the principal and interest on the Certificates. Notwithstanding the requirements of Section 6, if Surplus Revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes that otherwise would have been required to be levied pursuant to Section 6 may be reduced to the extent and by the amount of the Surplus Revenues then on deposit in the Interest and Sinking Fund. The Town reserves the right, without condition or limitation, to issue other obligations secured in whole or in part by a parity lien on and pledge of the Surplus Revenues, for any purpose permitted by law.
- (c) Article 1208, Government Code, applies to the issuance of the Certificates and the pledge of the taxes and Surplus Revenues granted by the Town hereunder, and is therefore valid, effective and perfected. Should State law be amended at any time while the Certificates are outstanding and unpaid, the result of such amendment being that the pledge of the taxes and Surplus Revenues granted by the Town hereunder is to be subject to the filing requirements of Chapter 9, Business and Commerce Code, in order to preserve to the registered owners of the Certificates a security interest in said pledge, the Town agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, Business and Commerce Code and enable a filing of a security interest in said pledge to occur.

SECTION 7

DEFEASANCE OF CERTIFICATES.

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

thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged or the pledge of Surplus Revenues as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates that is made in conjunction with the payment arrangements specified in subsection 6(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Town expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

- (b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Town be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Town, or deposited as directed in writing by the Town. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 6(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Certificates, with respect to which such money has been so deposited, shall be remitted to the Town or deposited as directed in writing by the Town.
- (c) Subject to any statement to the contrary that may be included in the Pricing Certificate, the term "Defeasance Securities" means any securities and obligations now or hereafter authorized by State law that are eligible to refund, retire or otherwise discharge obligations such as the Certificates.
- (d) Until all Defeased Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates the same as if they had not been defeased, and the Town shall make proper arrangements to provide and pay for such services as required by this Ordinance.
- (e) In the event that the Town elects to defease less than all of the principal amount of Certificates of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates by such random method as it deems fair and appropriate.

SECTION 8

DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES.

(a) <u>Replacement Certificates</u>. In the event any outstanding Certificate is damaged, mutilated, lost, stolen or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new certificate of the same principal amount, maturity and interest rate, as the

damaged, mutilated, lost, stolen or destroyed Certificate, in replacement for such Certificate in the manner hereinafter provided.

- (b) Application for Replacement Certificates. Application for replacement of damaged, mutilated, lost, stolen or destroyed Certificates shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft or destruction of a Certificate, the registered owner applying for a replacement certificate shall furnish to the Town and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft or destruction of a Certificate, the registered owner shall furnish to the Town and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft or destruction of such Certificate, as the case may be. In every case of damage or mutilation of a Certificate, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate so damaged or mutilated.
- (c) <u>No Default Occurred</u>. Notwithstanding the foregoing provisions of this Ordinance, in the event any such Certificate shall have matured, and no default has occurred that is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate, the Town may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate) instead of issuing a replacement Certificate, provided security or indemnity is furnished as above provided in this Section.
- (d) <u>Charge for Issuing Replacement Certificates</u>. Prior to the issuance of any replacement certificate, the Paying Agent/Registrar shall charge the registered owner of such Certificate with all legal, printing, and other expenses in connection therewith. Every replacement certificate issued pursuant to the provisions of this Section by virtue of the fact that any Certificate is lost, stolen or destroyed shall constitute a contractual obligation of the Town whether or not the lost, stolen or destroyed Certificate shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates duly issued under this Ordinance.
- (e) <u>Authority for Issuing Replacement Certificates</u>. In accordance with Section 1206.022, Government Code, this Section shall constitute authority for the issuance of any such replacement certificate without necessity of further action by the governing body of the Town or any other body or person, and the duty of the replacement of such certificates is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates in the form and manner and with the effect, as provided in Section 3(a) of this Ordinance for Certificates issued in conversion and exchange for other Certificates.

