



*Prosper is a place where everyone matters.*

**Agenda**  
**Prosper Town Council Meeting**  
Prosper Town Hall, Council Chambers  
250 W. First Street, Prosper, Texas  
Tuesday, November 22, 2022  
**6:15 PM**

### **Notice Regarding Public Participation**

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

Join the Zoom Meeting by clicking on the following link: <https://us02web.zoom.us/j/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. Proclamation recognizing December 2, 2022, as Salvation Army Red Kettle Campaign Day. (MLS)

### **CONSENT AGENDA:**

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

- [2.](#) Consider and act upon the minutes of the November 8, 2022, Town Council Work Session meeting. (MLS)
- [3.](#) Consider and act upon the minutes of the November 8, 2022, Town Council meeting. (MLS)
- [4.](#) Consider and act upon approval of the Buy Board Contract for pour-in-place surfacing installation for Windsong Park from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative; and authorizing the Interim Town Manager to execute documents for the same. (PN)
- [5.](#) Consider and act upon approving a Subscription Agreement by and between SmartForce Technologies, Inc. and the Town of Prosper for the integration of the SmartForce with ICS RMS system; and authorizing the Interim Town Manager to execute documents for the same. (DK)
- [6.](#) Consider and act upon approving a Consulting Services Agreement by and between Santos & Santos Ph.D., Inc., and the Town of Prosper for the implementation of a stratified policing model; and authorizing the Interim Town Manager to execute documents for the same. (DK)
- [7.](#) Consider authorizing the Interim Town Manager to execute a one-year renewal of the Professional Services Agreement between Valley View Consulting, L.L.C., and the Town of Prosper, Texas, related to Investment Advisory services. (RBS)
- [8.](#) Consider and act upon approval of Rutherford Park Plan. (RKP)
- [9.](#) 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 PISD Golf Building. (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:**

- [10.](#) Conduct a public hearing and consider and act upon a request to rezone 0.36± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the northeast corner of First Street and Parvin Street. (Z22-0016). (DS)
- [11.](#) Consider and act upon authorizing the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Construction, related to Construction Manager-At-Risk services for Raymond Community Park Page

3 of 3 Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk; consider and act upon rejecting all bids in the event an agreement is not reached with the first-ranked contractor; and any other actions incident and related thereto. (PN)

12. Consider and act upon the creation and appointment of members to a Capital Improvements Subcommittee. (RKP)

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

13. Discussion on Irrigation Ordinance. (BC)

**EXECUTIVE SESSION:**

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

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

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

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

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

*Section 551.071 - To consult with the Town Attorney regarding legal issues associated with a Municipal Court prosecution matter and all matters incident and related thereto.*

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

**Adjourn.**

**CERTIFICATION**

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, November 18, 2022, and remained so posted at least 72 hours before said meeting was convened.

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

\_\_\_\_\_  
Date Notice Removed

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

## **NOTICE**

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

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



## MINUTES

**Prosper Town Council Work Session**  
Prosper Town Hall – Council Chambers  
250 W. First Street, Prosper, Texas  
Tuesday, November 8, 2022

*Prosper is a place where everyone matters.*

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

The meeting was called to order at 5:00 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  
Bob Scott, Executive Director of Administrative Services  
Hulon Webb, Interim Executive Director of Development and Infrastructure Services  
David Soto, Planning Manager  
Stuart Blasingame, Fire Chief  
Doug Kowalski, Police Chief

### **Items for Individual Consideration**

#### **1. Discussion regarding the Solid Waste Request for Proposals (RFP). (RBS)**

Mr. Scott introduced Scott Pasternak with Burns & McDonnell, consultant for the Town of Prosper. Mr. Pasternak provided an overview of the process, the items he will facilitate and assist the Town within the process, a timeline of the project, key issues including collection services, options for carts, downtown services, and any enhancements.

The Town Council discussed commercial services, Household Hazardous Waste, number of carts per household, service levels, special clean up events, and proposal evaluation process.

The Town Council requested for staff to place the item on an agenda with a outline and/or draft of items that would be included in the RFP, and a way to solicit feedback from residents on services.

#### **2. Discuss virtual participation in public meetings. (RKP/MLS)**

Mr. Patterson introduced the item and noted that this is a policy decision based on the Council's preference.

The Town Council discussed current virtual participation and process of submitting public comment forms, as well as current ways to watch a meeting through Swagit and ZOOM, and the differences between each.

Due to time, the Town Council requested staff to bring back the item for further discussion in a future work session.

**Adjourn.**

The meeting was adjourned at 6:02 p.m.

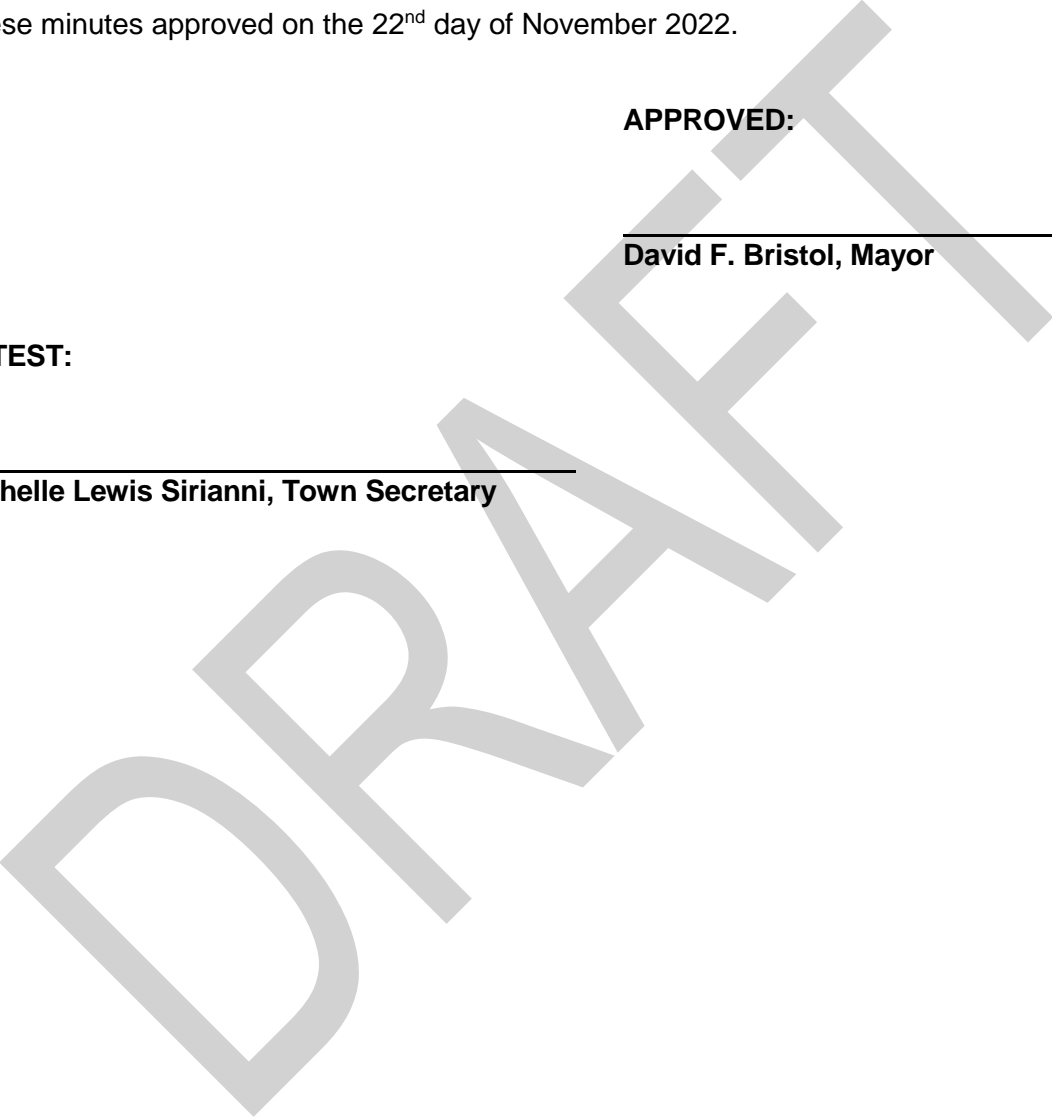
These minutes approved on the 22<sup>nd</sup> day of November 2022.

**APPROVED:**

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

**ATTEST:**

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





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## MINUTES

**Prosper Town Council Meeting**  
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### **Call to Order/ Roll Call.**

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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  
Bob Scott, Executive Director of Administrative Services  
Hulon Webb, Interim Executive Director of Development and Infrastructure Services  
David Soto, Planning Manager  
Dan Baker, Parks and Recreation Director  
Paul Naughton, Senior Park Planner  
Frank Jaromin, Public Works Director  
James Edwards, Human Resources Director  
Jessika Hotchkin, Help Desk Technician I  
Todd Rice, Communications Manager  
Brady Cudd, Building Official  
Doug Kowalski, Police Chief  
Scott Brewer, Assistant Police Chief  
Stuart Blasingame, Fire Chief

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

Mike Martin with Hope Fellowship led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were presented and recited by Girl Scouts Troop 4679.

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

Councilmember Kern made the following announcements:

Thank you to all who attended the Prosper Arbor Day Celebration this past Saturday and planted two Chinquapin Oak Trees, as well as our Parks and Recreation staff who provided instruction and guidance on proper tree planting techniques to the group.

Thank you to the 19 teams who participated in the Town's first annual Pickleball tournament this past Saturday along with all those who came out to spectate. A fun time was had by all.

Please join the Town for an informational public meeting on Wednesday, November 9 at 6:00 p.m. in the Council Chambers of Town Hall regarding traffic control measures on the west side of Prosper. Town staff members from the Engineering Department and the Prosper Police Department will provide information on short and long-term solutions to improve the traffic conditions on the west side of Town.

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

Reminder that Town Hall Offices will be closed on Thursday, November 24 and Friday, November 25 for the Thanksgiving Holiday. Due to the holiday, residents whose trash service falls on Thursday or Friday will be delayed by one day. The special bulk drop off location at Public Works will also be closed on Saturday, November 26.

Prosper residents and businesses are invited to dress up their locations for the annual Light the Night decorating contest sponsored by CoServ. Contest winners in several categories will receive a yard sign, gift card, and social media recognition. The online entry form will be coming soon. Deadline to enter is Sunday, December 11.

The Prosper annual Christmas Festival will take place on Saturday, December 3 at Prosper Town Hall. Come experience the magic of Santa Claus in his Workshop, the Kids Christmas Shoppe, dazzling exhibits, Kids Fun Zone, Community Stage performances, carriage rides, live demonstrations, and food truck vendors. Also, don't miss out on the Prosper Rotary Club Christmas Parade at 2:30 p.m., and the Tree Lighting at 7:00 p.m. followed by fireworks. The festival is free of charge. For more information visit ProsperChristmas.org.

### **Presentations.**

**1. Proclamation recognizing November 18, 2022, as National Injury Prevention Day. (MLS)**

Mayor Bristol read and presented a Proclamation to members of Safe Kids North Texas and Center for Children's Health led by Cook Children's.

**2. Receive an update from the Public Works Department. (FJ)**

Mr. Jaromin provided an update that included organizational structures for the water, wastewater, and streets departments, achievements and accomplishments within the past year, current challenges, and what is being planned for the upcoming year.

### **CONSENT AGENDA:**

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

**3. Consider and act upon the minutes of the October 25, 2022, Town Council meeting. (MLS)**

**4. Consider and act upon the minutes of the October 27, 2022, Town Council Work Session meeting. (MLS)**



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

**6. Consider and act upon Ordinance 2022-71 establishing a no parking zone on Ridgewood Drive from Hays Road to Crown Colony Drive. (HW)**

**7. Consider and act upon approval of a Services Agreement between Strategies 360 Texas, LLC, The Town of Prosper, and the Prosper Economic Development Corporation for government relations and strategic advocacy services and authorize the Interim Town Manager to execute the same. (RB)** Deputy Mayor Pro-Tem Andres requested to pull item #10.

Councilmember Cotten made a motion to approve consent agenda items 3 through 7. Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

### **CITIZEN COMMENTS**

No comments were made.

### **Items for Individual Consideration:**

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

*Mayor Bristol left the dais.*

Mayor Pro-Tem Hodges opened agenda items 8 through 11.

Mr. Edwards introduced Lance Pendley with McGriff Insurance Services. Mr. Pendley presented a review of the RFP process done for the Town's Insurance benefits, which included the goals and objectives, the two finalists, plan design options and recommendations for medical, dental, pharmacy benefits, and the voluntary products.

Jason Dixon, 1050 High Willow Drive, representing Trinity Captive, a finalist in the RFP process presented information to the Town Council on why Trinity Captive is a better fit for the Town. He encouraged the Town Council to compare the costs and overall benefits to the employees, and the total max liability.

The Town Council discussed plan designs, overall costs to the Town, the timeframe for open enrollment.

Councilmember Cotten made a motion to table awarding RFP No. 2022-58-A for Medical Administrative Services Only effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same, to November 22 to have the consultant address with the Benefits Subcommittee the items presented by Mr. Dixon. Seconded by Councilmember Kern. Tie vote of 2-2-2. Councilmember Ray and Deputy Mayor Pro-Tem Andres abstained citing concerns of the timeframe placed on Human Resources.

The Town Council further discussed the timeframe, recommendations by the consultant, and information presented by Mr. Dixon.

Councilmember Cotten subsequently made a motion to table awarding RFP No. 2022-58-A for Medical Administrative Services Only effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same to November 22, to have the consultant and staff to address the questions raised by the presentation by Mr. Dixon with the Subcommittee. Councilmember Kern seconded that motion. Tie vote of 2-2-2. Councilmember Ray and Mayor Pro-Tem Andres abstained.

Councilmember Ray made a motion to defer to the Benefits Subcommittee to approve.

Deputy Mayor Pro-Tem Andres asked for clarification of the motion. Councilmember Ray asked for the Councilmembers on the subcommittee for their recommendation.

Mayor Pro-Tem Hodges stated he is on the subcommittee and recommends going with the consultant's recommendation of UMR.

Councilmember Cotten stated he is on the subcommittee and recommends the Council defer.

Councilmember Bartley stated based on the employee feedback and the overall cost to the Town to go with the consultant's recommendation of UMR. She expressed concerns of delaying due to open enrollment for the staff.

Deputy Mayor Pro-Tem Andres seconded the motion with concerns expressed regarding the timeline.

Councilmember Ray re-stated a motion to approve awarding RFP No. 2022-58-A for Medical Administrative Services to Only to UMR effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same. Deputy Mayor Pro-Tem Andres seconded that motion. Motion carried with a 4-2 vote. Councilmembers Cotten and Kern voting in opposition.

*Mayor Bristol returned to the dais.*

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

Mayor Pro-Tem Hodges made a motion to approve awarding RFP No. 2022-59-A for fully insured dental benefits insurance effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same. Councilmember Cotten seconded that motion, and the motion was unanimously approved.

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

Councilmember Cotten made a motion to approve awarding RFP No. 2022-61-A for pharmacy benefits management services effective January 1, 2023 and authorizing the Interim Town Manager to execute all documents for the same. Mayor Pro-Tem seconded that motion, and the motion was unanimously approved.

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

Councilmember Cotten made a motion to approve awarding RFP No. 2022-60-A for group critical illness with cancer, group accident and group hospital indemnity insurance effective January 1, 2023, and authorizing the Interim Town Manager to execute all documents for the same. Councilmember Ray seconded that motion, and the motion was unanimously approved.

**12. Conduct a public hearing and consider and act upon Ordinance 2022-72 amending the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park. (CA22-0002). (HW)**

Mr. Webb presented the proposed changes to the Thoroughfare Plan. The Planning and Zoning Commission recommended approval at their October 18 meeting. Staff recommends approval of the proposed changes.

The Town Council discussed if the property owners were notified, and updating the map when zoning is approved versus waiting.

Mayor Bristol opened the public hearing.

Matt Moore, 301 S. Coleman with ClayMoore Engineering, asked the Town Council to reconsider the road from DNT collector to Frontier Park and let the traffic pattern(s) work themselves out as development occurs.

Mayor Bristol closed the public hearing.

Councilmember Cotten expressed concerns of the road connecting to Frontier Park and the need to have it on the Thoroughfare Plan.

Councilmember Cotten made a motion to approve Ordinance 2022-72 amending the Thoroughfare Plan to realign segments of Teel Parkway, McKinley Street, Gorgeous Road, Coleman Street, and the DNT Collector, amend the cross section for First Street between Coleman Street and Craig Road, rename Fishtrap Road west of Legacy Drive to First Street, and add a collector road from the DNT Collector to Frontier Park. Councilmember Bartley seconded that motion. The motion carried with a 6-1 vote. Mayor Pro-Tem Hodges voting in opposition.

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

*Mayor left the dais.*

Mr. Naughton presented the criteria evaluated by the committee for this item along with a timeline of the project. Staff recommends approval.

The Town Council expressed concerns of the matrix and scoring criteria, and the process of re-negotiating the bid or rejecting bids.

Councilmember Ray made a recommendation to enter negotiations with Dean Construction with the ability to go back and negotiate a price, and if should not

succeed, the Town Council would follow the procurement process in going to the next bidder.

Motion dies due to lack of second.

Councilmember Cotten made a motion to postpone for two weeks to negotiate with Dean Construction and including option of rejecting all bids if an agreement cannot be reached. Deputy Mayor Pro-Tem Andres seconded that motion. Motion carries with a 6-0 vote.

*Mayor Bristol returned to the dais.*

14. **Consider and act upon adopting Ordinance 2022-73 amending fees in the Town's Code of Ordinances, specifically Sections 113.2 and 113.3 of the International Fire Code, contained in Section 5.03.002 "Amendments" of Article 5.03, "Fire Code", of Chapter 3, "Fire Prevention and Protection," and amending various fees contained in Appendix A, "Fee Schedule," relating to Construction Permits and Fees, Sign-related Fees, Development Fees, Miscellaneous Fees, Health and Sanitation Fees, Public Works Fees, and Backflow Prevention Plan and Enforcement Fees; and repealing Section II, "Mechanical/Plumbing Permit Fees," and Section III, "Electrical Permit Fees," contained in Appendix A, "Fee Schedule." (RBS)**

Mr. Scott introduced item and indicated the item was presented to the Developer's Council with no feedback.

Mayor Pro-Tem Hodges asked regarding who is responsible for the fine if there is no permit. Mr. Cudd responded the homeowner would be responsible for ensuring there is a permit.

Councilmember Ray made a motion to adopt Ordinance 2022-73 amending fees in the Town's Code of Ordinances, specifically Sections 113.2 and 113.3 of the International Fire Code, contained in Section 5.03.002 "Amendments" of Article 5.03, "Fire Code", of Chapter 3, "Fire Prevention and Protection," and amending various fees contained in Appendix A, "Fee Schedule," relating to Construction Permits and Fees, Sign-related Fees, Development Fees, Miscellaneous Fees, Health and Sanitation Fees, Public Works Fees, and Backflow Prevention Plan and Enforcement Fees; and repealing Section II, "Mechanical/Plumbing Permit Fees," and Section III, "Electrical Permit Fees," contained in Appendix A, "Fee Schedule." Deputy Mayor Pro-Tem Andres seconded that motion, and the motion was unanimously approved.

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

Councilmember Cotten requested the evaluation matrix to be brought back to a future meeting.

**EXECUTIVE SESSION:**

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

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

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

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

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

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

The Town Council recessed into Executive Session at 9:20 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 10:54 p.m.

No action was taken.

**Adjourn.**

The meeting was adjourned at 10:54 p.m.

These minutes approved on the 22<sup>nd</sup> day of November 2022.

**APPROVED:**

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

**ATTEST:**

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



## PARKS & RECREATION

**To: Mayor and Town Council**

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

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

**Re: Windsong Park Playground Surface**

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Consider and act upon approval of the Buy Board Contract for pour-in-place surfacing installation for Windsong Park from Child’s Play, Inc., through the Texas Local Government Purchasing Cooperative; and authorizing the Interim Town Manager to execute documents for the same.

**Description of Agenda Item:**

The Town of Prosper was approached by Facts of Windsong, a non-profit group, with a desire to replace the playground surface at Windsong Park with a pour-in-place rubber surfacing. The current surface material is engineered FIBAR (wood chips). The group informed the Town that they would pursue fund-raising to pay for this conversion. This Playground is part of a maintenance agreement between the Town (Park Owner), PISD (Playground user group) and the Windsong HOA (park maintenance until 70% of the development is constructed). All parties involved have supported the project.

To date, Facts of Windsong has raised \$85,000 over the last two years. When the project was first discussed, this would have been sufficient to pay for the rubber surfacing, however, due to inflation and supply issues, they were still short in funds. The estimated cost of the resurfacing is \$107,900.00. The Town and PISD have agreed to share the delta between the amount raised and how much is left. In addition, the Town has agreed to remove the existing FIBAR (wood chips) and provide an onsite dumpster, which will help lower the overall cost. An agreement of this arrangement was signed, and funds have been received to begin the project.

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 participation agreement in June 2005, providing the Town’s participation in the Texas Local Government Purchasing Cooperative. Participation in the cooperative purchasing program allows our local government to purchase goods and services

from the cooperative's online purchasing system, BuyBoard, while satisfying all competitive bidding requirements.

**Budget Impact:**

The purchase price is \$107,800.00. As per the agreement, the Town will contribute \$11,500.00 towards the project from the department budget. This Buyboard Purchase will be funded from account #100-5355-60-02.

**Legal Obligations and Review:**

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the standard Buy Board Contract as to form and legality.

**Attached Documents:**

1. Buyboard Proposal
2. Windsong Playground Letter Agreement

**Town Staff Recommendation:**

Town staff recommends that the Town Council approves the Buy Board Contract for pour-in-place surfacing installation for Windsong Park from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative; and authorizing the Interim Town Manager to execute documents for the same.

**Proposed Motion:**

I move to approve the Buy Board Contract for pour-in-place surfacing installation for Windsong Park from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative; and authorizing the Interim Town Manager to execute documents for the same.

# Child's Play, Inc.

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

**ADDRESS**

Windsong Ranch Elementary PTO  
 800 Copper Canyon Drive  
 Prosper, TX 75078

**SHIP TO**

Windsong Ranch Elementary PTO  
 800 Copper Canyon Drive  
 Prosper, TX 75078

QUOTE #	DATE	EXPIRATION DATE
22-3396	10/11/2022	10/31/2022

**SALES REP**  
 CW

DESCRIPTION	QTY	PRICE EACH	AMOUNT
<b>PIP Rubber</b> Poured-In-Place Rubber Surfacing, 100% color with separate colors under swings and at exits of slides and high wear areas.	5,200	18.00	93,600.00
<b>Gravel</b> 3/8 Minus #10 Chat Drainage Gravel, approximately 4" depth- Includes installation	5,200	2.50	13,000.00
<b>Fencing Material</b> Fencing Material- temporary fencing 1 month rental	1	1,200.00	1,200.00
<b>Buyboard</b> This is a Buyboard Purchasing Cooperative Quote. Pricing reflects Buyboard discounts as listed under Contract #592-19, Vendor #1501 **Customer responsible for removing and hauling off all wood fiber**	1	0.00	0.00

TOTAL **\$107,800.00**

Accepted By

Accepted Date



**LETTER AGREEMENT**

This Letter Agreement is entered into between the Town of Prosper, Texas ("Town"), the Prosper Independent School District ("PISD") and Facts of Windsong ("Facts"), all of whom hereby agree to the following payment of funds for replacing the existing playground surface material (wood chips) at Windsong Park and replacing same with pour-in-place rubber. The Town, PISD and Facts agree to the following regarding the foregoing construction:

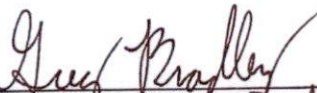
1. At the present time, the estimated cost of construction is \$107,900.00.
2. Facts shall pay \$85,000.00 as its respective portion for said construction. Both the Town and PISD shall pay \$11,500.00 each for said construction as their respective proportionate shares of construction costs. Payment to the contractor shall be made by the Town, and Facts and PISD shall provide their respective payments to the Town, the receipt of which shall be acknowledged by the Town.
3. Town staff shall remove the existing wood chips and shall provide a dumpster for the duration of said construction.
4. In the event of any costs in excess of \$107,900.00, the Town, PISD and Facts shall meet to mutually address such excess costs.

**AGREED TO AND ACKNOWLEDGED:**

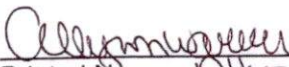
**TOWN OF PROSPER, TEXAS**

  
Printed Name: Ron K. Patterson

**PROSPER INDEPENDENT SCHOOL DISTRICT**

  
Printed Name: Greg Bradley

**FACTS OF WINDSONG**

  
Printed Name: Allison Warren



## POLICE DEPARTMENT

**To: Mayor and Town Council**

**From: Doug Kowalski, Chief of Police**

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

**Re: ICS/SmartForce Software Integration**

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Consider and act upon approving a Subscription Agreement by and between SmartForce Technologies, Inc. and the Town of Prosper for the integration of the SmartForce with ICS RMS system; and authorizing the Interim Town Manager to execute documents for the same.

**Description of Agenda Item:**

Approved in the Town's FY 2022-2023 Budget, the Prosper Police Department is ready to begin the process to enhance our SmartForce platform by uploading data from our Integrated Computer Systems (Computer Aided Dispatch and Records Management System).

To accomplish this enhancement, SmartForce Technologies, Inc. has provided the attached Order Form which shall be governed by the SmartForce Service Subscription Agreement already in place with the Town of Prosper.

**Budget Impact:**

FY 2022-2023 \$40,000. Annual maintenance \$5,000. Approved in the FY 2022-2023 Police Operations' account #100-5480-20-01 Contract Services.

**Legal Obligations and Review:**

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

**Attached Documents:**

1. Agreement

**Town Staff Recommendation:**

Town staff recommends approval of a Subscription Agreement by and between SmartForce Technologies, Inc. and the Town of Prosper for the integration of the SmartForce with ICS RMS system; and authorizing the Interim Town Manager to execute documents for the same.

**Proposed Motion:**

I move to approve a Subscription Agreement by and between SmartForce Technologies, Inc. and the Town of Prosper for the integration of the SmartForce with ICS RMS system; and authorizing the Interim Town Manager to execute documents for the same.

Check here if Renewal **ORDER FORM**

This Order Form (the “**Order Form**”) is by and between SmartForce® Technologies, Inc. (“**SmartForce**”) and the Subscriber identified below (“**Subscriber**”). THIS ORDER FORM IS ENTERED INTO PURSUANT TO AND SHALL BE GOVERNED BY THE THEN-CURRENT VERSION OF THE SMARTFORCE SERVICE SUBSCRIPTION AGREEMENT (THE “**SUBSCRIPTION AGREEMENT**” AND, TOGETHER WITH THIS ORDER FORM, THE “**AGREEMENT**”) LOCATED AT: <https://smartforcetech.com/agreement> WHICH ARE INCORPORATED HEREIN BY REFERENCE. All capitalized terms not defined herein have the meaning given to them in the Subscription Agreement. This Agreement will become effective when this Order Form is executed by authorized representatives of both parties (the “**Effective Date**”). In the event of any conflict between this Order Form and the Subscription Agreement, the terms set forth in this Order Form will prevail, but solely with respect to this Order Form.

**SUBSCRIBER INFORMATION:**

Name: Prosper Police Department	Principal Contact: Scott Brewer
Full Address: 801 Safety Way Prosper, TX 75078	Title: Assistant Chief of Police
	Phone: 972-569-1033
	Mobile Phone:
P.O. #:	Email: sbrewer@prospertx.gov
Number of Users: Up to 50	Billing Contact & Email: Same

<b>Terms: See Below</b>	Quote Valid through November 28, 2022.
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<b>Custom Development, Training, Implementation, and Other Services</b>	
<b>Description of Services</b>	<b>Price</b>
<b>Integrate SmartForce® with ICS RMS System. Pull and display RMS data into a Metric dashboard in SmartForce®. Quote dependent on RMS provider allowing SmartForce® system to pull the required data from a sequel database or other SmartForce® compatible database.</b>	<b>\$40,000.00 Year 1 \$5,000.00 Year 2 and each year after for Maintenance</b>

**Payment Terms**

Initial Term Fees are due and payable in advance upon execution of the Order Form. Fees for Renewal Terms will be invoiced by SmartForce approximately 30 days before the start of the Renewal Term and are due and payable prior to the start of such Renewal Term. Fees for any Renewal Terms are subject to change.

**Agreement**

BY SIGNING BELOW, EACH PARTY AGREES TO BE BOUND BY THE TERMS OF THIS ORDER FORM AND THE SUBSCRIPTION AGREEMENT LOCATED AT: <https://smartforcetech.com/agreement> WHICH ARE INCORPORATED HEREIN BY REFERENCE. THE SUBSCRIPTION AGREEMENT CONTAINS (I) DISCLAIMERS OF WARRANTIES WITH RESPECT TO THE SMARTFORCE SERVICE, SMARTFORCE SYSTEM, DOCUMENTATION AND SERVICES; (II) LIMITATIONS ON EACH PARTY'S LIABILITY; (III) INDEMNIFICATION OBLIGATIONS OF EACH PARTY; AND (IV) OTHER MATERIAL TERMS AND CONDITIONS, ALL OF WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. BY SIGNING BELOW, EACH PARTY REPRESENTS IT HAS READ AND AGREES TO BE BOUND BY THE ORDER FORM AND THE SUBSCRIPTION AGREEMENT. THIS AGREEMENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL AND ALL OF WHICH TOGETHER SHALL CONSTITUTE ONE AND THE SAME INSTRUMENT.

**SUBSCRIBER: Prosper Police Department**

**SMARTFORCE TECHNOLOGIES, INC.**

By (Signature): \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY.**

THE SMARTFORCE® SERVICE (AS DEFINED BELOW) IS PROVIDED TO SUBSCRIBER BY SMARTFORCE TECHNOLOGIES, INC. ("**SMARTFORCE**") SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS SERVICE SUBSCRIPTION AGREEMENT ("**AGREEMENT**"). BY USING THE SMARTFORCE SERVICE, CLICKING ON THE "I ACCEPT" BUTTON, OR BY COMPLETING THE REGISTRATION PROCESS FOR THE SMARTFORCE SERVICE, YOU: (1) AGREE TO THE TERMS OF THIS AGREEMENT, AND (2) REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY YOU HAVE NAMED AS THE SUBSCRIBER, AND TO BIND THAT ENTITY TO THIS AGREEMENT. IF YOU DO NOT FULLY AGREE TO THE TERMS OF THIS AGREEMENT, YOU ARE NOT AUTHORIZED TO ACCESS OR OTHERWISE USE THE SMARTFORCE SERVICE. THE TERM "**SUBSCRIBER**" MEANS THE ORGANIZATION TO WHICH THE SMARTFORCE SERVICE IS PROVIDED. EACH AND EVERY PERSON USING THE SMARTFORCE SERVICE ON BEHALF OF THE SUBSCRIBER REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO DO SO ON SUBSCRIBER'S BEHALF. IF SUBSCRIBER HAS ENTERED INTO A SIGNED HARDCOPY AGREEMENT REGARDING THE SUBJECT MATTER HEREOF WITH SMARTFORCE, THEN THAT SIGNED HARDCOPY AGREEMENT GOVERNS SUBSCRIBER'S USE OF THE SMARTFORCE SERVICE.

**1. DEFINITIONS.** As used in this Agreement:

**1.1** “**Access Protocols**” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber or any Authorized Users to access the SmartForce Service.

**1.2** “**SmartForce<sup>®</sup> Service**” means the agency management system delivered by SmartForce to Subscriber using the SmartForce System.

**1.3** “**SmartForce System**” means the technology, including software, used by SmartForce to deliver the SmartForce Service to Subscriber.

**1.4** “**Authorized User**” means Subscriber’s employees, representatives, consultants, contractors or agents who are authorized to use the SmartForce Service on behalf of Subscriber and have been supplied user identifications and passwords for this purpose.

**1.5** “**Documentation**” means the technical materials provided or made available by SmartForce to Subscriber that describe the features, functionality or operation of the SmartForce System.

**1.6** “**Error**” means a reproducible failure of the SmartForce Service to substantially conform to the Documentation.

**1.7** “**Error Corrections**” means bug fixes or workarounds intended to correct Errors in the SmartForce Service.

**1.8** “**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

**1.9** “**Order Form**” means an order form, executed by both parties, that sets forth the Services ordered, the applicable term thereof, and the schedule of payments for the provision of the SmartForce Service and/or performance of the Services, and any unique additional terms.

**1.10** “**Services**” means any services provided by SmartForce to Subscriber under this Agreement as set forth in an Order Form, including, but not limited to, provision of the SmartForce Service and Professional Services (as defined below).

**1.11** “**Subscriber Content**” means any content provided, imported or uploaded to, or otherwise used by Subscriber or on Subscriber’s behalf with the SmartForce Service or developed by or on behalf of Subscriber and used with the SmartForce Service.

**2. PROVISION OF SERVICES**

**2.1** **Orders.** Subscriber may request that SmartForce provide the Services as specified in an Order Form. SmartForce will provide the Services in accordance with the applicable Order Form.

**2.2** **License Grant.** Subject to the terms and conditions of this Agreement, SmartForce grants to Subscriber a non-exclusive, non-transferable, non-sublicensable license to, during the Term (as defined below), solely for Subscriber’s internal business purposes and in accordance with the Documentation and the limitations set forth in Section 4.2 and the applicable Order Form, (a) access and use the SmartForce Service; (b) internally use and reproduce the Documentation; and (c) grant Authorized Users the right to access and use the SmartForce Service.

**2.3** **Access.** Subject to Subscriber’s payment of the fees set forth in the applicable Order Form (“**Fees**”), and subject to any restriction set forth therein (e.g., a limit on the number of Authorized Users) SmartForce will provide Subscriber with access to the SmartForce Service during Term. SmartForce will provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the SmartForce Service in accordance with the Access Protocols. Subscriber will use commercially reasonable efforts to prevent unauthorized access to, or use of, the SmartForce Service, and notify SmartForce promptly of any such unauthorized use known to Subscriber.

**2.4** **Authorized Users.** Subscriber may permit any Authorized Users to access and use the features and functions of the SmartForce Service as contemplated by this Agreement. Each Authorized User will be assigned a unique user identification name and password (“**User ID**”) for access to and use of the SmartForce Service. User IDs cannot be shared or used by more than one Authorized User at a time.

**2.5** **Restrictions.** Subscriber will not, and will not permit any Authorized User or other party to: (a) use the SmartForce Service to harvest, collect, gather or assemble information or data regarding other SmartForce subscribers without their consent; (b) access or copy any data or information of other SmartForce subscribers without their consent; (c) knowingly interfere with or disrupt the integrity or performance of the SmartForce Service or the data contained therein; (d) harass or interfere with another SmartForce subscriber’s use and enjoyment of the SmartForce Service; (e) reverse engineer, disassemble or decompile any component of the SmartForce System; (f) interfere in any manner with the operation of the SmartForce Service, or the SmartForce System or the hardware and network used to operate the SmartForce Service; (g) sublicense any of Subscriber’s rights under this Agreement, or otherwise use the SmartForce Service for the benefit of a third party or to operate a service bureau; (h) modify, copy or make derivative works based on any part of the SmartForce Service; (i) access or use the SmartForce Service or Services to build a similar or competitive product or service or attempt to access the SmartForce Service through any unapproved interface; or (k) otherwise use the SmartForce Service in any manner that exceeds the scope of use permitted under Section 2.2 or in a manner inconsistent with applicable law, the

Documentation, or this Agreement. Subscriber acknowledges and agrees that the SmartForce Service will not be used, and are not licensed for use, in connection with any of Subscriber's time-critical or mission-critical functions.

**2.6 Availability of Subscriber Content.** Subscriber will make available all Subscriber Content necessary or desired for SmartForce to provide the Services or make available the SmartForce Service. Subscriber will obtain all third-party licenses, consents and permissions needed for SmartForce to use the Subscriber Content to provide the Services or make available the SmartForce Service.

**2.7 Support.** During the Term, support provided to Subscriber shall comprise the following:

- (a) **Help Desk.** Authorized Users may send requests via SmartForce' help desk.
- (b) **Error Corrections.** SmartForce will use commercially reasonable efforts to correct all Errors reported by Subscriber in writing to SmartForce. SmartForce may not issue Error Corrections for all Errors.
- (c) **Improvements.** SmartForce may, in its sole discretion, provide Subscriber with updates, upgrades, enhancements, and any other improvements that SmartForce then generally offers to other subscribers to the SmartForce Service.
- (d) **Security.** SmartForce will use commercially reasonable efforts to maintain the security of the SmartForce Service.

### 3. OWNERSHIP

**3.1 SmartForce Technology.** Subscriber acknowledges that SmartForce retains all right, title and interest in and to the SmartForce System, SmartForce Service and Documentation and all software and all SmartForce proprietary information and technology used by SmartForce or provided to Subscriber in connection with the SmartForce Service (the "**SmartForce Technology**"), and that the SmartForce Technology is protected by Intellectual Property Rights owned by or licensed to SmartForce. Other than as expressly set forth in this Agreement, no license or other rights in the SmartForce Technology are granted to Subscriber.

**3.2 Feedback.** Subscriber hereby grants to SmartForce a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the SmartForce Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber, including Authorized Users, relating to the SmartForce Service. SmartForce will not identify Subscriber as the source of any such feedback.

**3.3 Subscriber Content.** As between Subscriber and SmartForce, Subscriber will at all times remain the exclusive owner of such Subscriber Content. Subscriber hereby grants to SmartForce a non-exclusive, worldwide, royalty-free and fully paid license (a) to use the Subscriber Content as necessary to provide the SmartForce Service to Subscriber and (b) to use aggregated and anonymized Subscriber Content (i) to improve the SmartForce Service and SmartForce's related product and service offerings; (ii) to create new products and services relating to the SmartForce Service (including analytics services such as providing benchmarking); and (iii) to generate and disclose statistics regarding use of the SmartForce Service, provided, however, that no Subscriber-only statistics will be disclosed to third parties without Subscriber's consent. Except as expressly specified in this Agreement, Subscriber's provision of or SmartForce's collection of the Subscriber Content hereunder does not transfer to SmartForce or any third party any rights in or ownership thereof.

**3.4 Third Party Software.** The SmartForce Service may utilize, contain or otherwise use certain third-party software (collectively, the "**Third Party Software**"). Third Party Software may be subject to additional licensing terms, which SmartForce may deliver or make available from time to time to Subscriber, which are incorporated herein by reference, and which supersede any contradictory terms in this Agreement.

**4. PROFESSIONAL SERVICES.** Where the parties have agreed to SmartForce's provision of integration, design, development, operational and other professional services ("**Professional Services**"), they will enter into a mutually executed statement of work ("**SOW**") governing the provision of the initially required Professional Services. The SOW will incorporate the terms and conditions of this Agreement. To the extent that a conflict arises between the terms and conditions of the SOW and the terms of this Agreement, the terms and conditions of this Agreement will govern. The SOW will include: (i) a description of the Professional Services; (ii) the schedule for the performance of the Professional Services; (iii) the ownership rights with respect to the work product resulting from the performance of the Professional Services (and if no such provision is provided, all ownership rights are and shall be vested in SmartForce immediately); and (iv) SmartForce's then-current rates for the performance of the Professional Services.