SECTION 9

CUSTODY, APPROVAL, AND REGISTRATION OF CERTIFICATES; BOND COUNSEL'S OPINION; CUSIP NUMBERS AND CONTINGENT INSURANCE PROVISION, IF OBTAINED; ENGAGEMENT OF BOND COUNSEL.

(a) The Mayor of the Town is hereby authorized to have control of the Certificates initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates pending their delivery and their investigation, examination and approval by the

Attorney General and their registration by the Comptroller. Upon registration of the Certificates, the Comptroller (or a deputy designated in writing to act for the Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates, and the seal of the Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the Town's Bond Counsel and the assigned CUSIP numbers may, at the option of the Town, be printed on the Certificates issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Certificates. In addition, if bond insurance is obtained, the payment of the insurance premium is hereby approved and the Certificates may bear an appropriate legend as provided by the insurer.

(b) The obligation of the Underwriter to accept delivery of the Certificates is subject to the Underwriter being furnished with the final, approving opinion of McCall, Parkhurst & Horton L.L.P., bond counsel to the Town, which opinion shall be dated as of and delivered on the date of initial delivery of the Certificates to the Underwriter. The engagement of such firm as bond counsel to the Town in connection with issuance, sale and delivery of the Certificates is hereby approved and confirmed.

SECTION 10

COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE CERTIFICATES.

- (a) <u>Covenants</u>. The Town covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Certificates as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Town covenants as follows:
 - (1) to take any action to assure that no more than 10 percent of the proceeds of the Certificates or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the Town, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates, in contravention of section 141(b)(2) of the Code;
 - (2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;
 - (3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates (less amounts deposited into

a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

- (4) to refrain from taking any action which would otherwise result in the Certificates being treated as "private activity bonds" within the meaning of section 141(b) of the Code;
- (5) to refrain from taking any action that would result in the Certificates being "federally guaranteed" within the meaning of section 149(b) of the Code;
- (6) to refrain from using any portion of the proceeds of the Certificates, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Certificates, other than investment property acquired with B
 - (A) proceeds of the Certificates invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days or less until such proceeds are needed for the purpose for which the bonds are issued,
 - (B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148 1(b) of the Treasury Regulations, and
 - (C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates;
- (7) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);
- (8) to refrain from using the proceeds of the Certificates or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Certificates in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and
- (9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.
- (b) <u>Rebate Fund</u>. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the Town for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without

limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

- Use of Proceeds. The Town understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Certificates. It is the understanding of the Town that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Certificates, the Town will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Certificates, the Town agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In furtherance of such intention, the Town hereby authorizes and directs the Mayor, the Mayor Pro Tem, the Finance Director, the Town Secretary and each Pricing Officer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Town, which may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates.
- (d) Allocation of, and Limitation on, Expenditures for the Projects. The Town covenants to account for the expenditure of sale proceeds and investment earnings to be used for the Projects on its books and records in accordance with the requirements of the Code. The Town recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Projects are completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the Town recognizes that in order for proceeds to be expended under the Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates, or (2) the date the Certificates are retired. The Town agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Certificates. For purposes hereof, the Town shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) <u>Disposition of the Projects</u>. The Town covenants that the property constituting the Projects will not be sold or otherwise disposed in a transaction resulting in the receipt by the Town of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Certificates. For purpose of the foregoing, the Town may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Certificates. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Town shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

SECTION 11

SALE OF CERTIFICATES; OFFICIAL STATEMENT. (a) The Certificates shall be sold and delivered subject to the provisions hereof and pursuant to the terms and provisions of a bond purchase agreement, notice of sale and bidding instructions or private placement agreement (collectively and individually, the "Purchase Agreement"), each of which the Pricing Officer is hereby authorized to execute and deliver and in which the Underwriter shall be designated. The Certificates shall initially be registered in the name of the Underwriter, unless otherwise set forth in the Pricing Certificate.

(b) The Pricing Officer is hereby authorized, in the name and on behalf of the Town, to approve the distribution and delivery of a preliminary official statement and a final official statement relating to the Certificates to be used by the Underwriter in the marketing of the Certificates, if applicable.

SECTION 12

FURTHER PROCEDURES; ENGAGEMENT OF BOND COUNSEL; ATTORNEY GENERAL FILING FEE; APPROPRIATION. (a) The Mayor, the Mayor Pro Tem, the Finance Director, the Town Secretary and each Pricing Officer, individually or jointly, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Town such documents, certificates and instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Letter of Representations, the Certificates and the sale of the Certificates. In addition, prior to the delivery of the Certificates, the Mayor, the Mayor Pro Tem, the Finance Director, the Town Secretary and each Pricing Officer are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in this Ordinance or such other document, or (ii) as requested by the Attorney General or his representative to obtain the approval of the Certificates by the Attorney General. In case any officer whose signature shall appear on any Certificate shall cease to be such officer before the delivery of such Certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

- (b) The obligation of the Underwriter to accept delivery of the Certificates is subject to the Underwriter being furnished with the final, approving opinion of McCall, Parkhurst & Horton L.L.P., bond counsel to the Town, which opinion shall be dated as of and delivered on the Issuance Date. The engagement of such firm as bond counsel to the Town in connection with issuance, sale and delivery of the Certificates is hereby approved and confirmed.
- (c) To pay the debt service coming due on the Certificates, if any (as determined by the Pricing Certificate) prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.
- (d) In accordance with the provisions of Section 1202.004, Texas Government Code, in connection with the submission of the Certificates to the Attorney General for review and approval, a statutory fee (an amount equal to 0.1% principal amount of the Certificates, subject to a minimum of \$750 and a maximum of \$9,500) is required to be paid to the Attorney General upon the submission of the transcript of proceedings for the Certificates. The Town hereby authorizes and directs that a check in the amount of the Attorney General filing fee for the Certificates, made payable to the "Texas Attorney General," be promptly furnished to the Town's Bond Counsel, for payment to the Attorney General in connection with his review of the Certificates.

COMPLIANCE WITH RULE 15c2-12. (a) If the Certificates are sold by public offering, and are subject to the Rule (as defined below), the following provisions shall apply, unless modified by the Pricing Officer in the Pricing Certificate:

(i) <u>Definitions</u>. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means a: (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) a guarantee of the foregoing (a) and (b). The term Financial Obligation does not include any municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board or any successor to its functions under the Rule.

"Rule" means SEC Rule 15c2 12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

(ii) <u>Annual Reports.</u> (A) The Town shall provide annually to the MSRB, within the timeframe set forth in the Pricing Certificate, in the electronic format prescribed by the MSRB, certain updated financial information and operating data pertaining to the Town, being the information described in the Pricing Certificate.

- (B) Any financial information described in the Pricing Certificate to be provided shall be (i) prepared in accordance with the accounting principles described in the financial statements of the Town appended to the Official Statement, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not completed within the period set forth in the Pricing Certificate, then the Town shall provide unaudited financial information of the type described in the Pricing Certificate within such period, and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements becomes available.
- (C) If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.
- (D) All financial information, operating data, financial statements and notices required by this Section to be provided to the MSRB shall be provided in an electronic format and be accompanied by identifying information prescribed by the MSRB. Financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public on the MSRB's Internet Web site or filed with the SEC.
- (iii) <u>Event Notices</u>. The Town shall notify the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, of any of the following events with respect to the Certificates:
 - (1) Principal and interest payment delinquencies;
 - (2) Non-payment related defaults, if material;
 - (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
 - (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
 - (5) Substitution of credit or liquidity providers, or their failure to perform;
 - (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
 - (7) Modifications to rights of holders of the Certificates, if material;
 - (8) Certificate calls, if material, and tender offers;
 - (9) Defeasances;
 - (10) Release, substitution, or sale of property securing repayment of the Certificates, if material;
 - (11) Rating changes;
 - (12) Bankruptcy, insolvency, receivership, or similar event of the Town;
 - (13) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of the assets of the Town, other

- than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional paying agent/registrar or the change of name of a paying agent/registrar, if material;
- (15) Incurrence of a Financial Obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Town, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Town, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the Town in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town, and (b) the Town intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with subsection (a)(ii) of this Section by the time required by subsection (a)(ii).