### 5. FEES AND EXPENSES; PAYMENTS

**5.1 Fees.** In consideration for the access rights granted to Subscriber and the services performed by SmartForce under this Agreement, Subscriber will pay to SmartForce the Fees. Except as otherwise provided in the applicable Order Form, all fees are invoiced annually in advance. Subscriber shall pay such fees within thirty (30) days of receipt of an invoice. SmartForce shall be entitled to withhold performance and discontinue service until all amounts due are paid in full. SmartForce may increase its fees annually upon written notice to Subscriber at least forty-five (45) days prior to expiration of the then-current term. Subscriber will maintain complete, accurate and up-to-date Subscriber billing and contact information at all times. Interest will accrue on late payments at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

**5.2 Taxes.** All Fees invoiced under this Agreement are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Subscriber will be responsible



for payment of all such taxes (other than taxes based on SmartForce's income), fees, duties, and charges and any related penalties and interest, arising from the payment of the Fees, the delivery of the Services, or the license of the SmartForce Service to Subscriber. Subscriber will make all payments of Fees to SmartForce free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to SmartForce will be Subscriber's sole responsibility, and Subscriber will provide SmartForce with official receipts issued by the appropriate taxing authority, or such other evidence as the SmartForce may reasonably request, to establish that such taxes have been paid.

**5.3 Audit.** During the term of this Agreement and for a period of three (3) years thereafter, SmartForce shall have the right to review Subscriber's relevant records and inspect Subscriber's facilities to ensure compliance with this Agreement. SmartForce will give Subscriber at least ten (10) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Subscriber's normal operations. If any such audit should disclose any underpayment of fees, Subscriber will promptly pay SmartForce such underpaid amount, together with interest thereon at the rate specified in this Section. If the amount of such underpayment exceeds five percent (5%) of fees actually paid during the audited period, Subscriber will also pay SmartForce for SmartForce's expenses associated with such audit.

## **6. SUBSCRIBER CONTENT AND RESPONSIBILITIES**

**6.1 Subscriber Warranty.** Subscriber represents and warrants that any Subscriber Content hosted by SmartForce as part of the SmartForce Service shall not (a) infringe, misappropriate or violate any Intellectual Property Rights, publicity/privacy rights, law or regulation; (b) be deceptive, defamatory, obscene, pornographic or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (d) otherwise violate the rights of a third party. SmartForce is not obligated to back up any Subscriber Content; the Subscriber is solely responsible for creating backup copies of any Subscriber Content at Subscriber's sole cost and expense. Subscriber agrees that any use of the SmartForce Service contrary to or in violation of the representations and warranties of Subscriber in this section constitutes unauthorized and improper use of the SmartForce Service.

**6.2 Subscriber Responsibility for Data and Security.** Subscriber and its Authorized Users shall have access to the Subscriber Content and shall be responsible for all changes to and/or deletions of Subscriber Content and the security of all User IDs and other Access Protocols required in order to access the SmartForce Service. Subscriber shall have the ability to export Subscriber Content out of the SmartForce Service and is encouraged to make its own back-ups of the Subscriber Content. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content.

## **7. WARRANTY AND DISCLAIMER**

**7.1 Limited Warranty.** SmartForce warrants to Subscriber that, when used as permitted by SmartForce and in accordance with the Documentation, the SmartForce Service will operate free from Errors during the Term. Provided that Subscriber notifies SmartForce in writing of any breach of the foregoing warranty during the Term, SmartForce shall, as its sole obligation and Subscriber's sole and exclusive remedy, provide the support set forth Section 2.7 of this Agreement.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SMARTFORCE SERVICE, SMARTFORCE SYSTEM AND DOCUMENTATION ARE PROVIDED AS IS, "AS AVAILABLE," AND WITH ALL FAULTS, AND SMARTFORCE AND ITS AFFILIATES, SUPPLIERS, AND LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, RELATING TO THE SMARTFORCE SERVICE, SMARTFORCE SYSTEM AND DOCUMENTATION WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. SMARTFORCE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SMARTFORCE SERVICE AND THE SMARTFORCE SYSTEM SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

## **8. LIMITATION OF LIABILITY**

**8.1 Types of Damages.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER SMARTFORCE NOR ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO SUBSCRIBER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SMARTFORCE SERVICE, THE SMARTFORCE SYSTEM OR THE SERVICES, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SMARTFORCE HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.

**8.2 Amount of Damages.** THE MAXIMUM LIABILITY OF SMARTFORCE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY SUBSCRIBER TO SMARTFORCE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING

RISE TO SUCH LIABILITY. IN NO EVENT SHALL SMARTFORCE'S SUPPLIERS OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE SMARTFORCE'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SMARTFORCE OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.

**8.3 Basis of the Bargain.** The parties agree that the limitations of liability set forth in this Section 8 shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

## 9. CONFIDENTIALITY

**9.1 Confidential Information.** During the term of this Agreement, each party (the "**Disclosing Party**") may provide the other party (the "**Receiving Party**") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, "**Confidential Information**"). The Disclosing Party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or with a similar legend, and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, the SmartForce Service, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of SmartForce.

**9.2 Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Authorized Users (with respect to Subscriber) or to those employees or agents who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to SmartForce). In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall, upon the Disclosing Party's request, provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

**9.3 Exceptions.** The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by applicable law, including Open Records, Public Information Acts and Freedom of Information laws, or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

## 10. INDEMNIFICATION

**10.1 By SmartForce.** SmartForce will defend at its expense any suit brought against Subscriber, and will pay any settlement SmartForce makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the SmartForce Service misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any copyright or United States patent issued as of the Effective Date. If any portion of the SmartForce Service becomes, or in SmartForce's opinion is likely to become, the subject of a claim of infringement, SmartForce may, at SmartForce's option: (a) procure for Subscriber the right to continue using the SmartForce System; (b) replace the SmartForce Services with non-infringing software or services which do not materially impair the functionality of the SmartForce Services; (c) modify the SmartForce Services so that it becomes non-infringing; or (d) terminate this Agreement and refund any Fees actually paid by Subscriber to SmartForce for the remainder of the Term then in effect, and upon such termination, Subscriber will immediately cease all use of the SmartForce Services. Notwithstanding the foregoing, SmartForce shall have no obligation under this section or otherwise with respect to any infringement claim based upon (e) any use of the SmartForce Service not in accordance with this Agreement or as specified in the Documentation; (f) any use of the SmartForce Service in combination with other products, equipment, software or data not supplied by SmartForce; or (g) any modification of the SmartForce by any person other than SmartForce or its authorized agents. This Section 10.1 states the sole and exclusive remedy of Subscriber and the entire liability of SmartForce, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

**10.2 Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit;

(b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

## 11. TERM AND TERMINATION

**11.1 Term.** This Agreement commences on the date Subscriber accepts this Agreement and will continue until terminated in accordance with the terms herein (the “**Term**”). In the event Subscriber does not receive annual appropriation of funding from the relevant governmental entity(ies) as necessary to pay the applicable fees hereunder, Subscriber may terminate this Agreement upon thirty (30) days prior written notice; *provided, that*, Subscriber will provide SmartForce with any documentation reasonably requested by SmartForce to evidence the lack of appropriate funding. Any such termination shall become effective on the next anniversary of the Effective Date.

**11.2 Termination.** Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

**11.3 Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, including all licenses granted hereunder, shall immediately terminate; (b) within ten (10) days after the effective date of termination, each party shall comply with the obligations to return all Confidential Information of the other party, as set forth in the Section 9.2; and (c) for one hundred twenty (120) days following after the effective date of termination, SmartForce will make available the Subscriber Content for export by Subscriber, after which time SmartForce shall discontinue all use of Subscriber Content and destroy all copies of Subscriber Content in its possession. The Sections titled *Definitions, Restrictions, Ownership, Fees and Expenses; Payment, Warranty and Disclaimers, Limitation of Liability, Confidentiality, Indemnification, Effect of Termination, and Miscellaneous* will survive expiration or termination of this Agreement for any reason.

## 12. MISCELLANEOUS

**12.1 Governing Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**12.2 Compliance with Laws.** Subscriber shall at all times comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services hereunder, including, but not limited to those relating to open records requests.

**12.3 Export.** Subscriber agrees not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from SmartForce, or any products utilizing such data, in violation of the United States export laws or regulations.

**12.4 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**12.5 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.6 Remedies.** Except as provided in Section 10, the parties’ rights and remedies under this Agreement are cumulative. Subscriber acknowledges that the Services and Documentation contain valuable trade secrets and proprietary information of SmartForce, that any actual or threatened breach by Subscriber of its obligations with respect to Intellectual Property Rights of SmartForce will constitute immediate, irreparable harm to SmartForce for which monetary damages would be an inadequate remedy. In such case, SmartForce will be entitled to immediate injunctive relief without the requirement of posting bond, including an order that any Services, Documentation, or any portions thereof, that Subscriber attempts to import into any country or territory be seized, impounded and destroyed by customs officials. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys’ fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**12.7 No Assignment.** Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

**12.8 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

**12.9 Independent Contractors.** Subscriber’s relationship to SmartForce is that of an independent contractor, and neither party is an agent or partner of the other. Subscriber will not have and will not represent to any third party that it has, any authority to act on behalf of SmartForce.

**12.10 Notices.** Each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed on the Order Form by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

**12.11 Entire Agreement.** This Agreement, together with the applicable Order Form, is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters. Any preprinted terms included in any purchase order that are different from or are in addition to the terms of this Agreement shall be void and of no force or effect. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Subscriber and SmartForce. In the event of any conflict between the provisions in this Agreement and any Order Form, the terms of the Order Form will prevail, but only with respect to the Services to be performed under such Order Form (with the most recent prevailing over a previously executed Order Form).



## POLICE DEPARTMENT

**To: Mayor and Town Council**

**From: Doug Kowalski, Chief of Police**

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

**Re: Consulting Services Agreement**

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Consider and act upon approving a Consulting Services Agreement by and between Santos & Santos Ph.D., Inc., and the Town of Prosper for the implementation of a stratified policing model; and authorizing the Interim Town Manager to execute documents for the same.

**Description of Agenda Item:**

Approved in the Town's FY 2022-2023 Budget, attached is the Consulting Services Agreement from Santos & Santos Ph.D., Inc. for implementation of stratified policing through professional consulting. The term of the Agreement is from December 1, 2022 through September 30, 2023.

**Budget Impact:**

\$53,000 - FY23 budget Police Operations' account #100-5410-20-01 Professional Services.

**Legal Obligations and Review:**

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

**Attached Documents:**

1. Consulting Services Agreement
2. Schedule of Charges

**Town Staff Recommendation:**

Town staff recommends the approval of a Consulting Services Agreement by and between Santos & Santos Ph.D., Inc., and the Town of Prosper for the implementation of a stratified policing model; and authorizing the Interim Town Manager to execute documents for the same.

**Proposed Motion:**

I move to approve a Consulting Services Agreement by and between Santos & Santos Ph.D., Inc., and the Town of Prosper for the implementation of a stratified policing model; and authorizing the Interim Town Manager to execute documents for the same.

## CONSULTING SERVICES AGREEMENT

**THIS CONSULTING SERVICES AGREEMENT** (“Agreement”) is made this first day of December, 2022, by and between the Town of Prosper, Texas, a Texas home-rule municipality (“Town”), and Santos & Santos Ph.D., Inc., a Florida corporation (“Consultant”). The Town and Consultant may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

### RECITALS

A. The Town is desirous of contracting with Consultant for implementation of stratified policing in order to better meet service level expectations and goals of the Town of Prosper and the Prosper Police Department through implementation of a policing model which focuses on effective and sustainable crime prevention and reduction strategies that are stratified through all ranks and divisions of the Department.

B. Consultant provides these services to the public; Consultant is the sole source available; and Consultant desires to provide these services to the Town.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the terms, conditions and covenants included in this Agreement, the Parties agree as follows:

1. Term. Consultant shall provide the below described services to the Town from December 1, 2022, to September 30, 2023, inclusive (“Term”).
2. Services. Consultant shall undertake the duties and responsibilities and provide the services described in **Exhibit A**, Scope of Services, attached hereto and made a part hereof (“Services”). Exhibit A also includes the schedule for the Services. The Parties shall each designate a project manager for the Services and, as a general matter, the Parties shall communicate about the Services only through these designated project managers. Consultant shall provide all materials, labor and equipment necessary to perform the Services.
3. Payment; Rates and Invoices. The Town agrees to pay Consultant for the Services at the rates included in **Exhibit B**, Schedule of Charges, attached hereto and made a part hereof. Consultant shall bill the Town of Prosper by email to AP@prospertx.gov. The invoice shall include the following: date, invoice number, and fee amount. The Town shall pay the invoice within thirty (30) days following the Town’s receipt of Consultant’s invoice; however, payment shall be subject to verification as to the cost of materials used and the time spent in performance of the Services. The Town shall not be liable for payment for the Services or materials that do not conform to the requirements of this Agreement.
4. Qualifications on Obligations to Pay. No partial payment shall be final acceptance or approval of that part of the Services paid for or shall relieve Consultant of any of its obligations under this Agreement. Notwithstanding any other terms of this Agreement, the Town may withhold any payment (whether a progress payment or final payment) to Consultant if any one or more of the following conditions exists:

- a. Default. Consultant is in default of any of its obligations under this Agreement;
  - b. Non-Performance. Any part of such payment is attributable to the Services which are not performed according to this Agreement. (The Town will pay for any part thereof attributable to the Services performed according to this Agreement);
  - c. Failure to Pay. Consultant has failed to make payments promptly to any third parties used in the Services for which the Town has made payment to Consultant; or
  - d. Remaining Compensation. The Town, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services or any task according to this Agreement. In such case, no additional payments will be due to Consultant until Consultant, at its sole cost, performs a sufficient portion of the Services so that the Town determines that the compensation then remaining unpaid is sufficient to complete the Services.
5. Defective Services.
- a. Notice. The Town reserves the right to decide all questions arising as to the proper performance of the Services and as to the quality of the materials used. In the event that the Town shall determine that the Services are not being performed in accordance with the terms of this Agreement, or, if the Services be wholly, or in part, negligently, or improperly performed, then the Town shall provide written notice of such defect or defects to Consultant.
  - b. Default Not Remedied. In the event that such defect or defects are not remedied within a reasonable time from the date notice is given, the Town may, at its option, declare Consultant to be in default, either as to the particular Services declared to be defective or as to this entire Agreement. In the event that a default is declared as to particular Services, it is agreed and understood that such declaration of default shall not in any way relieve Consultant from any liability for non-performance of the remaining Services, but the same shall be and remain valid and binding obligations against Consultant. As to the Services *not* declared to be in default, Consultant agrees to complete the same under the terms of this Agreement. If the Town declares Consultant to be in default only as to the particular Services, then the costs incurred by the Town in consequence of such default may be applied in payment of any money due and owing to Consultant and the Town may re-let such portion of the Services. If there shall not be a sufficient sum due from the Town, then in such case, the costs incurred by the Town in consequence of the default shall be a just claim against Consultant and shall be recoverable in any court of competent jurisdiction.

6. Consultant's Duties.

- a. Abilities, Qualifications, Experience, and Best Efforts. Consultant shall perform the Services in a timely and professional manner consistent with the requirements set forth in the Scope of Work and in accordance with industry best practices. Consultant agrees to utilize its expertise and creative talents in timely completing the Services.
- b. No Conflicts. Consultant represents, covenants, and agrees that it has and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent it from the timely completion of the Services, loyally and strictly according to the best interests of the Town. In case of any conflict between the interests of the Town and any other entity, Consultant shall fully and immediately disclose the issue to the Town and shall take no action contrary to the Town's interests.
- c. Attendance at Meetings. Consultant shall attend such meetings on the work required by this Agreement as the Town requires. The Town will give reasonable notice of any such requirement to enable Consultant to schedule and attend such meetings.
- d. Efficiency. Consultant agrees to furnish efficient business administration and superintendence and perform the Services in the best, most expeditious, and most economical manner consistent with the interests of the Town.
- e. Books and Records. Consultant shall keep its books and records for the Services and reimbursable expenses according to recognized accounting principles and practices, consistently applied. Upon reasonable, advance request, Consultant shall make such books and records available for the Town's inspection and copying at all reasonable times. Consultant shall retain such books and records for at least three (3) years after completion of the Services.
- f. Permits and Licenses. Consultant shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of its Services under this Agreement.
- g. Payment of Bills. Consultant shall promptly pay all bills for labor and material performed and furnished by others in performance of the Services.

7. Confidential Information. Consultant may receive or have access to confidential data or information from the Town and/or confidential information that the Town may have access to and from Collin County and/or Denton County. Such confidential data or information, because of applicable law or other obligations with third parties, may be: (a) required to be kept confidential; (b) required not to be disclosed; or (c) not a public record under the Texas Public Information Act ("Confidential Information"). Consultant shall hold and not disclose any Confidential Information to any person not having a legitimate, need-to-know purpose authorized by the Town. Consultant shall protect all Confidential Information with the same degree of care



as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Consultant shall immediately notify the Town in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict Consultant with respect to information or data identical or similar to that contained in the Confidential Information of the Town but which: (i) that party rightfully possessed before it received such information from the Town as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of Consultant; (iii) is subsequently furnished lawfully to Consultant by a third party without restrictions on use or disclosure; or (iv) is required to be disclosed by law, provided that Consultant shall exercise reasonable efforts to notify the Town prior to disclosure.

8. Termination.

- a. Termination for Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days' prior written notice of termination to the defaulting Party.
- b. Return of Property. Upon termination of this Agreement, Consultant shall promptly deliver to the Town all Town data, which includes any data or information of the Town that is provided to or obtained by Consultant in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the Town, as well as any plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of its Services under this Agreement, up to and including the date of termination.

9. Indemnification.

- a. Consultant's Indemnification. Consultant shall indemnify and hold harmless the Town, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable attorneys' fees and costs of defense), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature suffered or incurred by the Town directly or indirectly arising from or related to: (i) any negligent or intentional act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (ii) any material breach in a representation, warranty, covenant or obligation of Consultant contained in this Agreement. Consultant is not obligated to indemnify the Town in any manner whatsoever for the Town's own negligence. Consultant's

obligation to indemnify the Town as set forth in this Agreement shall survive the termination or expiration of this Agreement.

10. Insurance. See Waiver Letter from the Consultant.

11. Notices. Any notice provided pursuant to this Agreement shall be in writing to the Parties at the addresses set forth below and shall be deemed given (i) if by hand delivery, upon receipt thereof; (ii) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested; or (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying overnight priority delivery. Either Party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other Party.

Any notice provided pursuant to this Agreement shall be in writing to the Parties at the following addresses:

If to Consultant:  
 Dr. Roberto Santos and Dr. Rachel Santos  
 Co-Presidents  
 Santos & Santos, Ph.D., Inc.  
 409 Sterling Heights Ln  
 Blacksburg, VA 24060

If to the Town:

Town of Prosper  
 Prosper Police Department  
 ATTN: Doug Kowalski, Chief of Police  
 801 Safety Way  
 Prosper, Texas 75078

12. Force Majeure. No delay, failure, or default will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, epidemics, pandemics, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing Party's reasonable control (collectively, "Force Majeure"). In such event, however, the delayed Party must promptly provide the other Party notice of the Force Majeure. Consultant shall not be excused from liability for delays or non-performance caused by events or conditions within its control nor for delays or non-performance which it could have foreseen and avoided, prevented or significantly ameliorated by exercising reasonable prudence or diligence, nor for any delays or non-performance caused in whole or in part by Consultant itself.

13. Laws to Be Observed. Consultant shall be subject to all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed to perform the Services or otherwise conduct the Services, and shall be subject to all orders and decrees of bodies or tribunals having any jurisdiction over the Services and shall, at all times, observe and comply with all such existing laws, ordinances, regulations, and decrees, and shall indemnify and hold harmless the Town against any claim or liability to the extent caused by the intentional or

negligent violation of any such law ordinance, regulation, order, or decree, whether by itself or by its Subcontractors, agents, or employees.

14. Independent Contractor. The relationship between Consultant and the Town is that of an independent contractor. Consultant shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. Consultant shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venture of the Town. No employee or officer of the Town shall supervise Consultant. **Consultant is not entitled to Workers' Compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Agreement.**

15. No Assignment. Consultant shall not assign this Agreement without the express written consent of the Town, which the Town may withhold at its sole discretion.

16. Complete Agreement. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing.

17. Amendment in Writing. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties. Neither the course of conduct between the Parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

18. Headings; Recitals; Exhibits. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth at the beginning of this Agreement, as well as the exhibits referred to throughout this Agreement and any Scope of Services, are incorporated into this Agreement.

19. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

20. Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement shall not affect in any way the full right to require such performance at any subsequent time nor shall the waiver by either Party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

21. No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Town and Consultant that any such party or entity, other than the Town or Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

22. No Requirements Contract. Nothing in this Agreement shall be construed as a requirement contract and, notwithstanding anything to the contrary contained herein, this Agreement shall not be interpreted to prevent the Town from obtaining from third parties, or

providing to itself, any or all of the Services described herein; the Town shall be free to obtain said Services from other sources without incurring liability or damages to Consultant.

23. Applicable Law; Jurisdiction; Venue. This Agreement shall be construed in accordance with the laws of the State of Texas. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state court situated in Collin County or appropriate federal court for Collin County and each Party consents to jurisdiction and venue before such courts.

24. No Arbitration. No dispute between the Parties shall be resolved by binding arbitration before any extra-judicial body or person. Any provision to the contrary shall be null and void. In the event of any dispute between the Parties, the Parties agree to non-binding mediation.

25. Survival. Any and all provisions of this Agreement that, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement.

26. Authority. Consultant warrants that the individual executing this Agreement is properly authorized to bind Consultant to this Agreement.

**[SIGNATURE PAGE FOLLOWS]**

The Parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute a fully binding and executed Agreement.

**CONSULTANT**

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

Dr. Roberto Santos  
Co-President

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

Dr. Rachel Santos  
Co-President

**TOWN OF PROSPER, TEXAS**

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

Name: Ron K. Patterson  
Interim Town Manager

**ATTEST:**

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

# STRATIFIED POLICING

## Organizational Implementation Partnership

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**Submitted to:** Chief Doug Kowalski  
Prosper, TX Police Department

**Submitted by:** Dr. Roberto Santos and Dr. Rachel Santos  
Co-Presidents, Santos & Santos, Ph.D., Inc.

**Date:** October 27, 2022

**RE:** Schedule of Charges (Exhibit B)

The following is the cost breakdown for the work described in Exhibit A in the contract.

\$13,500:	Organizational assessment of crime reduction practices/procedures/recommendations report with a road map for implementation
\$7,500:	One 1-day session of crime analysis training
\$7,500:	One 1-day session of command-level training
\$15,000:	Four ½-day sessions (delivered in two days to accommodate shiftwork) of line-level/supervisor training
\$9,500:	Six Months of ongoing assistance after training delivery
\$53,000:	Total

These costs include all travel, preparation, and communication needed to carry out this work. The assessment and the crime analysis training would be delivered virtually. Training of sworn personnel would be conducted onsite in person in one trip.

The assessment and crime analysis training would be conducted in the first several months. This would be followed by three days of in person training of all sworn personnel which will be done at least one month after the crime analysis training to allow them to work with Dr. Rachel Santos and prepare crime analysis products using agency data.

The specific timeline of the carrying out the work will depend on the agency's needs the consultants availability. However, we anticipate the assessment work and scheduling the training to begin as soon as the contract is signed.



## Administrative Services

**To: Mayor and Town Council**

**From: Robert Scott, Executive Director of Administrative Services**

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

**Re: Valley View Consulting Service Agreement Renewal**

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Consider authorizing the Interim Town Manager to execute a one-year renewal of the Professional Services Agreement between Valley View Consulting, L.L.C., and the Town of Prosper, Texas, related to Investment Advisory services.

**Description of Agenda Item:**

The Town issued a Request for Proposal (RFP) for Investment Advisory Services in 2020 ultimately awarding the contract to Valley View Consulting, LLC for a one-year term with up to four additional one-year renewals. The Public Funds Investment Act requires the governing board to approve investment advisors every two years.

In November 2021, after determination of satisfactory performance, the Town renewed for an additional year. Staff is recommending Council approve renewal for one more year with authorization of additional personnel and the growth of the portfolio. Staff has a goal of taking investment management in-house. The speed at which this can be accomplished will be dependent on filling of positions and overall workload including implementation of a new ERP during the year. If Town staff is entirely self-sufficient prior to the end of the one-year renewal, the contract contains a provision of 30 days' notice. The Town's staff will still have full control over all investment purchases and investment decisions.

**Budget Impact:**

The annual fee is projected to be approximately \$57,100, but the actual cost is dependent on the Town's total investment portfolio assets. These costs will be allocated to each Town Fund based on their annual interest earnings.

**Legal Obligations and Review:**

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

**Attached Documents:**

1. Proposed Professional Services Agreement

**Town Staff Recommendation:**

Town staff recommends that the Town Council authorize the Town Manager to execute a one-year renewal of the Professional Services Agreement between Valley View Consulting, L.L.C., and the Town of Prosper, Texas, related to Investment Advisory services.

**Proposed Motion:**

I move to authorize the Town Manager to execute a one-year renewal of the Professional Services Agreement between Valley View Consulting, L.L.C., and the Town of Prosper, Texas, related to Investment Advisory services.



**AGREEMENT  
BY AND BETWEEN  
THE TOWN OR PROSPER, TEXAS  
AND  
VALLEY VIEW CONSULTING, L.L.C.**

It is understood and agreed that the Town or Prosper (the *Investor*) will have money available for investment (the *Investable Funds*) and Valley View Consulting, L.L.C. (the *Advisor*) has been requested to provide professional services to the Investor with respect to the Investable Funds. This agreement (the *Agreement*) constitutes the understanding of the parties with regard to the subject matter hereof.

1. This Agreement shall apply to any and all Investable Funds of the Investor from time to time during the period in which this Agreement shall be effective.
2. The Advisor agrees to provide its professional services to direct and coordinate all programs of investing as may be considered and authorized by the Investor.
3. The Advisor agrees to perform the following duties, as requested:
  - a. Assist the Investor in developing cash flow projections,
  - b. Suggest appropriate investment strategies to achieve the Investor's objectives,
  - c. Advise the Investor on market conditions, general information and economic data,
  - d. Analyze risk/return relationships between various investment alternatives,
  - e. Attend occasional meetings as requested by the Investor,
  - f. Assist in the selection, purchase, and sale of investments. The Advisor shall not have discretionary investment authority over the Investable Funds and the Investor shall make all decisions regarding purchase and sale of investments. The eligible investments are listed in the Investor's Investment Policy,
  - g. Advise on the investment of bond funds as to provide the best possible rate of return to the Investor in a manner which is consistent with the proceedings of the Investor authorizing the investment of the bond funds or applicable federal rules and regulations,
  - h. Assist the Investor in creating investment reports in compliance with State legislation and the Investor's Investment Policy,
  - i. Assist the Investor in creating monthly portfolio accounting reports, and
  - j. Assist the Investor in selecting a primary depository services financial institution.

4. The Investor agrees to:

- a. Compensate the Advisor for any and all services rendered and expenses incurred as set forth in Appendix A attached hereto,
- b. Provide the Advisor with the schedule of estimated cash flow requirements related to the Investable Funds, and will promptly notify the Advisor as to any changes in such estimated cash flow projections,
- c. Allow the Advisor to rely upon all information regarding schedules, investment policies and strategies, restrictions, or other information regarding the Investable Funds as provided to it by the Investor and that the Advisor shall have no responsibility to verify, through audit or investigation, the accuracy or completeness of such information,
- d. Recognize that there is no assurance that recommended investments will be available or that such will be able to be purchased or sold at the price recommended by the Advisor, and
- e. Not require the Advisor to place any order on behalf of the Investor that is inconsistent with any recommendation given by the Advisor or the policies and regulations pertaining to the Investor.

5. In providing the investment services in this Agreement, it is agreed that the Advisor shall have no liability or responsibility for any loss or penalty resulting from any investment made or not made in accordance with the provisions of this Agreement, except that the Advisor shall be liable for its own gross negligence or willful misconduct; nor shall the Advisor be responsible for any loss incurred by reason of any act or omission of any broker, selected with reasonable care by the Advisor and approved by the Investor, or of the Investor's custodian. Furthermore, the Advisor shall not be liable for any investment made which causes the interest on the Investor's obligations to become included in the gross income of the owners thereof.

6. The fee due to the Advisor in providing services pursuant to this Agreement shall be calculated in accordance with Appendix A attached hereto, and shall become due and payable as specified. Any and all expenses for which the Advisor is entitled to reimbursement in accordance with Appendix A attached hereto shall become due and payable at the end of each calendar quarter in which such expenses are incurred.

7. This Agreement shall expire November 30, 2023, with the option of the Investor to extend the Agreement for up to two additional one-year terms. Provided, however, the Investor or Advisor may terminate this Agreement upon thirty (30) days written notice to the other party. In the event of such termination, it is understood and agreed that only the amounts due to the Advisor for services provided and expenses incurred to and including the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement. In the event this Agreement is terminated, all investments and/or funds held by the Advisor shall be returned to the Investor as soon as practicable. In addition, the parties hereto agree that upon termination of this Agreement the Advisor shall have no continuing obligation to the Investor regarding the investment of funds or performing any other services contemplated herein.

8. The Advisor reserves the right to offer and perform these and other services for various other clients. The Investor agrees that the Advisor may give advice and take action with respect to any of its other clients, which may differ from advice given to the Investor. The Investor agrees to coordinate with and avoid undue demands upon the Advisor to prevent conflicts with the performance of the Advisor towards its other clients.

9. The Advisor shall not assign this Agreement without the express written consent of the Investor.

10. By initialing the appropriate line, Investor acknowledges that:

- 1) \_\_\_\_\_ Investor was provided a written copy of Form ADV Part 2 not less than 48 hours prior to entering into this written contract, or
- 2) \_\_\_\_\_ Investor received a written copy of Form ADV Part 2 at the time of entering into this contract and has the right to terminate this contract without penalty within five business days after entering into this contract.
- 3)  X  Investor is renewing an expiring contract and has received in the past, and offered annually, a written copy of Form ADV Part 2.

When accepted by the Investor, it, together with Appendix A attached hereto, will constitute the entire Agreement between the Investor and Advisor for the purposes and the consideration herein specified.

Respectfully submitted,



Richard G. Long, Jr.  
Manager, Valley View Consulting, L.L.C.

This agreement is hereby agreed to and executed on behalf of the Town or Prosper, Texas.

By \_\_\_\_\_

Town or Prosper

Date: \_\_\_\_\_

## APPENDIX A

## FEE SCHEDULE AND EXPENSE ITEMS

In consideration for the services rendered by Advisor in connection with the investment of the Investable Funds for the Investor, it is understood and agreed that its fee will be a tiered annual fee equal to:

<b><u>Average Quarter End Book Value</u></b>	<b><u>Annual Fee</u></b>
First \$85 million	0.036% (3.6 basis points)
Next \$65 million (above \$85 million up to \$150 million)	0.030% (3 basis points)
Balances over \$150 million	0.020% (2 basis points)

In the event a flexible repurchase agreement or other similar investment option is utilized, the Advisor shall receive a normal and customary fee within the guidelines of the Internal Revenue Service, in lieu of the Agreement Fee.

Said fee includes all costs of services related to this Agreement, and all travel and business expenses related to attending regularly scheduled occasional meetings. With pre-trip Investor approval, the Advisor may also request reimbursement for special meeting or event travel and business expenses. The obligation of the Advisor to pay expenses shall not include any costs incident to litigation, mandamus action, test case or other similar legal actions.

Any other fees retained by the Advisor shall be disclosed to the Investor.



## Town Manager's Office

**To: Mayor and Town Council**

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

**Through: NA**

**Re: Adoption of Park Plan**

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Consider and act upon approval of Rutherford Park Plan.

**Description of Agenda Item:**

Due to the continued growth of the Town, there is a correlated growth in demand for additional outdoor recreational and educational space. In response to that demand, the Town has partnered with the Prosper Independent School District (PISD) to create a park and educational facility plan that contains the following amenities:

- 3.75 acres of programmable open space dedicated for park and recreation uses
- Athletic fields
- Playground with sunshade
- Trail kiosk & pavilion with seating
- 2.3+ acres of hike and bike trails with park connection
- PISD outdoor environmental learning center for nature and science

The Town has already acquired fee simple ownership of 3.75 acres of parkland and 2.3 acres of trail easements for this facility. The PISD already owned a parcel of land in the same area as the parkland. Additionally, this property is immediately adjacent to a 15-acre pond.

**Budget Impact:**

Not applicable for adoption of the proposed plan.

**Legal Obligations and Review:**

Legal review not applicable for adoption of this plan. Legal was involved in the acquisition of the parkland that was previously approved by the Town Council.

**Attached Documents:**

1. Proposed Rutherford Park Plan

**Town Staff Recommendation:**

Staff recommends approval as submitted.

**Proposed Motion:**

I move to adopt the Rutherford Park Plan as submitted.



## Rutherford Park

The Town of Prosper's Next  
Community Park Experience

## Rutherford Park Plans

In response to growing demand in the Prosper region, the Town of Prosper, in partnership with the Prosper Independent School District, has plans to provide the Town and school district's growing population with a quality park, open space, and a Prosper ISD environmental education and learning center. This new park and education center will provide hike+bike trails, sports field(s), recreational playground, multiuse pavilion, programmable open space, and educational facility to the residents of this community who live and play in this region. The Town of Prosper is committed to providing a park system to complement the town's livability and quality of life. For more information about the Town of Prosper and Prosper ISD, see **Attachment 1**. Our parks and recreation system is a reflection of the community's long-held values and support for parkland, green space, and healthy lifestyles. This system of parks, trails, open spaces, environmental education facilities, and programs is a major contributor to Prosper's growing reputation, and the result of sustained community support, and investment.

## Programmable Open Space, Hike and Bike Trails

The Town acquired fee simple ownership of 3.75 acres of parkland and approximately 2.3 acres of trail easements immediately adjacent to a large 15-acre pond. The Town intends to include the following elements into this new premiere park and educational space as reflected in **Exhibit 1**:

- 3.75 acres of programmable open space dedicated for park and recreation uses
- Athletic fields
- Playground with sunshade
- Trail kiosk & pavilion with seating
- 2.3+ acres of hike and bike trails with park connection

In addition to the current residential development underway, programmable open space amenities within Wandering Creek Park and Ladera Park include hike and bike trail connections to this new Rutherford Park, as reflected in **Exhibit 2**. This will also allow for easy access to residents of these and other communities in the immediate area. This park and educational facility will serve all residents of the Town and Prosper ISD.

## Prosper ISD Outdoor Learning Center

The plan for the Community Park includes a learning center for nature and science on the northwest side of the pond. This will allow for a scenic and educational natural environment for students and residents to learn about environmental education, wildlife, and urban forestry. The center will also provide educational programming and walking trails. This facility will allow students in grades pre-K through 12th grade the opportunity to access a unique educational facility throughout the year that will enhance, and foster students' curiosity about the natural environment. More details can be found on **Exhibits 3-1 and 3-2**.





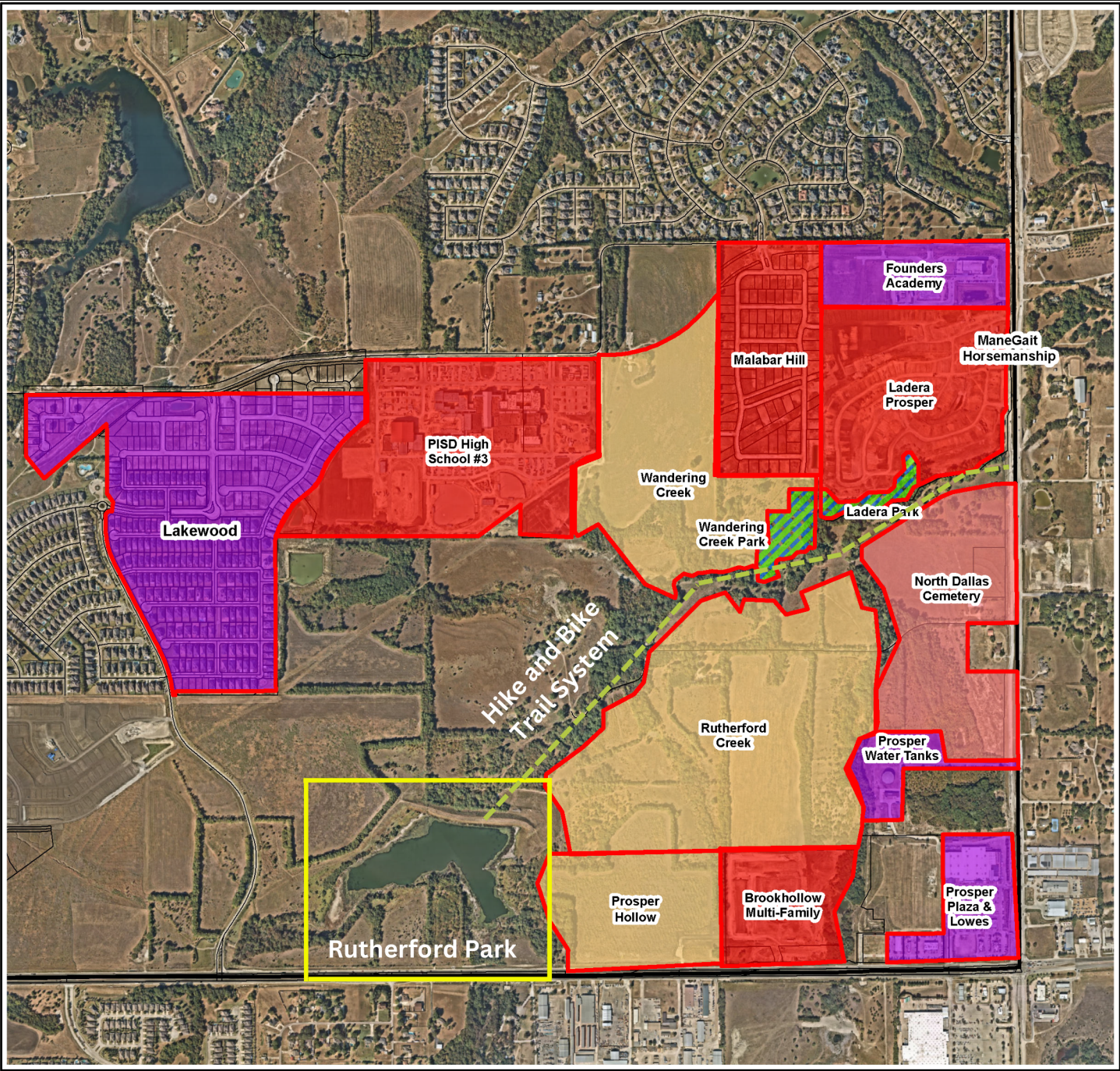
# Rutherford Park Concept Plan - Ex. 1

Item 8.



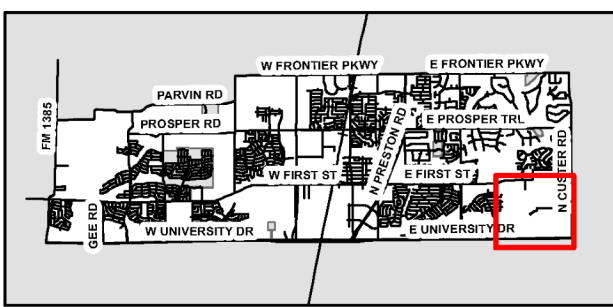
THIS PLAN IS CONCEPTUAL IN NATURE AND SUBJECT TO CHANGE AND MAY NOT NECESSARILY DEPICT THE PROJECT AS IT SHALL FINALLY BE DEVELOPED.