- (iv) <u>Limitations, Disclaimers and Amendments</u>. (A) The Town shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Town remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the Town in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes the Certificates no longer to be outstanding.
 - (B) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Town

does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

- (C) UNDER NO CIRCUMSTANCES SHALL THE TOWN BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.
- (D) No default by the Town in observing or performing its obligations under this Section shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Town under federal and state securities laws.
- (E) The provisions of this Section may be amended by the Town from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the Town (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Certificates. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The Town may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates.
- (b) If the Certificates are sold by private placement, the Pricing Officer may agree to provide for an undertaking in accordance with the Rule or may agree to provide other public information to the Underwriter as may be necessary for the sale of the Certificates on the most favorable terms to the Town.

METHOD OF AMENDMENT. The Town hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

- (a) The Town may from time to time, without the consent of any holder, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in order to (i) cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (iv) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (v) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not in the opinion of the Town's Bond Counsel materially adversely affect the interests of the holders.
- (b) Except as provided in paragraph (a) above, the holders of Certificates aggregating a majority of the aggregate principal amount of then outstanding Certificates that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the Town; provided, however, that without the consent of 100% of the holders in aggregate principal amount of the then outstanding Certificates, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Certificates so as to:
 - (1) Make any change in the maturity of any of the outstanding Certificates;
 - (2) Reduce the rate of interest borne by any of the outstanding Certificates;
 - (3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Certificates;
 - (4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Certificates or any of them or impose any condition with respect to such payment; or
 - (5) Change the minimum percentage of the principal amount of any series of Certificates necessary for consent to such amendment.
- (c) If at any time the Town shall desire to amend this Ordinance under subsection (b) of this Section, the Town shall send by U.S. mail to each registered owner of the affected Certificates a copy of the proposed amendment.
- (d) Whenever at any time within one year from the date of mailing of such notice the Town shall receive an instrument or instruments executed by the holders of at least a majority in aggregate principal amount of all of the Certificates then outstanding that are required for the amendment, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent to and approve such amendment, the Town may adopt the amendment in substantially the same form.

- (e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such amendatory Ordinance, and the respective rights, duties, and obligations of the Town and all holders of such affected Certificates shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.
- (f) Any consent given by the holder of a Certificate pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the mailing of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Certificate during such period. Such consent may be revoked at any time after six months from the date of the mailing of said notice by the holder who gave such consent, or by a successor in title, by filing notice with the Town, but such revocation shall not be effective if the holders of a majority in aggregate principal amount of the affected Certificates then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.
- (g) For the purposes of establishing ownership of the Certificates, the Town shall rely solely upon the registration of the ownership of such Certificates on the registration books kept by the Paying Agent/Registrar.

DEFAULT AND REMEDIES

- (a) <u>Events of Default</u>. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:
- (i) the failure to make payment of the principal of or interest on any of the Certificates when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the Town, the failure to perform which materially, adversely affects the rights of the registered owners of the Certificates, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the Town.

(b) Remedies for Default.

- (i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the Town for the purpose of protecting and enforcing the rights of the Registered Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Registered Owners hereunder or any combination of such remedies.
- (ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Certificates then outstanding.

(c) Remedies Not Exclusive.

- (i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.
- (ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.
- (iii) By accepting the delivery of a Certificate authorized under this Ordinance, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Town or the Council.

INTEREST EARNINGS ON CERTIFICATE PROCEEDS; USE OF PREMIUM RECEIVED FROM SALE OF CERTIFICATES. (a) <u>Interest Earnings</u>. Interest earnings derived from the proceeds that are deposited to the Construction Fund (defined below) shall be retained therein and used for the purposes for which the Certificates were issued, provided that after the completion of such purposes, any amounts remaining therein shall be deposited to the Interest and Sinking Fund for the Certificates. It is further provided, however, that any interest earnings on Certificate proceeds that are required to be rebated to the United States of America pursuant to this Ordinance in order to prevent the Certificates from being arbitrage bonds shall be so rebated and not considered as interest earnings for purposes of this Section.