## Prosper Development Map



### Prosper Development

- Zoning - Approved
- Under Review
- Plats - Approved
- Site Plans - Approved
- Construction - Released
- Complete
- Park



This map is for illustration purposes

## PROSPER ISD OUTDOOR LEARNING CENTER

Enrich. Experience. Explore.

Prosper ISD students are excited about the opportunities to explore the world and access experiences that our school walls are unable to provide.

**THE OUTDOOR LEARNING CENTER WILL PROVIDE OPPORTUNITY FOR EACH AND EVERY CHILD.**

A central location makes it easily accessible by bus during school hours, or for families that want to have an after-school outing.

All grade levels are immersed in science content each year including life cycles, ecosystems, rocks and soil, natural resources and more. This facility will support this content being taught in schools, extend learning by providing hands-on investigations.



HIKING TRAILS



IN-DISTRICT  
FIELD TRIPS



DIVERSE  
ECOSYSTEMS



INTERACTIVE  
SCIENCE LESSONS

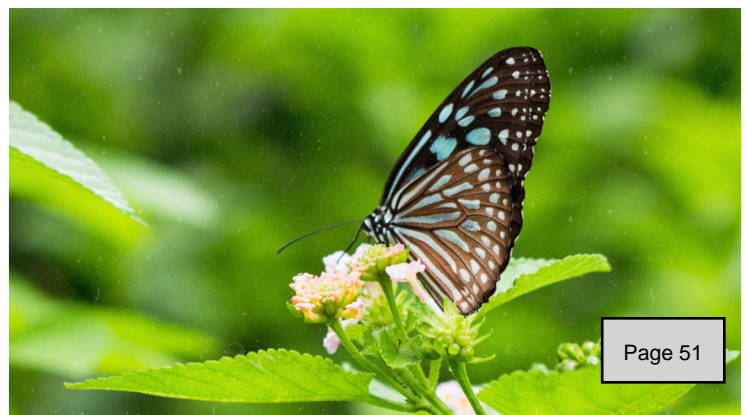


MONARCH  
CONSERVATION  
PROJECT



NATIVE PLANTS  
AND ANIMALS

The center will not only support science education, but will also be used for learning in Mathematics, Reading-Language Arts, Social Studies, CTE, and Fine Arts.



In partnership with



Every member of the Prosper Community may access this beautiful area and find value and enjoyment. By partnering with the town of Prosper, we will create a location that supports both academic and personal growth.



*Grounded by Tradition, Soaring to New Beginnings*  
Prosper Independent School District

## The Prosper ISD Outdoor Learning Center

We are excited to propose the development of the Prosper ISD Outdoor Learning Center located within Prosper on 35 acres north of 380. The Outdoor Learning Center will utilize the natural environment to provide students memorable and relevant learning experiences. Students will put into practice what they learn within the classroom in real-life scenarios that support both academic and personal growth goals.

This facility will allow students (grades PK-12) the opportunity to access a unique educational facility throughout the year that will

- Enhance and foster students' curiosity about the natural world,
- Support every grade level of science content, and
- Extend and enrich daily science instruction.

The Outdoor Learning Center will benefit not only the students of Prosper ISD, but also provide a space for intergenerational learning; it is important that this facility is a place that benefits all citizens of our community.

The facility would provide students and the community a space:

- For in-district field trips;
- To observe and study native plants and animals;
- To experience interactive science experiences using the diverse ecosystems on site;
- To foster conservation initiatives that develop responsible citizens and good stewards of our environment; and
- To increase their physical health and a respect for nature through the use of hiking and walking trails.

Prosper ISD continues to expand services to meet and exceed the facilities and learning opportunities offered in the Metroplex and looks forward to partnering with the Town of Prosper to explore other opportunities, which may include an open performance space, wedding venues and locations for family and other community events. The Outdoor Learning Center will serve each and every student in Prosper ISD and also prove to be a valuable resource for the larger Prosper community.

## Community

The Town of Prosper is a fast-growing community offering a high quality of life, where neighbors know each other and kids can play in a safe, friendly community. The Town's annual growth rate was over 13% over the last year with currently 35,430 residents calling Prosper home.

## Location

North of Dallas, Prosper's land area is 27 square miles and is located less than 30 minutes from two major airports: Dallas Love Field and Dallas/Fort Worth International. The Town is just 35 miles from Downtown Dallas and 55 miles from Fort Worth.

## Education

The Town of Prosper is working alongside the Prosper Independent School District on this exceptional park and educational experience to provide the most optimal park system and educational facility for the increasing number of children in the community. Prosper ISD continues to be one of the fastest-growing school districts in Texas. In 2021-2022, the district had more than 22,000 students and more than 2,600 staff members serving 14 elementary schools, 4 middle schools, and 2 high schools. By buildout, the district is expected to have 28-30 elementary campuses, 9-10 middle schools, and 4-5 high school campuses.

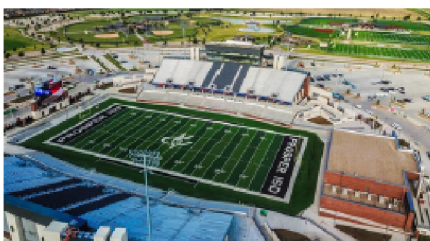
## History

The Town of Prosper began as a farming community in Collin County in the early 1900s. In its early years, the town was also a central stop for the railroad between Dallas and Sherman. Prosper was incorporated in 1914 with a population of 500.

## Parks and Recreation

Prosper prides itself on having parks and recreation facilities that promote healthy lifestyles for all ages and enhance property values.

The Town is home to more than 350 acres of park, including open spaces, recreational venues, athletic facilities, and tennis courts. More than 30 miles of hike and bike trails weave throughout Prosper with plans for additional trails but the need for more acreage and facilities continues to increase.





*Prosper is a place where everyone matters.*

## PLANNING

**To:** Mayor and Town Council

**From:** David Soto, Planning Manager

**Through:** Ron Patterson, Interim Town Manager  
 Hulon T. Webb, Jr., Interim Executive Director of Development and Infrastructure Services

**Re:** Notice of Appeal

**Town Council Meeting – November 22, 2022**

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**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 Plans and Preliminary Site Plans, including PISD Golf Building.

**Description of Agenda Item:**

Attached is the site plan that were acted on by the Planning & Zoning Commission at their November 1, 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 Plans and Preliminary Site Plans acted on by the Planning & Zoning Commission.

**Attachments:**

- 1. PISD Golf Building Revised Site Plan

**Planning & Zoning Recommendation:**

At their November 1, 2022, meeting, the Planning & Zoning Commission approved the following item:

- 1. PISD Golf Building Revised Site Plan (Approved)

**Town Staff Recommendation:**

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



- SITE PLAN NOTES**
- ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE REVISIONS TO ANY CORRESPONDING PLANS TO AVOID CONFLICTS BETWEEN PLANS.
- DUMPSTERS AND TRASH COMPACTORS SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
  - OPEN STORAGE, WHERE PERMITTED, SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
  - OUTDOOR LIGHTING SHALL COMPLY WITH THE LIGHTING AND GLARE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE.
  - LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN.
  - ALL ELEVATIONS SHALL COMPLY WITH THE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE.
  - BUILDINGS OF 5,000 SQUARE FEET OR GREATER SHALL BE 100% FIRE SPRINKLED. ALTERNATIVE FIRE PROTECTION MEASURES MAY BE APPROVED BY THE FIRE DEPARTMENT.
  - FIRE LANES SHALL BE DESIGNED AND CONSTRUCTED PER TOWN STANDARDS OR AS DIRECTED BY THE FIRE DEPARTMENT.
  - TWO POINTS OF ACCESS SHALL BE MAINTAINED FOR THE PROPERTY AT ALL TIMES.
  - SPEED BUMPS/HUMPS ARE NOT PERMITTED WITHIN A FIRE LANE.
  - 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.
  - ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
  - ALL FENCES AND RETAINING WALLS SHALL BE SHOWN ON THE SITE PLAN AND ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
  - ALL EXTERIOR BUILDING MATERIALS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL AND SHALL CONFORM TO THE APPROVED FACADE PLAN.
  - 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.
  - APPROVAL OF THE SITE PLAN IS NOT FINAL UNTIL ALL ENGINEERING PLANS ARE APPROVED BY THE ENGINEERING DEPARTMENT.
  - SITE PLAN APPROVAL IS REQUIRED PRIOR TO GRADING RELEASE.
  - ALL NEW ELECTRICAL LINES SHALL BE INSTALLED AND/OR RELOCATED UNDERGROUND.
  - ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW IN ACCORDANCE WITH THE ZONING ORDINANCE.
  - ALL LANDSCAPE EASEMENTS MUST BE EXCLUSIVE OF ANY OTHER TYPE OF EASEMENT.

**SITE DATA SUMMARY**

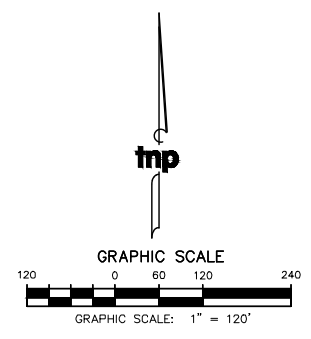
EXISTING ZONING:	SF-10/15 (PD-22)
PROPOSED USE:	HIGH SCHOOL
GROSS LOT AREA:	103,005 ACRES (4,486,888 SF)
NET LOT AREA:	99,191 ACRES (4,320,760 SF)
BUILDING AREA:	511,000 SF
HEIGHT:	60'-0" (2 STORIES)
LOT COVERAGE RATIO:	11.8%
FLOOR AREA RATIO:	17.42%
TOTAL IMPERVIOUS AREA:	32.74 ACRES ~ 44%
REQUIRED PARKING:	504
PROVIDED PARKING:	1,263
REQUIRED HANDICAP SPACES:	23
PROVIDED HANDICAP SPACES:	31
OPEN SPACE REQUIRED (%):	35,770 SF
OPEN SPACE PROVIDED (%):	1,254,100 SF

**BUILDING AREA SUMMARY**

BUILDING AREA:	
GOLF PRACTICE (PEMB):	2,400 SF (TOTAL)

**FEMA NOTE**

BASED ON THE FEMA FLOOD MAP SERVICE CENTER, THE SUBJECT TRACT OF LAND SHOWN HEREON LIES WITHIN ZONE 'X' UNSHADED, DEFINED AS 'AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE OF FLOODPLAIN' AS IDENTIFIED BY THE CURRENT FEDERAL EMERGENCY MANAGEMENT AGENCY, FLOOD INSURANCE RATE MAP, MAPS NO. 4808502255J & 4808502255L, EFFECTIVE DATE OF JUNE 02, 2009, FOR COLLIN COUNTY, TEXAS AND INCORPORATED AREAS.



**OWNER/APPLICANT:**  
 PROSPER I.S.D.  
 805 E. SEVENTH STREET  
 PROSPER, TEXAS 75078  
 PHONE: 469.219.2000  
 CONTACT: DR. GREG BRADLEY

**ENGINEER:**  
 TEAGUE NALL & PERKINS, INC.  
 825 WATTERS CREEK BLVD., SUITE M300  
 ALLEN, TX 75103  
 214.461.9867  
 CONTACT: CHRIS SCHMITT, P.E.

**SITE PLAN FOR PISD GOLF PRACTICE BUILDING**

**DATE PREPARED: JANUARY 2022  
 TOWN CASE D22-0012**

Drawing: C:\Projects\PPS10288\Golf Boy\2022\_01\_24 Golf Boy Site Planning at Feb 12, 2022 - 12:03pm by cschmitt  
 Layout: Layout1 Xref: XREF-BORDER.dwg - Seal-LM.dwg - SEAL-WIS.dwg - NGR SEAL PLAN.dwg - X-Border.dwg

no.	revision	by	date

**teague nall and perkins, inc**  
 825 Watters Creek Blvd., Suite M300  
 Allen, Texas 75013  
 214.461.9867 ph  
 www.tnpsc.com  
 TBPES: ENGR F-230, SURV 10011600, 10011601, 10194381  
 GBPE: PEF007431; TBAE: BR 2673



scale  
 horiz 1"=120'  
 vert N/A  
 date MAR 2021



This document is for interim review and is not intended for construction, bidding or permit purposes.  
 CHRIS SCHMITT, P.E. Date: FEB 2021  
 Tx. Reg. # 91150

**Town of Prosper, Texas**  
 Prosper Independent School District  
**PISD Golf Practice Facility**  
 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 303 Parvin

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Conduct a Public Hearing, and consider and act upon a request to rezone 0.36± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the northeast corner of First Street and Parvin Street. (Z22-0016).

**Description of Agenda Item:**

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

	<b>Zoning</b>	<b>Current Land Use</b>	<b>Future Land Use Plan</b>
<b>Subject Property</b>	Single Family-15	Single Family Residence	Old Town Office
<b>North</b>	Single Family-15	Single Family Residence	Old Town Office
<b>East</b>	Single Family-15	Office	Old Town Office
<b>South</b>	Single Family-15 & Downtown Office - DTO	Single Family Residential	Old Town Office
<b>West</b>	Downtown Office - DTO	Prosper Park and Recreation	Old Town Office



**Requested Zoning** – The purpose of this request is to rezone the property to the Downtown Office District to allow for development of an office building in the future. The existing house will not be removed. At the time of an application for “straight” zoning, the applicant is not required to submit an exhibit depicting how the property will be specifically developed or elevations of the proposed building. Prior to development, the developer will be required to submit a Site Plan for review and approval by the Planning & Zoning Commission. The applicant has been advised of the standards necessary for development.

**Future Land Use Plan** – The Future Land Use Plan recommends Old Town Office. The proposed zoning request conforms to the Future Land Use Plan.

**Thoroughfare Plan** – This property currently has direct access to Parvin Street and could potentially have access to First Street.

**Parks Master Plan** – The Parks Master Plan does not indicate a park is needed on the subject property. However, a hike and bike trail will be implemented at some point in the future near the downtown area. At that time, this property will be impacted by such development.

**Legal Obligations and Review:**

Notification was provided to neighboring property owners as required by State Law. To date, Town staff has not received any Public Hearing Notice Reply Forms.

**Attachments:**

1. Aerial and Zoning Map
2. Exhibit A

**Planning & Zoning Recommendation:**

At their November 1, 2022, meeting, the Planning & Zoning Commission recommended the Town Council approved the request, by a vote of 6-0.

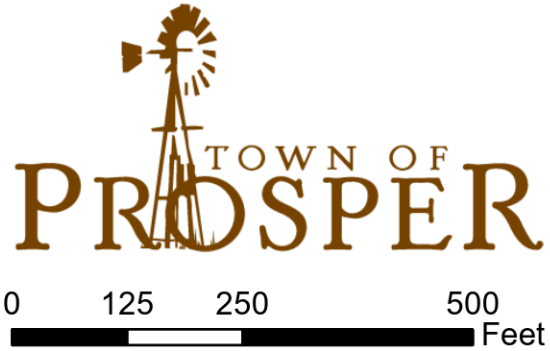
**Town Staff Recommendation:**

Staff has visited the site and was able to observe its surrounding environment. Currently there are non-residential uses to the west across Parvin Street and southwest across First Street. Staff understands that there are numerous non-residential uses and single-family residences along First Street. However, it is recommended, per the Comprehensive Plan, for downtown office uses. The zoning request would be consistent with the uses in the surrounding area. As a result, Town staff recommends that the Town Council approve this zoning request.

**Proposed Motion:**

I move to approve/deny a request to rezone 0.36± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the northeast corner of First Street and Parvin Street. (Z22-0016).

Item 10.



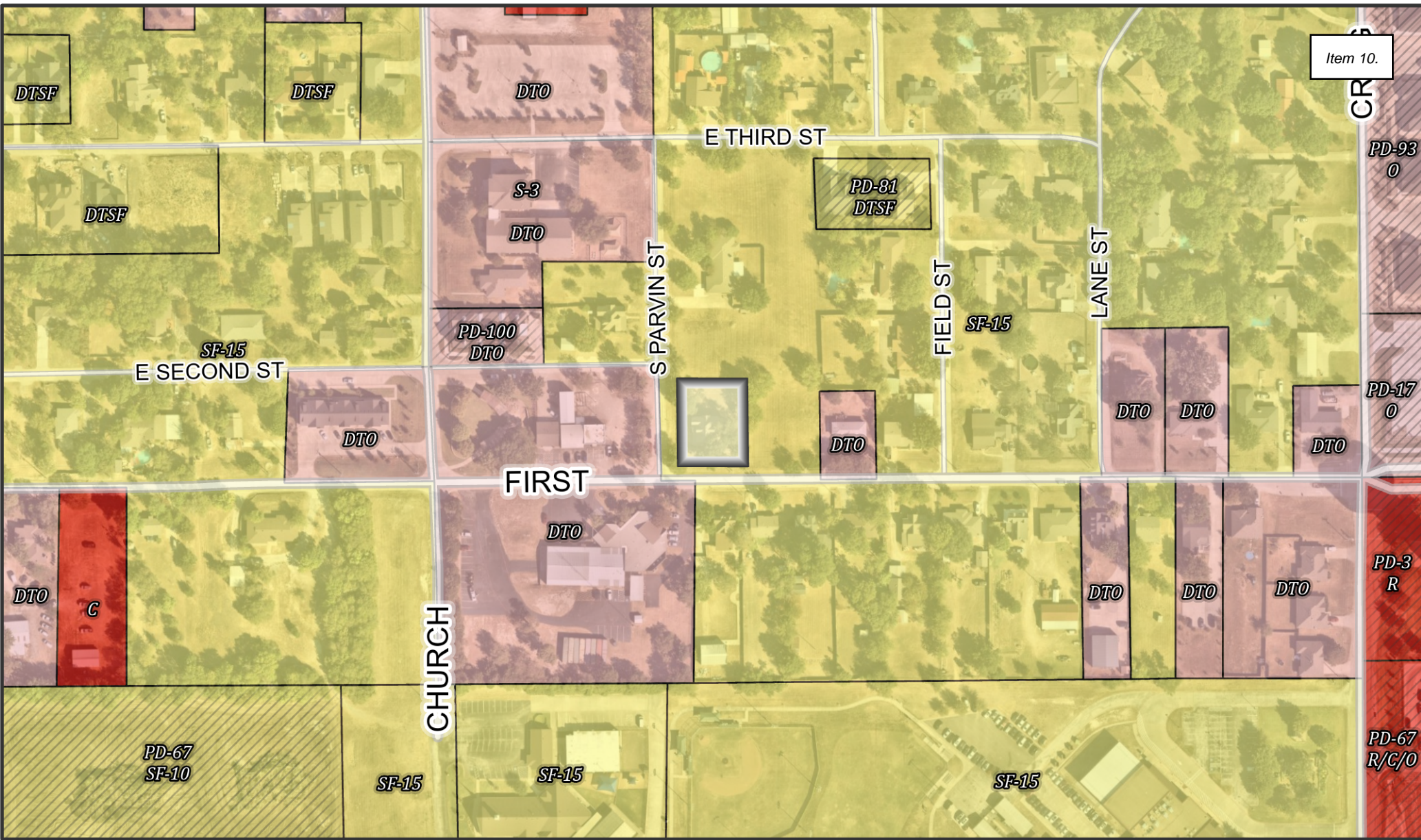
This map for illustration purposes only

Z22-0016

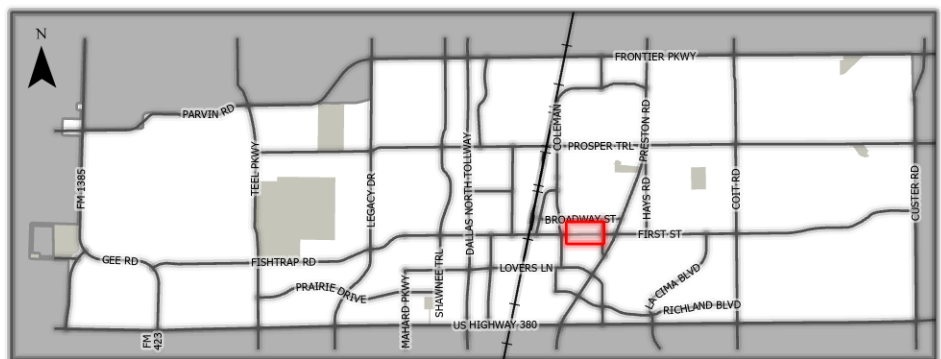
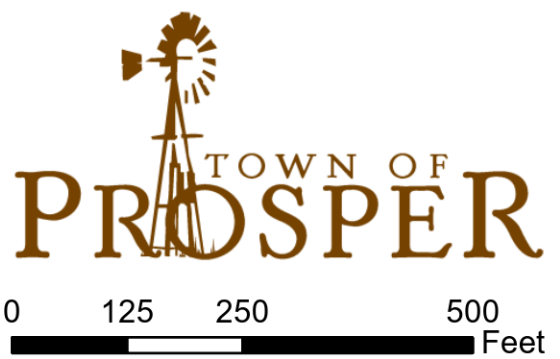
303 Parvin

Page 58

Straight Zoning



Item 10.



This map for illustration purposes only

Z22-0016

303 Parvin

Page 59

Straight Zoning



**PRELIMINARY**  
 FOR REVIEW ONLY  
 Not for construction purposes.  
**CLAYMOORE ENGINEERING**  
 ENGINEERING AND PLANNING CONSULTANTS  
 Engineer: DREW DONOSKY  
 P.E. No. 95813 Date 9/19/2022

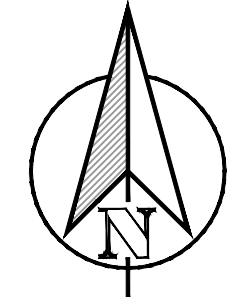
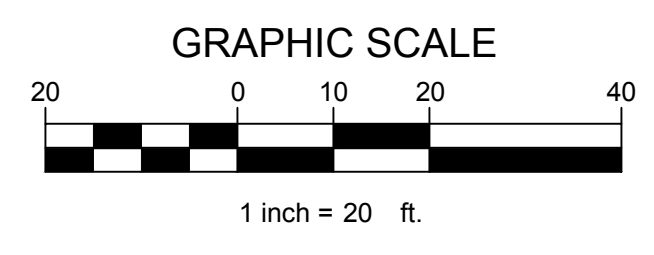
**303 PARVIN STREET  
 PARVIN ST. AND E. FIRST ST.  
 PROSPER, TEXAS**

No.	DATE	REVISION	BY

**EXHIBIT A**

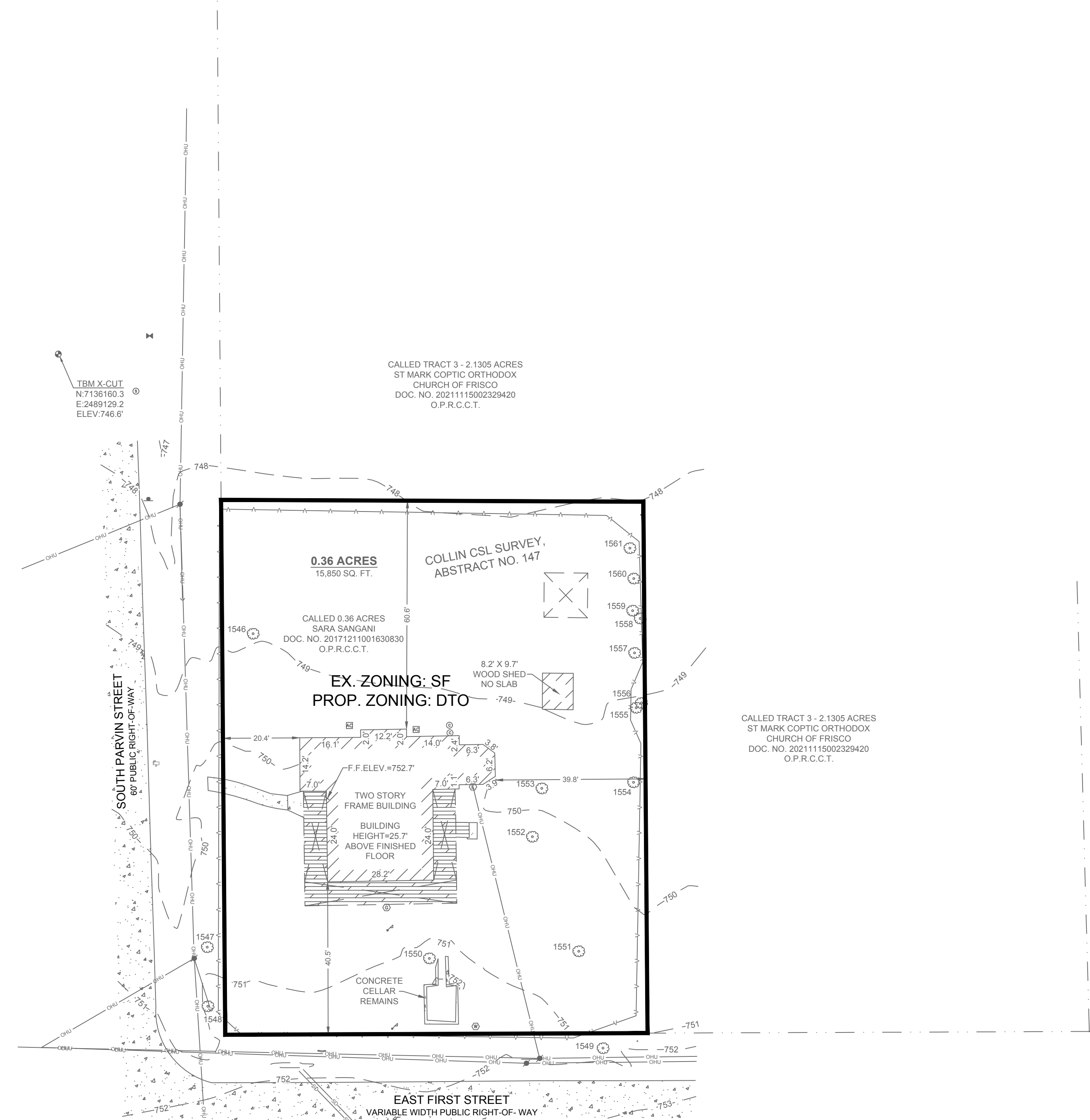
DESIGN:	ASD
DRAWN:	ASD
CHECKED:	MAM
DATE:	09/19/2022

SHEET  
**A**



**VICINITY MAP**  
 N.T.S.

BEING A 0.36 ACRE TRACT OR PARCEL OF LAND SITUATED IN THE COLLIN CSL SURVEY, ABSTRACT NUMBER 147 IN COLLIN COUNTY, TEXAS, BEING ALL OF A CALLED 0.36 ACRE TRACT OF LAND CONVEYED TO SARA SANGANI BY DEED OF RECORD IN DOCUMENT NUMBER 20171211001630830 OF THE OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:  
**BEGINNING** AT A 1/2 INCH IRON ROD WITH GREEN PLASTIC CAP STAMPED "EAGLE SURVEYING" SET IN THE NORTH RIGHT-OF-WAY LINE OF EAST FIRST STREET, BEING THE SOUTHEAST CORNER OF SAID 0.36 ACRE TRACT FROM WHICH A 1/2 INCH IRON ROD FOUND, BEARS S51°30'43"W, A DISTANCE OF 3.42 FEET;  
**THENCE** S89°46'53"W, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID EAST FIRST STREET, BEING THE COMMON SOUTH LINE OF SAID 0.36 ACRE TRACT, A DISTANCE OF 112.03 FEET TO A 3/8 INCH IRON ROD FOUND AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF SOUTH PARVIN STREET AND THE NORTH RIGHT-OF-WAY LINE OF SAID EAST FIRST STREET, BEING THE SOUTHWEST CORNER OF SAID 0.36 ACRE TRACT;  
**THENCE** N00°26'25"W, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID SOUTH PARVIN STREET, BEING THE COMMON WEST LINE OF SAID 0.36 ACRE TRACT, A DISTANCE OF 141.94 FEET TO A 5/8 IRON ROD WITH PLASTIC CAP STAMPED "RPLS 1890" FOUND, BEING THE SOUTHWEST CORNER OF A CALLED TRACT 3 - 2.1305 ACRE TRACT OF LAND CONVEYED TO ST MARK COPTIC ORTHODOX CHURCH OF FRISCO BY DEED OF RECORD IN DOCUMENT NUMBER 20211115002329420 OF SAID OFFICIAL PUBLIC RECORDS, ALSO BEING THE NORTHWEST CORNER OF SAID 0.36 ACRE TRACT FROM WHICH A 5/8 INCH IRON ROD WITH PLASTIC CAP STAMPED "RPLS 1890" FOUND, BEARS N00°26'25"W, A DISTANCE OF 342.18 FEET;  
**THENCE** S89°44'45"E, ALONG THE SOUTH LINE OF SAID TRACT 3, BEING THE COMMON NORTH LINE OF SAID 0.36 ACRE TRACT, A DISTANCE OF 112.04 FEET TO A 1/2 INCH IRON ROD WITH GREEN PLASTIC CAP STAMPED "EAGLE SURVEYING" SET AT THE SOUTHWEST CORNER OF SAID TRACT 3, ALSO BEING THE NORTHEAST CORNER OF SAID 0.36 ACRE TRACT, FROM WHICH A 1/2 INCH IRON ROD FOUND, BEARS S11°38'54"W, A DISTANCE OF 3.59 FEET;  
**THENCE** S00°26'25"W, ALONG THE SOUTHWEST LINE OF SAID TRACT 3, BEING THE COMMON EAST LINE OF SAID 0.36 ACRE TRACT, A DISTANCE OF 141.02 FEET TO THE POINT OF BEGINNING, CONTAINING AN AREA OF 0.36 ACRES (15,850 SQUARE FEET) OF LAND, MORE OR LESS.



PLOTTED BY: DREW DONOSKY  
 PLOT DATE: 10/18/2022 5:16 PM  
 LOCATION: Z:\PROJECTS\MARKETING\303 PARVIN\CADD\SHEETS\EXHIBIT A.DWG  
 LAST SAVED: 9/19/2022 9:10 AM

TBM X-CUT  
 N:7135930.2  
 E:2489134.7  
 ELEV:753.2

TBM X-CUT  
 N:7136160.3  
 E:2489129.2  
 ELEV:746.6'

CALLED TRACT 3 - 2.1305 ACRES  
 ST MARK COPTIC ORTHODOX  
 CHURCH OF FRISCO  
 DOC. NO. 20211115002329420  
 O.P.R.C.C.T.

0.36 ACRES  
 15,850 SQ. FT.

COLLIN CSL SURVEY,  
 ABSTRACT NO. 147

CALLED 0.36 ACRES  
 SARA SANGANI  
 DOC. NO. 20171211001630830  
 O.P.R.C.C.T.

EX. ZONING: SF  
 PROP. ZONING: DTO

8.2' X 9.7'  
 WOOD SHED  
 NO SLAB

TWO STORY  
 FRAME BUILDING  
 BUILDING  
 HEIGHT=25.7'  
 ABOVE FINISHED  
 FLOOR

CONCRETE  
 CELLAR  
 REMAINS

CALLED TRACT 3 - 2.1305 ACRES  
 ST MARK COPTIC ORTHODOX  
 CHURCH OF FRISCO  
 DOC. NO. 20211115002329420  
 O.P.R.C.C.T.

CASE #: Z22-0016	
<b>303 PARVIN STREET</b>	
<b>EXHIBIT A</b>	
DEVELOPER: SARA SANGANI 303 S. PARVIN ST. PROSPER, TX 76078 EMAIL: SANGANI.SARA@GMAIL.COM CONTACT NAME: SARA SANGANI	
APPLICANT: CLAYMOORE ENGINEERING, INC. 1903 CENTRAL DRIVE, SUITE #406 BEDFORD, TX 76021 PH: 817.281.0572 CONTACT NAME: MATT MOORE	
SURVEYOR: EAGLE SURVEYING, LLC 210 SOUTH ELM STREET, SUITE #104 DENTON, TX 76201 PH: 940.222.3009 CONTACT NAME: MATTHEW RAABE	
LEGAL DESCRIPTION: BEING A 0.36 ACRE TRACT OR PARCEL OF LAND SITUATED IN THE COLLIN CSL SURVEY, ABSTRACT NUMBER 147 IN COLLIN COUNTY, TEXAS, BEING ALL OF A CALLED 0.36 ACRE TRACT OF LAND CONVEYED TO SARA SANGANI BY DEED OF RECORD IN DOCUMENT NUMBER 20171211001630830 OF THE OFFICIAL PUBLIC RECORDS OF COLLIN COUNTY, TEXAS	
CITY: PROSPER	STATE: TEXAS
COUNTY: COLLIN	SURVEY: COLLIN COUNTY SCHOOL LAND SURVEY
ABSTRACT NO. 147	



## PARKS AND RECREATION

**To:** Mayor and Town Council

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

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

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

**Town Council Meeting – November 22, 2022**

**Agenda Item:**

Consider and act upon authorizing the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Construction, related to Construction Manager-At-Risk services for Raymond Community Park Page 3 of 3 Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk; consider and act upon rejecting all bids in the event an agreement is not reached with the first-ranked contractor; and any other actions incident and related thereto.

**Description of Agenda Item:**

At the November 8<sup>th</sup> Town Council Meeting, Town Council directed staff to negotiate with Dean Construction. Since then, Dean Construction has changed the following from the original proposal:

General Conditions lowered from \$880,000.00 to \$803,200.00.

This lowers Dean Construction's overall proposal cost to \$1,203,200.00. Attached is the revised proposal tabulation summary and evaluation matrix that reflects this change.

**Budget Impact:**

There is no budget impact until a complete construction estimate is ready, and construction begins. Based on a construction cost of \$16,000,000, the estimated fees to be paid to the CMAR total \$1,203,200.00 (\$400,000.00 construction services fee + \$803,200.00 not-to-exceed general conditions cost).

**Legal Obligations and Review:**

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

**Attached Documents:**

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

**Town Staff Recommendation:**

Town staff recommends authorizing the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Construction, related to Construction Manager-At-Risk services for Raymond Community Park Page 3 of 3 Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk; consider and act upon rejecting all bids in the event an agreement is not reached with the first-ranked contractor; and any other actions incident and related thereto.

**Proposed Motion:**

I move to authorize the Interim Town Manager to execute a Standard Form of Agreement between the Town and Dean Electric, Inc., dba Dean Construction, related to Construction Manager-At-Risk services for Raymond Community Park Page 3 of 3 Phase 1 Project; and an Addendum to the Standard Form of Agreement between the Town and the Construction Manager-At-Risk; consider and act upon rejecting all bids in the event an agreement is not reached with the first-ranked contractor; and any other actions incident and related thereto.



**TOWN OF PROSPER  
PROPOSAL TABULATION SUMMARY**

Item 11.

<b>Solicitation Number</b>	RFP No. 2022-63-B
<b>Solicitation Title</b>	Construction Manager-At-Risk for Raymond Community Park
<b>Close Date</b>	09/29/2022 2:00PM

<b>Responding Contractor</b>	<b>Pre-Construction Services Fee</b>	<b>Construction Services Fee</b>	<b>General Conditions</b>	<b>Total Proposal</b>
Authers Building Group	\$ 20,000.00	2.95%	\$ 712,653.84	\$ 1,204,653.84
Balfour Beatty	\$ 15,000.00	1.90%	\$ 1,139,584.40	\$ 1,458,584.40
Core Construction Services of Texas	\$ 15,000.00	2.95%	\$ 1,235,902.00	\$ 1,722,902.00
Dean Construction	\$ -	2.50%	\$ 803,200.00	\$ 1,203,200.00
Spaw Glass	\$ 46,670.00	4.00%	\$ 1,197,425.00	\$ 1,884,095.00
Tegrity Contractors	\$ 10,777.00	4.47%	\$ 550,777.00	\$ 1,276,754.00

**\*\*All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.**

<b>Certified by:</b>	Jay Carter, NIGP-CPP, CPPB, C.P.M. Purchasing Manager Town of Prosper, Texas	<b>Certified On:</b>	September 29, 2022
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RFP NO. 2022-63-B  
 CONSTRUCTION MANAGER-AT-RISK FOR RAYMOND COMMUNITY PARK

EVALUATION MATRIX		AUTERS BUILDING GROUP		BALFOUR BEATTY		CORE CONSTRUCTION SERVICES		DEAN CONSTRUCTION		SPAWGLASS CONTRACTORS		TEGRITY CONTRACTORS	
EVALUATION CRITERIA	WEIGHTING	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Overall Ability to Meet Town's Objectives	10.0%	7.33	0.73	7.83	0.78	8.50	0.85	9.42	0.94	6.83	0.68	6.83	0.68
Experience with Similar Facility Construction	20.0%	7.33	1.47	7.83	1.57	8.67	1.73	9.83	1.97	7.33	1.47	6.83	1.37
Qualifications of Project Personnel	20.0%	7.83	1.57	8.00	1.60	8.67	1.73	9.17	1.83	7.17	1.43	7.17	1.43
References	10.0%	10.00	1.00	9.50	0.95	8.67	0.87	9.90	0.99	9.50	0.95	9.00	0.90
Cost Proposal	40%	9.99	4.00	8.25	3.30	6.98	2.79	10.00	4.00	6.39	2.55	9.42	3.77
<b>TOTAL</b>	<b>100%</b>		<b>8.76</b>		<b>8.20</b>		<b>7.98</b>		<b>9.73</b>		<b>7.09</b>		<b>8.15</b>



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

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

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

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

Town of Prosper  
250 W First Street  
Prosper, TX 75078

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

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

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

Raymond Community Park  
Prosper, TX

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

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

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

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

The Owner and Construction Manager agree as follows.

Init.

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

Raymond Community Park

§ 1.1.2 The Project's physical characteristics:

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

As determined by plans developed by Dunaway and Associates

Init.