(b) <u>Use of Certificate Premium</u>. The net premium received from the sale of the Certificates shall be applied as determined by the Pricing Officer in the Pricing Certificate.

(c) Establishment of Construction Fund.

- (i) The Town hereby creates and establishes and shall maintain on the books of the Town a separate fund to be entitled the "Series 2022 Certificates Construction Fund" (the "Construction Fund") for use by the Town for payment of all lawful costs associated with the Projects. Proceeds of the Certificates in the amount determined by the Pricing Officer in the Pricing Certificate shall be deposited into the Construction Fund. Upon payment of all project costs, any moneys remaining on deposit in the Construction Fund shall be transferred to the Interest and Sinking Fund. Amounts so deposited to the Interest and Sinking Fund shall be used in the manner described in this Ordinance.
- (ii) The Town may place proceeds of the Certificates (including investment earnings thereon) and amounts deposited into the Interest and Sinking Fund in investments authorized by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended; provided, however, that the Town hereby covenants that the proceeds of the sale of the Certificates will be used as soon as practicable for the Projects.

(iii) All deposits authorized or required by this Ordinance shall be secured to the fullest extent required by law for the security of public funds.

SECTION 17

EFFECTIVE DATE. In accordance with the provisions of Texas Government Code, Section 1201.028, this Ordinance shall be effective immediately upon its adoption by the Council.

SECTION 18

SEVERABILITY. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 19

APPROPRIATION. To pay the debt service coming due on the Certificates, if any (as determined by the Pricing Certificate) prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

[Execution page follows]

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS $27^{\rm TH}$ DAY OF SEPTEMBER, 2022.

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

Exhibit A

FORM OF CERTIFICATES

(a) The form of the Certificate, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached only to the Certificates initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance and with the Certificates to be completed with information set forth in the Pricing Certificate. The Form of Certificate as it appears in this **Exhibit A** shall be completed, amended and modified by Bond Counsel to incorporate the information set forth in the Pricing Certificate, but it is not required for the Form of Certificate to be reproduced as an exhibit to the Pricing Certificate.

NO. R-__ UNITED STATES OF AMERICA PRINCIPAL
STATE OF TEXAS AMOUNT
TOWN OF PROSPER, TEXAS,
COMBINATION TAX AND SURPLUS
REVENUE CERTIFICATE OF OBLIGATION,
SERIES 2022

Interest Rate	Issuance Date	Maturity Date	CUSIP No.
%	, 2022	[February 15], 20	

REGISTERED OWNER:

PRINCIPAL AMOUNT:

ON THE MATURITY DATE specified above, the Town of Prosper, located in Collin and Denton Counties, Texas (the "Town"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), the Principal Amount specified above. The Town promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from the [Issuance Date] above at the Interest Rate per annum specified above. Interest is payable on [February 15, 2023 and semiannually on each August 15 and February 15] thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates, if any, for which this Certificate is being exchanged is due but

has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full.

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

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

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

THIS CERTIFICATE is dated [October 1, 2022], and is authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$_____ for paying all or a portion of the Town's contractual obligations incurred in connection with (i) acquiring, constructing, installing and equipping additions, improvements, extensions and equipment for the Town's waterworks and sewer system and the acquisition of land and rights-of-way therefor; (ii) acquiring, constructing and installing stormwater drainage and flood control improvements in the Town, including dredging, channel improvements and related infrastructure and utility relocation and the acquisition of land and interests in land necessary for said improvements; and (iii) paying legal, fiscal and engineering fees in connection with such projects, including payment of costs of issuance of the Certificates.

ON [FEBRUARY 15, 20__], or any date thereafter, the Certificates of this series may be redeemed prior to their scheduled maturities, at the option of the Town, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Certificates, or portions thereof, to be redeemed shall be selected and designated by the Town (provided that a portion of a Certificate may be redeemed only in an integral multiple of \$5,000), at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

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

WITH RESPECT TO ANY OPTIONAL REDEMPTION OF THE CERTIFICATES, unless certain prerequisites to such redemption required by the Certificate Ordinance have been met and money sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed will have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption may, at the option of the Town, be conditional upon the satisfaction of such prerequisites and receipt of such money by the Paying Agent/Registrar on or prior to the date fixed for such redemption or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given

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and such prerequisites to the redemption are not fulfilled, such notice will be of no force and effect, the Town will not redeem such Certificates, and the Paying Agent/Registrar will give notice in the manner in which the notice of redemption was given, to the effect that such Certificates have not been redeemed.

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

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

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

within the limits prescribed by law, and that this Certificate is additionally secured by and payable from a pledge of the Surplus Revenues of the System remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve, and other requirements in connection with all of the Town's revenue bonds or other obligations (now or hereafter outstanding) which are payable from all or any part of the net revenues of the System, all as provided in the Certificate Ordinance.

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

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

IN WITNESS WHEREOF, the Town has caused this Certificate to be signed with the manual or facsimile signature of the Mayor of the Town and countersigned with the manual or facsimile signature of the Town Secretary of said Town, and has caused the official seal of the Town to be duly impressed, or placed in facsimile, on this Certificate.

Town Secretary	Mayor
Town of Prosper, Texas	Town of Prosper, Texas
(Town Seal)	

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE (To be executed if this Certificate is not accompanied by an executed Registration

To be executed if this Certificate is not accompanied by an executed Registration Certificate of the Comptroller of Public Accounts of the State of Texas)

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

Dated:	[U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, Dallas, Texas] Paying Agent/Registrar
	By:
	Authorized Representative

ASSIGNMENT

For value received, the undersigned hereby sells	, assigns and transfers unto:
Please insert Social Security or Taxpa	yer Identification Number of Transferee
Please print or type name and ad	ldress, including zip code of Transferee
the within Certificate and all rights thereunder, a	
Certificate on the books kept for registration premises.	ttorney, to register the transfer of the within thereof, with full power of substitution in the
Dated:	
Signature Guaranteed:	
NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.	NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Certificate in every particular, without alteration or enlargement or any change whatsoever.
COMPTROLLER'S REGISTRATION	CERTIFICATE: REGISTER NO
	een examined, certified as to validity and approved and that this Certificate has been registered by the Texas.
Witness my signature and seal this	·
	mptroller of Public Accounts the State of Texas
(COMPTROLLER'S SEAL)	
(b) <u>Initial Certificate Insertions</u> .	
(i) The initial Certificate sha	ll be in the form set forth is paragraph (a) of this

- A. immediately under the name of the Certificate, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As shown below" and "CUSIP No. _____" shall be deleted.
- B. the first paragraph shall be deleted and the following will be inserted:

"THE TOWN OF PROSPER, TEXAS, in Collin and Denton Counties, Texas (the "Town"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on [February 15] in each of the years, in the principal amounts and bearing interest at the per annum rates set forth in the following schedule

	Principal	Interest		Principal	Interest
Years	Amount	Rates	Years	Amount	Rates
2023			2033		
2024			2034		
2025			2035		
2026			2036		
2027			2037		
2028			2038		
2029			2039		
2030			2040		
2031			2041		
2032			2042		

The Town promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from the [Issuance Date] above, at the respective Interest Rate per annum specified above. Interest is payable on [February 15, 2023 and semiannually on each August 15 and February 15] thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates, if any, for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full."

C. The initial Certificate shall be numbered "T-1."



FINANCE DEPARTMENT

To: Mayor and Town Council

From: Sandy Mattick, Interim Finance Director

Through: Ron K. Patterson, Interim Town Manager

Bob Scott, Executive Director of Administrative Services

Re: Oncor Rate Change

Town Council Meeting – September 27, 2022

Agenda Item:

Consider and act upon a resolution to deny the application of Oncor Electric Delivery Company LLC for approval to increase system-wide transmission and distribution rates within the Town.

Description of Agenda Item:

Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application on or about May 13, 2022, with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by about \$251 million or approximately 4.5% over present revenues. The Company asks the Town to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates. If approved, a residential customer using 1,300 kWh per month would see a bill increase of about \$6.02 per month.

At the June 2022 Council Meeting, Oncor's rate request was suspended from taking effect for 90 days, the fullest extent permissible under the law. This time period has permitted the Town, through its participation with the Steering Committee of Cities Served by Oncor ("Steering Committee"), to determine that the proposed rate increase is unreasonable. Consistent with the recommendations of the experts engaged by the Steering Committee, Oncor's request for a rate increase should be denied.

Accordingly, the purpose of the Resolution is to deny the rate change application proposed by Oncor. Once the Resolution is adopted, Oncor will have 30 days to appeal the decision to the Public Utility Commission of Texas where the appeal will be consolidated with Oncor's filing (i.e. PUC Docket No. 53601) currently pending at the Commission.

The Town of Prosper is a member of a 169-city coalition known as the Steering Committee of Cities Served by Oncor ("Steering Committee"). The Steering Committee has been in existence since the late 1980s. It took on a formal structure in the early 1990s when cities served by the former TXU gave up their statutory right to rate case expense reimbursement in exchange for higher franchise fee payments. Empowered by city resolutions and funded by per capita assessments, the Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for

the last 30 years.

Although Oncor has increased rates many times over the past few years, this is the first comprehensive base rate case for the Company since March 2017.

Legal Obligations and Review:

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

Attached Documents:

1. Resolution

Town Staff Recommendation:

Town staff recommends approval of a resolution to deny the application of Oncor Electric Delivery Company LLC for approval to increase system-wide transmission and distribution rates within the Town.

Proposed Motion:

I move to approve a resolution to deny the application of Oncor Electric Delivery Company LLC for approval to increase system-wide transmission and distribution rates within the Town.

A RESOLUTION OF THE TOWN OF PROSPER, TEXAS, FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY LLC'S ("ONCOR" OR "COMPANY") APPLICATION TO CHANGE RATES WITHIN THE TOWN SHOULD BE DENIED; FINDING THAT THE TOWN'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper, Texas ("City") is an electric utility customer of Oncor Electric Delivery Company LLC ("Oncor" or "Company"), and a regulatory authority with an interest in the rates and charges of Oncor; and

WHEREAS, the Town is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee"), a coalition of similarly situated cities served by Oncor that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in Oncor's service area; and

WHEREAS, on or about May 13, 2022, Oncor filed with the Town an application to increase system-wide transmission and distribution rates by \$251 million or approximately 4.5% over present revenues. The Company asks the Town to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates; and

WHEREAS, the Steering Committee is coordinating its review of Oncor's application and working with the designated attorneys and consultants to resolve issues in the Company's filing; and

WHEREAS, through review of the application, the Steering Committee's consultants determined that Oncor's proposed rates are excessive; and

WHEREAS, the Steering Committee's members and attorneys recommend that members deny the Application; and

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

SECTION 1

The rates proposed by Oncor to be recovered through its electric rates charged to customers located within the Town limits, are hereby found to be unreasonable and shall be denied.

SECTION 2

The Company shall continue to charge its existing rates to customers within the Town.

The Town's reasonable rate case expenses shall be reimbursed in full by Oncor within thirty (30) days of the adoption of this Resolution.

SECTION 4

It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5

A copy of this Resolution shall be sent to Oncor, c/o Howard Fisher, Oncor Electric Delivery Company, LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Ave., Suite 1900, Austin, Texas 78701.

SECTION 6

This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 27^{TH} DAY OF SEPTEMBER, 2022.

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