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

\$16,000,000.00

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

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

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

N/A

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

N/A

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

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

N/A

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/

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

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

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

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

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

.1 Geotechnical Engineer:

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

.2 Civil Engineer:

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

.3 Other, if any:

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

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

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

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

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

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

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

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

Greg Firebaugh - 25%  
Tyler Firebaugh - 25%

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

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

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

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

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

**ARTICLE 2 GENERAL PROVISIONS**

**§ 2.1 The Contract Documents**

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

**§ 2.2 Relationship of the Parties**

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

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

### § 2.3 General Conditions

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

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

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

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

#### § 3.1.3 Consultation

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

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

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

#### § 3.1.4 Project Schedule

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

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

### § 3.1.5 Phased Construction

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

### § 3.1.6 Cost Estimates

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

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

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

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

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

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

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

### § 3.1.11 Subcontractors and Suppliers

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

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

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

### § 3.1.12 Procurement

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

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

### § 3.1.13 Compliance with Laws

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

### § 3.1.14 Other Preconstruction Services

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

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

## § 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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



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

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

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

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

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

#### § 3.3.2 Administration

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

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

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 Cost Control

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

## ARTICLE 4 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

### § 4.2 Owner's Designated Representative

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

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

§ 4.3 **Architect**

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

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

§ 5.1 **Compensation**

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

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

N/A

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

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

N/A

Individual or Position

Rate

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

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

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

§ 5.2 **Payments**

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

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

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

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

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**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

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

§ 6.1.2 The Construction Manager's Fee:

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

The cost of work plus 2.5%.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed

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

§ 6.1.6 Liquidated damages, if any:

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

§ 6.1.7 Other:

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

**§ 6.2 Guaranteed Maximum Price**

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

**§ 6.3 Changes in the Work**

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

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

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

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

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

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

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

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

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

### § 7.2 Labor Costs

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

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

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

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

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

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

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

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

**§ 7.3 Subcontract Costs**

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

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

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

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

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

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

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

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

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

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

**§ 7.6 Miscellaneous Costs**

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

#### § 7.7 Other Costs and Emergencies

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

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

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

#### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including

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the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### § 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

### ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

#### ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

#### ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

##### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

#### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

N/A

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

Subject to the owners approval, subcontractors retainage can be released after final acceptance.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article

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9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017

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Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

#### ARTICLE 13 TERMINATION OR SUSPENSION

##### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that

would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

### § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

#### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

#### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

#### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000.00 ) for each occurrence and two million (\$ 2,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million (\$ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than one million (\$ 1,000,000.00 ) each accident, one million (\$ 1,000,000.00 ) each employee, and one million (\$ 1,000,000.00 ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than three million (\$ 3,000,000.00 ) per claim and three million (\$ 3,000,000.00 ) in the aggregate

§ 14.3.1.6 Other Insurance

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

Coverage	Limits
Builder's Risk	\$13,000,000.00
Rented/Leased Equipment	\$200,000.00

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between

Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

§ 14.5 Other provisions:

**ARTICLE 15 SCOPE OF THE AGREEMENT**

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

.6 Other Exhibits:  
*(Check all boxes that apply.)*

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

General conditions to be fixed at 5.02% of the cost of the work.

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

  
CONSTRUCTION MANAGER (Signature)

\_\_\_\_\_  
Gregory Firebaugh - President  
\_\_\_\_\_  
(Printed name and title)

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# **AIA** Document A133™ – 2019 Exhibit A **Guaranteed Maximum Price Amendment**

This Amendment dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_ the year \_\_\_\_\_ (the “Agreement”)  
*(In words, indicate day, month, and year.)*

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

for the following **PROJECT**:  
*(Name and location or address)*  
Raymond Community Park  
Prosper, TX

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

**THE OWNER:**  
*(Name, legal status, and address)*  
Town of Prosper  
250 W First Street  
Prosper, TX 75078

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*  
Dean Electric, Inc. dba Dean Construction  
701 Hall Street  
Cedar Hill, TX 75104

## TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed

(\$ ), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

*(Provide itemized statement below or reference an attachment.)*

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
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§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
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§ A.1.1.6 Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of execution of this Amendment.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

**§ A.2.3 Substantial Completion**

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

Not later than ( ) calendar days from the date of commencement of the Work.

By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work**

**Substantial Completion Date**

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The following Specifications:

(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
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§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
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§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

**ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

Gregory Firebaugh - President

\_\_\_\_\_  
(Printed name and title)

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# **AIA** Document A133™ – 2019 Exhibit B **Insurance and Bonds**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

*(In words, indicate day, month and year.)*

for the following **PROJECT**:  
*(Name and location or address)*  
Raymond Community Park  
Prosper, TX

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

**THE OWNER:**  
*(Name, legal status, and address)*  
Town of Prosper  
250 W First Street  
Prosper, TX 75078

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*  
Dean Electric, Inc. dba Dean Construction  
701 Hall Street  
Cedar Hill, TX 75104

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### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

### ARTICLE B.2 OWNER'S INSURANCE

#### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ B.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Cause of Loss	Sub-Limit
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**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit
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**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

Init.



**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

**§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

**§ B.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

**§ B.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

**§ B.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

**§ B.2.4.5 Civil Authority Insurance,** for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

§ B.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

§ B.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

§ B.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

§ B.2.5.2 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits
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**ARTICLE B.3 CONSTRUCTION MANAGER’S INSURANCE AND BONDS**

**§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner’s written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager’s Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

Init.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect’s consultants as additional insureds for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions during the Construction Manager’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner’s general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, CG 20 32 07 04.

**§ B.3.2 Construction Manager’s Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager’s indemnity obligations under Section 3.18 of the General Conditions.

**§ B.3.2.2.2** The Construction Manager’s Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager’s Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse, and underground hazards, where the Work involves such hazards.

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than (\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

Init.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

Init.

**§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

**§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.

**§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

**§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

**§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

**§ B.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

<b>Coverage</b>	<b>Limits</b>
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**§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Init.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

**ADDENDUM to  
The Standard Form of Agreement Between  
Owner and Construction Manager as Constructor  
Where the Basis of Payment is the Cost of the Work  
Plus a Fee with a Guaranteed Maximum Price  
AIA Document A133-2019**

This Addendum to the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2019 (“Addendum”) is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between Dean Electric, Inc., (the “Construction Manager”) and the Town of Prosper, Texas, (the “Owner”). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2019 (the “Agreement”), as set forth herein below.

**WITNESSETH:**

**WHEREAS**, the Owner and Construction Manager desire to enter into the Agreement for the construction of Dudley Raymond Community Park in the Town of Prosper, Texas; and

**WHEREAS**, the Owner and Construction Manager desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

**WHEREAS**, the Owner and Construction Manager would not enter into the Agreement save and except for the clarifications and revisions contained herein;

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

**I.**

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. Section 1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1 The Owner's Initial Information on which this Agreement is based is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

2. Section 1.1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.1 The Owner's program for the Project is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.1, and modified and defined by and through the process set out in Section 4.1.1.

3. Section 1.1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.2 The Project's physical characteristics are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.2.

4. Section 1.1.3 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's budget for the Guaranteed Maximum Price may be restated and/or further detailed in this Section 1.1.3 and may be further modified and updated by and through the processes set out in the Contract Documents.

5. Section 1.1.4 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.4 The Owner's anticipated design and construction milestone dates are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if



any, and the Owner's Specifications and Drawings. The Owner's anticipated design and construction milestone dates may be restated and/or further detailed in this Section 1.1.4 and may be further modified and updated by and through the processes set out in the Contract Documents.

6. Section 1.1.5 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, may be restated and/or further detailed in this Section 1.1.5, and may be further modified and updated by and through the processes set out in the Contract Documents.

7. Section 1.1.6 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project, if any, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's anticipated Sustainable Objective for the Project, if any, may be restated and/or further detailed in this Section 1.1.6, and may be further modified and updated by and through the processes set out in the Contract Documents.

8. Section 1.1.6.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager will complete such other and additional documents as may be agreed to be necessary for a full and complete set of Contract Documents.

9. Section 1.1.7 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.7 Intentionally omitted.

10. Section 1.1.8 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.8 The Owner identifies the following person to initially represent the Town in accordance with Section 4.2, it being understood that such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority and that the Owner reserves the right to replace and/or designate, in writing, one or more persons to represent the Owner.

Dan Baker  
Director of Parks and Recreation  
Town of Prosper, Texas  
dpbaker@prospertx.gov  
(972) 569-1060 (office)

11. Section 1.1.10 and subsections .1, .2 and .3 are hereby amended by deleting said provisions in their entirety and replacing such provisions with the following provision:

§ 1.1.10 The Owner shall retain such consultants and contractors as the Owner deems necessary, which consultants or contractors may include one or more of the following:

12. Section 1.1.13 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

13. Section 1.1.14 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

14. Section 1.1.15 is hereby amended by deleting said provision in its entirety.
15. Section 1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.2 The Owner and Construction Manager may generally rely on the Initial Information contained in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. Both parties, however, recognize that such information may materially change during the development of the Guaranteed Maximum Price.

16. Section 2.1 is hereby amended by deleting the last two sentences of this section.
17. Section 2.3 is hereby amended by deleting Sections 2.3, 2.3.1 and 2.3.2 in their entirety and replacing such provisions with a new Section 2.3, a new Section 2.3.1, and a new Section 2.3.2 to read as follows:

#### § 2.3 General Conditions

The General Conditions of the Agreement shall be as set forth in AIA Document A201™-2017, *General Conditions of the Contract for Construction*, as modified by the Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (referred to collectively as the "A201-2017 Documents"), which A201-2017 Documents are incorporated herein by reference. Whenever the Agreement or this Addendum refers to AIA Document A201-2017 such reference shall also mean and include the Owner's Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017. The term "Contractor" as used in the A201-2017 Documents shall mean the Construction Manager.

#### § 2.3.1 Professional Services

Section 3.12.10 of the A201-2017 Documents shall apply to both the Preconstruction and Construction Phases.

#### § 2.3.2 Hazardous Materials

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including

but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), lead paint, or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the project site but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

18. The opening paragraph of Article 3, "Construction Manager's Responsibilities," is hereby amended by amending the first sentence to read as follows:

The Construction Manager's Preconstruction Phase responsibilities are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, the Owner's Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents.

19. Section 3.1.1 is hereby amended in part by adding the following language to the end of that section:

The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form that is acceptable to the Owner and Architect.

20. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.4 to read as follows:

§ 3.1.3.4 During the Preconstruction Phase the Construction Manager shall review the Contract Documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing.

21. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.5 to read as follows:

§ 3.1.3.5 Notwithstanding any provision of this Agreement or the A201-2017 Documents to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence and the Owner and Architect were not informed of such conflicts as required by Section 3.1.3.4. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

22. Section 3.1.4 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.4 When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall coordinate with the Project schedule already developed by the Architect. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; the occupancy requirements of the Owner; and the proposed dates of Substantial Completion and Final Completion. Updates shall be provided with each estimate of the Cost of the Work required by Section 3.1.6, below, and whenever changes in the proposed Work or conditions may materially alter the latest schedule.

23. Section 3.1.6.2 is hereby amended in part by adding the phrase "until such time as the Owner and the Construction Manager agree on a Guaranteed Maximum Price for the Work" at the end of the first sentence of that section.

24. Section 3.1.6.2 is hereby further amended in part by adding the phrase “to reduce the cost and/or maintain the budget” at the end of the final sentence of that section.
25. Section 3.1.11.2 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.11.2 The Construction Manager shall seek to develop subcontractor and supplier interest in the Project. All subcontracts shall be awarded pursuant to the procedures set forth in Section 9.1.

26. Section 3.1.14 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

The Construction Manager’s Preconstruction Phase responsibilities are generally set forth in the Owner’s Request for Proposals together with any addenda thereto, if any, the Owner’s Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents. Notwithstanding the foregoing, such Preconstruction Phase responsibilities may be modified by and through an amendment or change order to this Agreement and/or the Contract Documents.

28. Section 3.2.1 is hereby amended by deleting section 3.2.1 in its entirety and replacing it with a new section 3.2.1 to read as follows:

§ 3.2.1 When the Construction Drawings and Specifications are one hundred percent (100%) complete, or as otherwise agreed by the Owner and Construction Manager, the Construction Manager shall propose a Guaranteed Maximum Price, including contingencies as described in Section 3.2.4, which shall be the sum of the estimated Cost of the Work and the Construction Manager’s fee. The Guaranteed Maximum Price shall be proposed no later than 30 days after approval of the Construction Drawings and Specifications by the Owner. The Guaranteed Maximum Price shall be submitted on form AIA A133-2019, Exhibit A, unless otherwise directed by the Owner.

29. Section 3.2.2 is hereby amended by deleting section 3.2.2 in its entirety and replacing it with a new section 3.2.2 to read as follows:

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development by the Architect,

the Construction Manager shall provide in, the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

30. Subsection .2 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .2 to read as follows:

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal;

31. Subsection .3 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .3 to read as follows:

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

32. Subsection .4 of section 3.2.3 is hereby amended by deleting the word "and" immediately following the semi-colon.

33. Subsection .5 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .5 to read as follows:

.5 A date by which the Owner must accept the Guaranteed Maximum Price, but in any event not less than sixty (60) days after submission of the Guaranteed Maximum Price; and

34. Section 3.2.3 is hereby amended by adding a new subsection .6 to read as follows:

.6 A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis; and

35. Section 3.2.3 is hereby amended by adding a new subsection .7 to read as follows:

.7 If Owner requests, Construction Manager shall make available for inspection the background documents and

information that form the basis of the Construction Manager's Guaranteed Maximum Price proposal.

36. Section 3.2.4 is hereby amended by deleting section 3.2.4 in its entirety and replacing it with a new section 3.2.4 to read as follows:

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order (the "Construction Manager's Contingency").

37. Section 3.2.5 is hereby amended by adding the following sentence at the end of section 3.2.5 to read as follows:

The Owner shall be allowed not less than sixty (60) days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price proposal.

38. Section 3.2.9 is hereby amended by deleting section 3.2.9 in its entirety and replacing it with a new Section 3.2.9 to read as follows:

§ 3.2.9 The Guaranteed Maximum Price shall include no amount for sales or use taxes for which Texas municipal corporations are exempt and for which the Owner has timely provided to the Construction Manager an appropriate tax exemption certificate or other required verification of the Owner's tax-exempt status. Such taxes shall not be reimbursable costs under Article 7.

39. Section 3.2 is hereby amended by adding a new Section 3.2.10, a new Section 3.2.11, and a new Section 3.2.12 to read as follows:

§ 3.2.10 Except with the Owner's prior written consent, the Construction Manager shall not include any allowances in its proposed Guaranteed Maximum Price.

§ 3.2.11 By its submission of a Guaranteed Maximum Price proposal, the Construction Manager agrees that any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings shall be returned to the Owner without sharing with the Construction Manager, unless the Owner specifically agrees



otherwise in writing. Savings shall be identified and submitted with each application for payment submitted by Construction Manager and shall be fully reconciled with the Construction Manager's submission of the final payment application.

§ 3.2.12 The Construction Manager is discouraged from seeking bidder's interest or entering into a transaction with a "related party," as that term is defined by Section 7.8.1, below. If the Construction Manager, nonetheless, concludes that it may be in the Owner's best interest to seek bidder's interest or enter into a transaction with a related party, then the Construction Manager shall comply with Section 7.8.2, below, before seeking bidder's interest or entering into a transaction with a related party.

40. Section 3.3.1.1 is hereby amended by deleting section 3.3.1.1 in its entirety and replacing it with a new section 3.3.1.1 to read as follows:

§ 3.3.1.1 The Construction Phase shall commence upon the issuance to the Construction Manager of the Notice to Proceed for all or a portion of the Work.

41. Section 3.3.1.2 is hereby amended by deleting section 3.3.1.2 in its entirety and replacing it with a new section 3.3.1.2 to read as follows:

§ 3.3.1.2 The Contract Time shall be measured from the date of commencement of the Construction Phase.

42. Section 3.3.1 is hereby amended by adding a new section 3.3.1.3 and a new section 3.3.1.4 to read as follows:

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Agreement, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.1.4 The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: One Thousand and No/One Hundredths Dollars (\$1,000.00) per day or part of a day pursuant to and in accordance section 6.1.6, below.

43. Section 3.3.2.2 is hereby amended by deleting section 3.3.2.2 in its entirety and replacing it with a new section 3.3.2.2 to read as follows:

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

44. Article 3, "Construction Manager's Responsibilities," is hereby amended by adding a new section 3.4 to read as follows:

§ 3.4 The Construction Manager shall be responsible for all construction surveys and staking. Dimensions of Work shall not be determined by scale or rule but figured dimensions shall be followed at all times. The Construction Manager shall compare all drawings and verify all dimensions and shall take any and all measurements necessary to verify the Drawing dimensions in relation to conditions already established at the Project site before laying out the Work. Any discrepancy will be immediately called to the attention of the Architect and Owner by the Construction Manager. The Construction Manager will be held responsible for subsequent errors which could have been avoided.

45. Section 4.1.2 is hereby amended by deleting section 4.1.2 in its entirety and replacing it with a new section 4.1.2 to read as follows:

§ 4.1.2 This Project is a public project governed by Chapter 2253 of the Texas Government Code. Prior to the Owner's execution of the Guaranteed Maximum Price Amendment, the Owner acting by and through the Town Council of the Town of Prosper, Texas, approved the Owner's execution of the Guaranteed Maximum Price Amendment and authorized the expenditure of funds up to, and set aside funds in an amount not to exceed the full amount of the Guaranteed Maximum Price Amendment for the Construction Manager's full and complete performance of the Project in strict accordance with the Contract Documents.

46. Section 4.1.3 is hereby deleted in its entirety.
47. Section 4.1.6 is hereby deleted in its entirety.

- 48. Section 4.2 is hereby amended by deleting section 4.2 in its entirety and replacing it with a new section 4.2 to read as follows:

§ 4.2 Owner's Designated Representative

The Owner is the Town of Prosper, Texas, acting by and through its Town Council, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

- 49. Section 4.2.1 is hereby deleted in its entirety.

- 50. Section 4.3 is hereby amended by deleting section 4.3 in its entirety and replacing it with a new section 4.3 to read as follows:

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Architect retained by the Owner. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

- 51. Article 4, "Owner's Responsibilities," is hereby amended by adding a new section 4.4 to read as follows:

§ 4.4 Inspection and Testing

The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by the Owner. Notwithstanding the foregoing, the Construction Manager shall be responsible for the performance of all energy inspections.

- 52. Section 5.1.1 is hereby amended by inserting the following language in the space, provided for such purpose, following the parenthetical at the end of section 5.1.1:

Compensation for the pre-construction services described in Sections 3.1 and 3.2 is separate from and in addition to the compensation described in Section 6.1, provided however, if

the Construction Phase does not commence for any reason, the Construction Manager's compensation for the services described in Sections 3.1 and 3.2 shall be a total amount not to exceed Fifteen Thousand and No/One Hundredths Dollars (\$15,000.00).

53. Section 5.1.2 is hereby deleted in its entirety.
54. Section 5.1.2.1 is hereby deleted in its entirety.
55. Section 5.1.3 is hereby amended by inserting the following phrase in the corresponding spaces provided for such purpose between the phrase "extend beyond" and the phrase "months of" in section 5.1.3:

"Six (6) calendar"

56. Section 5.2.2 is hereby amended by deleting section 5.2.2 in its entirety and replacing it with a new section 5.2.2 to read as follows:

§ 5.2.2 Payments are due and payable 30 days from the date the Construction Manager's application for payment, approved by the Architect, is received by the Owner. Past due payments shall bear interest in accordance with the Texas Prompt Payment Act. No interest shall ever be due on any disputed amounts.

57. Section 6.1.1 is hereby amended by deleting section 6.1.1 in its entirety and replacing it with a new section 6.1.1 to read as follows:

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

58. Section 6.1.2 is hereby amended by deleting section 6.1.2 in its entirety and replacing it with a new section 6.1.2 to read as follows:

The Construction Manager's fee shall be based on two (2) and Fifty/One Hundredths percent (2.50%) of the actual Cost of the Work as defined in Article 7 and less any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings.

59. Section 6.1.3 is hereby amended by deleting section 6.1.3 in its entirety and replacing it with a new section 6.1.3 to read as follows:

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be by formal written Change Order approved by the Owner.

60. Section 6.1.4 is hereby amended by deleting section 6.1.4 in its entirety and replacing it with a new section 6.1.4 to read as follows:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be no more than ten percent (10%) of the subcontractor's cost, for overhead, and shall be no more than five percent (5%) of the subcontractor's cost, for profit:

61. Section 6.1.5 is hereby amended by deleting section 6.1.5 in its entirety and replacing it with a new section 6.1.5 to read as follows:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred and Fifty Percent (150%) of standard rental rate paid in Prosper, Texas.

62. Section 6.1.6 is hereby amended by deleting Section 6.1.6 in its entirety and replacing it with a new Section 6.1.6 to read as follows:

§ 6.1.6 Liquidated Damages for Failure to Complete on Time.

North Central Texas Council of Governments Standard Specifications for Public Works Construction Standards ("NCTCOG Specifications") Item 108.8, Delays; Extension of Time; Liquidated Damages shall apply, except to the extent it is conflict with, or is otherwise amended by, this Section 6.1.6. The Construction Manager understands and agrees that time is of the essence in performing and completing the Work. The Owner and Construction Manager acknowledge that the actual damages the Owner may sustain if the Construction Manager fails to complete the Work on time are uncertain and will be difficult to ascertain. Consequently, the Construction Manager agrees to pay to the Owner the sum of One Thousand and No/One Hundredths Dollars (\$ 1,000.00) for each calendar day or part of a calendar day that completion of any Work required under the Contract Documents is overdue. This amount is payable as reasonable and just compensation for failure to complete the Work on time. This

amount is payable as liquidated damages and not as a penalty.

63. Section 6.1.7 is hereby amended by deleting Section 6.1.7 in its entirety and replacing it with a new Section 6.1.7 to read as follows:

**§ 6.1.7 Delays: Extension of Time: Liquidated Damages**

In addition to the requirements of NCTCOG Specifications Item 108.8 Delays; Extension of Time; Liquidated Damages, the following provisions shall be applied to Item 108.8 and be incorporated in to the NCTCOG Specifications as Item 108.8.2:

“108.8.2 Unforeseeable Cause

The term "unforeseeable cause" as it is used in Item 108.8 shall mean:

1. An act of God in the form of unusually severe weather conditions, including storms, flood, fire, or similar event, that could not have been anticipated or guarded against and which materially affects the Work site, including access or egress thereto;
2. A riot or war situation actually involving the site or actually preventing the Construction Manager from working on the site, but not including any situation involving suppliers off site other than those essential suppliers as supplied to OWNER;\* or
3. An epidemic, pandemic, or quarantine restrictions that actually involves the site and actually prevents the Construction Manager and the Construction Manager's employees and subcontractors from physically working on the site, but not including any situation involving Construction Manager's employees, subcontractors, and suppliers off site other than those essential suppliers as supplied to OWNER,\* and then only to the extent that:
  - a. Construction Manager promptly reports the epidemic, pandemic, or quarantine restrictions to the Owner in writing within five (5) business

days after the epidemic, pandemic, or quarantine restrictions first impact the site;

- b. Construction Manager identifies and tracks the work that was prevented from being performed in accordance with the Construction Manager's Gantt Chart for each day lost together with the number of Construction Manager's employees and subcontractors assigned to the performance of such work that were prevented from physically working on the site as a direct result of the epidemic, pandemic, or quarantine restrictions; and
  - c. The Construction Manager uses its best efforts to identify and hire employees and subcontractors to continue the performance of the Work and fully documents such efforts to perform the work to the extent reasonably practicable given the limitations imposed by the epidemic, pandemic, or quarantine restrictions that impact the site.
4. An unanticipated strike involving the forces actually working on the Project or involving the employees of those essential suppliers,\* but no other labor stoppage.

\* The Construction Manager must identify its essential suppliers in writing within five (5) business days of the Notice to Proceed. Any supplier that is not so identified shall not be considered an essential supplier justifying an extension of time for a delay caused by an Unforeseeable Cause.

No event shall be deemed an Unforeseeable Cause for the purposes of this Agreement unless it actually and directly necessitates a delay in the Work which could not be otherwise remedied by taking reasonably prudent steps, and the Construction Manager could not reasonably adjust the schedule of the remaining Work to deal with, make up for, or otherwise work around the delays resulting from the Unforeseeable Cause(s)."

64. Section 6.1 is hereby amended by adding a new Section 6.1.8 to read as follows:

§ 6.1.8 Claims for Additional Time.

The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. The Construction Manager shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service (Dallas / Fort Worth, TX Weather Forecast Office):

Average Weather Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
3	2	3	2	4	3	3	2	3	3	2	2

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner and no later than fourteen (14) days after the event(s) giving rise to such claim. The notice shall, in writing, specify the nature and duration of the delays or disruptions and the anticipated effect such weather days will have on the Construction Manager's abilities



to perform its obligations along with a plan to deal with the effects of such weather days and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, whether such hindrances or delays be avoidable or unavoidable, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any such delays.”

65. Section 6.3.3 is hereby amended by deleting section 6.3.3 in its entirety and replacing it with a new section 6.3.3 to read as follows:

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “costs” and “fee” as used in Article 7 of the AIA A201-2017 Documents shall have the meanings assigned to them in the AIA A201-2017 Documents and shall not be modified by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner.

66. Section 6.3.5 is hereby amended by deleting Section 6.3.5 in its entirety and replacing it with a new Section 6.3.5 to read as follows:

§ 6.3.5 In the case of changes in the Work, the fee will be adjusted as provided for in Section 6.1, if both parties agree that the scope of services has changed significantly. No

change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

67. Section 7.2.4 is hereby amended by deleting Section 7.2.4 in its entirety and replacing it with a new Section 7.2.4 to read as follows:

§ 7.2.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, and provided that such costs are directly attributable to work performed on this Project only and percentages of such wages and salaries as set forth in the staff rate sheet provided by Construction Manager for each employee of Construction Manager working on the Project.

68. Section 7.3 is hereby amended by deleting the last four (4) words “subcontracts and this Agreement” and replacing that phrase with the phrase “Guaranteed Maximum Price Amendment.”

69. Section 7.4.2 is hereby amended by deleting Section 7.4.2 in its entirety and replacing it with a new Section 7.4.2 to read as follows:

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Construction Manager’s property at the completion of the Work and the actual cost of such excess materials as was originally billed to Owner shall be credited to the Owner as a deduction from the Cost of the Work.

70. Section 7.5 is hereby amended by deleting Sections 7.5.4, 7.5.5 and 7.5.6 in their entirety, and replacing Section 7.5.4 with a new Section 7.5.4 to read as follows:

§ 7.5.4 Costs of document reproductions; facsimile transmissions to the extent only that information being transmitted via facsimile cannot be transmitted via email or some Internet protocol; long-distance telephone calls with third-parties unrelated to CMAR; postage and parcel delivery charges for bulky items that cannot be transmitted electronically via email or some Internet protocol; one hard-wired (or "landline") telephone at the site, if necessary, and a pro rata portion of wireless telephone service expenses to the extent only that such wireless telephones are required for use on this Work Site and then only to the extent actually used for the Project; and, reasonable petty cash expenses of the site office subject to Owner's approval of the basis or justification for any and all expenses having a cumulative total in excess of \$100.00 in any month.

71. Sections 7.6.1.1 and 7.6.1.2 are hereby deleted in their entirety.

72. Section 7.6.2 is hereby amended by deleting Section 7.6.2 in its entirety and replacing it with a new Section 7.6.2 to read as follows:

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work, for which the Construction Manager is liable, and that are not permanently installed in the Work.

73. Section 7.6.4 is hereby amended by deleting Section 7.6.4 in its entirety and replacing it with a new Section 7.6.4 to read as follows:

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents.

74. Sections 7.6.5 through 7.6.11 are hereby deleted in their entirety.

75. Section 7.7.1 is hereby amended by deleting Section 7.7.1 in its entirety and replacing it with a new Section 7.7.1 to read as follows:

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

76. Sections 7.7.3 and 7.7.4 are hereby deleted in their entirety.
77. Section 7.8.2 is hereby amended by adding the following sentence to the end of that Section: "Transactions with a related party based on any method of compensation other than a lump sum are prohibited."
78. Section 7.9.1 is hereby amended by deleting the phrase "The Cost of the Work shall not include the items listed below" and replacing it with the phrase "The Cost of the Work shall exclude items including, but not limited to, those items listed below."
79. Section 7.9.1 is hereby amended, in part, by deleting Section 7.9.1.6 in its entirety and replacing it with a new Section 7.9.1.6 to read as follows:

§ 7.9.1.6 Costs due to the negligence of the Construction Manager, the Construction Manager's Subcontractors or suppliers, or the failure of the Construction Manager or the Construction Manager's Subcontractors or suppliers to fulfill a specific responsibility to the Owner set forth in this Agreement.

80. Section 8.1 is hereby amended by deleting the first sentence in its entirety.
81. Article 8, "Discounts, Rebates and Refunds," is hereby amended, in part, by inserting the following provision as a new Section 8.3:

§ 8.3 Costs of inspections and testing of work ordered by the Contractor where the work was not performed or completed in accordance with the scheduling of such inspections and testing and the inspection or testing lab is not notified shall be credited to the Owner as a deduction from the Cost of the Work.

82. Section 9.1 is hereby amended by deleting section 9.1 in its entirety and replacing it with a new section 9.1 to read as follows:

§ 9.1 All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including the Construction Manager, who have been selected using competitive bids or competitive sealed proposals. With the Owner's approval, the Construction Manager shall publicly

advertise and solicit either competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and,
- .3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

Nothing herein shall prevent the Construction Manager from including other notices required or allowed by law. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors', subcontractors' and Construction Manager's bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefore is completed. All bids or proposals shall be made public within seven (7) days after the date of final selection.

83. Section 9.1.1 is hereby amended by deleting section 9.1.1 in its entirety and replacing it with a new section 9.1.1 to read as follows:

§ 9.1.1 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) offers the best value to the Owner, but the Owner requires that another bid be accepted, then the Construction Manager may require that

a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

84. Section 9.2 is hereby amended by deleting Section 9.2 in its entirety and replacing it with a new section 9.2 to read as follows:

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, any adjustments to such a subcontract shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner. In addition, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights regarding the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

85. Section 11.1.3 is hereby amended by deleting Section 11.1.3 in its entirety and replacing it with a new Section 11.1.3 to read as follows:

§ 11.1.3 The Owner will pay an approved Application for Payment within thirty (30) days after the date such approved Application for Payment is received by the Owner from the Architect. Notwithstanding the foregoing the Owner shall not be required to pay any disputed amounts that the Owner believes were erroneously approved by the Architect. Past due payments and any disputed amounts shall bear interest in accordance with the Texas Prompt Payment Act.

86. Section 11.1.4 is hereby amended by adding the following sentence at the end of Section 11.1.4 to read as follows:

Each Application for Payment shall be accompanied by a release of claims and liens in the form acceptable to the Owner.

87. Section 11.1.5 is hereby amended by deleting Section 11.1.5 in its entirety and replacing it with a new Section 11.1.5 to read as follows:

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. The Construction Manager's Contingency and the Construction Manager's Fee shall be shown as separate individual items. Construction Manager shall use AIA Document G702 for Application and Certificate for Payments and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.

88. Section 11.1.5.1 is hereby amended in part by deleting the second sentence and replacing said sentence with a new sentence to read as follows:

The schedule of values, once approved by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

89. Section 11.1.5.3 is hereby amended by deleting Section 11.1.5.3 in its entirety and replacing it with a new Section 11.1.5.3 to read as follows:

§ 11.1.5.3 When the Construction Manager allocates costs from the Construction Manager's Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner. Similarly, when the Construction Manager shifts costs from one line item to one or more different line items in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner.

90. Section 11.1.7.1.3 is hereby deleted in its entirety.

91. Section 11.1.7.2.2 is hereby amended by deleting Section 11.1.7.2.2 in its entirety and replacing it with a new Section 11.1.7.2.2 to read as follows:

§ 11.1.7.2.2 The amount, if any, for Work that remains uncorrected and for which the Owner or Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;

92. Section 11.1.7.2.4 is hereby amended by deleting Section 11.1.7.2.4 in its entirety and replacing it with a new Section 11.1.7.2.4 to read as follows:

§ 11.1.7.2.4 For Work performed or defects discovered since the last payment application, any amount for which the Owner or Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;

93. Section 11.1.8 is hereby amended by inserting the following phrase in the corresponding spaces, provided for such purpose, immediately after the phrase “as retainage, from the payment otherwise due”:

“Retainage shall be five percent (5%).”

94. Section 11.1.8.2 is hereby deleted in its entirety.

95. Section 11.1.7.7 is hereby amended by deleting Section 11.1.7.7 in its entirety and replacing it with a new Section 11.1.7.7 to read as follows:

§ 11.1.7.7 The Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate of Payment as provided in Section 9.5 of the A201-2017 Documents;

96. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new section 11.1.11 to read as follows:

**§ 11.1.11** In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, §9.3.3 and §9.10.2 of the A201-2017 Documents.

97. Section 11.2.1.1 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents.”

98. Section 11.2.2 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents” in both the second and third sentences of said section.

99. Section 11.2.3 is hereby amended by deleting the phrase “A201-2017” at the end of the first sentence and replacing it with the phrase “A201-2017 Documents.”

100. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new Section 11.2.5 to read as follows:



**§ 11.2.5** The Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:

- .1 provision of record or as-built drawings executed or complete in both “.dwg” and “.tiff” formats;
- .2 provision of executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- .3 provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.

101. Article 12, entitled “Dispute Resolution,” including all Sections thereof is hereby deleted in its entirety and replaced with a new Article 12 also entitled “Dispute Resolution” to read as follows:

**§ 12.1** All disputes arising out of this Agreement shall be resolved in accordance with the provisions of Article 15 of the A201-2017 Documents.

102. Article 13, entitled “Termination or Suspension,” including all Sections and Subsections thereof is hereby deleted in its entirety and replaced with a new Article 13 also entitled “Termination or Suspension” to read as follows:

### **ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1** Prior to execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this agreement, with or without cause, at any time upon twenty-four hours’ notice. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for all Preconstruction Phase services actually performed prior to receipt of notice of termination, not to exceed the compensation set forth in Section 4.1.1.

**§ 13.2** Following execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this

agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

**§ 13.3** Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Construction Manager may not terminate this agreement.

**§ 13.4** The Owner or the Construction Manager may terminate this agreement for cause as provided in Article 14 of the A201-2017 Documents.

103. Section 14.2, "Successors and Assigns," is hereby deleted in its entirety and replaced with a new Section 14.2, "Successors and Assigns," to read as follows:

**§ 14.2 Successors and Assigns**

The parties' rights with respect to assignment of this Agreement shall be in accordance with Article 13.2 of the General Conditions, AIA A-201-2017.

104. Section 14.3, entitled "Insurance and Bonds," is hereby deleted in its entirety and replaced with a new Section 14.3 also entitled "Insurance and Bonds" to read as follows:

**§ 14.3 Insurance and Bonds**

For all phases of the Project, the Construction Manager shall purchase and maintain insurance and shall provide bonds in accordance with the Contract Documents and the Request for Proposals.

105. Section 14.4 is hereby deleted in its entirety and replaced with a new Section 14.4, "Conflict of Interest," to read as follows:

**§ 14.4 Conflict of Interest**

**§ 14.4.1** Construction Manager covenants and agrees that Construction Manager and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Construction Manager pursuant to this Agreement will be conducted by employees, associates or subcontractors of Construction Manager.

**§ 14.4.2** In addition, to the extent that this Agreement (a) must be approved by the Town's governing body before it may be signed or (b) has a value of \$1,000,000, or more, Construction Manager shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time Construction Manager submits this signed Agreement to Owner, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The Construction Manager must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the Construction Manager must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the Owner.

The Owner must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the Owner.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

106. Section 14.5 is hereby deleted in its entirety and replaced with a new Section 14.5, "Prohibition on Contracts with Companies Boycotting Israel," to read as follows:

**§ 14.5 Prohibition on Contracts with Companies Boycotting Israel.**

In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.

Chapter 2270 does not apply to: (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

107. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.6, "Prohibition on Contracts with Companies Boycotting Energy Companies," to read as follows:

**§ 14.6 Prohibition on Contracts with Companies Boycotting Energy Companies.**

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the

contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

108. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.7, "Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association," to read as follows:

**§ 14.7 Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association.**

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). In addition, this provision does not apply to: (1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the

Construction Manager does not boycott any firearm entity or firearm trade association and will not boycott any firearm entity or firearm trade association during the term of this Agreement.

109. Article 15, entitled "Scope of the Agreement," including all Sections and Subsections thereof is hereby deleted in its entirety.

## II.

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

## III.

This Addendum, when combined with the Agreement contains the entire agreement between Owner and Construction Manager with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions were incorporated therein word for word.

## IV.

This Addendum and the Agreement are entered into subject to the Prosper Town Charter and ordinances of Town, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Construction Manager will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Construction Manager's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

## V.

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**VI.**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

**VII.**

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Construction Manager) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Construction Manager or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Construction Manager.

**IN WITNESS WHEREOF**, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

**OWNER:**

**TOWN OF PROSPER, TEXAS**

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

Date Signed: \_\_\_\_\_

**ATTEST:**

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

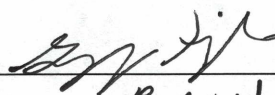
**APPROVED AS TO FORM:**

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



**CONSTRUCTION MANAGER:**

**DEAN ELECTRIC, INC., d/b/a  
DEAN CONSTRUCTION**

By:   
Title: President

Date Signed: 10-2-22

THE STATE OF TEXAS,  
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Ron K. Patterson, Interim Town Manager of the **TOWN OF PROSPER**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the Town's behalf.

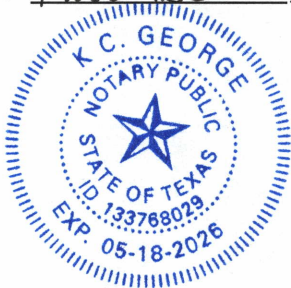
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, Collin County, Texas  
My commission expires \_\_\_\_\_

THE STATE OF TEXAS,  
COUNTY OF Dallas

This instrument was acknowledged before me on the 2nd day of November, 2022, by Bregory Firebaugh, in his capacity as President of **DEAN ELECTRIC, INC., d/b/a DEAN CONSTRUCTION**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **DEAN ELECTRIC, INC., d/b/a DEAN CONSTRUCTION**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 2nd DAY OF November, 2022.



K.C. George  
Notary Public, Dallas County, Texas  
My commission expires 5/18/2026



## TOWN MANAGER

**To: Mayor and Town Council**

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

**Through: Robyn Battle, Executive Director of Community Services  
Hulon T. Webb, Jr., Interim Executive Director of Development and Infrastructure Services  
Bob Scott, Executive Director of Administrative Services**

**Re: Capital Improvements Subcommittee**

**Town Council Meeting – November 22, 2022**

### **Agenda Item:**

Consider and act upon the creation and appointment of members to a Capital Improvements Subcommittee.

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

Section 7.11 of the Town Charter states: *“The Town Manager shall submit a five-year (5-year) capital program as an attachment to the annual budget”*. With the rapid growth of the town, significant capital needs and the creation of an additional funding source of a capital dedicated property tax levy, there is a need for a longer-term and more extensive prioritization of projects prior to the annual budget process.

At the September 13, 2022, Town Council meeting, the Town Council discussed the option of having a Capital Improvements Subcommittee to assist full council with the prioritization process. The purpose of the Capital Improvements Subcommittee would be to as follows:

- Obtain a holistic view of the Town’s short-term and long-term capital improvement needs regardless of possible funding sources.
- Using projected funding available by year received from staff and reviewed by the Finance sub-committee prioritize the timing and scope of projects for a minimum of five but potentially up to ten years. Available funding sources as determined by the Finance sub-committee will include the Capital Dedicated Fund, Impact Fee Funds, debt issuance, grants, year-end savings and other sources.
- In the event, that the sub-committee believes that available funding is not sufficient to complete all needed capital projects within the desired timeframe request the Finance sub-committee to identify additional funding sources including additional debt issuance.
- Make a clear recommendation to the Town Council on the capital improvement projects that would be selected as part of the budget process through the adoption of the Multi-Year Capital Plan.

The Subcommittee would function in the same manner as the current Council Subcommittees and consist of three (3) Councilmembers and supported by selected staff.

Item 12.

The Town Council requested this item to be brought back for formal consideration.

**Town Staff Recommendation:**

Town staff recommends that the Town Council consider and act upon the appointment of members to a Capital Improvements Subcommittee.

**Proposed Motion:**

I move to appoint the following individuals to the Capital Improvements Subcommittee: