



*Prosper is a place where everyone matters.*

**Agenda**  
**Prosper Town Council Meeting**  
Council Chambers  
Prosper Town Hall  
250 W. First Street, Prosper, Texas  
Tuesday, November 26, 2019  
**5:45 PM**

**Call to Order/ Roll Call.**

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

**Announcements of recent and upcoming events.**

**Presentations.**

1. Library Services Annual Update. **(LS)**
2. *One Book, One Town* Presentation. **(LS)**
3. Presentation of a Certificate of Appreciation to a Prosper Eagle Scout in recognition of his work on the Prosper Book Trail. **(LS)**

**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. Zoning-related Public Hearing items on the Consent Agenda have received a unanimous recommendation for approval by the Planning & Zoning Commission, and no written opposition was received prior to the posting of this agenda. Those wishing to speak on a Public Hearing item on the Consent Agenda should complete a "Public Meeting Appearance Card" and present it to the Town Secretary prior to the meeting.

- [4.](#) Consider and act upon the Minutes from the November 12, 2019, Town Council Meeting. **(RB)**
- [5.](#) Consider and act upon canceling the December 24, 2019, Prosper Town Council meeting. **(RB)**
- [6.](#) Consider and act upon adopting the ExpressVote EVS 6.0.2.0 Universal voting system in Collin County, and the Hart Intercivic Verity Voting 2.3 voting system in Denton County, for early voting in person, early voting by mail, Election Day voting, and provisional voting for all elections held within the Town of Prosper. **(RB)**
- [7.](#) Consider and act upon approving a Standard Form of Agreement with Pogue Construction Co., LP, for the construction of additional Town Hall office space; and authorizing the Town Manager to execute the same. **(CS)**
- [8.](#) Consider and act upon approving the purchase of one Ford transit van from Silsbee Ford, Inc., through the Texas Local Government Purchasing Cooperative; and one Rover camera truck system from Green Equipment Co., through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program. **(FJ)**

9. Consider and act upon rejecting all proposals received in response to CSP No. 2020-13-B for Project I: Drainage and Sanitary Sewer Improvements for North Church Street and North Parvin Street; and Project II: Grading, Drainage and Structures for Old Town Retention Pond. **(PA)**
10. Conduct a Public Hearing, and consider and act upon an ordinance rezoning 0.8± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the northwest corner of Second Street and Coleman Street. (Z19-0019). **(AG)**

### **Citizen Comments:**

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a “Public Meeting Appearance Card” and present it to the Town Secretary prior to the meeting.

### **REGULAR AGENDA:**

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

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

11. Conduct a Public Hearing, and consider and act upon a request to rezone 2.1± acres from Office to Planned Development-Office (PD-O), located on the west side of future Mahard Drive, south of future Prairie Drive, to facilitate the development of a Limited Service Hotel (Holiday Inn Express). (Z19-0016). **(AG)**
12. Conduct a Public Hearing, and consider and act upon a request to amend 654.0± acres of Planned Development-40 (PD-40), for Windsong Ranch, generally located on the west side of Teel Parkway, south of Parvin Road, in order to modify the residential development standards, including but not limited to; decreasing the overall lot count; incorporating smaller lot types; and providing architectural and landscape regulations. (Z19-0020). **(AG)**
13. Presentation of recent administrative updates to the Thoroughfare Plan, reflecting existing roadway conditions, right-of-way dedication, and/or easement acquisition. **(AG)**

### **Executive Session:**

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

*Section 551.087 – To discuss and consider economic development incentives.*

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

*Section 551.076 – Deliberation of the deployment, or specific occasions for implementation, of security personnel or devices at Town Hall.*

*Section 551.071 - Consultation with the Town Attorney regarding legal issues relative to Section 1.03.002 of the Town's Code of Ordinances, and all matters incident and related thereto.*

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

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

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

**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 7:30 p.m., on Friday, November 22, 2019, and remained so posted at least 72 hours before said meeting was convened.

\_\_\_\_\_  
Robyn Battle, Town Secretary

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

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

### **NOTICE**

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

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



*Prosper is a place where everyone matters.*

## Minutes

**Prosper Town Council Meeting**  
Council Chambers  
Prosper Town Hall  
250 W. First Street, Prosper, Texas  
Tuesday, November 12, 2019

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

The meeting was called to order at 5:47 p.m.

### **Council Members Present:**

Mayor Ray Smith  
Mayor Pro-Tem Curry Vogelsang, Jr.  
Deputy Mayor Pro-Tem Jason Dixon (arrived at 5:53 p.m.)  
Councilmember Marcus E. Ray  
Councilmember Craig Andres  
Councilmember Meigs Miller (arrived at 6:00 p.m.)  
Councilmember Jeff Hodges

### **Staff Members Present:**

Harlan Jefferson, Town Manager  
Terry Welch, Town Attorney  
Robyn Battle, Town Secretary/Public Information Officer  
Chuck Springer, Executive Director of Administrative Services  
Kelly Wilson, Finance Director  
Betty Pamplin, Accounting Manager  
Kala Smith, Human Resources Director  
Dudley Raymond, Parks and Recreation Director  
Paul Naughton, Landscape Architect  
Hulon Webb, Engineering Services Director  
Pete Anaya, Assistant Director of Engineering Services – Capital Projects  
John Webb, Development Services Director  
Alex Glushko, Planning Manager  
Doug Kowalski, Police Chief

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

Pastor John Fowler from First Presbyterian Church of Prosper led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

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

Councilmember Ray read the following announcements:

Winter averaging for the Town's wastewater charges begins on November 15 and ends on February 15. Every year, the Town uses residential water consumption for these three months to determine average wastewater usage for the year. Contact the Utility Billing department for more information.

Entries for the Prosper Christmas Parade, sponsored by the Prosper Rotary Club, are now being accepted. The parade will begin at 2:30 p.m. on December 7, and will travel along Broadway to

Downtown. Community groups, civic organizations, scout troops, and businesses are encouraged to participate.

The annual Prosper Christmas Festival is moving back to Downtown Prosper on Saturday, December 7 from 3:00-7:00 p.m. This year's event will include a Kids Christmas Shop, complimentary horse-drawn carriage rides, Santa's Workshop with interactive children's art projects, Community Stage performances, and a Kid Zone with rides and attractions. The evening will end with Mayor Smith lighting the Community Christmas Tree, with fireworks to follow as the festival finale. More information is available at [www.ProspersChristmasFestival.org](http://www.ProspersChristmasFestival.org)

Councilmember Ray thanked Cub Scout Troop 1902 for meeting with Mayor Smith earlier this evening to learn about leadership in the community.

### **Discussion Items.**

**1. Presentation of the Government Finance Officer Association (GFOA) Award for Outstanding Achievement in Popular Annual Financial Reporting. (KN)**

Mayor Smith presented the award to Finance Director Kelly Wilson and Accounting Manager Betty Pamplin.

Deputy Mayor Pro-Tem Dixon arrived at 5:53 p.m.

**2. Downtown Live! Discussion (DR)**

Parks and Recreation Director Dudley Raymond briefed the Council on plans for the Downtown Live! event in 2020. The Town has budgeted \$50,000 for this event. The Council directed staff to pursue sponsorships and other fundraising efforts, identify a headline performer, and investigate holding the event on Broadway rather than the Town Hall parking lot. Additionally, the Council directed staff not to have alcohol sales, which will cut down substantially on the event cost. The Council would like to see more vendors at the next event, and perhaps involve downtown business owners and volunteers in the planning of the event.

Councilmember Miller arrived at 6:00 p.m.

### **CONSENT AGENDA:**

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- 3. Consider and act upon the Minutes from the October 22, 2019, Town Council Meeting. (RB)**
- 4. Receive the September Financial Report. (KW)**
- 5. Receive the Quarterly Investment Report. (KW)**
- 6. Consider and take action upon Resolution No. 19-81 expressing official intent to reimburse costs of Town capital improvement program projects that may be funded with proceeds of bonds or other obligations, if those costs are paid prior to the issuance of such bonds or other obligations. (KW)**
- 7. Consider and act upon Resolution No. 19-82 appointing members to the Board of Directors of the Town of Prosper Crime Control and Prevention District. (KW)**

8. Consider and act upon authorizing the Competitive Sealed Proposal (CSP) procurement method for construction of the Fishtrap Road (Teel Intersection Improvements) and Fishtrap & Teel Parkway Traffic Signal projects. (PA)
10. Consider and act upon a request for a Subdivision Waiver for a lot without street frontage for the Mav Addition, Block A, Lot 4, on 4.4± acres, located north side of Fishtrap Road, west of Legacy Drive. The property is zoned Office (O). (D19-0062).
11. Consider and act upon a request to permit open fencing in the front yard of Lot 14, Prestonview Estates, Phase 1, located at 8967 Prestonview Drive. (V19-0003). (JW)
12. Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Site Plan or Preliminary Site Plan. (AG)

Councilmember Andres removed Item 9 from the Consent Agenda.

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

9. Consider and act upon authorizing the Town Manager to execute an Interlocal Agreement between the Prosper Independent School District, and the Town of Prosper, Texas, related to the construction and/or expansion of Segments 1 through 4 of Fishtrap Road. (HW)

Hulon Webb, Director of Engineering Services, responded to questions regarding the timeline and budget for the different segments of the project. Some budget adjustments are due to the recent changes in the Town's pavement standards. Town Manager Harlan Jefferson stated that the Town will utilize a Competitive Sealed Proposal method of procurement to select a vendor for the project, which is more competitive, and should result in greater cost savings compared to other bidding methods.

After discussion, Councilmember Andres made a motion and Councilmember Hodges seconded the motion to approve Item 9. The motion was approved by a vote of 7-0.

#### **Citizen Comments:**

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

There were no Citizen Comments.

#### **REGULAR AGENDA:**

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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:**

13. **Conduct a Public Hearing, and consider and act upon an ordinance modifying the development standards of Planned Development-40 (PD-40), for Windsong Ranch, regarding key lot side yard setbacks. (Z19-0015). (AG)**

Planning Manager Alex Glushko presented this item before the Town Council. The proposed amendment is to eliminate the PD-40 regulation for a 25' key lot side yard setback, thus adopting the Town's standard key lot side yard setback regulation, which requires it match the adjacent front yard setback and accommodates the staggered setback provision.

Mayor Smith opened the Public Hearing.

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

Councilmember Miller made a motion and Councilmember Ray seconded the motion to approve Ordinance No. 19-83 modifying the development standards of Planned Development-40 (PD-40), for Windsong Ranch, regarding key lot side yard setbacks. The motion was approved by a vote of 7-0.

14. **Conduct a Public Hearing, and consider and act upon a request to amend Planned Development-68 (PD-68), Shops at Prosper Trail, on 33.2± acres, located on the northeast corner of Preston Road and Prosper Trail, generally to modify the development standards, including but not limited to permitting a drive-through restaurant, outdoor sales and display, modified parking regulations, and architectural design. (Z19-0017). (AG)**

Planning Manager Alex Glushko presented this item before the Town Council. The purpose of this request is to amend Planned Development-68 (PD-68), Shops at Prosper Trail, 33.2± acres, to modify the development standards to accommodate existing development, as well as to allow for the development of the remaining pad sites within the development. Mr. Glushko reviewed the details of the request. Don Silverman, the applicant, also provided an overview of the proposed changes, noting that all of the buildings in the development will have a consistent palette of materials.

Mayor Smith opened the Public Hearing.

O. B. Barsh, 1350 Preston Road, Prosper, spoke in favor of the development, and provided photographs of the requested outdoor storage for Council's review. He noted that the items will be brought in at night, and would not impede sidewalk traffic or the sidewalk ramp.

Curt Mooney, 1230 Packsaddle Trail, Prosper, spoke in opposition to the item, stating that there was significant opposition to the development in 2014, since it did not comply with the Town's Comprehensive Plan at the time. He encouraged the Council to uphold the Town's standards and prohibit outdoor sales and storage, and the drive-through restaurant.

Barbara Nugent, 961 Grassy Shore, Prosper, spoke in opposition to the item, noting the noise and traffic that would accompany the drive-through restaurant.

With no one else speaking, Mayor Smith closed the Public Hearing.

The Council discussed the modifications to the parking area. Although the modifications were made without Town review or permitting, the Council was supportive of the applicant's request to allow the parking to remain as it currently exists.

Town Attorney Terry Welch responded to questions from the Council on the proposed Development Agreement. An ordinance and a development agreement will be brought forward for Council consideration at a future meeting which will incorporate the terms discussed tonight, as well as detailed building elevations.

After discussion, Councilmember Ray made a motion and Councilmember Hodges seconded the motion to approve the request to amend Planned Development-68 (PD-68), Shops at Prosper Trail, on 33.2± acres, located on the northeast corner of Preston Road and Prosper Trail, subject to the following conditions and exceptions:

1. Denial of the drive-through restaurant use on Lot 6;
2. Approval of the flat-roof architecture on Lot 7, subject to approval of a development agreement, including elevations consistent with proposed Exhibit F;
3. Denial of additional outdoor sales and display uses;
4. Approval of the modified parking on Lot 5, as it presently exists; and
5. Approval of a development agreement, including elevations of the office located on Lot 8 consistent with proposed Exhibit F.

The motion was approved by a vote of 5-2, with Deputy Mayor Pro-Tem Dixon and Councilmember Miller casting the opposing votes.

**15. Consider and act upon authorizing the Town Manager to execute Contract Amendment #1 to the Professional Services Agreement between Halff Associates, Inc., and the Town of Prosper, Texas, related to the design of the Prosper Trail (Coit – Custer) project. (PA)**

Pete Anaya, Assistant Director of Engineering Services – Capital Projects, presented this item before the Town Council. As part of the adoption of the Town's 2019-2020 Capital Improvement Program, the Town Council approved the funding for the construction of two lanes of the ultimate four lanes on Prosper Trail from Coit Road to Custer Road. The proposed Contract Amendment #1 includes the revision of the design plans to proceed from the 90% to 100% design, repackages the submittal of construction drawings and specifications to reflect the construction of two lanes of the ultimate four-lane design, modifies the drainage system to include open drainage, and provides record drawings at conclusion of construction.

The Council expressed a preference to accelerate the timeline on this project. Town Manager Harlan Jefferson noted that the project is currently scheduled so that design, right-of-way acquisition, and utility relocation can occur concurrently.

After discussion, Councilmember Hodges made a motion and Councilmember Andres seconded the motion to authorize the Town Manager to execute Contract Amendment #1 to the Professional Services Agreement between Halff Associates, Inc., and the Town of Prosper, Texas, related to the design of the Prosper Trail (Coit – Custer) project. The motion was approved by a vote of 7-0.

**16. Consider and act upon an ordinance amending Subpart (4) "Amount of Park Improvement Fee," of Subsection (H), "Park Improvement Fee," of Section 6.20, "Park Land Dedications, and Fees," of Section 6, "Subdivision Desi**

**Standards,” of the Subdivision Ordinance by removing park improvement fee amounts; amending Subsection (2) “Other Fees,” of Section V, “Development Fees,” of Appendix A, “Fee Schedule,” of the Town’s Code of Ordinances, by establishing new park improvement fees and amending the term, “Park Fee” to “Park Land Fee Lieu of Dedication” in the “Fee Schedule.” (MD19-0008)**

Parks and Recreation Director Dudley Raymond presented this item before the Town Council. At the Town Council Strategic Session in January 2019, staff presented the current park improvement and park dedication fee rates. During the presentation, staff received direction from Town Council regarding the amount of fees that should be increased in the near term, as well as possible fee increases in the future. Staff recommended, and Council agreed, on no change to the “Fee in Lieu of Park Land Dedication” requirement because it is currently meeting the needs of existing parks, and appears to be sufficient for future park needs. Town staff proposed an increase in the single family unit Park Improvement Fee from \$1,500 to \$2,300, and an increase in the multifamily unit fee from \$2,000 to \$2,800. The Town’s fees have not been updated since 2010. Staff met with the Prosper Developers Council (PDC) on September 10, 2019, to discuss the updated park improvement fee rates. Staff did not receive any formal comments from the PDC.

Mayor Smith recognized the following individual who requested to speak:

David Lehde, 5816 W. Plano Parkway, Plano, Director of Government Affairs at the Dallas Builders Association, spoke in opposition to the item, stating that the proposed Park Improvement Fees are higher than those of the surrounding cities, and will ultimately increase home prices for future homeowners in Prosper.

Responding to a question from the Town Council, Town Attorney Terry Welch responded that the fee goes into effect when the property is platted.

After discussion, Deputy Mayor Pro-Tem Dixon made a motion and Councilmember Miller seconded the motion to table Item 16 indefinitely. The motion was approved by a vote of 7-0.

**Executive Session:**

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

***Section 551.087 – To discuss and consider economic development incentives.***

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

***Section 551.071 - Consultation with the Town Attorney regarding legal issues associated with incentivization and revitalization of residential construction in the Old Town District, and all matters incident and related thereto.***

***Section 551.071 - Consultation with the Town Attorney regarding legal issues associated with ordinance waivers, exceptions, and recommendations, and all matters incident and related thereto.***

**Section 551.071 - Consultation with the Town Attorney regarding legal issues relative to Section 1.03.002 of the Town’s Code of Ordinances, and all matters incident and related thereto.**

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

The Town Council recessed into Executive Session at 8:57 p.m.

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

The Town Council reconvened the Regular Session at 11:41 p.m. No action was taken as a result of the Closed Session.

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

**17. No parking on Talon. (HW)**

Hulon Webb, Director of Engineering Services, briefed the Council on a safety concern with parking along Talon Lane before and after school. Prosper ISD plans to erect permanent “no parking” signs in the area. The Prosper Police Department is assisting with enforcement in the area; however, the Town would need to adopt an ordinance and enter into an agreement with Prosper ISD in order to issue citations for parking violations.

**18. Fence on west side of Talon. (HW)**

Mr. Webb briefed the Council on a safety concern with students crossing the train tracks near the new football stadium. The Town proposed a fence and pedestrian bridge near the railroad tracks prior to the construction of the stadium; however, Prosper ISD, who owns the property adjacent to the railroad tracks, declined. A partial fence currently exists along the eastern property boundary of the football stadium, along Wesley Drive. Town staff was directed to stay in communication with Prosper ISD regarding the construction of a fence along the railroad tracks.

**Adjourn.**

The meeting was adjourned at 11:55 p.m. on Tuesday, November 18, 2019.

These minutes approved on the 26<sup>th</sup> day of November 2019.

**APPROVED:**

\_\_\_\_\_  
**Ray Smith, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Robyn Battle, Town Secretary**

**TOWN SECRETARY/PIO**



**To: Mayor and Town Council**  
**From: Robyn Battle, Town Secretary**  
**Through: Harlan Jefferson, Town Manager**  
**Re: Town Council Meeting – November 26, 2019**

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**Agenda Item:**

Consider and act upon canceling the December 24, 2019, Prosper Town Council meeting.

**Description of Agenda Item:**

The second Regular Town Council meeting in December falls on Tuesday, December 24, 2019. Town offices will be closed due to the Christmas holiday; therefore, Town staff is proposing that the December 24, 2019, Town Council meeting be canceled.

**Proposed Motion:**

I move to cancel the December 24, 2019, Prosper Town Council meeting.

## TOWN SECRETARY/PIO



**To:** Mayor and Town Council  
**From:** Robyn Battle, Town Secretary/PIO  
**Through:** Harlan Jefferson, Town Manager  
**Re:** Town Council Meeting – November 26, 2019

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**Agenda Item:**

Consider and act upon adopting the ExpressVote EVS 6.0.2.0 Universal voting system in Collin County, and the Hart Intercivic Verity Voting 2.3 voting system in Denton County, for early voting in person, early voting by mail, Election Day voting, and provisional voting for all elections held within the Town of Prosper. **(RB)**

**Description of Agenda Item:**

In August 2019, the Collin County Commissioners Court voted to approve the ExpressVote Universal Voting System, EVS 6.0.2.0 for early voting and Election Day voting. The new system replaces the county's 15-year-old system. Denton County adopted a similar system, the Hart InterCivic 2.3 voting system, in November 2017. Both systems utilize a ballot-marking system that prints out a paper ballot for each voter to verify before it is scanned and tabulated. The ExpressVote system used in Collin County and the Hart InterCivic system used in Denton County have both been certified by the Texas Secretary of State.

Collin County has requested all entities who contract with the County for election services to adopt the new voting system. Since the Town also contracts with Denton County for election services, and to ensure compliance with Texas Election Code Chapter 123, Subchapter A, Town staff is recommending the Town Council formally adopt both voting systems.

**Attached Documents:**

1. Collin County Commissioners Court Order 2019-697-08-26
2. Denton County Commissioners Court Order 17-0489
3. Texas Secretary of State Certification of ExpressVote EVS 6.0.2.0 Voting System
4. Texas Secretary of State Certification of Hart InterCivic Verity Voting 2.3 Voting System

**Town Staff Recommendation:**

Town staff recommends the Town Council adopt the ExpressVote EVS 6.0.2.0 Universal voting system in Collin County, and the Hart Intercivic Verity Voting 2.3 voting system in Denton County,

for early voting in person, early voting by mail, Election Day voting, and provisional voting for all elections held within the Town of Prosper.

**Proposed Motion:**

I move to adopt the ExpressVote EVS 6.0.2.0 Universal voting system in Collin County, and the Hart Intercivic Verity Voting 2.3 voting system in Denton County, for early voting in person, early voting by mail, Election Day voting, and provisional voting for all elections held within the Town of Prosper.

State of Texas §  
Collin County §  
Commissioners Court §

Court Order  
2019-697-08-26

An order of the Commissioners Court adopting the ExpressVote Universal Voting System for Early Voting in Person, Early Voting by Mail, Election Day Voting, and Provisional Voting in all future elections held in Collin County.

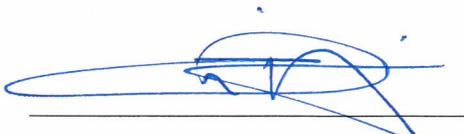
Whereas, on January 28, 2019, the Collin County Commissioners Court voted unanimously to award RFP No. 2018-241 for the new voting systems to Election Systems and Software; and

Whereas, the Texas Secretary of State has officially approved the contract between Collin County and ES&S for the purchase of the ExpressVote Universal Voting System; and

Whereas, the ExpressVote Universal Voting System, EVS 6.0.2.0 consisting of Electionware election management software, ExpressVote ballot marking device, ExpressTough curbside voting device, DS200 precinct tabulator/scanner, DS450 high speed central scanner, and DS850 high speed central scanner have been certified by both the Texas Secretary of State and the United States Election Assistance Commission;

Now, therefore, be it resolved that the Commissioners Court of Collin County adopts the ExpressVote Universal Voting System consisting of Electionware election management software, ExpressVote ballot marking device, ExpressTouch curbside voting device, DS200 precinct tabulator/scanner, DS450 high speed central scanner, and DS850 high speed central scanner. This voting equipment will be used for Early Voting in Person, Early Voting by Mail, Election Day Voting, and Provisional Voting in all future elections held in Collin County.

Passed and approved this 26<sup>th</sup> day of August, 2019.

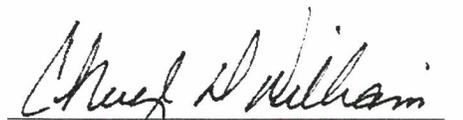
  
Chris Hill, County Judge

  
Darrell Hale, Commissioner, Pct 3

  
Susan Fletcher, Commissioner, Pct 1



  
Duncan Webb, Commissioner, Pct 4

  
Cheryl Williams, Commissioner, Pct 2

  
ATTEST: Stacey Kemp, County Clerk

# DENTON COUNTY COMMISSIONERS COURT

06/20/2017

Month Day Year  
17-0489

Court Order Number

6. A.

**THE ORDER:**

Approval of purchase of Verity Voting System, RFP #04-17-2534, through the BuyBoard Contract #460-14, from Hart Intercivic for the Paper Option inclusive of the Poll Pad System and the first year license and support, less equipment trade in, for a total of \$8,787,104 as recommended by Frank Phillips, Elections Administrator; approval to declare existing election equipment as surplus and authorize trade-in for a \$345,000 credit towards the purchase; and any appropriate action.

Motion by Eads

Seconded by Horn

County Judge  
Mary Horn  
Yes   
Abstain   
No   
Absent

Commissioner Pct No 1  
Hugh Coleman  
Yes   
Abstain   
No   
Absent

Commissioner Pct No 2  
Ron Marchant  
Yes   
Abstain   
No   
Absent

Commissioner Pct No 3  
Bobbie J. Mitchell  
Yes   
Abstain   
No   
Absent

Commissioner Pct No 4  
Andy Eads  
Yes   
Abstain   
No   
Absent

Motion Carried 3-0-0

Other Action: Pulled from Consent  No Action  Postponed

BY ORDER OF THE COMMISSIONERS COURT:

ATTEST:

Mary Horn  
Presiding Officer

APPROVED AS TO FORM  
John Reldt  
Assistant District Attorney

Luji Luke  
County Clerk  
and Ex-Officio Clerk of the  
Commissioners Court of  
Denton County, Texas  
Luji Luke  
Deputy County Clerk

Elections Division  
P.O. Box 12060  
Austin, Texas 78711-2060  
www.sos.texas.gov



David Whitley  
Secretary of State

Phone: 512-463-5650  
Fax: 512-475-2811  
Dial 7-1-1 For Relay Services  
(800) 252-VOTE (8683)

REPORT OF REVIEW OF ES&S EVS 6.0.2.0 AND THE EXPRESSVOTE XL

**PRELIMINARY STATEMENT**

On January 22, 2019, Election Systems & Software (the "Vendor") presented EVS 6.0.2.0 and the ExpressVote XL for examination and certification. The examination was conducted in Austin, Texas. Pursuant to Sections 122.035(a) and (b) of the Texas Election Code, the Secretary of State appointed the following examiners:

1. Mr. Tom Watson, an expert in electronic data communication systems; and
2. Mr. Charles Pinney, an expert in election law and procedure.

Pursuant to Section 122.035(a), the Texas Attorney General appointed the following examiners:

1. Dr. Jim Sneeringer, an expert in electronic data communication systems; and
2. Mr. Ryan Vassar, an employee of the Texas Attorney General.

On January 22, 2019, Mr. Watson, Mr. Pinney, Dr. Sneeringer, and Mr. Vassar were present and witnessed the installation of the EVS 6.0.2.0 software and firmware that the Office of the Texas Secretary of State (the "Office") received directly from the Independent Testing Authority. Mr. Pinney and Ms. Krystine Ramon, a staff attorney with the Office, examined the accessibility components of the ExpressVote XL.

After the accessibility review, the Vendor demonstrated the system and answered questions presented by the examiners. Test ballots were then processed on the ExpressVote XL. The results were accumulated and later verified for accuracy by staff of the Secretary of State.

Examiner reports on the system are attached hereto and incorporated herein by reference.

On March 13, 2019, a public hearing was conducted in which interested persons were given an opportunity to express views for or against certification of the system.

**BRIEF DESCRIPTION OF EVS 6.0.2.0 AND THE EXPRESSVOTE XL**

The EVS 6.0.2.0 Voting System contains a new hardware component and an updated version of the reporting module in the ElectionWare software in previous versions of EVS that the Secretary of State certified on December 15, 2016, July 28, 2017, and November 15, 2018.

EVS 6.0.2.0 (together with ExpressVote and ExpressTouch) has been evaluated at an accredited independent voting system testing laboratory for conformance to the 2005 Voluntary Voting System Guidelines. It has received Elections Assistance Commission (EAC) # ESSEVS6020 on October 4, 2018.

The components of EVS 6.0.2.0 are as follows:

<b>Component</b>	<b>Version</b>	<b>Description</b>
ExpressVote XL	1.0.0.0	Accessible ballot marker and precinct scanner
ExpressTouch	1.0.0.0	Accessible electronic vote capture and tabulation device
DS200	2.17.0.0	Precinct Scanner and Tabulator
DS450	3.1.0.0	Central Scanner and Tabulator
DS850	3.1.0.0	Central Scanner and Tabulator
ExpressVote HW 1.0	1.5.0.0	Accessible electronic ballot marker
ExpressVote HW 2.1	2.4.0.0	Accessible electronic ballot marker and precinct scanner
ElectionWare	5.0.1.0	Database system that allows jurisdictions to code, lay out ballots, and burn media
ES&S Event Log Service	1.6.0.0	Background function that monitors the functioning of Windows Event Viewer
ExpressVote Previewer 1.0	1.5.0.0	Allows user to preview screen and layout and audio for ExpressVote
ExpressVote Previewer 2.1	2.4.0.0	Allows user to preview screen and layout and audio for ExpressVote
Removable Media Service	1.5.0.0	Supports installation and removal of election and results media

### FINDINGS

The following are the findings, based on written evidence submitted by the Vendor in support of its application for certification, oral evidence presented at the examination, and Texas voting system examiner reports.

The EVS 6.0.2.0 Voting System and the ExpressVote XL ballot marking device and precinct scanner meet the standards for certification as prescribed by Section 122.001 of the Texas Election Code. Specifically, the EVS 6.0.2.0 and the ExpressVote XL components, among other things:

- 1. Preserve the secrecy of the ballot;
- 2. Are suitable for the purpose for which they are intended;
- 3. Operate safely, efficiently, and accurately and comply with the voting system standards adopted by the Election Assistance Commission;
- 4. Are safe from fraudulent or unauthorized manipulation;
- 5. Permit voting on all offices and measures to be voted on at the election;
- 6. Prevent counting votes on offices and measures on which the voter is not entitled to vote;
- 7. Prevent counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevent counting votes for more than the number of candidates for whom the voter is entitled to vote;
- 8. Prevent counting a vote on the same office or measure more than once;
- 9. Permit write-in voting;
- 10. Are capable of permitting straight-party voting; and
- 11. Are capable of providing records from which the operation of the system may be audited.

**CONCLUSION**

Accordingly, based upon the foregoing, I hereby certify the EVS 6.0.2.0 Voting System and the ExpressVote XL for use in elections in Texas.

Signed under my hand and seal of office, this 28<sup>th</sup> day of MARCH, 2019.

  
\_\_\_\_\_  
JOSE A. ESPANZA  
DEPUTY SECRETARY OF STATE

Elections Division  
P.O. Box 12060  
Austin, Texas 78711-2060  
www.sos.texas.gov



Phone: 512-463-5650  
Fax: 512-475-2811  
Dial 7-1-1 For Relay Services  
(800) 252-VOTE (8683)

Secretary of State

## REPORT OF REVIEW OF HART INTERCIVIC VERITY VOTING 2.3 SYSTEM

### PRELIMINARY STATEMENT

On May 22-23, 2019, Hart InterCivic Inc. (the "Vendor") presented Verity Voting 2.3 for examination and certification. The examination was conducted in Austin, Texas. Pursuant to Sections 122.035(a) and (b) of the Texas Election Code, the Secretary of State appointed the following examiners:

1. Mr. Tom Watson, an expert in electronic data communication systems;
2. Mr. Brian Mechler, an expert in electronic data communication systems;
3. Mr. Brandon Hurley, an expert in election law and procedure; and
4. Mr. Charles Pinney, an expert in election law and procedure.

Pursuant to Section 122.035(a), the Texas Attorney General appointed the following examiners:

1. Dr. Jim Sneeringer, an expert in electronic data communication systems; and
2. Mr. Ryan Vassar, an employee of the Texas Attorney General.

On May 22, 2019, Mr. Pinney, Mr. Mechler, and Dr. Sneeringer witnessed the installation of the Verity Voting 2.3 software and firmware that the Office of the Texas Secretary of State (the "Office") received directly from the Independent Testing Authority. Mr. Pinney and Ms. Heidi Martinez, a staff attorney with the Office, examined the accessibility components of the Verity Touch, the Verity Touch with Access, the Verity Touch Writer with Access, and the Verity Touch Writer Duo.

On May 23, 2019, the Vendor demonstrated the system and answered questions presented by the examiners. Test ballots were then processed on each voting device. The results were accumulated and later verified for accuracy by staff of the Secretary of State.

Examiner reports regarding the Verity Voting 2.3 system are attached hereto and incorporated herein by this reference.

On July 10, 2019, pursuant to Section 122.0371 of the Texas Election Code, the Office held a public hearing for interested persons to express views for or against the certification of the Verity Voting 2.3 system.

### BRIEF DESCRIPTION OF VERITY VOTING 2.3

The Verity Voting 2.3 system is an updated version of the Verity Voting 2.0 system, which the Office certified in December 2016 for use in Texas elections. The updated version includes

software enhancements to the existing election management system and introduces a new voting device, the Verity Touch Writer Duo. The Touch Writer Duo is a ballot marking device that allows users to input their selections on a digital interface and prints a paper record of the vote that can be scanned and tabulated using a precinct or central scanner.

Verity Voting 2.3 has been evaluated at an accredited independent voting system testing laboratory for conformance to the 2005 Voluntary Voting System Guidelines (VVSG). Verity Voting 2.3 was certified by the U.S. Election Assistance Commission (EAC) on March 15, 2019.

The components of Verity Voting 2.3 are as follows:

<b>Component</b>	<b>Version</b>	<b>Description</b>
Verity Data	2.3.1	Data management software
Verity Build	2.3.1	Election definition software
Verity Count	2.3.1	Tabulation and reporting software
Verity Central	2.3.1	Central scanning software
Verity User Management	2.3.1	User management software
Verity Election Management	2.3.1	Election management software
Verity Desktop	2.3.1	Election management software
Verity Scan	2.3.1	Precinct scanner
Verity Touch Writer with Access	2.3.1	Ballot marking device with accessibility features
Verity Controller	2.3.2	Voting machine ballot activation device
Verity Touch	2.3.1	Direct-recording electronic voting machine
Verity Touch with Access	2.3.1	Direct-recording electronic voting machine with accessibility features
Verity Touch Writer Duo	2.3.1	Ballot marking device

**FINDINGS**

The following are the findings, based on written evidence submitted by the Vendor in support of its application for certification, oral evidence presented at the examination, and the written reports of the voting system examiners (all of whom recommended certifying the Verity Voting 2.3 system for use in Texas elections).

The Verity Voting 2.3 system, including its hardware and software components, meets the standards for certification as prescribed by Section 122.001 of the Texas Election Code. Specifically, the Verity Voting 2.3 system and its components, among other things:

1. Preserve the secrecy of the ballot;
2. Are suitable for the purpose for which they are intended;
3. Operate safely, efficiently, and accurately and comply with the voting system standards adopted by the Election Assistance Commission;
4. Are safe from fraudulent or unauthorized manipulation;
5. Permit voting on all offices and measures to be voted on at the election;
6. Prevent counting votes on offices and measures on which the voter is not entitled to vote;
7. Prevent counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevent counting votes for more than the number of candidates for whom the voter is entitled to vote;
8. Prevent counting a vote on the same office or measure more than once;
9. Permit write-in voting;
10. Are capable of permitting straight-party voting; and
11. Are capable of providing records from which the operation of the system may be audited.

### CONDITIONS

In their written reports, some of the voting system examiners indicated that the Verity Voting 2.3 system does not provide a software solution to address the ballot-numbering requirements in Sections 51.006-.008, 52.062, and 62.009 of the Texas Election Code. However, the examiners noted that jurisdictions that adopt the Verity Voting 2.3 system can still comply with these requirements by following additional procedures provided by the Vendor. Therefore, the certification of system is conditioned on jurisdictions utilizing these additional procedures to comply with the Texas Election Code's ballot-numbering requirements when using the Verity Voting 2.3 system.

### CONCLUSION

Accordingly, based upon the foregoing, I hereby certify Hart InterCivic's Verity Voting 2.3 system for use in Texas elections, subject to the above condition.

Signed under my hand and seal of office, this 22<sup>nd</sup> day of July 2019.

  
 JOSE A. ESPARZA  
 DEPUTY SECRETARY OF STATE

**TOWN MANAGER'S  
OFFICE**

**To: Mayor and Town Council**

**From: Chuck Springer, Executive Director of Administrative Services**

**Through: Harlan Jefferson, Town Manager**

**Re: Town Council Meeting – November 26, 2019**

---

**Agenda Item:**

Consider and act upon approving a Standard Form of Agreement with Pogue Construction Co., LP, for the construction of additional Town Hall office space; and authorizing the Town Manager to execute the same.

**Description of Agenda Item:**

The construction of additional Town Hall office space for the Mayor was an approved FY 2019-2020 discretionary package in the amount of \$125,000. The Town will be connecting to existing systems. Therefore, the Town will use Pogue Construction Co., LP, the CMAR for Town Hall, in order to maintain the integrity of mechanical and system warranties.

**Budget Impact:**

The cost for design and construction of additional Town Hall office space is \$103,465.77, and will be funded from General Fund Non-Departmental Capital Expenditures (Account No. 100-6610-10-99).

**Legal Obligations and Review:**

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

**Attached Documents:**

1. Proposal
2. Plan Details
3. AIA Document A101-2017 Standard Form of Agreement
4. AIA Document A201-2007 General Conditions of the Contract

**Town Staff Recommendation:**

Town staff recommends approving a Standard Form of Agreement with Pogue Construction Co., LP, for the construction of additional Town Hall office space; and authorizing the Town Manager to execute the same.

**Proposed Motion:**

I move to approve a Standard Form of Agreement with Pogue Construction Co., LP, for the construction of additional Town Hall office space; and authorize the Town Manager to execute the same.



## Cost Proposal

To:  
Town of Prosper  
200 South Main Street  
Prosper, TX 75078

Description: **Mayor's Office Build out**  
Date: 10/29/2019

Scope of Work	Description	Cost
01A- General Requirements		
Pogue Staff		\$ 10,000.00
Pogue Insurance		\$ 307.81
Maintenance Bond -2yr		\$ 513.02
Cleaning- Daily/ Final		\$ 1,000.00
Elevator protection		\$ 300.00
Dust Control		\$ 300.00
06A- Millwork	Provide and install wood base and wood portals to match existing	\$ 5,780.00
08A- Glazing	Provide glazing at doors and sidelites	\$ 1,000.00
08B- Door/ Hardware	Provide and install aluminum frames, hardware, and wood doors to match existing	\$ 7,607.00
09A- Framing/Drywall	Provide framing and drywall per plans	\$ 30,888.00
09B- Flooring	Provide labor only to install flooring. Attic stock material to be used	\$ 1,062.00
09B- Floor protection	As required at existing spaces	\$ 500.00
09C- Painting	Provide tape, bed and paint to match existing	\$ 3,920.00
22A- Fire Suppression	Add sprinkler heads as required to existing fire suppression system	\$ 2,870.00
23A- HVAC	Provide HVAC ductwork, insulation and grilles, as required to tie into existing VAV's	\$ 14,500.00
23B- Test and Balance	Provide Test and Balance of new space	\$ 1,000.00
26A- Electrical	Provide electrical as shown including power, lighting, and low voltage rough in	\$ 9,612.00
27A- Data cabling	Provide and install data cabling as shown	\$ 1,254.00
28B- Fire Alarm	Provide and install fire alarm as required tied into existing system	\$ 3,475.00
28C- Access Control	Provide access control at corridor entry only	\$ 2,650.00
CM Fee @ 5%		\$ 4,926.94

### Total

**\$ 103,465.77**

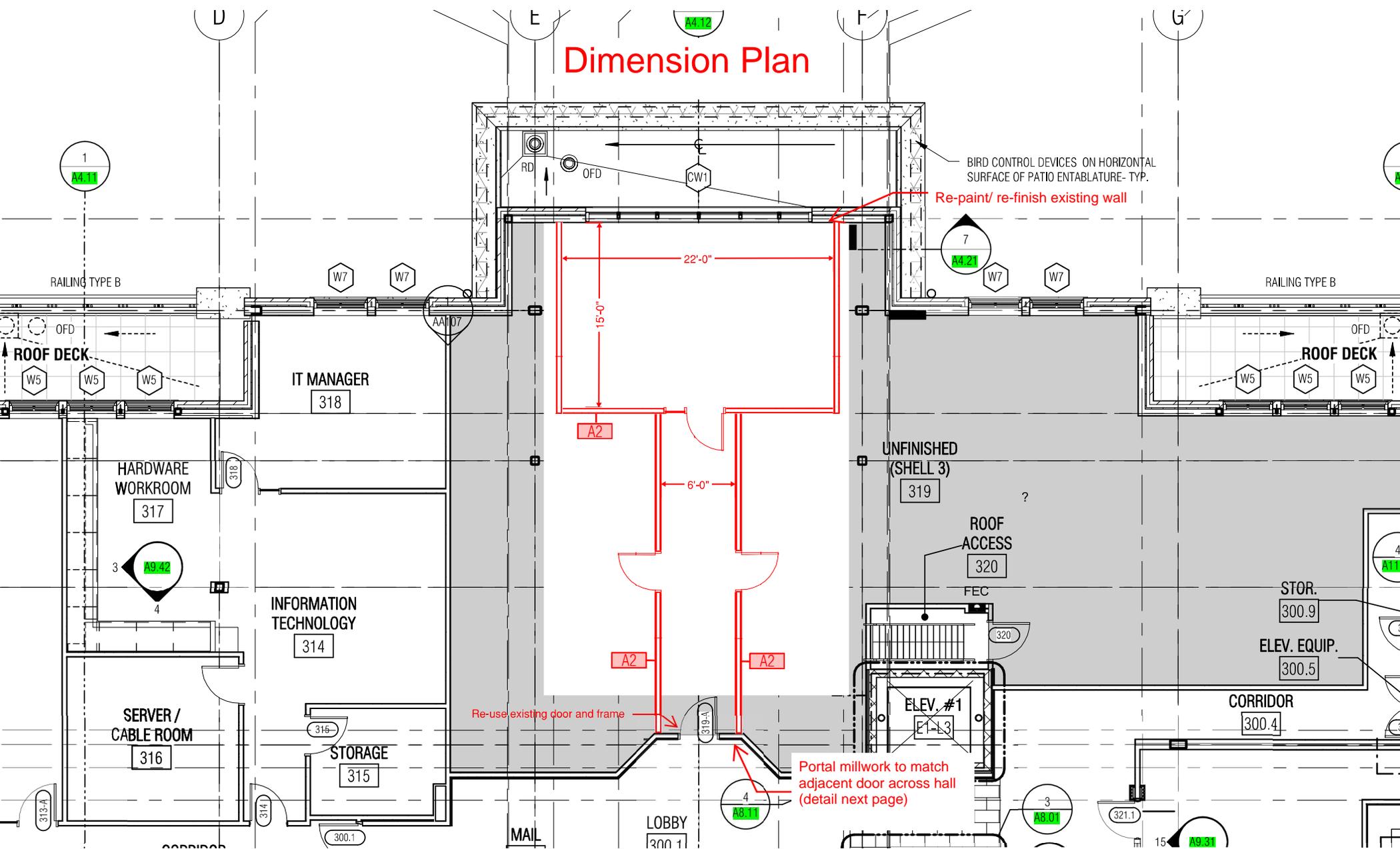
Cost per S/F= \$ 194.48

Total SF= 532

### Clarifications

Temporary Electric excluded- (use existing)  
 Corner guards excluded  
 All Audio/ Visual scope excluded- Data cabling only included  
 Furniture excluded  
 Shop drawings included for Fire alarm and fire suppression only.  
 Pricing based on information in the attached drawing set, RED areas only  
 HVAC system to tie into existing VAV units. No equipment included in this pricing  
 No flooring material included in this proposal. Labor only included. Attic stock material will be used.  
 Door at corridor entry to include card reader and electrified hardware  
 Finishes to match existing  
 Contract to be standard AIA 101 language with standard A201 General Conditions  
 Inspection fees excluded  
 Permit fees excluded  
 Sales tax excluded  
 P&P Bond Excluded

# Dimension Plan



**PARTITION TYPES**

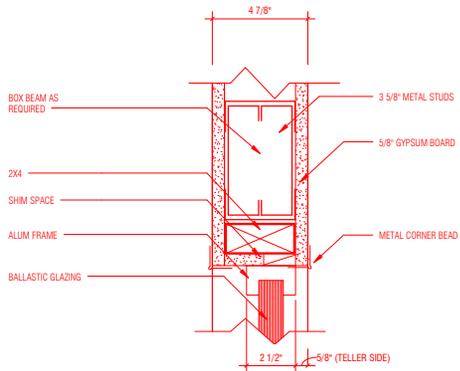
MARK	1st DIGIT: STRUCTURE / THICKNESS	
	MATERIAL	THICKNESS
A	METAL STUDS	3 5/8"
B	METAL STUDS	6"
C	METAL STUDS	1 5/8"
D	METAL STUDS	2 1/2"
E	HAT CHANNEL	7/8"
F	HAT CHANNEL	1 1/2"
G	C-H METAL STUD	4"
H	DOUBLE METAL STUD	9"
J	METAL	

MARK	2nd DIGIT: FINISH			
	GYPSUM BOARD			
	SINGLE LAYER		DOUBLE LAYER	
	1 SIDE	2 SIDES	1 SIDE	2 SIDES
1	●			
2		●		
3	●		●	
4				●
5			●	
6				●
7	●			●

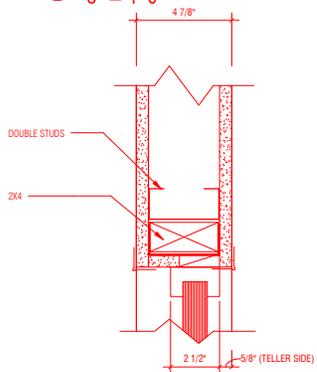
MARK	3rd DIGIT: SPECIAL CONDITIONS	
	DISCRIPTION	XXXXXXXXXX
1H	1 HOUR	XX
2H	2 HOUR	XX/AX/XX
SD	SOUND RATED	XX/AX/XX

**DIMENSION CONTROL PLAN GENERAL NOTES**

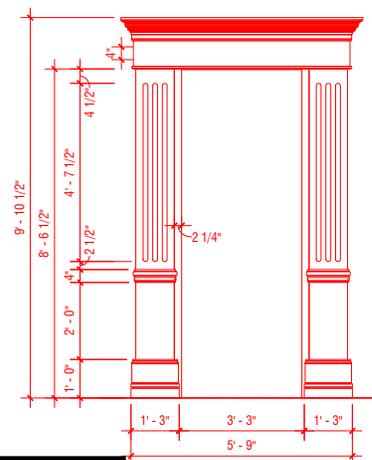
- 1 DIMENSIONS ARE TO FACE OF FINISH MATERIAL, UNLESS NOTED OTHERWISE. DIMENSIONS TO EXTERIOR WALLS ARE TO FINISH FACE OF SILL WALL. CLEAR DIMENSIONS SHALL NOT VARY AND ARE MEASURED AT THE FLOOR LINE.
- 2 COORDINATE, CONFIRM AND VERIFY ALL DIMENSIONS, WHERE APPLICABLE, WITH STRUCTURAL, MECHANICAL, ELECTRICAL AND PLUMBING ELEMENTS.
- 3 UNDER NO CIRCUMSTANCES SHALL DIMENSIONS BE DIRECTLY MEASURED FROM THIS DOCUMENT.
- 4 PARTITION TYPES SHALL BE TYPE A2 WITH ACOUSTICAL BATTS 1 HR RATED TO DECK UNLESS OTHERWISE NOTED.
- 5 ALL GYPSUM BOARD IS 5/8" THICK UNLESS OTHERWISE NOTED. REFER TO SPECIFICATION SECTION 092900 GYPSUM BOARD FOR TYPE AND LOCATION.
- 6 PROVIDE RATED DECK CLOSURE AT ALL FIRE RATED PARTITIONS AS REQUIRED BY CODE. REFER TO DETAILS.
- 7 ALL LETTER AND NUMBER DESIGNATIONS LISTED IN THE SCHEDULES ABOVE MAY NOT BE USED.



**1 HEAD**  
3" = 1'-0"



**2 JAMB**  
3" = 1'-0"





**TABLE OF ARTICLES**

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

**EXHIBIT A INSURANCE AND BONDS****ARTICLE 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**§ 3.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

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 this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial Completion**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

Init.

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

Not later than One hundred and fifty ( 150 ) calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 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 Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One hundred and three thousand, four hundred and sixty-five dollars and seventy-seven cents (\$ 103,465.77 ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
None	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
None		

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
None	

§ 4.4 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)
None		

§ 4.5 Liquidated damages, if any:

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

\$100/ Day

§ 4.6 Other:

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

**ARTICLE 5 PAYMENTS****§ 5.1 Progress Payments**

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

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

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 25th day of the same 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 forty five ( 45 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** 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.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** 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 Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor 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; and
- .5 Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.7 Retainage**

**§ 5.1.7.1** 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%

**§ 5.1.7.1.1** The following items are not subject to retainage:  
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:  
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
(Insert any other conditions for release of retainage upon Substantial Completion.)

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

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## **§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor'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; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Upon receipt of certificate of occupancy

## **§ 5.3 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 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this 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.)

**§ 6.2 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 Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor 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 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

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

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** 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.

**§ 8.2** The Owner's representative:

*(Name, address, email address, and other information)*

Todd White

**§ 8.3** The Contractor's representative:

*(Name, address, email address, and other information)*

Roby Bledsoe

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 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.)*

§ 8.7 Other provisions:

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 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.)*

.5 Drawings

Number	Title	Date
See Exhibit A		

.6 Specifications

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

Init.

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.9 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 Contractor'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.)*

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

Town of Prosper

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

By: Harlan Jefferson, Town Manager

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

Pogue Construction Co., LP, a Texas Limited Partnership, acting by and through Ben Pogue, LC, a Texas limited liability company, General Partner

\_\_\_\_\_  
CONTRACTOR (Signature)

By: Benjamin P. Pogue, Sole Member of Ben Pogue, LC, a Texas limited liability company

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

## **Additions and Deletions Report for AIA® Document A101™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:58:13 ET on 11/11/2019.

### **PAGE 1**

Town of Prosper  
250 W. First St.  
Prosper, TX 75078

...

Pogue Construction Co., LP  
1512 Bray Central Drive, Suite 300  
McKinney, TX 75069

...

Mayor's Office Build Out

...

N/A

### **PAGE 2**

[  ] A date set forth in a notice to proceed issued by the Owner.

### **PAGE 3**

[  ] Not later than One hundred and fifty ( 150 ) calendar days from the date of commencement of the Work.

...

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~(\$ One hundred and three thousand, four hundred and sixty-five dollars and seventy-seven cents (\$ 103,465.77 )~~, subject to additions and deductions as provided in the Contract Documents.

...

None

...

None

...

None

...

None

...

\$100/ Day

**PAGE 4**

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 25th day of the same 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 forty five ( 45 ) days after the Architect receives the Application for Payment.

...

5%

**PAGE 5**

Upon receipt of certificate of occupancy

**PAGE 6**

[ X ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

...

Todd White

...

Roby Bledsoe

PAGE 7

See Exhibit A

PAGE 8

Town of Prosper  
\_\_\_\_\_

Pogue Construction Co., LP, a Texas Limited Partnership, acting by and through Ben Pogue ,LC, a Texas limited liability company, General Partner  
\_\_\_\_\_

...

By: Harlan Jefferson, Town Manager

By: Benjamin P. Pogue, Sole Member of Ben Pogue, LC, a Texas limited liability company  
\_\_\_\_\_

**Certification of Document's Authenticity**  
**AIA® Document D401™ – 2003**

I, Ben Pogue, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:58:13 ET on 11/11/2019 under Order No. 2933912647 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
 (Signed)

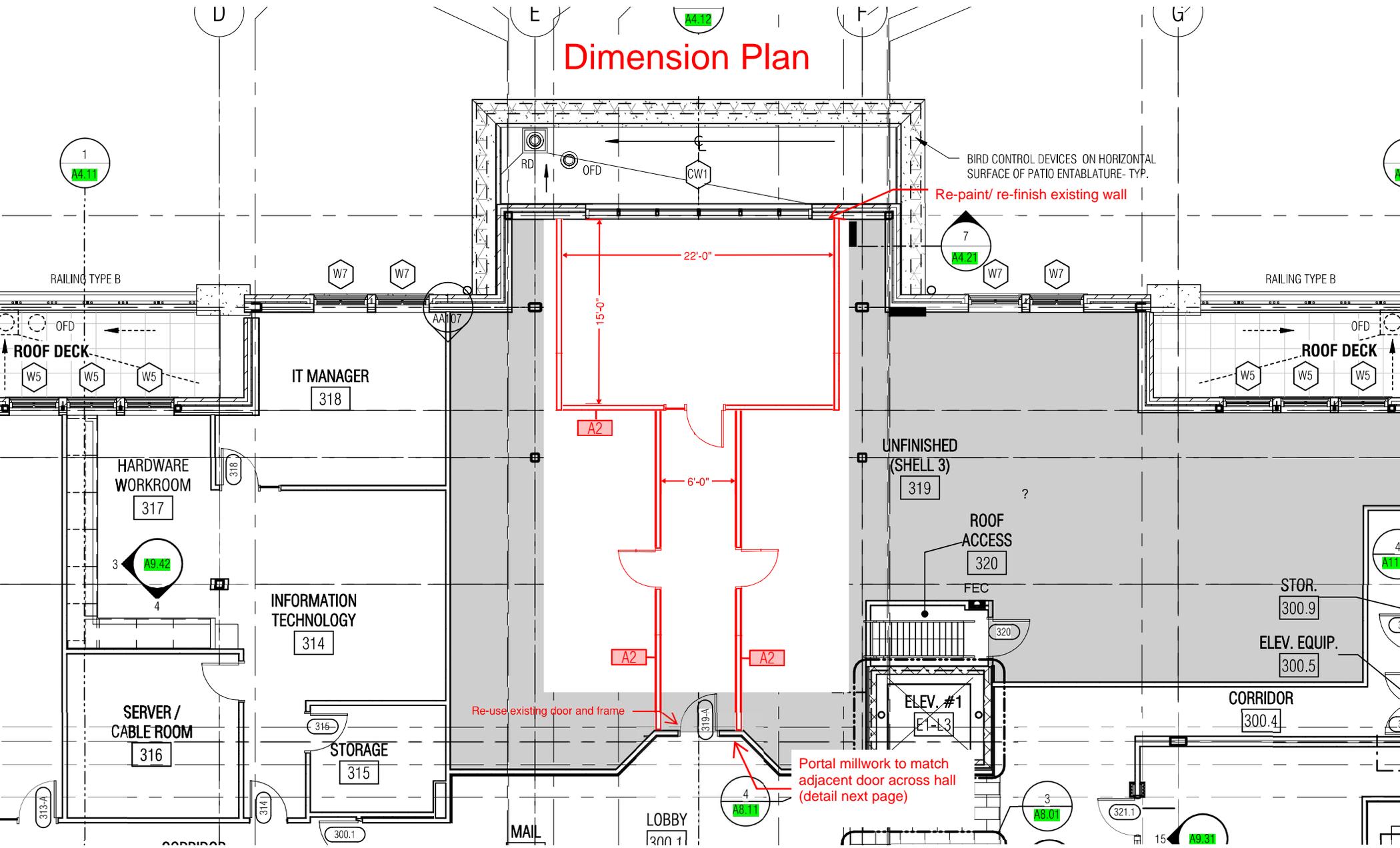
Sole Member

\_\_\_\_\_  
 (Title)

11/11/2019

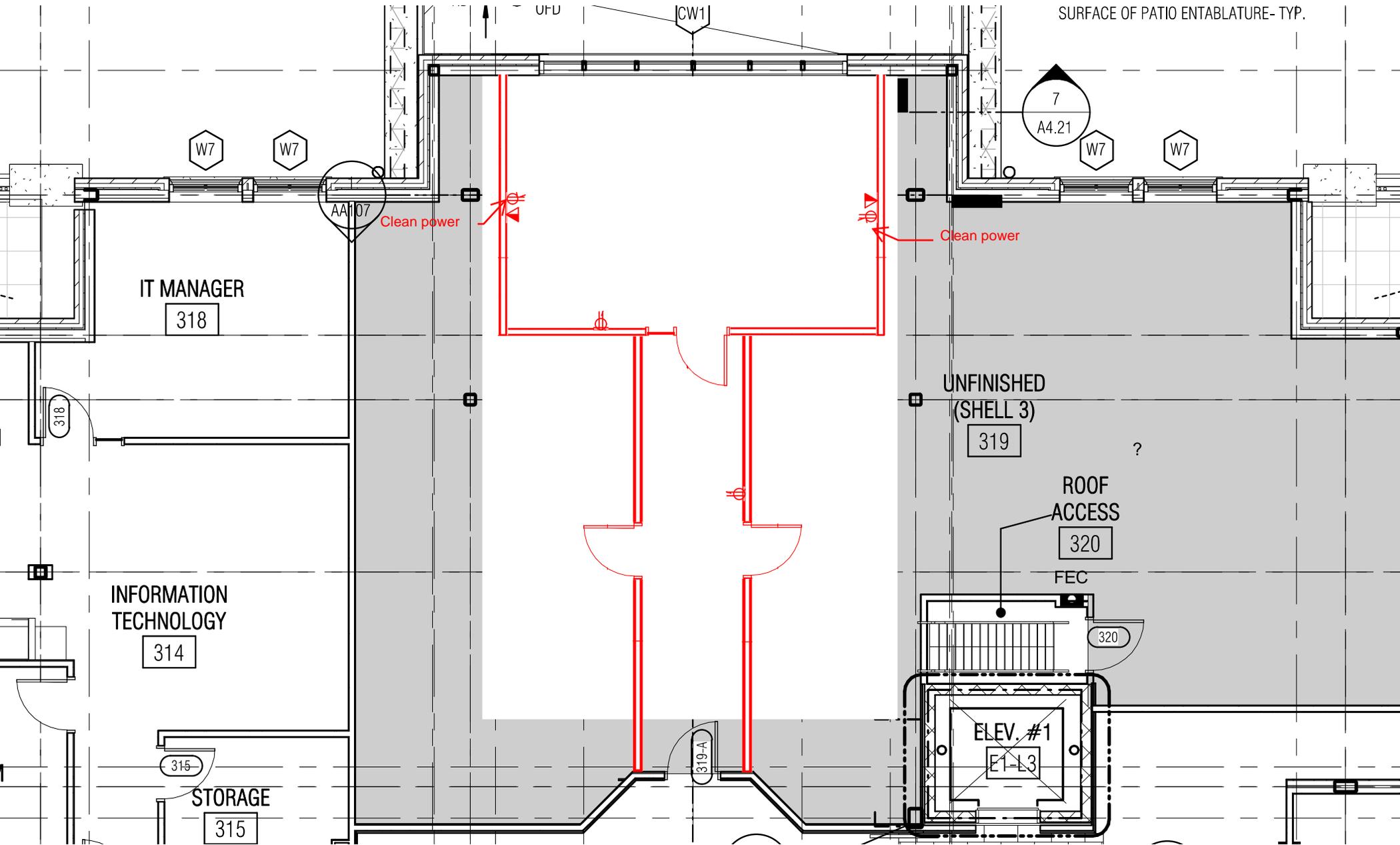
\_\_\_\_\_  
 (Dated)

\*New scope of work includes areas in "red" only

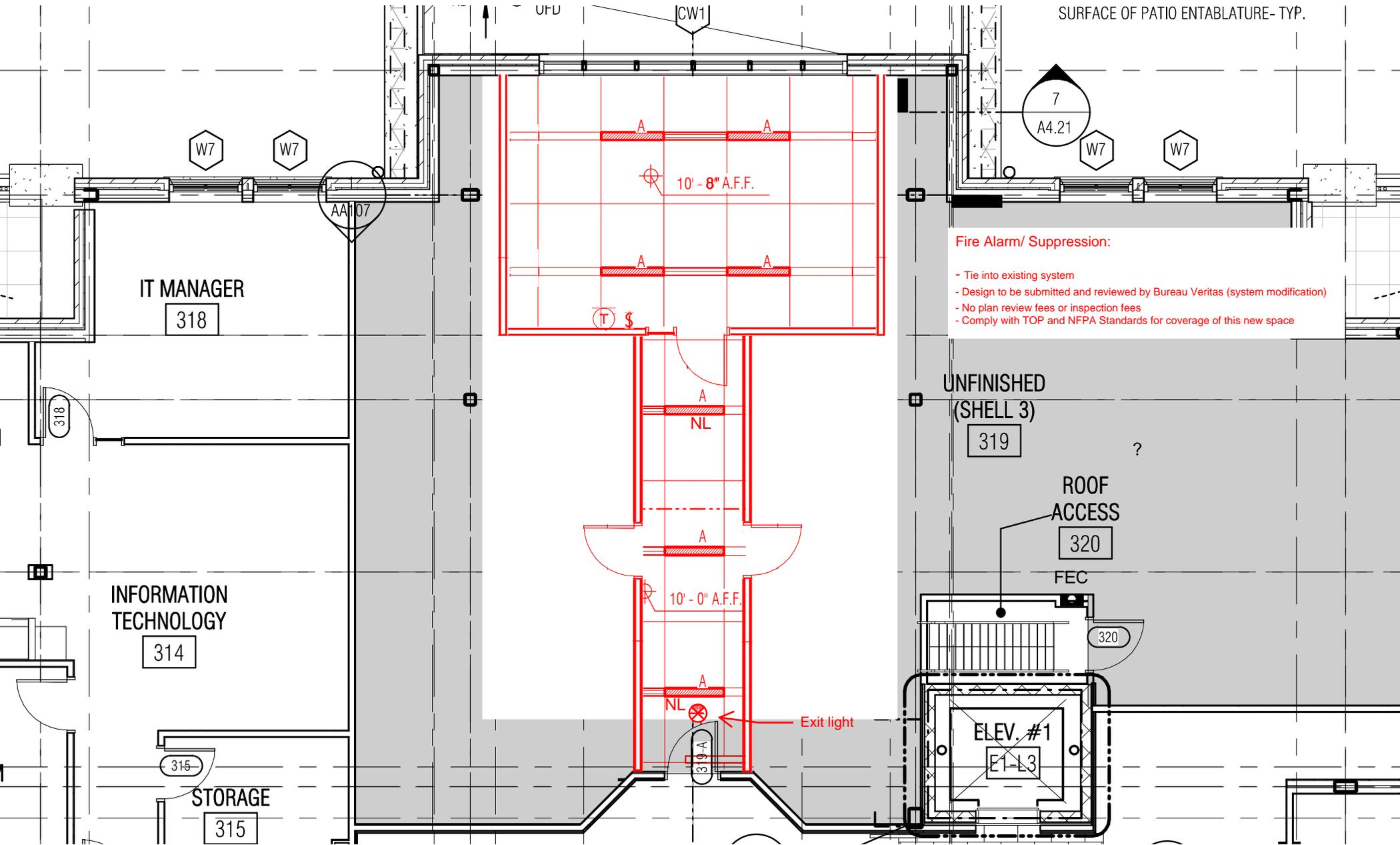




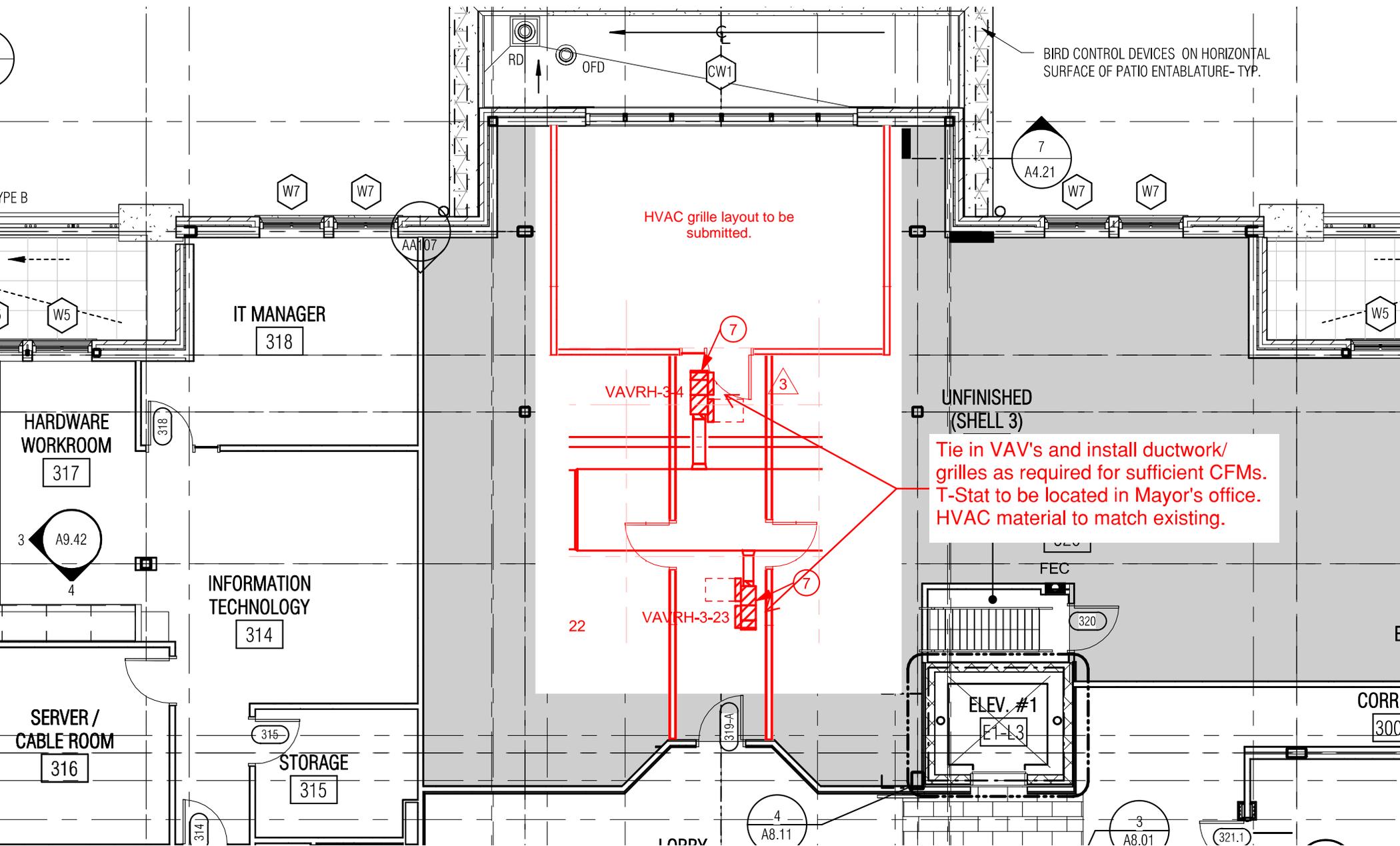
# Electrical / AV Plan



# Reflected Ceiling Plan

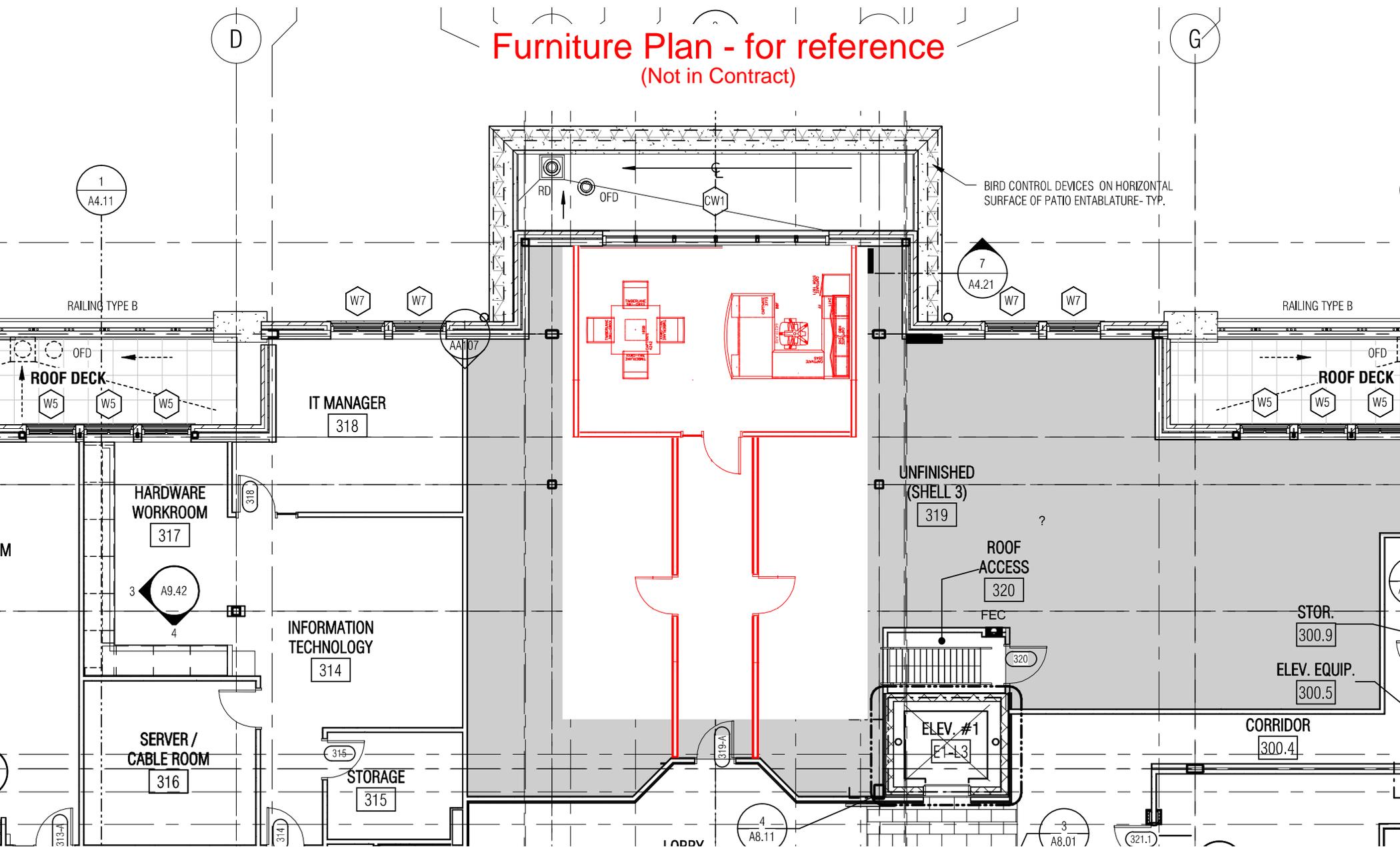


# Mechanical Plan



# Furniture Plan - for reference

(Not in Contract)





# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*  
Mayor's Office Build Out

### THE OWNER:

*(Name, legal status and address)*  
Town of Prosper  
250 W. First St.  
Prosper, TX 75078

### THE ARCHITECT:

*(Name, legal status and address)*  
N/A

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- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
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- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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**ARTICLE 1 GENERAL PROVISIONS****§ 1.1 BASIC DEFINITIONS****§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

**§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

**§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

**§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

**§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.5.1** The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor 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. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.4** 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

**§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**ARTICLE 4 ARCHITECT****§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

#### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

#### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**.4** As provided in Section 7.3.7.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

**§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

**ARTICLE 8 TIME****§ 8.1 DEFINITIONS**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

**§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**ARTICLE 9 PAYMENTS AND COMPLETION****§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

**§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended

appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect

will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents 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 Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

**§ 11.4.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **§ 12.2 CORRECTION OF WORK**

##### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor 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 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, 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 Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

**§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ 13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

**§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT****§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

##### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

##### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

**§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 15.4 ARBITRATION**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

### **§ 15.4.4 CONSOLIDATION OR JOINDER**

**§ 15.4.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

## **Additions and Deletions Report for AIA® Document A201™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:58:46 ET on 11/11/2019.

### **PAGE 1**

Mayor's Office Build Out  
Town of Prosper  
250 W. First St.  
Prosper, TX 75078

...

N/A

### **PAGE 9**

#### **ARTICLE 1 GENERAL PROVISIONS**

## Certification of Document's Authenticity

### AIA® Document D401™ – 2003

I, Ben Pogue, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:58:46 ET on 11/11/2019 under Order No. 2933912647 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Sole Member

(Title)

11/11/2019

(Dated)

Item 7.

## PUBLIC WORKS



**To: Mayor and Town Council**

**From: Frank E. Jaromin, P.E., Director of Public Works**

**Through: Harlan Jefferson, Town Manager**

**Re: Town Council Meeting – November 26, 2019**

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**Agenda Item:**

Consider and act upon approving the purchase of one Ford transit van from Silsbee Ford, Inc., through the Texas Local Government Purchasing Cooperative; and one Rovver camera truck system from Green Equipment Co., through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program.

**Description of Agenda Item:**

This is part of an approved FY 2019-2020 discretionary package to purchase a CCTV Camera Van. An additional camera truck is needed to maintain the CMOM (Capacity, Management, Operation, and Maintenance Plan) inspection requirements of 10% of the wastewater lines and camera inspections on lines prior to maintenance bond expiration. This CCTV Camera Van will also assist in preventing sanitary sewer overflows (SSOs) and other backups in Town.

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.

The Town of Prosper and HGAC entered into an interlocal agreement, effective January 4, 2001, which allows our local government to purchase certain goods or services through HGAC. The agreement renews automatically each fiscal year, unless cancelled by either party.

**Budget Impact:**

The approved budget for this item is \$200,000. The total cost for this purchase is \$199,752.24 and will be funded from Public Works Wastewater Capital Expenditure - Vehicles (Account No. 200-6160-50-03).

**Attached Documents:**

1. Buyboard Contract Pricing Worksheet for Cargo Van
2. HGAC Contract Pricing Worksheet for Rover Camera Truck System

**Town Staff Recommendation:**

Town staff recommends approving the purchase of one Ford transit van from Silsbee Ford, Inc., through the Texas Local Government Purchasing Cooperative; and one Rover camera truck system from Green Equipment Co., through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program.

**Proposed Motion:**

I move to approve the purchase of one Ford transit van from Silsbee Ford, Inc., through the Texas Local Government Purchasing Cooperative; and one Rover camera truck system from Green Equipment Co., through the Houston-Galveston Area Council (HGAC) Cooperative Purchasing Program.

**BUYBOARD #521-16**  
**Vehicles and Heavy Duty Trucks**  
**PRODUCT PRICING SUMMARY BASED ON CONTRACT**

Item 8.

VENDOR: SILSBEE FORD, INC  
 1211 US HWY 96N  
 SILSBEE, TX 77656

End User: CITY OF PROSPER Silsbee Rep: TAYLOR SMITH  
 Contact: SEAN MCAFFREY Phone/email: 409-920-1612/tsmith.silsbeefleet@  
 Phone/email: 972-569-1018/ january\_cook@prospertx.gov Date: Tuesday, October 15, 2019  
 Product Description: 2020 FORD TRANSIT T350 CARGO

A. Bid Series: 148 A. Base Price: \$ 22,548.00

**B. Published Options [Itemize each below]**

Code	Options	Bid Price	Code	Options	Bid Price
S4X	2020 TRANSIT T350 HR DRW UPGRAD	\$ 13,300.78	YZ	EXTERIOR: OXFORD WHITE	\$ -
99G	3.5L ECOBOOST	\$ 1,495.00	VK	INTERIOR: VINYL PALAZZO	\$ -
44U	10 SPEED AUTO TRANSMISSION			GRAY	
	POWER WINDOWS LOCKS			GVWR 10,360	\$ -
	REARVIEW CAMERA			2020 FORD T350 HR DRW UPGRADE	\$ -
	XL TRIM PACKAGE				
	REMOTE KEYLESS ENTRY				
				DELIVERY ARO 90 - 120 DAYS	
<b>Total of B. Published Options:</b>					<b>\$ 14,795.78</b>

**C. Unpublished Options [Itemize each below, not to exceed 25%]** \$= 0.0 %

Options	Bid Price	Options	Bid Price
<b>Total of C. Unpublished Options:</b>			<b>\$ -</b>

D. Pre-delivery Inspection: \$ -

E. Texas State Inspection: \$ -

F. Manufacturer Destination/Delivery: \$ -

G. Floor Plan Interest (for in-stock and/or equipped vehicles): \$ -

H. Lot Insurance (for in-stock and/or equipped vehicles): \$ -

I. Contract Price Adjustment: \_\_\_\_\_

J. Additional Delivery Charge: 296 miles \$ 518.00

K. Subtotal: \$ 37,861.78

L. Quantity Ordered 1 x K = \$ 37,861.78

M. Trade in: \_\_\_\_\_

N. BUYBOARD Administrative Fee (\$400 per purchase order) \$ 400

O. TOTAL PURCHASE PRICE INCLUDING BUYBOARD FEE \$ 38,261.78

<b>HGACBuy</b>	<b>CONTRACT PRICING WORKSHEET</b>	Contract No.:	SC01-18	Date Prepared:	Item 8. <sup>9</sup>
	For Standard Equipment Purchases				

**This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.**

Buying Agency: Town of Prosper Contact Person: Aubrey Smith Phone: Fax: Email: january_cook@prospertx.gov	Contractor: Green Equipment Company Prepared By: Jimmy Fougerousse Phone: 817-247-5039 Fax: Email: jimmyfougerousse@greenequipco.com
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Product Code:	E-019	Description:	Rovver X Basic Truck System
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**A. Product Item Base Unit Price Per Contractor's H-GAC Contract:** 72,611

**B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable**  
 (Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
E-000-0036-00 - Tyger Tail	67.9	E-564-0900-04 - RX Camera Elevator Kit	13,302.08
E-000-035-00 Top Hole Roller	333.35	E-559-0900-03 - RX Aux Light	3,757.51
E-VX-Expert 1 - Wincan VX Expert License	12,765.52	E-PA-RACKMOUNT-01 - Rackmount Computer	2,757.35
E-Wincan TR-2 - Wincan 2 Day On-site Training	3,370.10	E-Vitec-C8 - Vitec Card	1,123.37
		E-080-0705-00 - Small Grease wheels (4)	1,041.68
E-080-0711-00 Med carbide Wheels (4)	2,287.60	E-080-0706-00 - Med Grease Wheels (4)	1,327.60
E-080-0704-01 XXL Rubber QCD wheels (4)	2,144.60	Transit Meps Build	37,800.81
<b>Subtotal From Additional Sheet(s):</b>			
			<b>Subtotal B:</b> 82079.47

**C. Unpublished Options - Itemize below - Attach additional sheet if necessary**  
 (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Custom Build Upgrade	3,999.99		
<b>Subtotal From Additional Sheet(s):</b>			
			<b>Subtotal C:</b> 3999.99

**Check:** Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B). **For this transaction the percentage is:** 3%

**D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)**

Quantity Ordered:	1	X Subtotal of A + B + C:	158690.46	=	<b>Subtotal D:</b> 158690.46
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**E. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges**

Description	Cost	Description	Cost
Transport Delivery & Shipping	2,800.00		
	0		
<b>Subtotal</b>			800

**Delivery Date:** 30 Days **F. Total Purchase Price (D+E):** 158690.46

## ENGINEERING SERVICES



**To: Mayor and Town Council**

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

**Through: Harlan Jefferson, Town Manager**

**Re: Town Council Meeting – November 26, 2019**

**Agenda Item:**

Consider and act upon rejecting all proposals received in response to CSP No. 2020-13-B for Project I: Drainage and Sanitary Sewer Improvements for North Church Street and North Parvin Street; and Project II: Grading, Drainage and Structures for Old Town Retention Pond.

**Description of Agenda Item:**

On November 7, 2019, two (2) Competitive Sealed Proposals (CSP) were received for Project I: Drainage and Sanitary Sewer Improvements for North Church Street and North Parvin Street; and Project II: Grading, Drainage and Structures for Old Town Retention Pond. The construction of the Old Town Retention Pond project requires specialized construction of a levee to impound storm water to create a retention pond. The project was bid using the Competitive Sealed Proposal alternative procurement method to allow the Town to award the project to the contractor that offers the best value proposal based on the following criteria:

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

The Engineer's estimate was \$834,000. The lowest proposal was \$467,422 over the Engineer's estimate, and the other proposal was \$1,672,080 over the Engineer's estimate. Due to the significant separation between the Engineer's estimate and the two (2) proposals, staff is discussing with the design engineer the merits of reconfiguring the construction documents in order to provide more clarity. A meeting has also been scheduled with one of the contractors that provided a proposal on the project to discuss their perspective on the construction documents.

In addition, Town staff is aware of at least one proposer that was not able to use the Town's electronic submittal process, which could have provided the Town with another proposal. Staff intends to reach out to that proposer to confirm that they are aware of the proper process of providing an electronic submittal.

Based on the lack of proposals received, and the significant cost differential between the Engineer's estimate and the two (2) proposals received, Staff is recommending rejecting all proposals so that the project can be re-advertised for proposals.

**Town Staff Recommendation:**

Town Staff recommends the Town Council reject all proposals received in response to CSP No. 2020-13-B for Project I: Drainage and Sanitary Sewer Improvements for North Church Street and North Parvin Street; and Project II: Grading, Drainage and Structures for Old Town Retention Pond.

**Proposed Motion:**

I move to reject all proposals received in response to CSP No. 2020-13-B for Project I: Drainage and Sanitary Sewer Improvements for North Church Street and North Parvin Street; and Project II: Grading, Drainage and Structures for Old Town Retention Pond.

# PLANNING



**To: Mayor and Town Council**

**From: Alex Glushko, AICP, Planning Manager**

**Through: Harlan Jefferson, Town Manager**

**Re: Town Council Meeting – November 26, 2019**

**Agenda Item:**

Conduct a Public Hearing, and consider and act upon an ordinance rezoning 0.8± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the northwest corner of Second Street and Coleman Street. (Z19-0019).

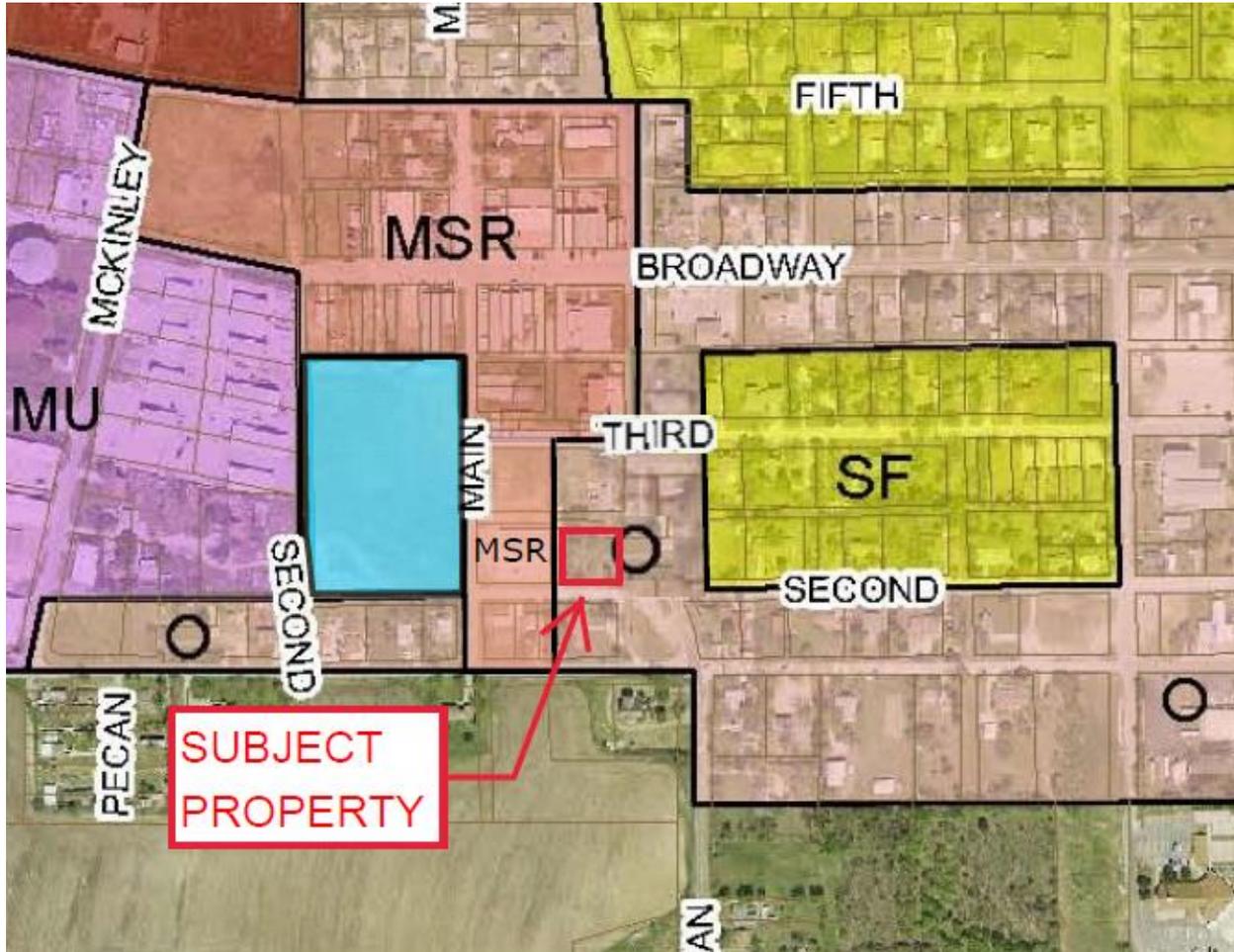
**Description of Agenda Item:**

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 (SF-15)	Mobile Home	Old Town Office
<b>North</b>	Downtown Office (DTO)	Office Building	Old Town Office
<b>East</b>	Single Family-15 (SF-15)	Single Family Residential	Old Town Single Family
<b>South</b>	Single Family-15 (SF-15)	Single Family Residential	Old Town Office
<b>West</b>	Commercial (C)	Commercial Building	Old Town Main Street Retail

**Requested Zoning** – The purpose of this request is to rezone the property to the Downtown Office District to allow for development in the future. 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 – The property has direct access to Coleman Street, a two lane divided roadway with on-street parallel parking.

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

**Legal Obligations and Review:**

Notification was provided to neighboring property owners as required by State Law. To date, Town staff has not received any Public Hearing Notice Reply Forms. Town Attorney, Terrence Welch of Brown & Hofmeister, L.L.P., has approved the standard ordinance as to form and legality.

**Attached Documents:**

- 1. Aerial and Zoning Maps
- 2. Ordinance
- 3. Exhibit A

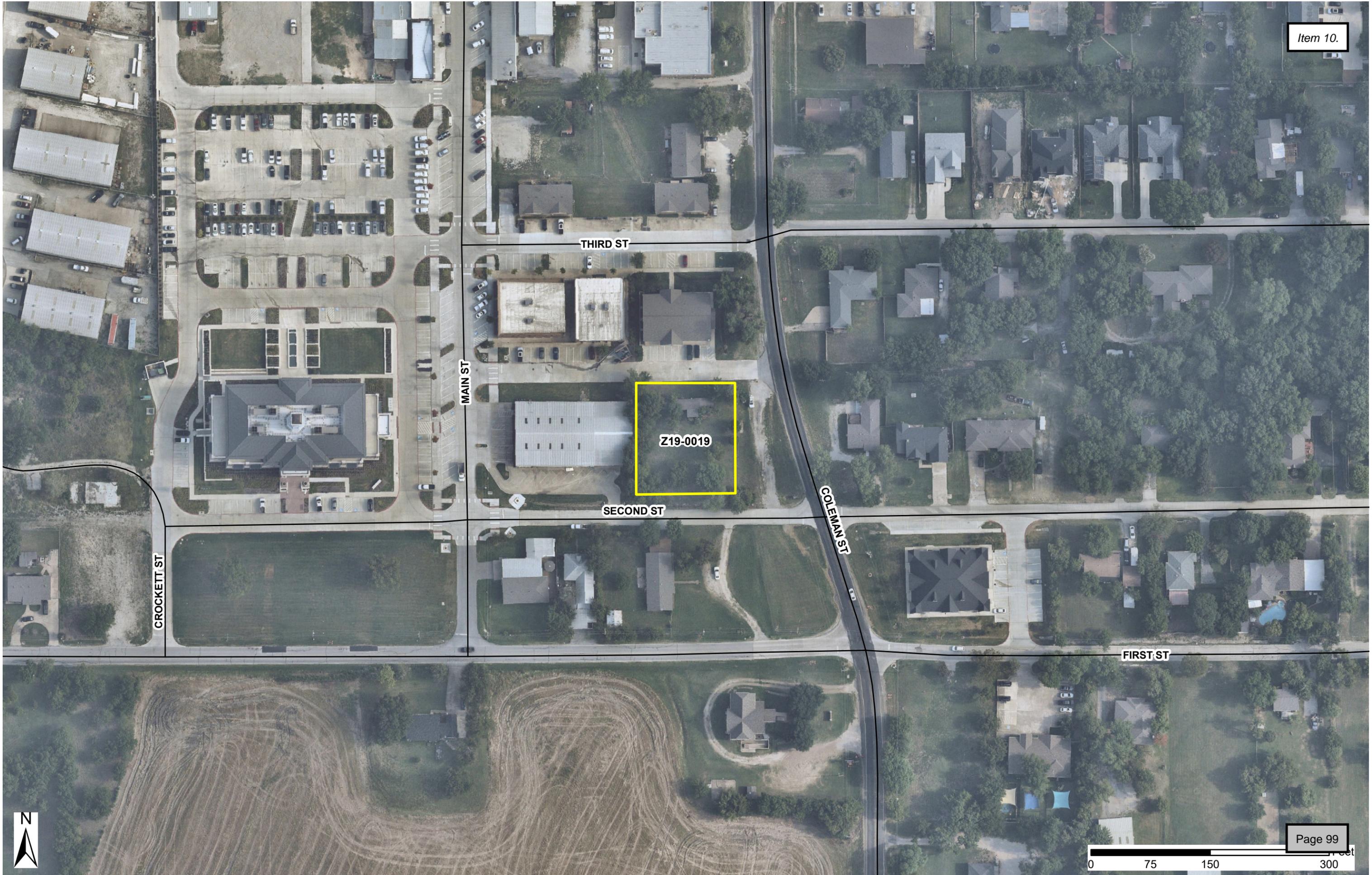
**Planning & Zoning Commission Recommendation:**

At their November 5, 2019 meeting, the Planning and Zoning Commission recommended the Town Council approve the request, by a vote of 6-0. By policy, "straight" zoning change requests

that receive a unanimous recommendation for approval by the Planning & Zoning Commission and have not generated any written opposition, are placed on the Consent Agenda. However, if requested, the public can speak on the matter.

**Proposed Motion:**

I move to approve an ordinance rezoning 0.4± acres from Single Family-15 (SF-15) to Downtown Office (DTO), located on the northwest corner of Second Street and Coleman Street.



Z19-0019

CROCKETT ST

MAIN ST

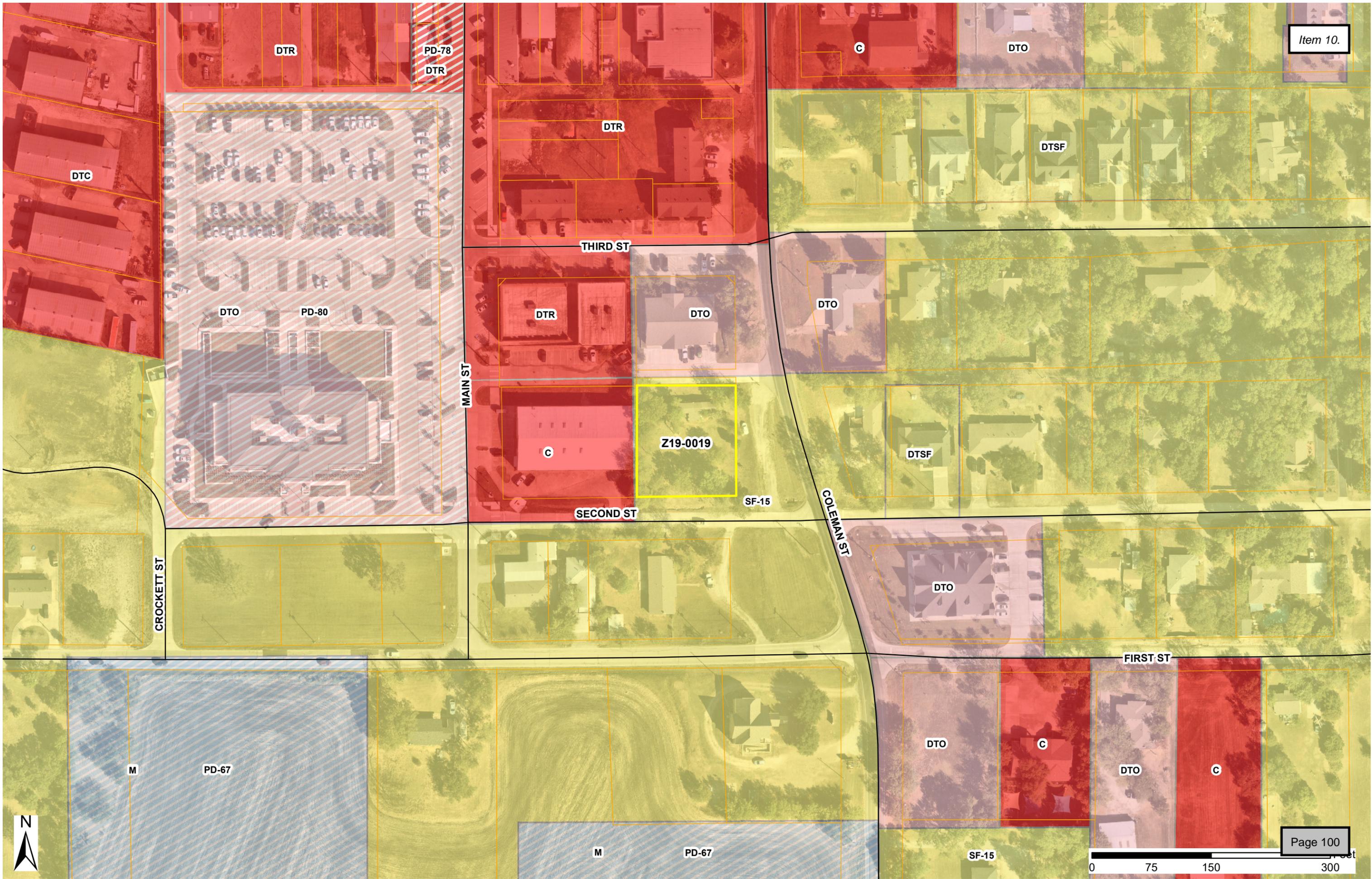
THIRD ST

SECOND ST

COLEMAN ST

FIRST ST





Item 10.

DTR

PD-78  
DTR

C

DTO

DTSF

DTC

DTR

THIRD ST

DTO

PD-80

MAIN ST

DTR

DTO

DTO

C

Z19-0019

SF-15

DTSF

SECOND ST

CROCKETT ST

DTO

FIRST ST

M

PD-67

DTO

C

DTO

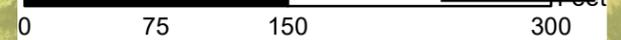
C



M

PD-67

SF-15



TOWN OF PROSPER, TEXAS

ORDINANCE NO. 19-\_\_\_

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING PROSPER’S ZONING ORDINANCE BY REZONING A TRACT OF LAND CONSISTING OF 0.82 ACRES, SITUATED IN THE COLLIN COUNTY SCHOOL LAND, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS FROM SINGLE FAMILY-15 (SF-15) TO DOWNTOWN OFFICE (DTO); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

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

WHEREAS, the Town of Prosper, Texas (“Prosper”) has received a request from James Ralph Jordan, Mark Henry Jordan, and William Thomas Jordan (“Applicants”), to rezone 0.82 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, from Single Family-15 (SF-15) to Downtown Office (DTO) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes; and

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

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

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

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

**SECTION 1**

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

**SECTION 2**

Amendment to the Town’s Zoning Ordinance. The Town’s Zoning Ordinance, adopted by Ordinance No. 05-20 is amended as follows: The zoning designation of the below described property containing 0.82 acres of land, more or less, in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the “Property”) and all streets, roads, and alleyways contiguous and/or adjacent thereto is hereby zoned as Downtown Office (DTO) and being more particularly described in Exhibit “A,” attached hereto and incorporated herein for all purposes as if set forth verbatim.

All development plans, standards, and uses for the Property shall comply fully with the requirements of all ordinances, rules, and regulations of the Town of Prosper, as they currently exist or may be amended.

Two (2) original, official, and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. One (1) copy shall be filed with the Town Secretary and retained as an original record and shall not be changed in any manner.
- b. One (1) copy shall be filed with the Building Official and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy, and enforcing the zoning ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

**SECTION 3**

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

**SECTION 4**

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

**SECTION 5**

Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper’s Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day’s violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

**SECTION 6**

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

**SECTION 7**

Savings/Repealing Clause. Prosper’s Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 8**

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

**DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2019.**

\_\_\_\_\_  
Ray Smith, Mayor

ATTEST:

\_\_\_\_\_  
Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

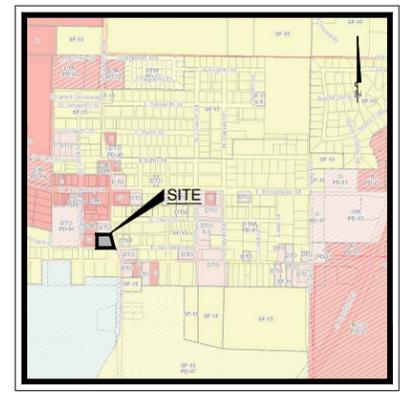
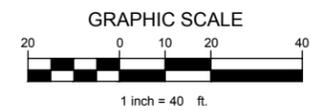
\_\_\_\_\_  
Terrence S. Welch, Town Attorney

**Item 10.**  
**PRELIMINARY**  
 FOR REVIEW ONLY  
 Not for construction purposes.  
**CLAYMOORE ENGINEERING**  
 ENGINEERING AND PLANNING  
 CONSULTANTS  
 Engineer: **MATT MOORE**  
 P.E. No. 98351 Date 10/21/2019

**COLEMAN OFFICE**  
**COLEMAN STREET & W. 2ND STREET**  
**PROSPER, TEXAS**

No.	DATE	REVISION	BY

**ZONING EXHIBIT**



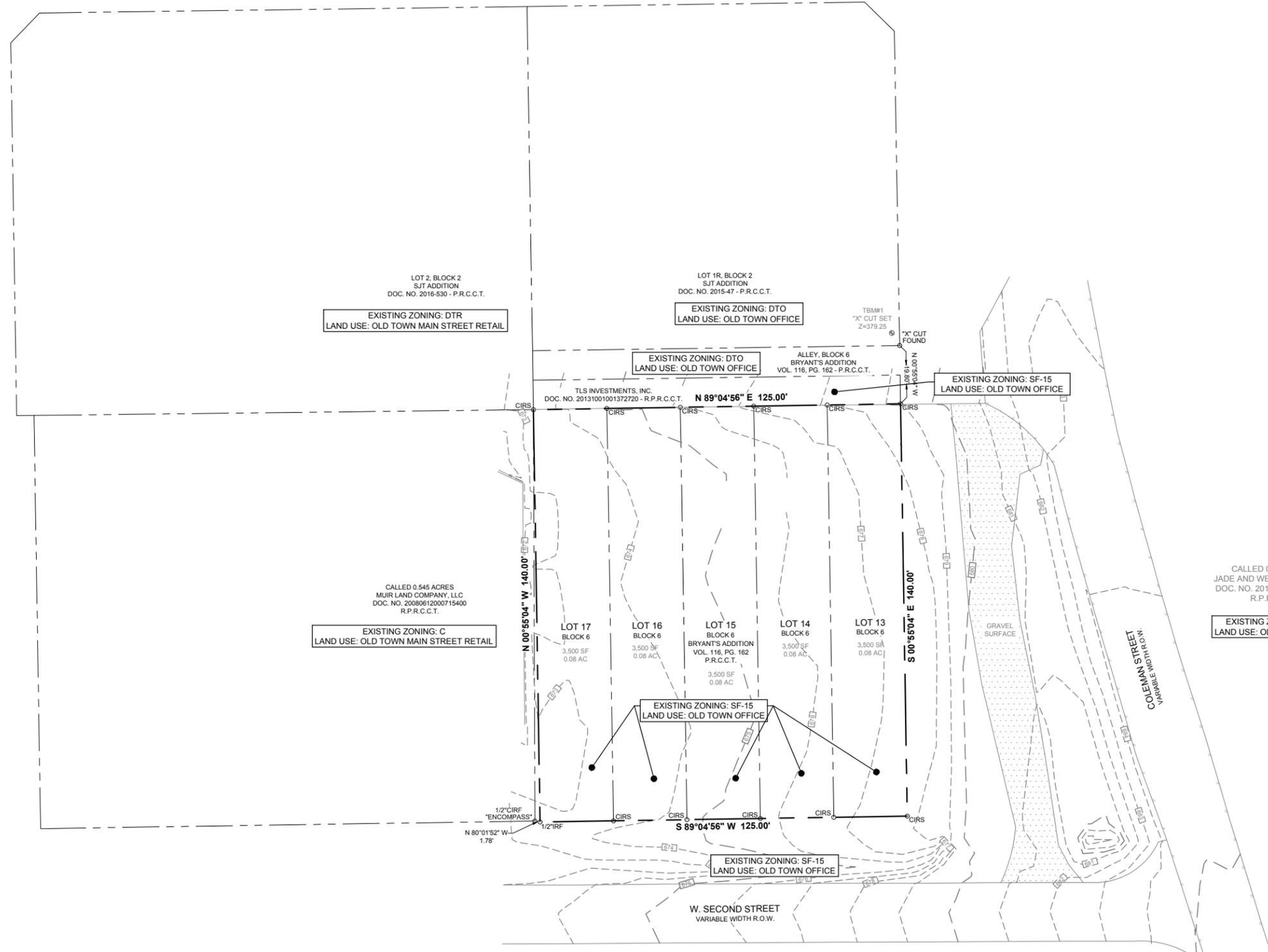
VICINITY MAP & EXISTING ZONING MAP  
 N.T.S.

**LEGAL DESCRIPTION**  
 BEING LOTS 13, 14, 15, 16, & 17, BLOCK 6, OF BRYANT'S ADDITION, AN ADDITION TO THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 116, PAGE 162, PLAT RECORDS, COLLIN COUNTY, TEXAS.

**FLOODPLAIN NOTE**  
 ACCORDING TO MAP NO. 4895C0235J, DATED JUNE 2, 2009 OF THE NATIONAL FLOOD INSURANCE PROGRAM MAP, FLOOD INSURANCE RATE MAP OF COLLIN COUNTY, TEXAS, FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, THIS PROPERTY IS WITHIN ZONE "X". (AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN). IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS, GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

**EXISTING ZONING: SF-15 (0.40 AC)**  
**PROPOSED ZONING: DTO (0.40 AC)**

<b>PROSPER COLEMAN OFFICE</b>	
CASE # : Z19 - 0019	
OWNER: JORDAN JAMES RALPH & MARK HENRY JORDAN & WILLIAM THOMAS JORDAN 4716 ALLENCREST LANE DALLAS, TX 75244 CONTACT NAME: JORDAN JAMES RALPH	
APPLICANT/REPRESENTATIVE: CLAYMOORE ENGINEERING, INC. 301 S. COLEMAN, SUITE #40 PROSPER, TX 75078 PH: 817.201.6982 CONTACT NAME: MATT MOORE	
SURVEYOR: EAGLE SURVEYING 210 S. ELM STREET, SUITE #104 DENTON, TX 76201 PH: 940.222.3009 CONTACT NAME: DAN RICK	
LEGAL DESCRIPTION: BRYANT'S FIRST ADDITION (CPR), BLOCK 6, LOTS 13 THRU 17, 0.4017 ACRES	
CITY: PROSPER	STATE: TEXAS
COUNTY: COLLIN	SURVEY: COLLIN COUNTY SCHOOL LAND #12
ABSTRACT NO. C0147	



PLOTTED BY: CURTIS PETERS  
 PLOT DATE: 10/21/2019 5:41 PM  
 LOCATION: Z:\PROJECTS\PROJECTS\2019-136 BOREA COLEMAN 2ND\CADD\EXHIBIT\2019-10-21 ZONING EXHIBIT.DWG  
 LAST SAVED: 10/21/2019 1:55 PM

**BEING** a 0.82 acre tract of land out of the **COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NUMBER 147**, situated in the Town of Prosper, Collin County, Texas and being all of that certain tract of land conveyed to James Ralph, Mark Henry and William Thomas Jordan by deed of record in Document No.20110217000179950 of the Official Public Records of Collin County, Texas, same being all of Lots 13-17, Block 6 of Bryant's Addition, a subdivision of record in Volume 116, Page 162 of the Plat Records of Collin County, Texas, also being a portion of the Coleman Street right-of-way, also being a portion of the second Street right-of-way and being more particularly described by metes and bounds as follows:

**COMMENCING**, at an X-cut found in the West right-of-way line of Colman Street (R.O.W. Varies), being the Southeast corner of Lot 1R, Block 2 of SJT Addition, a subdivision of record in Volume 2015, Page 47 of said Plat Records;

**THENCE**, S00°55'04"E, along the West right-of-way line of Colman Street, being in part the East line of the remaining portion of a 20 foot wide alley of record in said Bryant's Addition and in part, the East line of that certain tract of land conveyed to TLS Investments, Inc. by deed of record in Document No. 20131001001372720 of said Official Public Records, a distance of 19.80 feet to a 1/2 inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set at the Northeast corner of said Lot 13 for the **POINT OF BEGINNING**;

**THENCE**, N89°04'56"E, leaving the East line of said Lot 13, over and across the Colman Street right-of-way, a distance of 60.09 feet to a point at or near the centerline of Colman Street for the Northeast corner hereof;

**THENCE**, S15°35'29"E, along or near the centerline of Colman Street, over and across the Colman Street right-of-way, a distance of 179.63 feet to a point at or near the intersection of the centerline of Colman Street and the centerline of Second Street (60' R.O.W.) for the Southeast corner hereof;

**THENCE**, S89°40'43"W, along or near the centerline of Second Street, over and across the Second Street right-of-way, a distance of 230.60 feet to the Southwest corner hereof;

**THENCE**, N00°55'04"W, continuing over and across the Second Street right-of-way, a distance of 31.38 feet to a 1/2 inch iron rod found in the North right-of-way line of Second Street, being the Southwest corner of said Lot 17, from which a 1/2 inch iron rod with plastic cap stamped "ENCOMPASS" found at the Southeast corner of a called 0.545 acre tract of land conveyed to Muir Land Company, LLC by deed of record in Document No. 20080612000745400 of said Official Public Records bears N80°01'52"W, a distance of 1.78 feet;

**THENCE**, N00°55'04"W, leaving the North right-of-way line of Second Street, along the West line of said Lot 17, a distance of 140.00 feet to a 1/2 inch iron rod with green plastic cap stamped "EAGLE SURVEYING" set in the South line of said TLS Investments, Inc. tract, being the Southeast corner of Lot 2, Block 2 of SJT Addition, a

subdivision of record in Volume 2016, Page 530 of said Plat Records, also being the Northeast corner of said 0.545 acre tract, also being the Northwest corner of said Lot 17 and hereof;

**THENCE**, N89°04'56"E, along the South line of said TLS Investments, Inc. tract and the common North lines of said Lots 13-17, a distance of 125.00 feet to the **POINT OF BEGINNING** and containing an area of 0.82 Acres, or (35,840 Square Feet) of land, more or less.

*Matthew Raabe 10-21-19*



# PLANNING



**To:** Mayor and Town Council  
**From:** Alex Glushko, AICP, Planning Manager  
**Through:** Harlan Jefferson, Town Manager  
**Re:** Town Council Meeting – November 26, 2019

**Agenda Item:**

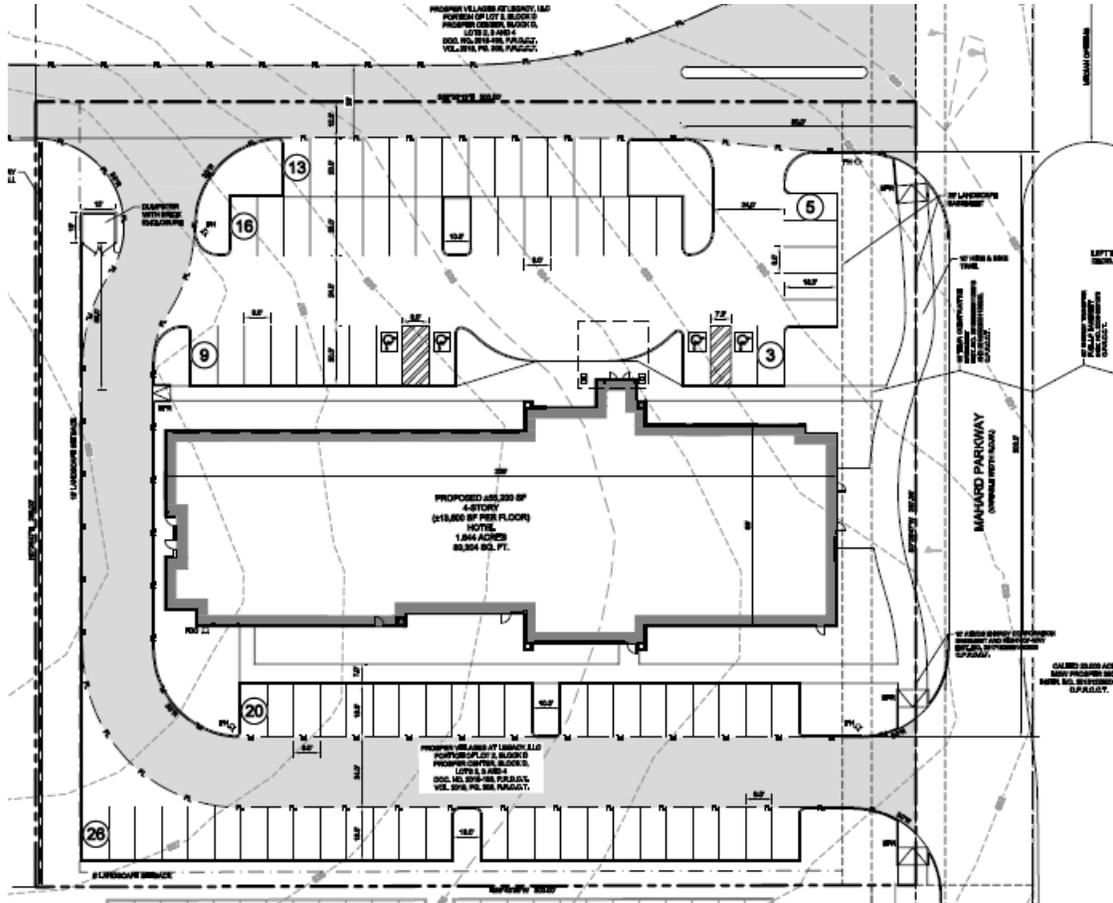
Conduct a Public Hearing, and consider and act upon a request to rezone 2.1± acres from Office to Planned Development-Office (PD-O), located on the west side of future Mahard Drive, south of future Prairie Drive, to facilitate the development of a Limited Service Hotel (Holiday Inn Express). (Z19-0016).

**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>	Office	Undeveloped	US 380 District
<b>North</b>	Planned Development-65-Single Family	Undeveloped	Tollway District
<b>East</b>	Planned Development-47-Commercial Corridor	Undeveloped	Tollway District
<b>South</b>	Planned Development-99-Commercial	Undeveloped	US 380 District
<b>West</b>	Planned Development-98-Multifamily	Undeveloped	US 380 District

Requested Zoning – The purpose of this request is to rezone 2.1± acres from Office to Planned Development-Office to allow for development of a limited service hotel, Holiday Inn Express. As shown on Exhibit D, the hotel will be a four (4) story, 55,200 square foot building, containing 92 guest rooms.



As outlined in Exhibit C, the applicant is proposing one modification to the base Office (O) district zoning which is the addition of Limited Service Hotel as a permitted use. The applicant has not requested any modifications to the Office district development standards.

As shown on Exhibit F, the proposed four (4) story building will be constructed primarily of brick and stone with small percentages of EIFS. The proposed elevations are in conformance with the Zoning Ordinance, as required by the Town Council approved Development Agreement.



As shown on Exhibit G, the applicant is proposing an eight (8) foot tall masonry screening wall with landscaping along the western property line to screen the future multifamily residential (senior living) development. The proposed landscaping complies with the landscaping requirements of the Zoning Ordinance.

Future Land Use Plan – The Future Land Use Plan recommends US 380 District. The proposed zoning request conforms to the Future Land Use Plan.

Thoroughfare Plan – The property will have direct access to Mahard Parkway, an ultimate 90-foot, 4-lane divided thoroughfare. The roadway will have to be extended to the site by the developer. This request conforms to the Thoroughfare Plan.

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

**Legal Obligations and Review:**

Notification was provided to neighboring property owners, as required by state law. Town staff has not received any Public Hearing Notice Reply Forms.

**Attached Documents:**

1. Aerial and Zoning Maps
2. Proposed Exhibits A, B, C, D, E, F, and G

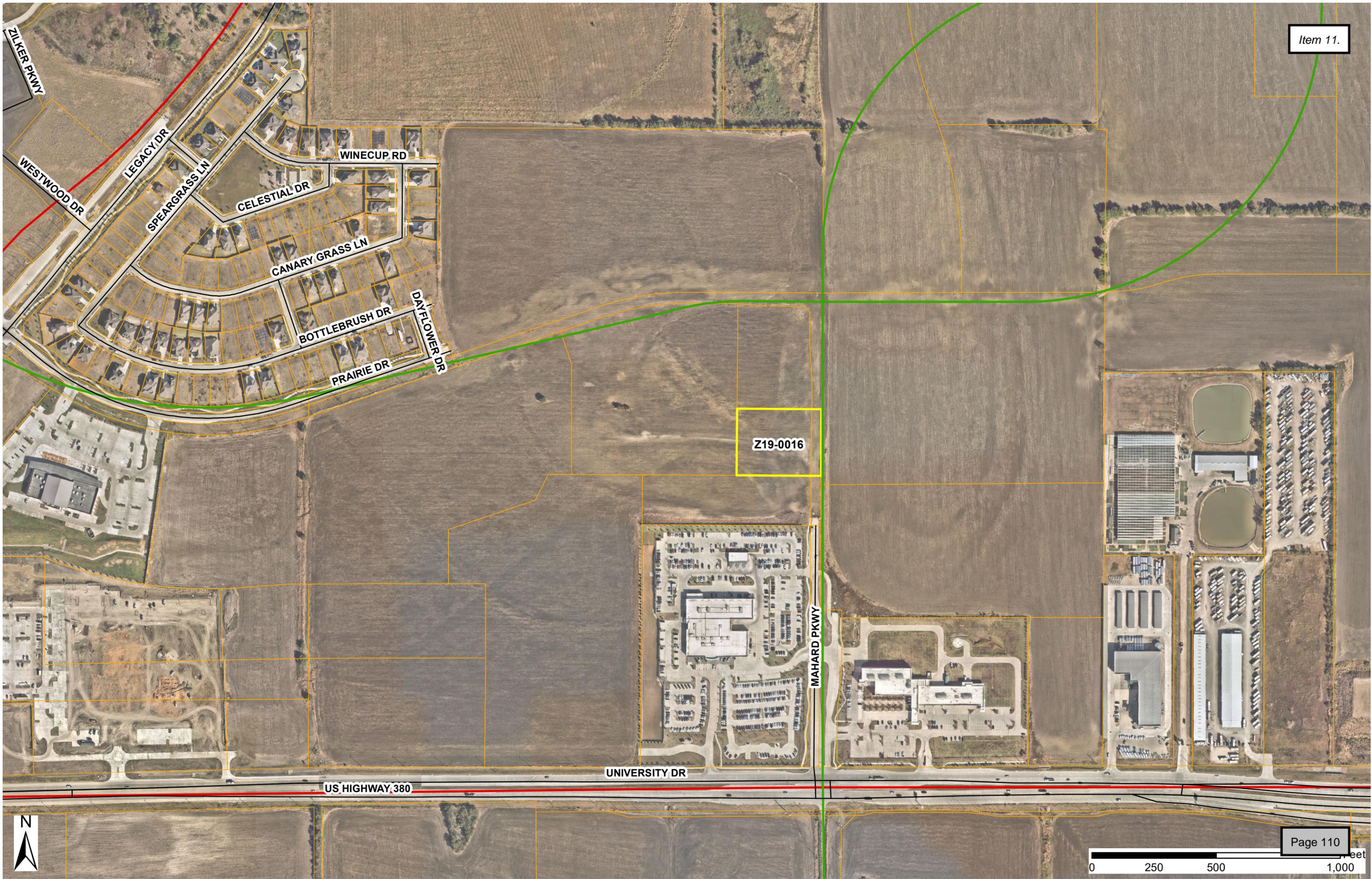
**Planning & Zoning Commission Recommendation:**

At their November 5, 2019 meeting, the Planning & Zoning Commission recommended the Town Council approve the request, by a vote of 6-0.

**Proposed Motion:**

I move to approve the request to rezone 2.1± acres from Office to Planned Development-Office (PD-O), located on the west side of future Mahard Drive, south of future Prairie Drive, to facilitate the development of a Limited Service Hotel (Holiday Inn Express).

Item 11.



Z19-0016

US HIGHWAY 380

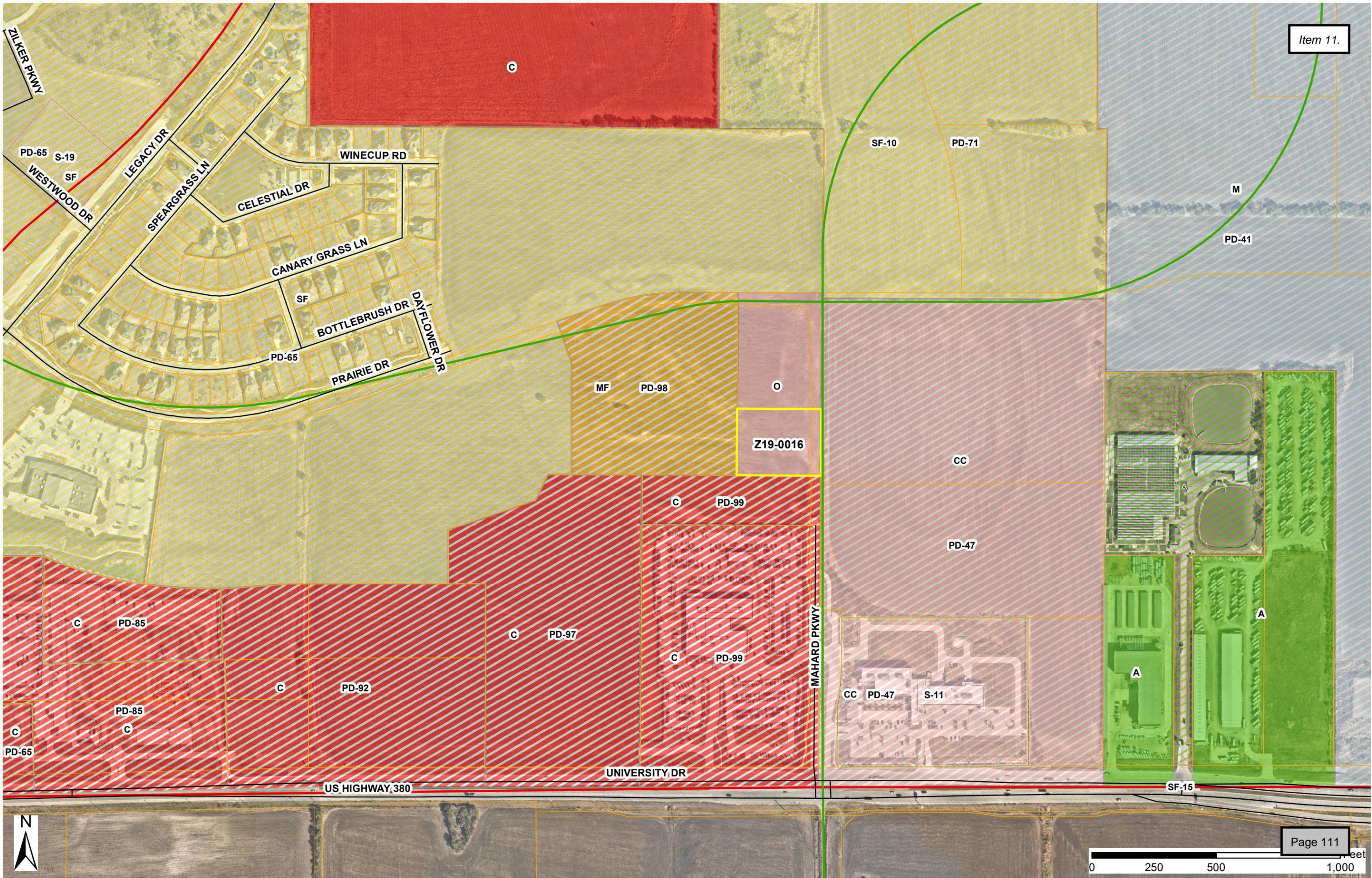
UNIVERSITY DR

MAHARD PKWY



Page 110

0 250 500 1,000 feet



Item 11.

Z19-0016



**Z19-0016**

**EXHIBIT B**

**STATEMENT OF INTENT AND PURPOSE**

The Planned Development (PD) District provides the ability to develop a four-story hotel on a tract of land currently zoned Office (O) located adjacent to a future senior living and automotive repair center facility. The hotel use will be located along future Mahard Parkway and south of future Prairie Drive.

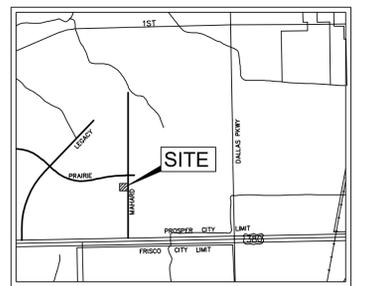
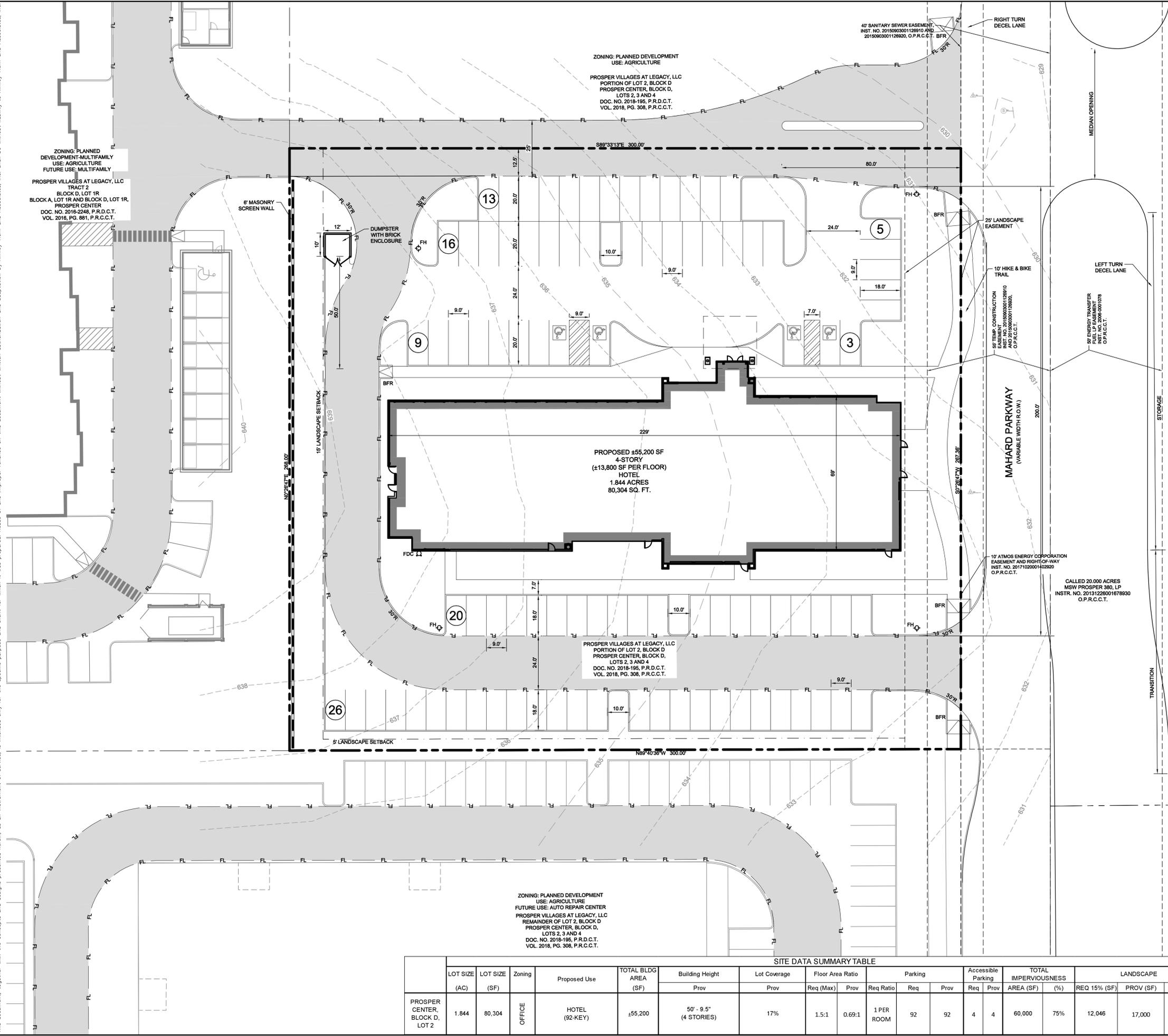
**Z19-0016****EXHIBIT C****DEVELOPMENT STANDARDS**

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20) as it currently exists or may be amended, and the Subdivision Ordinance (Ordinance No. 17-41) as it currently exists or may be amended, shall apply.

Except as noted below, the Tract shall develop in accordance with the Office (O) District, as it exists or may be amended.

1. Development Plans:
  - A. Concept Plan: The tract shall be developed in general accordance with the attached concept plan, set forth in Exhibit D.
  - B. Elevations: The tract shall be developed in general accordance with the attached elevations, set forth in Exhibit F.
  - C. Landscape Plan: The tract shall be developed in general accordance with the attached landscape plan, set forth in Exhibit G.
2. Uses: Uses shall be permitted in accordance with the Office (O) District with the addition of the following:
  - A. Limited Service Hotel.
3. Regulations: The tract shall be developed in accordance with the Office (O) District development standards except as follows:
  - A. Maximum Height: Limited Service Hotels shall be no greater than four (4) stories or 55 feet in height.

Plotted By: Wollenberg, Austin, Date: October 22, 2019 03:32:33, 15pm. File Path: K:\V\FRI\_Civil\05222020-Prosper Mahard Hotel\CAD\PlanSheets\F01\_Request\Exhibit\_D.dwg  
 This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



VICINITY MAP  
(NOT TO SCALE)



GRAPHIC SCALE IN FEET

LEGEND

	PROPERTY LINE
	SETBACK LINE
	EASEMENT
	FIRE LANE
	PROPOSED WALL
	NUMBER OF PARKING SPACES PER ROW
	FIRE HYDRANT (FH)
	FIRE DEPARTMENT CONNECTION (FDC)
	RADIUS

NOTES

- NO 100-YEAR FLOODPLAIN EXISTS ON THE SITE.
- THE THOROUGHFARE ALIGNMENT(S) SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DOES NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAT.

TOWN OF PROSPER 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.
- DUMPSTER 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 REGULATION 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) 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 TOWN ENGINEER.
  - 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. IMPACT FEE WILL BE ASSESSED IN ACCORDANCE WITH THE LAND USE CLASSIFICATION(S) IDENTIFIED ON THE SITE DATA SUMMARY TABLE; HOWEVER, CHANGES TO THE PROPOSED LAND USE AT THE TIME OF CO AND/OR FINISH OUT PERMIT MAY RESULT IN ADDITIONAL IMPACT FEES AND/OR PARKING REQUIREMENTS.
  - THE SITE PLAN SHALL BE EFFECTIVE FOR A PERIOD OF EIGHTEEN (18) MONTHS FROM THE DATE OF APPROVAL BY THE PLANNING & ZONING COMMISSION. AT THE END OF WHICH TIME THE APPLICANT MUST HAVE SUBMITTED AND RECEIVED APPROVAL OF ENGINEERING PLANS AND BUILDING PERMITS. IF THE ENGINEERING PLANS AND BUILDING PERMITS ARE NOT APPROVED, THE SITE PLAN APPROVAL, TOGETHER WITH ANY PRELIMINARY SITE PLAN FOR THIS PROPERTY, IS NULL AND VOID.

EXHIBIT D  
 PROSPER CENTER, BLOCK D, LOT 2  
 TOWN PROJECT NO. Z19-0016  
 BEING 1.844 ACRES PORTION OF LOT 2, BLOCK D  
 PROSPER CENTER, BLOCK D, LOTS 2, 3, AND 4  
 PREPARED: 10/22/19

ENGINEER KIMLEY-HORN AND ASSOCIATES, INC. ADDRESS: 6160 WARREN PARKWAY, STE. 210 FRISCO, TX 75034 PHONE (972) 335-3580 CONTACT: C.J. PONTON, P.E. (TX)	OWNER PROSPER VILLAGES AT LEGACY, LLC ADDRESS: 10350 RESEARCH ROAD FRISCO, TX 75033 PHONE (214) 387-3993 CONTACT: CLINT RICHARDSON	APPLICANT SHYANA HOSPITALITY MANAGEMENT, LLC ADDRESS: 6401 ELDORADO PARKWAY, STE. 338 FRISCO, TX 75034 PHONE (972) 335-3580 CONTACT: SYLVIANA GUNAWAN, RPLS (TX)	DATE 10/22/19
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LOT SIZE (AC)	LOT SIZE (SF)	Zoning	Proposed Use	TOTAL BLDG AREA (SF)	Building Height		Lot Coverage	Floor Area Ratio		Parking			Accessible Parking		TOTAL IMPERVIOUSNESS AREA (SF)	LANDSCAPE REQ 15% (SF)	LANDSCAPE PROV (SF)	LANDSCAPE PROV (%)
					Prov	Req (Max)		Prov	Req	Prov	Req	Prov	Req	Prov				
1.844	80,304	OFFICE	HOTEL (92-KEY)	±55,200	50' - 9.5" (4 STORIES)	17%	1.5:1	0.69:1	1 PER ROOM	92	92	4	4	60,000	75%	12,046	17,000	21%

<b>Kimley»Horn</b>		Item 11.
© 2019 KIMLEY-HORN AND ASSOCIATES, INC. 6160 WARREN PARKWAY, SUITE 210, FRISCO, TX 75034 PHONE: 972-335-3580 WWW.KIMLEY-HORN.COM TEXAS REGISTERED ENGINEERING FIRM F-628		DATE
SCALE AS SHOWN DESIGNED BY CJP DRAWN BY ATW CHECKED BY CJP		REVISIONS
<b>EXHIBIT D</b>		No.
<b>MAHARD HOTEL</b>		DATE
TOWN OF PROSPER, TEXAS		PROJECT NO.
TOWN OF PROSPER, TEXAS		SHEET NUMBER
TOWN OF PROSPER, TEXAS		1 OF 1
TOWN OF PROSPER, TEXAS		Page 115

**Z19-0016**

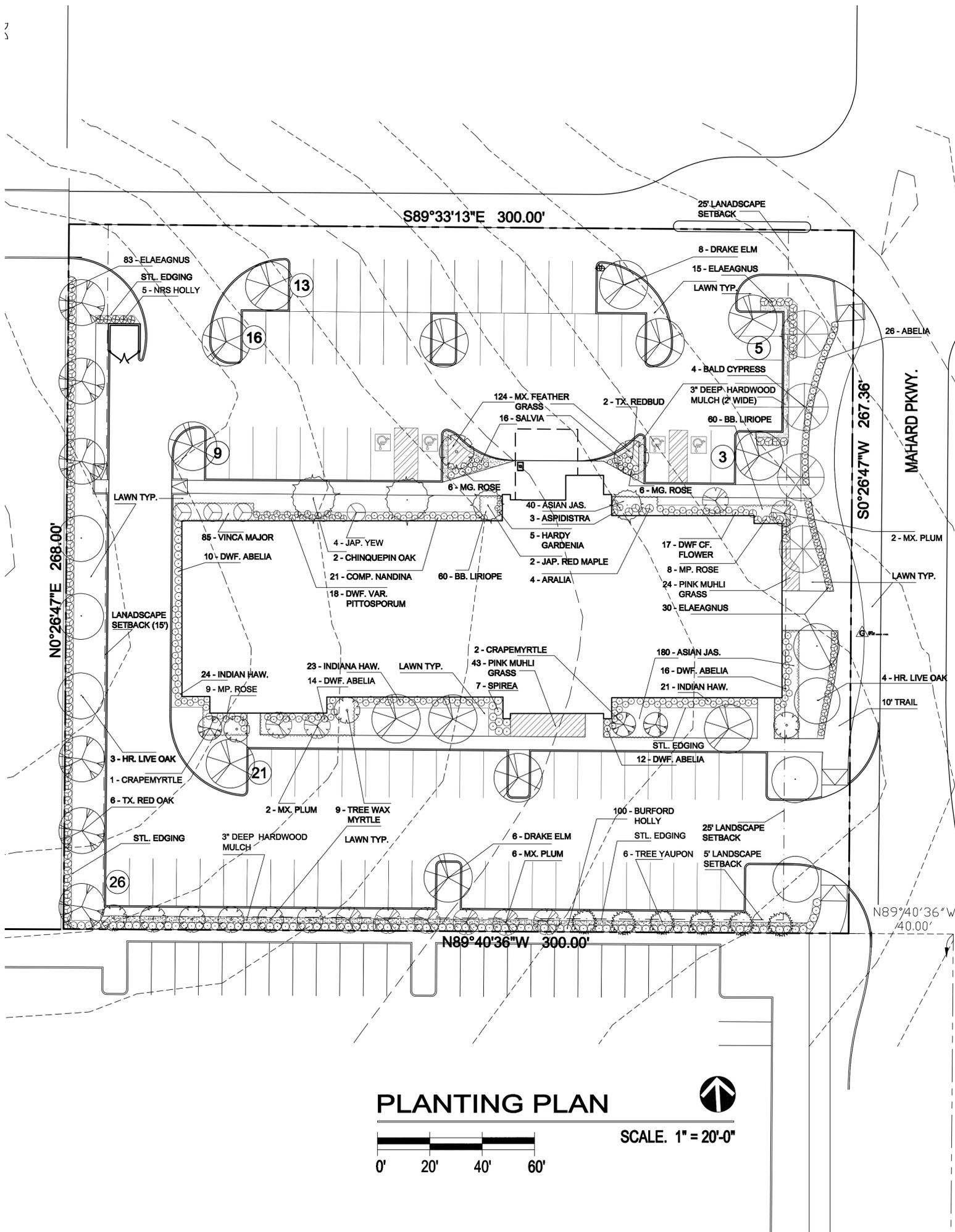
**EXHIBIT E**

**DEVELOPMENT SCHEDULE**

The timing of development will depend upon construction of thoroughfares, storm sewer, and utilities to serve the property as well as shared access points by others. The project is anticipated to begin construction within one (1) to three (3) years following approval of the Planned Development Ordinance.







**PLANTING PLAN**

SCALE. 1" = 20'-0"



**tree symbols**

- TX. RED OAK
- BALD CYPRESS
- DRAKE ELM
- HIGHRISE LIVE OAK
- CHINQUAPIN OAK
- TEX. REDBUD
- MEXICAN PLUM
- CRAPEMYRTLE ( RED )
- TREE WAX MYRTLE
- MEXICAN PLUM
- TREE YAUPON ( FEM. )

**plant schedule**

PRO.HIX

QTY	COMMON NAME	SCIENTIFIC NAME	SIZE	REMARKS
<b>TREES</b>				
6	Texas Red Oak	Quercus shumardii "Texana"	3" Caliper	10-12' ht., 5-6' sp., straight trunk, full, matching
7	Highrise Live Oak	Quercus virginiana QVTIA	3" Caliper	10-12' ht., 4-5' sp., full, matching
2	Chinquapin Oak	Quercus muhlenbergii	3" Caliper	10-12' ht., 5-6' sp., full, matching
4	Bald Cypress	Texodium distichum	3" Caliper	10-12' ht., 4-5' sp. full, matching
14	Drake Elm	Ulmus crassifolia	3" Caliper	8'-10' ht., full, matching.
<b>SMALL ORNAMENTAL &amp; FLOWERING TREES</b>				
9	Tree Wax Myrtle	Myrica cerifera		6-8' ht., full pot, well rooted.
3	Crapemyrtle (red)	Lagerstroemia indica		6-8' ht. full pot, multi trunk, matching, well rooted.
10	Mexcan Plum	Prunus mexicana		6-8' ht. full pot, matching, well rooted.
6	Tree Yaupon	Ilex vomitoria		6-8' ht. full pot, matching, well rooted.
2	Oklahoma Redbud	Circis canadensis		6-8' ht. full pot, matching, well rooted.
2	Jap Red Maple	Acer palmatum		4-5' ht. full pot, matching, well rooted.
<b>SHRUBS &amp; VINES</b>				
5	Nellie R. Stevens Holly	Ilex x Nellie R. Stevens		5 gal. full pot, well rooted, 48" O.C.
100	Burford Holly	Ilex Cornuta 'Burfordii'		5 gal. full pot, well rooted, 36" O.C.
128	Elaeagnus	Elaeagnus macrophylla		5 gal. full pot, well rooted, 36" O.C.
26	Abelia	Abelia grandiflora		5 gal. full pot, well rooted, 36" O.C.
52	Dwf. Abelia	Abelia grandiflora		3 gal. full pot, well rooted, 30" O.C..
21	Comp. Nandina	Nandina domestica 'Compecta'		3 gal. full pot, well rooted, 24" O.C..
12	Martha Gonzalez Rose	Rosa spec.		3 gal. full pot, well rooted, 30" O.C.
15	Marie Pavie Rose	Rosa spec.		3 gal. full pot, well rooted, 30" O.C.
17	Dwf. Fringe Flower	Loropetalum chinense 'Nana'		3 gal. full pot, well rooted, 30" O.C.
57	Indian Hawthorn	Rhapiolepis indica		3 gal. full pot, well rooted, 30" O.C.
16	Salvia Greggii (red)	Salvia greggii		1 gal. full pot, well rooted, 24" O.C.
6	Cleyera	Cleyera Japonica		3 gal. full pot, well rooted, 30" O.C.
7	Spirea	Spirea 'Anthony Waterers'		3 gal. full pot, well rooted, 30" O.C.
67	Pink Muhli Grass	Muhlenbergia capillaris		3 gal. full pot, well rooted, 30" O.C.
124	Mexian Feather Grass	Nassella tenuissima		2 gal. full pot, well rooted, 18" O.C.
18	Dwf. Var. Pittosporum	Pittosporum tobira 'Nana Varigata'		3 gal. full pot, well rooted, 24" O.C.
4	Jap Yew	Podocarpus macrophyllus		5 gal. full pot, well rooted.
3	Aspidistra	Aspidistra eliator		3 gal. full pot, well rooted.
4	Aralia	Fatsia japonica		3 gal. full pot, well rooted.
5	Hardy Gardenia	Gardenia jasminoides		3 gal. full pot, well rooted.
<b>GROUNDCOVERS, &amp; LAWN</b>				
250	Bigblue Liriope	Liriope muscari		4" Pots, full pot, well rooted, 12" O.C.
85	Vinca Major	Vinca major		4" Pots, full pot, well rooted, 18" O.C.
345	Asian jasmine	Trechelosperrum asiaticum		4" Pots, full pot, well rooted, 18" O.C.
	Bermudagrass	Cynodon dactylon		Hydromulched / Solidsod

THE CENTRAL LEADER FOR SHADE TREES SHALL BE INTACT.

**aroids**

landscape architects

5901 Indian hills drive - garland - texas 75044 - 214-403-2034 - massiam2745@gmail.com

**HOLIDAY INN EXPRESS & SUITES**

PROSPER, TEXAS

**revision**

△ OCT. 20, 19

shown LANDSCAPE PLAN



date

SEP. 18, 2019

sheet

**LP.01**

# PLANNING



**To: Mayor and Town Council**

**From: Alex Glushko, AICP, Planning Manager**

**Through: Harlan Jefferson, Town Manager**

**Re: Town Council Meeting – November 26, 2019**

**Agenda Item:**

Conduct a Public Hearing, and consider and act upon a request to amend 654.0± acres of Planned Development-40 (PD-40), for Windsong Ranch, generally located on the west side of Teel Parkway, south of Parvin Road, in order to modify the residential development standards, including but not limited to; decreasing the overall lot count; incorporating smaller lot types; and providing architectural and landscape regulations. (Z19-0020).

**Background Information:**

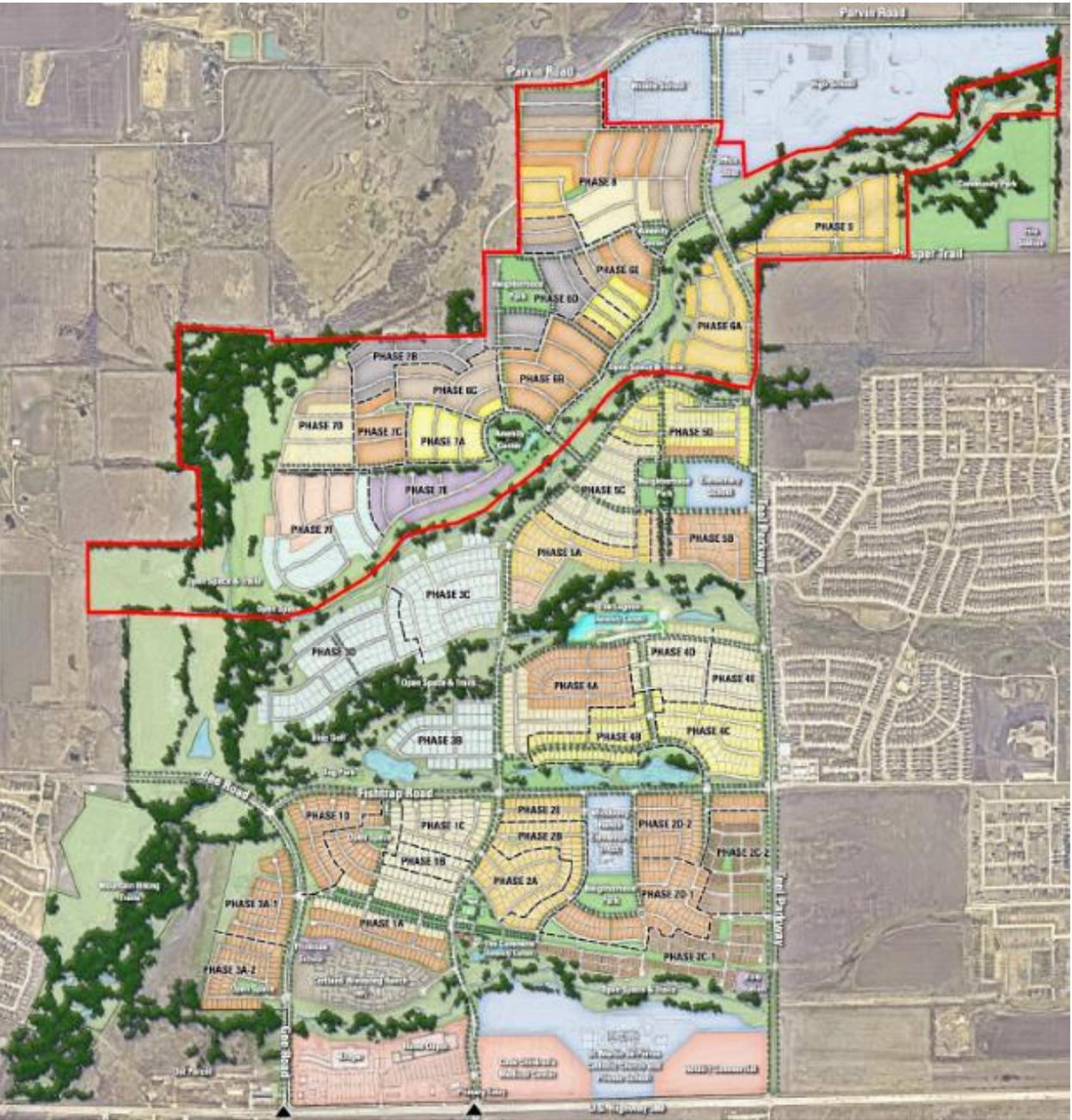
On November 5, 2019, the Planning & Zoning Commission considered this request. At that time, the applicant was proposing the following amendments to Planned Development-40 (PD-40):

1. Decreasing the overall density of the development, by reducing the maximum number of lots from 3,500 to 3,250;
2. Modifying the existing permitted lot type regulations by,
  - increasing the number of Type A (8,000 sq. ft.) lots from 750 to 850,
  - decreasing the number of Type C (10,500 sq. ft.) lots from 1,100 to 660, and
  - decreasing the number of Type D (12,500 sq. ft.) lots from 550 to 160;
3. Adding four (4) new lot types, including three (3) smaller lot types and one (1) larger lot type, including Lot Types E, F, G, and H. Type E Lots are “4-Pack” or “garden homes” which are comprised of four (4) individual lots, with single family dwellings on each lot, that all share one (1) common driveway. Details of the new lot types are shown on the table below:

	Lot Type E (4-Pack)	Lot Type F	Lot Type G	Lot Type H
Min. Permitted Lot Sizes	5,000 sq. ft.	5,000 sq. ft.	6,000 sq. ft.	20,000 sq. ft.
Permitted Number of Lots	Max. 250 combined (with Max. 48 Type E)		Max. 250	Min. 40
Min. Lot Width	80 ft.	40 ft.	50 ft.	120 ft.
Min. Lot Depth	70 ft.	100 ft.	100 ft.	150 ft.

- 4. Incorporating additional architectural standards for the smaller lot types, including masonry, garage door, porch, and roof pitch regulations.

The changes in the lot types would occur in the future phases 6-9 on the north side of Doe Branch as depicted below:



The Planning & Zoning Commission recommended approval of the request, subject to the following conditions:

- 1. Removal of the Type E (4-pack/garden home) lots;
- 2. Removal of the Type F (40' wide) lots;
- 3. Reallocation of the 250 Type E and F lots, equally, to Type A (8,000 sq. ft.) lots and Type G (6,000 sq. ft.) lots; and

4. Town Council approval of a development agreement including the proposed architectural standards.

In response to the Planning & Zoning Commission’s recommendation, the applicant revised the request, as follows:

1. Remove the Type E (4-Pack/Garden Home) lots
2. Retain the request for Type F (5,000 sq. ft./40’ wide) lots;
3. Replace the Type E (4-Pack/Garden Home) lots with a Type E (40’ wide, rear entry/alley served) lots;
4. Incorporate minimum house pad widths into the PD (Types E and F lots requiring a minimum of twenty-nine feet, six inches (29’ 6”) and Type G lots requiring a minimum of thirty-nine feet, six inches (39’ 6”); and
5. Require a development agreement including the proposed architectural standards.

**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>	Planned Development-40-Single Family	Undeveloped	Medium Density Residential
<b>North</b>	Planned Development-40-Single Family, Agricultural and Unincorporated	Undeveloped	Medium Density Residential
<b>East</b>	Planned Development-40-Single Family, Agricultural and Unincorporated	Undeveloped	Medium Density Residential
<b>South</b>	Planned Development-40-Single Family and Agricultural	Undeveloped and Single Family (Windsong Ranch)	Medium Density Residential
<b>West</b>	Agricultural	Undeveloped	Low Density Residential and Floodplain

The proposed PD limits the number of Type E, F, and G Final Plat lots that can be approved by the Planning & Zoning Commission to a maximum of 300, until a subdivision including a minimum of the 20 Type H, (20,000 sq. ft. lots) lots has received Final Acceptance (i.e. all public infrastructure is in place and the Final Plat is filed).

In addition, the proposed PD allows a total of 250 total Type E (40’ rear entry) and F (40’ front entry) lots. The proposed PD indicates the total number of final platted Type E (40’ rear entry) lots at any point in time shall not be more than 75 lots greater than the number of final platted Type F (40’ front entry) lots. The Type E and F lots would be permitted in the location identified on Exhibit D-1.

- *Architectural Standards* – With a narrower lot and narrower home product, the typical, two-car, front entry garage tends to be the dominant feature of the home. In an attempt to improve the streetscape appeal of the fronts of the homes, the applicant is proposing additional masonry, garage, porch, and roof pitch regulations in conjunction with the new lot types, as detailed below.

- Masonry – The current PD allows cementitious fiber board for 50% of upper stories, not in line with the same vertical plane as the first story. The proposed PD requires brick, stone, or stucco on 100% of homes on Type E, F, and G Lots.
- *Garages* – The proposed PD requires 50% of Type F and G Lots to have single garage doors separated by a masonry column. Garages are required to be setback a minimum of 25' from the street. For the Type F Lots, the proposed PD requires the garage doors to be recessed a minimum of 5' behind the portion of the building located closest to the street, so that the garage is not the closest building element to the street.

For the Type F and G Lots, the proposed PD also requires that garage doors are either constructed of wood or have the appearance of a real wood, cedar-type door. Further, two (2) of the three (3) garage door upgrades are required:

- Carriage style door designs giving the appearance of a classic swing-open design with the flexibility of an overhead door operation;
  - Doors incorporating decorative hardware; or
  - Doors with windows.
- *Porches* – The proposed PD requires a minimum of 25% of Type E, F, and G Lots to have front porches, with a minimum of 15% of homes along a block face to have a porch. All porches are required to have a minimum depth of seven feet (7'). Homes with split garage doors shall have a minimum porch width of seven feet (7'), while homes without split garages shall have a minimum porch width of ten feet (10'). The intent of these dimensions is to create a usable front porch.
  - *Roof Pitch* – The proposed PD requires a minimum of 25% of the Type E, F, and G Lots to have a main roof pitch of greater than 8:12.
  - *Pad Width* – The proposed PD requires Types E and F lots to be a minimum of twenty-nine feet, six inches (29' 6") and requires Type G lots to be a minimum of thirty-nine feet, six inches (39' 6").

Representative pictures of homes on the Types E, F, and G Lots are below.

*Example Type E (5,000 sq. ft. lot) Rear Entry Homes*



*Example Type F (5,000 sq. ft. lot) Front Entry Homes*



*Example Type G (6,000 sq. ft. lot) Homes*



Future Land Use Plan – The Future Land Use Plan recommends Medium Density Residential for the property.

Thoroughfare Plan – The property is adjacent to Teel Parkway and Parvin Road, future six-lane divided major thoroughfares.

Parks Master Plan – The Parks Master Plan identifies park areas and hike and bike trails on the subject property.

**Legal Obligations and Review:**

Zoning is discretionary. Therefore, the Town Council is not obligated to approve the request and may recommend modifications to the proposed PD. Notification was provided to neighboring property owners as required by state law. To date, staff has received two (2) Public Hearing Notice Reply Forms; one (1) in support and one (1) in opposition to the request.

**Attached Documents:**

1. Aerial and Zoning Maps
2. Proposed Exhibits A, C, D-1, and F
3. Applicant Provided Exhibits
4. Detailed Lot Summary Table
5. Public Hearing Notice Reply Forms

**Planning & Zoning Commission Recommendations:**

At their November 5, 2019 meeting, the Planning & Zoning Commission recommended the Town Council approve the request, by a vote of 6-0, subject to the following conditions:

1. Removal of the Type E (4-pack/garden home) lots  
*(Note: the applicant has revised the request in accordance with this Planning & Zoning Commission recommendation);*
2. Removal of the Type F (40' wide) lots;
3. Reallocation of the 250 Type E and F lots, equally, to Type A and Type G lots  
*(Note: the Type E (4-pack/garden home) lots referenced in this condition, has subsequently been revised by the applicant to Type E (40' wide rear entry) lots; therefore the proposed recommendation and motion has been revised accordingly);* and
4. Town Council approval of a development agreement including the proposed architectural standards.

**Staff Recommendations:**

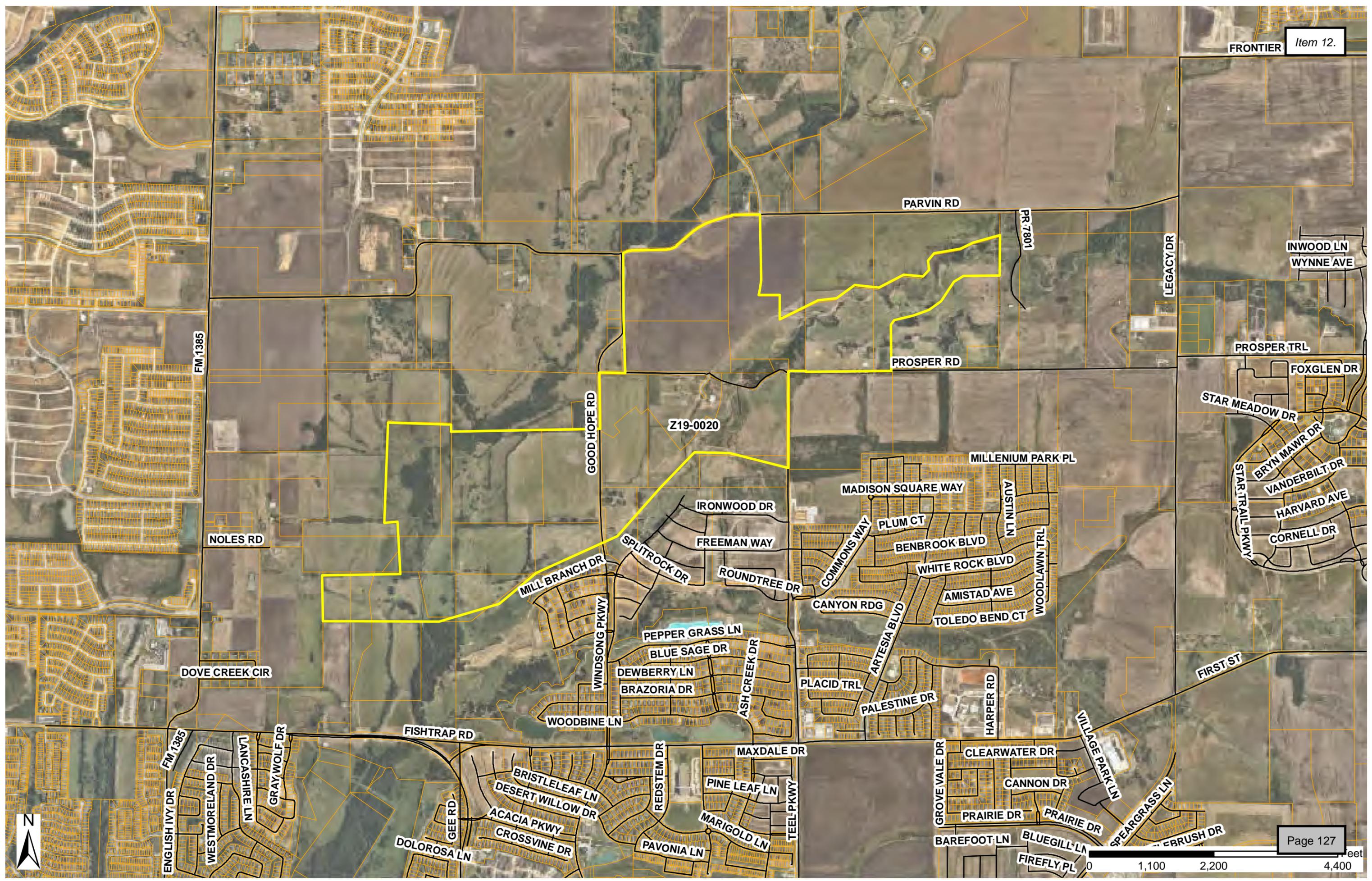
Staff recommends the Town Council approve the request to amend 654.0± acres of Planned Development-40 (PD-40), for Windsong Ranch, generally located on the west side of Teel Parkway, south of Parvin Road, subject to the following conditions:

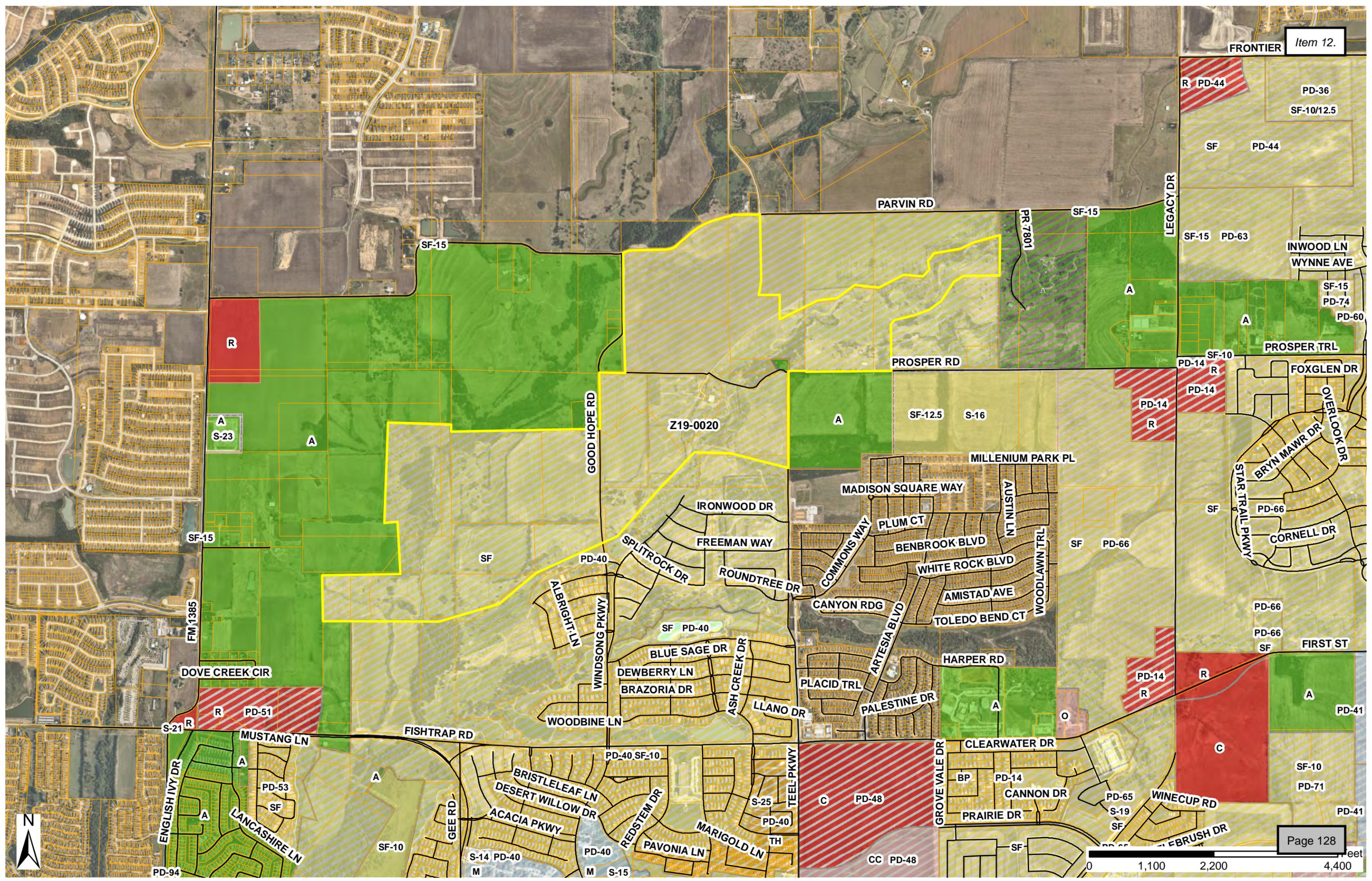
1. Removal of the Type F (40' wide) lots;
2. Reallocation of the 250 Type E and F lots, equally, to Type A and Type G lots; and
3. Town Council approval of a development agreement including the proposed architectural standards.

**Proposed Motion:**

I move to approve a request to amend 654.0± acres of Planned Development-40 (PD-40), for Windsong Ranch, generally located on the west side of Teel Parkway, south of Parvin Road, subject to the following conditions:

1. Removal of the Type F (40' wide) lots;
2. Reallocation of the 250 (40' wide) lots, equally, to Type A and Type G lots; and
3. Approval of a development agreement including the proposed architectural standards.











**EXHIBIT "C"****Development Standards for Mahard Ranch, Town of Prosper, Texas**

Conformance with the Town's Zoning Ordinance and Subdivision Ordinance: Except as otherwise set forth in these Development Standards, the regulations of the Town's Zoning Ordinance (Ordinance No. 05-20 as it currently exists or may be amended) and Subdivision Ordinance (as it currently exists or may be amended) shall apply.

1. **Amenity Program**

- a. **General.** As a master planned community, Mahard Ranch will have a programmed and qualitatively controlled system of amenities throughout. These amenities combine to create an overall sense of place that would be difficult to achieve when considered as independent elements within smaller developments. The community amenities that are addressed within these Development Standards are:

- Primary Community Entries
- Secondary Community Entries
- Neighborhood Entries
- Thoroughfare Landscape Buffers
- Community Park
- Community Amenity Center
- Floodplain / Greenway Parks
- Neighborhood Parks
- Pocket Parks

b. **Primary Community Entries**

- a. Major points of entry into Mahard Ranch (minimum two locations, including at least one entry along U.S. 380) will be defined with a combination of monument signage, landscape and lighting to create a sense of arrival commensurate in scale and character with a 2,120.54 acre master planned community (see representative examples below). These entries will include:

- Community name / logo incorporated into monument signage element, to be constructed of masonry or similar material;
- Enhanced landscape, including seasonal color, shrubs, groundcover, perennials and unique combinations of both canopy and ornamental trees;
- Enhanced lighting on the monument / signage and the unique aspects of the landscape;
- Water will be considered as an accent feature if land and topography permit, and if compatible with the overall physical design theme for the community.

- b. Primary entries will be developed to incorporate both sides of the entry roadway when both are contained within Mahard Ranch, and will also include enhancements to the median in the immediate area (where / if applicable). Landscape easements will be provided to ensure adequate space to provide for visibility triangle(s) and adequate development of entry design.



c. **Secondary Community Entries**

- a. **Secondary community entries** will be similar to primary community entries in their use of compatible building and landscape materials, but will be smaller in scale and land area. They will occur at the outside edges of Mahard Ranch, at the entries for either arterials or collectors into the community. It is anticipated that a minimum of three secondary entries will be provided for the community, primarily along Teel Parkway (see representative examples below). Secondary community entries will include the following elements, scaled slightly smaller than the primary entries:

- Community name / logo incorporated into monument signage element, to be constructed of masonry or similar material;
- Enhanced landscape, including seasonal color, shrubs, groundcover, perennials and unique combinations of both canopy and ornamental trees;
- Enhanced lighting on the monument / signage and the unique aspects of the landscape;
- Center median to allow for more landscape density and also provide alternative location for neighborhood identification and way-finding graphics;
- Landscape easements where required to accommodate enhanced landscape and monument construction.



- b. **Neighborhood Entries.** Internal to Mahard Ranch and along both arterials and collectors, points of intersection will be enhanced to denote entries into individual 'villages' or neighborhoods. These entries will resemble primary and secondary entries in their use of materials and landscape, but will also

incorporate village or neighborhood names and will contribute to a unique, community-wide system of visual way finding.

d. **Thoroughfare Landscape Buffers (Arterial and Collector Roads) - 25' Min.**

Thoroughfares will provide a continuity of design from primary and secondary points of community entry throughout the entirety of Mahard Ranch. These thoroughfares and the adjacent landscape buffers are intended to include the following:

- Screen walls composed primarily of ornamental metal fence with living screen or stone or stone veneer (allowing brick accent), ONLY if the Town determines that mitigating circumstances (land area / depth, topography, etc) will not allow natural landscape to buffer adjacent land uses (no builder fencing allowed);
- Enhanced grading / berms combined with landscape (grass, trees, accent shrubs and groundcover at entry points) to provide design continuity and buffer adjacent land uses;
- Street tree system throughout (formal and/or informal in arrangement – design to be determined), to visually identify the hierarchy of streets and neighborhoods. A variety of tree species will be provided, including canopy / shade and smaller flowering, ornamentals of a minimum 3 inch caliper for every 30 lineal feet which with requested approval by the Town at the time of submission of a preliminary plat may be grouped and in no case shall there be less than the total number of street trees as required by this subsection;
- Continuous 6' sidewalks on both sides of the thoroughfare (sidewalks interior to Residential may be 5');
- Integrated neighborhood / 'village' entries at points of intersection.

e. **Community Park** Mahard Ranch will include one community park (of approximately 50 acres) that shall be dedicated to the Town in accordance with the Preannexation Agreement. Schedule for improvements and requirements for maintenance are described in Section 4 of the Development Standards. It is intended that this park include sports and athletic facilities, passive and natural spaces and associated parking - all of a scope and type to be determined in coordination with Town staff. Following are parameters of design intended for this facility:

- Location will be along one of the open space / greenway parks in order to facilitate pedestrian connectivity to the neighborhoods;
- Facility design will utilize materials (masonry, pavements, landscape, lighting) that are compatible with other common area improvements within the Mahard Ranch community;
- Specific facilities to be determined in coordination with Town staff, but may include some combination of the following:
  - ✓ 8' wide hike and bike trails
  - ✓ Softball / Baseball field(s) (lighted);
  - ✓ Soccer field(s) (lighted);

- ✓ Football field(s)
- ✓ Multipurpose field(s)
- ✓ Shade pavilion(s);
- ✓ Parking;
- ✓ Trailhead connections to adjacent floodplain / greenway parks;
- ✓ Site furnishings, including benches, water fountains, trash receptacles;
- ✓ Enhanced landscape at entries, and irrigated turf in all maintained (developed) areas.

f. **Community Amenity Center**

- a. At least one Community Amenity Center shall be developed within Mahard Ranch, providing a range of more active, family oriented activities in a 'resort' style environment (see representative examples above). This facility will be HOA maintained and provide the "centerpiece" recreational amenity for the entire community. Like the community park, this facility is intended to be located along the floodplain / greenway parks system to accommodate pedestrian and bicycle access from the neighborhoods of Mahard Ranch.
- A. A Community Amenity Center will be completed along with the initial phase of residential development, within the Single-Family Residential Tract.
- B. Three (3) additional Neighborhood Amenity Centers will be built upon completion of each successive phase of residential development, each phase to include approximately 750 homes, within the Single-Family Residential tract.
- b. The intended program for the Community Amenity Center facility shall include multiple elements from the following list:
- Active adult and children's pools;
  - Water slides and water play features;
  - Paved and turf chaise areas;
  - Community building, with interior and exterior spaces programmed for resident and HOA uses, including possible inclusion of a kitchen, community room, meeting room(s), fitness room, and storage area(s);
  - Restrooms (in the community building and possibly additionally at the pool area(s));
  - Convenience parking (quantity to be determined based upon code compliance);
  - Children's playground facility(s);
  - Sport court(s);
  - Trailhead linkages to the floodplain / greenway parks.



c. **Floodplain / Greenway Parks**

A. Mahard Ranch includes over 550 acres of flood plain corridors through the property. Significant portions of these corridors are rich in native flora and fauna, and are intended to be preserved in a natural condition, with only minimal impact to allow hike / bike trail linkages. Other areas are more open and less valuable as a native resource, and these areas may be developed to include a golf course or ponds and fountains that contribute to the overall storm drainage system and provide enhanced value to the community. All of these corridors shall be interconnected with a series of paths and trails, with an overall hike / bike trail system throughout. Following are the key components of this system of open space through the community:

- Master hike / bike trail – minimum 8' in width – concrete or other material approved by the Town – linking all neighborhoods, schools and amenities;
- Secondary paths and trails – minimum 8' in width – concrete or 'soft' surface (decomposed granite, crushed fines) is permitted for HOA maintained trails– providing secondary linkages and 'spur' connections to the hike / bike trail system;
- Native preservation areas in locations of most desirable existing vegetation, including wetland, upland and forested environments;
- Trailhead locations at community amenity sites and at schools, to include trail maps, bike racks, and site furnishings (trash, seating);
- Ponds and water features in open areas where impacts to existing vegetation will not be an issue and storm drainage requirements can be enhanced – ponds to include predominantly native, soft edges, safety shelves, water circulation / aeration to ensure water quality.



d. **Neighborhood Parks**

- A. Mahard Ranch will include a minimum of three, 7.5 acre (each) neighborhood parks, distributed throughout the community in areas that are linked by the floodplain / greenway parks system and that contribute to ensuring a maximum ¼ mile walk from any neighborhood to a park or open space amenity. Additional requirements for schedule of completion for these facilities, as well as maintenance, can be found in Section 4 of the Development Standards.
- B. Neighborhood parks shall be designed as a complementary component of the Mahard Ranch amenities program, including consideration of alternative uses, and the use of compatible materials (hardscape, landscape and, if included, lighting). These parks are to be integrated within the open space system as well as the neighborhoods that they serve. Neighborhood parks may include features and elements from the following list of amenities;
- Open play fields (non-lit);
  - Sport courts;
  - Covered pavilion or shade structure;
  - Children's playgrounds segregated by age groups (i.e. 2-5 and 5-12);
  - Parking for +/- 10 spaces;
  - Grading around perimeter to provide safety for playfields and street frontages;
  - 8' sidewalks around site linking facilities and providing connections to adjacent floodplain / greenway parks;
  - Town's Park signage approved by the Parks Board consistent with community theme.



- e. **Pocket Parks** Additional components of the Mahard Ranch amenities program are smaller pocket parks within individual neighborhoods. These parks will be an HOA maintained component of the open space system, and allow for:
- Providing valuable open space in adjacency to smaller homes;
  - integration of existing tree rows and other natural features that warrant preservation;
  - ensuring one-quarter mile resident walks to a component of the open space system;
  - additional passive and moderately active recreational opportunities, including:
    - ✓ open play areas;
    - ✓ natural interpretive areas;
    - ✓ neighborhood playgrounds;
    - ✓ children's water play area;
    - ✓ small neighborhood gathering spaces.

## 2. **Single-Family Residential Tract**

- a. **General Description:** Residential uses shall be permitted throughout the Property as set forth herein.
- b. **Allowed Uses:** Land uses allowed within the Single-Family Residential Tract are as follows: Uses followed by an **S** are permitted by Specific Use Permit. Uses followed by a **C** are permitted subject to conditional development standards. Conditional development standards are set forth in Chapter 3, Section 1 of the Town's Zoning Ordinance.
- Accessory buildings incidental to the allowed use and constructed of the same materials as the main structure.
  - Churches / rectories
  - Civic facilities
  - Electronic security facilities, including gatehouses and control counter
  - Fire stations and public safety facilities
  - Guest House
  - Home Occupation **C**
  - Model Home
  - Park or Playground
  - Private Recreation Center
  - Private Street Development and gated communities **S**

- Public or Private Parks, playgrounds and neighborhood recreation facilities including, but not limited to, swimming pools, clubhouse facilities and tennis courts, to be stated on plat
  - Single family residential uses as described herein
  - Schools – public or private
  - Golf Course for Country Club (including clubhouse, maintenance facilities, on-course food and beverage structure, and on course restroom facilities.)
  - Temporary real estate sales offices for each builder during the development and marketing of the Planned Development which shall be removed no later than 30 days following the final issuance of the last Certificate of Occupancy (CO) on the last lot owned by that builder.
  - Temporary buildings of the builders and uses incidental to construction work on the premises, which shall be removed upon completion of such work.
  - Townhouses (only as a buffer use as set forth herein)
  - Utility distribution lines and facilities. Electric substations shall be allowed at the sole discretion of the Developer.
- c. **Density:** The maximum number of single family detached units for the Properties is 3,250.
- d. **Lot Types:** The single family detached lots developed within the Properties shall be in accordance with the following Lot Types:
- Type A Lots: Minimum 8,000 square foot lots
  - Type B Lots: Minimum 9,000 square foot lots
  - Type C Lots: Minimum 10,500 square foot lots
  - Type D Lots: Minimum 12,500 square foot lots
  - Type E Lots: Minimum 5,000 square foot lots
  - Type F Lots: Minimum 5,000 square foot lots
  - Type G Lots: Minimum 6,000 square foot lots
  - Type H Lots: Minimum 20,000 square foot lots
- e. **Lot Type Development Threshold:**
- A. Planning and Zoning Commission can approve up to three hundred (300) Type E, F and G final platted Lots prior to the final acceptance of twenty (20) Type H Lots.
  - B. The total number of Final platted Type E Lots at any point in time shall not be more than seventy-five (75) lots greater than the number of final platted Type F Lots.
- f. **Lot Area Regulations:** Lot Type E and Lot Type F shall only be permitted in the location identified on Exhibit D-1.
- g. **Area and building regulations:**
- a. **Type A Lots:** The area and building standards for Type A Lots are as follows and as set forth in Table 1:

- A. **Minimum Lot Size.** The minimum lot size for Type A Lots shall be 8,000 square feet. A typical lot will be 60' x 133', but may vary as long as requirements in Table 1 are accommodated.
- B. **Minimum Lot Width.** The minimum lot width for Type A Lots shall be sixty (60) feet.
- C. **Minimum Yard Setbacks.**
- i. **Minimum Frontyard Setback:** The minimum frontyard setback for Type A Lots shall be twenty-five (25) feet. The minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type A Lots.
- ii. **Minimum Sideyard Setback:**
- (a) The minimum sideyard setback for Type A Lots shall be eight (8) feet.
- (b) For courtyard homes, as defined herein, the minimum sideyard setback shall be fourteen (14) feet for one side and two (2) feet for the other side yard. Windows on the 2' side of the courtyard home will not be allowed unless they are opaque or consist of glass block.
- (c) For corner lots, the minimum sideyard setback shall be fifteen (15) feet.
- iii. **Minimum Rearyard Setback:**
- (a) The minimum rearyard setback shall be twenty-five (25) feet.
- (b) For Courtyard Homes, as defined herein, the minimum rearyard setback is ten (10) feet for a maximum number of lots not to exceed seventy-five (75) Type A lots.
- iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to five (5) feet. Swing-in garages may encroach into required front yards up to ten (10) feet. Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.

- D. **Minimum Floor Space.** Each dwelling constructed on a Type A Lot shall contain a minimum of one thousand, nine hundred (1,900) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling
- E. **Height.** The maximum height for structures on Type A Lots shall be forty (40) feet.
- F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are permitted.
- G. **Driveways.** Driveways fronting on a street on Type A Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.
- H. **Exterior Surfaces.**
- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred (100) percent masonry. Cementitious fiber board is considered masonry, but may only constitute fifty (50) percent of the area for stories other than the first story. However, cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story. Cementitious fiber board may also be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the Building Official.
  - ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
  - iii. **Address Plaque.** A cast stone address plaque is required for each Type A Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
  - iv. **Chimneys.** On Type A Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be 100% brick or stone.

- v. **Stucco.** Stucco on structures on Type A Lots shall be traditional 3-coat process cement plaster stucco.
  - vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type A Lots.
- I. **Windows.** All window framing on structures on Type A Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
- i. Window shutters may be used on structures on Type A Lots. Window shutters shall be painted, stained wood, or fiberglass.
  - ii. No reflective window coverings or treatments shall be permitted.
- J. **Roofing.**
- i. Structures constructed on the Type A Lots shall have a composition, slate, clay tile or cement/concrete tile roof.
  - ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
  - iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
  - iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile and cement/concrete tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.
- K. **Garages.**
- i. Homes shall have a minimum of two (2) car garages but no more than three (3). No carports shall be permitted.
  - ii. Homes with three (3) garages shall not have more than two (2) garage doors facing the street.

- iii. Garage doors shall be constructed of either metal or wood.
- L. **Plate Height.** Each structure on a Type A Lot shall have a minimum principal plate height of 9' on the first floor.
- M. **Fencing.** No fence, wall or hedge on a Type A Lot shall exceed eight (8) feet in height or be less than four (4) feet in height unless otherwise specifically required by the Town of Prosper.
  - i. All Type A Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.
  - ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
  - iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.
- N. **Landscaping.**
  - i. A minimum of six (6) caliper inches of trees shall be planted on all Type A Lots.
  - ii. A minimum of one (1) tree shall be located in the front yard.
  - iii. Corner lots adjacent to a street shall plant (1) additional tree in the side yard.
  - iv. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
  - v. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.
- O. **Mailboxes.** Mailboxes on a Type A Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, **unless otherwise required by USPS (United States Postal Service).**
- P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the

roof, and not in public view from the front of the home are permitted on Type A Lots.

- Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type A Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.
- R. **Plan Elevations.** On Type A Lots, plan elevations shall alternate every four (4) homes on the same side of a street and every three (3) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type A Lots are attached hereto as Exhibit "F-1".
- S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten (10) feet, have a minimum rearyard setback of ten (10) feet, and a minimum sideyard setback of eight (8) feet.
- b. **Type B Lots:** The area and building standards for Type B Lots are as follows and as set forth in Table 1:
- A. **Minimum Lot Size.** The minimum lot size for Type B Lots shall be nine thousand (9,000) square feet. A typical lot will be 70' x 128', but may vary as long as requirements in Table 1 are accommodated.
  - B. **Minimum Lot Width.** The minimum lot width for Type B Lots shall be seventy (70) feet.
  - C. **Minimum Yard Setbacks.**
    - i. **Minimum Frontyard Setback:** The minimum frontyard setback for Type B Lots shall be twenty-five (25) feet. The minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type B Lots.
    - ii. **Minimum Sideyard Setback:**

- (a) The minimum sideyard setback for Type B Lots shall be eight (8) feet.
- (b) For courtyard homes, as defined herein, the minimum sideyard setback shall be fourteen (14) feet for one side and two (2) feet for the other side yard. Windows on the 2' side of the courtyard home will not be allowed unless they are opaque or consist of glass block.
- (c) For corner lots, the minimum sideyard setback shall be fifteen (15) feet.

iii. **Minimum Rearyard Setback:**

- (a) The minimum rearyard setback shall be twenty-five (25) feet.
- (b) For Courtyard Homes, as defined herein, the minimum rearyard setback is ten (10) feet for a maximum number of lots not to exceed one hundred and ten (110) Type B lots.

iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to five (5) feet. Swing-in garages may encroach into required front yards up to ten (10) feet. Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.

D. **Minimum Floor Space.** Each dwelling constructed on a Type B Lot shall contain a minimum of two thousand, one hundred (2,100) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling

E. **Height.** The maximum height for structures on Type B Lots shall be forty (40) feet.

F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are permitted.

G. **Driveways.** Driveways fronting on a street on Type B Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.

- H. **Exterior Surfaces.**
- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred (100) percent masonry. Cementitious fiber board is considered masonry, but may only constitute fifty (50) percent of the area for stories other than the first story. However, cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story. Cementitious fiber board may also be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the Director of Development Services.
  - ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
  - iii. **Address Plaque.** A cast stone address plaque is required for each Type B Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
  - iv. **Chimneys.** On Type B Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be 100% brick or stone.
  - v. **Stucco.** Stucco on structures on Type B Lots shall be traditional 3-coat process cement plaster stucco.
  - vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type B Lots.
- I. **Windows.** All window framing on structures on Type B Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
- i. Window shutters may be used on structures on Type B Lots. Window shutters shall be painted, stained wood, or fiberglass.

- ii. No reflective window coverings or treatments shall be permitted.

J. **Roofing.**

- i. Structures constructed on the Type B Lots shall have a composition, slate, clay tile or cement/concrete tile roof.
- ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
- iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
- iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile and cement/concrete tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.

K. **Garages.**

- i. Homes shall have a minimum of two (2) car garages but no more than four (4). No carports shall be permitted.
- ii. Homes with three (3) or four (4) garages shall not have more than two (2) garage doors facing the street.
- iii. Garage doors shall be constructed of either metal or wood.

- L. **Plate Height.** Each structure on a Type B Lot shall have a minimum principal plate height of 9' on the first floor.

- M. **Fencing.** No fence, wall or hedge on a Type B Lot shall exceed eight (8) feet in height or be less than four (4) feet in height unless otherwise specifically required by the Town of Prosper.

- i. All Type B Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.

- ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
- iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.

N. **Landscaping.**

- i. A minimum of nine (9) caliper inches of trees shall be planted on all Type B Lots.
- ii. A minimum of two (2) three inch (3") caliper trees shall be located in the front yard.
- iii. Corner lots adjacent to a street shall plant (1) additional tree in the side yard.
- iv. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
- v. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.

O. **Mailboxes.** Mailboxes on a Type B Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, **unless otherwise required by USPS (United States Postal Service).**

P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type B Lots.

Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type B Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.

R. **Plan Elevations.** On Type B Lots, plan elevations shall alternate every four (4) homes on the same side of a street and every three (3) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type B Lots are attached hereto as **Exhibit "F-2"**.

- S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten (10) feet, have a minimum rearyard setback of ten (10) feet, and a minimum sideyard setback of eight (8) feet.
- c. **Type C Lots:** The area and building standards for Type C Lots are as follows and as set forth in Table 1:
- A. **Minimum Lot Size.** The minimum lot size for Type C Lots shall be ten thousand, five hundred (10,500) square feet. A typical lot will be 80' x 131', but may vary as long as the requirements of Table 1 are accommodated.
  - B. **Minimum Lot Width.** The minimum lot width for Type C Lots shall be eighty (80) feet.
  - C. **Minimum Yard Setbacks.**
    - i. **Minimum Frontyard Setback:** The minimum frontyard setback for Type C Lots shall be twenty-five (25) feet. The minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type C Lots.
    - ii. **Minimum Sideyard Setback:**
      - (a) The minimum sideyard setback for Type C Lots shall be eight (8) feet.
      - (b) For courtyard homes, as defined herein, the minimum sideyard setback shall be fourteen (14) feet for one side and two (2) feet for the other side yard. Windows on the 2' side of the courtyard home will not be allowed unless they are opaque or consist of glass block.
      - (c) For corner lots, the minimum sideyard setback shall be fifteen (15) feet.
    - iii. **Minimum Rearyard Setback:**

- (a) The minimum rearyard setback shall be twenty-five (25) feet.
  - (b) For Courtyard Homes, as defined herein, the minimum rearyard setback is ten (10) feet for a maximum number of lots not to exceed one hundred ten (110) Type C lots.
- iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to five (5) feet. Swing-in garages may encroach into required front yards up to ten (10) feet. Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.
- D. **Minimum Floor Space.** Each dwelling constructed on a Type C Lot shall contain a minimum of two thousand, three hundred (2,300) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling
- E. **Height.** The maximum height for structures on Type C Lots shall be forty-five (45) feet.
- F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are permitted.
- G. **Driveways.** Driveways fronting on a street on Type C Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.
- H. **Exterior Surfaces.**
- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred (100) percent masonry. Cementitious fiber board is considered masonry, but may only constitute fifty (50) percent of the area for stories other than the first story. However, cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story. Cementitious fiber board may also be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers,

columns, chimneys not part of an exterior wall, or other architectural features approved by the Director of Development Services.

- ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
  - iii. **Address Plaque.** A cast stone address plaque is required for each Type C Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
  - iv. **Chimneys.** On Type C Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be 100% brick or stone.
  - v. **Stucco.** Stucco on structures on Type C Lots shall be traditional 3-coat process cement plaster stucco.
  - vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type C Lots.
- I. **Windows.** All window framing on structures on Type C Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
- i. Window shutters may be used on structures on Type C Lots. Window shutters shall be painted, stained wood, or fiberglass.
  - ii. No reflective window coverings or treatments shall be permitted.
- J. **Roofing.**
- i. Structures constructed on the Type C Lots shall have a composition, slate, clay tile or cement/concrete tile roof.
  - ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.

- iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
- iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile and cement/concrete tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.

K. **Garages.**

- i. Homes shall have a minimum of two (2) car garages but no more than four (4). No carports shall be permitted.
- ii. Homes with three (3) or four (4) garages shall not have more than two (2) garage doors facing the street.
- iii. Garage doors shall be constructed of metal or wood.

L. **Plate Height.** Each structure on a Type C Lot shall have a minimum principal plate height of 10' on the first floor.

M. **Fencing.** No fence, wall or hedge on a Type C Lot shall exceed eight (8) feet in height or be less than four (4) feet in height unless otherwise specifically required by the Town of Prosper.

- i. All Type C Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.
- ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
- iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.

N. **Landscaping.**

- i. A minimum of nine (9) caliper inches of trees shall be planted on all Type C Lots.

- ii. A minimum of two (2) three inch (3") caliper trees shall be located in the front yard.
  - iii. Corner lots adjacent to a street shall plant (1) additional tree in the side yard.
  - iv. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
  - v. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.
- O. **Mailboxes.** Mailboxes on a Type C Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, **unless otherwise required by USPS (United States Postal Service).**
- P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type C Lots.
- Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type C Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.
- R. **Plan Elevations.** On Type C Lots, plan elevations shall alternate every four (4) homes on the same side of a street and every three (3) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type C Lots are attached hereto as Exhibit "F-3".
- S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten (10) feet, have a minimum rearyard setback of ten (10) feet, and a minimum sideyard setback of eight (8) feet.
- d. **Type D Lots:** The area and building standards for Type D Lots are as follows and as set forth in Table 1:

- A. **Minimum Lot Size.** The minimum lot size for Type D Lots shall be twelve thousand, five hundred (12,500) square feet. A typical lot will be 90' x 138', but may vary as long as requirements Table 1 are accommodated.
- B. **Minimum Lot Width.** The minimum lot width for Type D Lots shall be ninety (90) feet.
- C. **Minimum Yard Setbacks.**
- i. **Minimum Frontyard Setback:** The minimum frontyard setback for Type D Lots shall be twenty-five (25) feet. The minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type D Lots.
  - ii. **Minimum Sideyard Setback:**
    - (a) The minimum sideyard setback for Type D Lots shall be eight (8) feet.
    - (b) For corner lots, the minimum sideyard setback shall be fifteen (15) feet.
  - iii. **Minimum Rearyard Setback:** The minimum rearyard setback shall be twenty-five (25) feet.
  - iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to five (5) feet. Swing-in garages may encroach into required front yards up to ten (10) feet. Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.
- D. **Minimum Floor Space.** Each dwelling constructed on a Type D Lot shall contain a minimum of two thousand, six hundred (2,600) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling
- E. **Height.** The maximum height for structures on Type D Lots shall be forty-five (45) feet.
- F. **Driveways.** Driveways fronting on a street on Type D Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.

G. **Exterior Surfaces.**

- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred (100) percent masonry. Cementitious fiber board is considered masonry, but may only constitute fifty (50) percent of the area for stories other than the first story. However, cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story. Cementitious fiber board may also be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the Building Official.
- ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
- iii. **Address Plaque.** A cast stone address plaque is required for each Type D Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
- iv. **Chimneys.** On Type D Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be 100% brick or stone.
- v. **Stucco.** Stucco on structures on Type D Lots shall be traditional 3-coat process cement plaster stucco.
- vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type D Lots.

H. **Windows.** All window framing on structures on Type D Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.

- i. Window shutters may be used on structures on Type D Lots. Window shutters shall be painted, stained wood, or fiberglass.

- ii. No reflective window coverings or treatments shall be permitted.

I. **Roofing.**

- i. Structures constructed on the Type D Lots shall have a composition, slate, clay tile or cement/concrete tile roof.
- ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
- iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
- iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile and cement/concrete tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.

J. **Garages.**

- i. Homes shall have a minimum of two (2) car garages but no more than four (4). No carports shall be permitted.
- ii. Homes with three (3) or four (4) garages shall not have more than two (2) garage doors facing the street.
- iii. Garage doors shall be constructed of metal or wood.

- K. **Plate Height.** Each structure on a Type D Lot shall have a minimum principal plate height of 10' on the first floor.

- L. **Fencing.** No fence, wall or hedge on a Type D Lot shall exceed eight (8) feet in height or be less than four (4) feet in height unless otherwise specifically required by the Town of Prosper.

- i. All Type D Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.

- ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
- iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.

M. **Landscaping.**

- i. A minimum of nine (9) caliper inches of trees shall be planted on all Type D Lots.
- ii. A minimum of two (2) three inch (3") caliper trees shall be located in the front yard.
- iii. Corner lots adjacent to a street shall plant (1) additional tree in the side yard.
- iv. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
- v. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.

N. **Mailboxes.** Mailboxes on a Type D Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, **unless otherwise required by USPS (United States Postal Service).**

O. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type D Lots.

P. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type D Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.

Q. **Plan Elevations.** On Type D Lots, plan elevations shall alternate every four (4) homes on the same side of a street and every three (3) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type D. Lots are attached hereto as **Exhibit "F-4"**.

- R. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten (10) feet, have a minimum rearyard setback of ten (10) feet, and a minimum sideyard setback of eight (8) feet.
- e. **Type E (Rear Entry) Lots:** The area and building standards for Type E Lots are as follows and as set forth in Table 1:
- A. **Minimum Lot Size.** The minimum lot size for Type E Lots shall be 5,000 square feet. A typical lot will be 40' x 130', but may vary as long as requirements in Table 1 are accommodated.
  - B. **Minimum Lot Width.** The minimum lot width for Type E Lots shall be forty feet (40').
  - C. **Minimum Yard Setbacks.**
    - i. **Minimum Frontyard Setback:** The minimum front yard setback for Type E Lots shall be thirty feet (30') on every fourth lot, but otherwise shall be twenty-five feet (25'). Unless otherwise stated herein, the minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type E Lots.
    - ii. **Minimum Sideyard Setback:**
      - (a) The minimum sideyard setback for Type E Lots shall be five feet (5').
      - (b) For corner lots, the minimum sideyard setback shall be fifteen feet (15').
    - iii. **Minimum Rearyard Setback:**
      - (a) The minimum rearyard setback shall be twenty-five feet (25'), with a twenty foot (20') rearyard setback allowed on lots that have a thirty foot (30') frontyard setback.

- iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to ten feet (10').
- D. **Minimum Floor Space.** Each dwelling constructed on a Type E Lot shall contain a minimum of one thousand five hundred (1,500) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling
- E. **Height.** The maximum height for structures on Type E Lots shall be forty feet (40').
- F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are not permitted.
- G. **Driveways.** Driveways fronting on a street or alley on Type E Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.
- H. **Exterior Surfaces.**
- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred percent (100%) masonry. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the Building Official.
- ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
- iii. **Address Plaque.** A cast stone address plaque is required for each Type E Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
- iv. **Chimneys.** On Type E Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be one hundred percent (100%) brick or stone.

- v. **Stucco.** Stucco on structures on Type E Lots shall be traditional 3-coat process cement plaster stucco.
  - vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type E Lots.
- I. **Windows.** All window framing on structures on Type E Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
- i. Window shutters may be used on structures on Type E Lots. Window shutters shall be painted, stained wood, or fiberglass.
  - ii. No reflective window coverings or treatments shall be permitted.
- J. **Roofing.**
- i. Structures constructed on the Type E Lots shall have a composition, slate or tile roof.
  - ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
  - iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
  - iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.
  - v. A minimum of twenty-five percent (25%) of Type E Lots, shall have a main roof pitch greater than 8:12.
- K. **Garages.**
- i. Homes shall have a garage sized for a maximum of two (2) cars in width. Three (3) car garages are acceptable by incorporating a tandem spot. Carports or three (3) car rear facing garages shall not be permitted.

- ii. Garage doors shall have a minimum rear setback of twenty-five feet (25'); unless the front yard setback is thirty feet (30') or greater.
  - iii. Garage doors shall be constructed of wood, or a material that gives the appearance of a real wood door. Materials may consist of paint or stain grade wood (Cedar, Ash, Hemlock, etc.) or other material, including fiberglass or steel, that when stained or painted gives the appearance of a real wood door.
- L. **Plate Height.** Each structure on a Type E Lot shall have a minimum principal plate height of nine feet (9') on the first floor.
- M. **Fencing.** No fence, wall or hedge on a Type E Lot shall exceed eight feet (8') in height or be less than four feet (4') in height unless otherwise specifically required by the Town of Prosper.
- i. All Type E Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.
  - ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
  - iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.
- N. **Landscaping.**
- i. A minimum of six caliper inches (6") of trees shall be planted on all Type E Lots (inclusive of street trees).
  - ii. Corner lots adjacent to a street shall plant one (1) additional tree in the side yard.
  - iii. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
  - iv. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.

- v. A minimum of one (1) tree shall be located in the front yard.
- O. **Mailboxes.** Mailboxes on a Type E Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, unless otherwise required by USPS (United States Postal Service).
- P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type E Lots.
- Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type E Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.
- R. **Plan Elevations.** On Type E Lots, plan elevations shall alternate every fourth (4<sup>th</sup>) homes on the same side of a street and every third (3<sup>rd</sup>) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type E Lots are attached hereto as Exhibit "F-5".
- S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
- ii. Accessory structures shall be separate from the main dwelling by a minimum of ten feet (10'), have a minimum rearyard setback of ten feet (10'), and a minimum sideyard setback of eight feet (8').
- T. **Porches.** A minimum of twenty-five percent (25%) of Type E Lots shall have a front porch, subject to the following regulations.
- i. A minimum of fifteen percent (15%) of homes along a block face shall have a porch.
- ii. The minimum porch depth shall be seven feet (7').
- iii. The minimum porch width shall be ten feet (10').

- U. **House Pad Width.** Type E lots shall have a minimum pad width of twenty-nine feet, six inches (29' 6").
- f. **Type F (Front Entry) Lots:** The area and building standards for Type F Lots are as follows and as set forth in Table 1:
- A. **Minimum Lot Size.** The minimum lot size for Type F Lots shall be 5,000 square feet. A typical lot will be 40' x 130', but may vary as long as requirements in Table 1 are accommodated.
- B. **Minimum Lot Width.** The minimum lot width for Type F Lots shall be forty feet (40').
- C. **Minimum Yard Setbacks.**
- i. **Minimum Frontyard Setback:** The minimum front yard setback for Type F Lots shall be thirty feet (30') on every fourth lot, but otherwise shall be twenty-five feet (25'). Unless otherwise stated herein, the minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type F Lots.
- ii. **Minimum Sideyard Setback:**
- (a) The minimum sideyard setback for Type F Lots shall be five feet (5').
- (b) For corner lots, the minimum sideyard setback shall be fifteen feet (15').
- iii. **Minimum Rearyard Setback:**
- (a) The minimum rearyard setback shall be twenty-five feet (25'), with a twenty-foot (20') rearyard setback allowed on lots that have a thirty foot (30') frontyard setback.
- iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to ten feet (10'). Swing-in garages may encroach into required front yards up to ten feet (10'). Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.

- D. **Minimum Floor Space.** Each dwelling constructed on a Type F Lot shall contain a minimum of one thousand five hundred (1,500) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling
- E. **Height.** The maximum height for structures on Type F Lots shall be forty feet (40').
- F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are not permitted.
- G. **Driveways.** Driveways fronting on a street on Type F Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.
- H. **Exterior Surfaces.**
- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred percent (100%) masonry. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the Building Official.
  - ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
  - iii. **Address Plaque.** A cast stone address plaque is required for each Type F Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
  - iv. **Chimneys.** On Type F Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be one hundred percent (100%) brick or stone.
  - v. **Stucco.** Stucco on structures on Type F Lots shall be traditional 3-coat process cement plaster stucco.

- vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type F Lots.
- I. **Windows.** All window framing on structures on Type F Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
  - i. Window shutters may be used on structures on Type F Lots. Window shutters shall be painted, stained wood, or fiberglass.
  - ii. No reflective window coverings or treatments shall be permitted.
- J. **Roofing.**
  - i. Structures constructed on the Type F Lots shall have a composition, slate or tile roof.
  - ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
  - iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
  - iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.
  - v. A minimum of twenty-five percent (25%) of Type F Lots, shall have a main roof pitch greater than 8:12.
- K. **Garages.**
  - i. Homes shall have a garage sized for a maximum of two (2) cars in width. Three (3) car garages are acceptable by incorporating a tandem spot. Carports or three (3) car front facing garages shall not be permitted.
  - ii. Homes with two (2) single car width garage doors facing the street shall have such garage doors separated by a masonry column of no less than twelve inches (12') in width.

- iii. Garage doors shall have a minimum front setback of twenty-five feet (25').
  - iv. A minimum of fifty percent (50%) shall have two (2) single garage doors split by a masonry column.
  - v. A maximum two (2) garage spaces shall face the street.
  - vi. Garage doors shall be constructed of wood, or a material that gives the appearance of a real wood door. Materials may consist of paint or stain grade wood (Cedar, Ash, Hemlock, etc.) or other material, including fiberglass or steel, that when stained or painted gives the appearance of a real wood door.
  - vii. Two of the following garage door upgrades shall be incorporated:
    - (a) Carriage style door designs giving the appearance of a classic swing-open design with the flexibility of an overhead door operation
    - (b) Doors incorporating decorative hardware
    - (c) Doors with windows
  - viii. Garage doors shall be recessed a minimum of five feet (5') behind the portion of the building located closest to the street (inclusive of porch columns), provided the garage does not encroach the required setbacks.
- L. **Plate Height.** Each structure on a Type F Lot shall have a minimum principal plate height of nine feet (9') on the first floor.
- M. **Fencing.** No fence, wall or hedge on a Type F Lot shall exceed eight feet (8') in height or be less than four feet (4') in height unless otherwise specifically required by the Town of Prosper.
- i. All Type F Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.
  - ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail

shall be established for the community by the developer.

- iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.

N. **Landscaping.**

- i. A minimum of six caliper inches (6") of trees shall be planted on all Type F Lots (inclusive of street trees).
- ii. Corner lots adjacent to a street shall plant one (1) additional tree in the side yard.
- iii. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
- iv. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.
- v. A minimum of one (1) tree shall be located in the front yard.

O. **Mailboxes.** Mailboxes on a Type F Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, unless otherwise required by USPS (United States Postal Service).

P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type F Lots.

Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type F Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.

R. **Plan Elevations.** On Type F Lots, plan elevations shall alternate every fourth (4<sup>th</sup>) homes on the same side of a street and every third (3<sup>rd</sup>) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type F Lots are attached hereto as Exhibit "F-6".

S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.

- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten feet (10'), have a minimum rearyard setback of ten feet (10'), and a minimum sideyard setback of eight feet (8').
- T. **Porches.** A minimum of twenty-five percent (25%) of Type F Lots shall have a front porch, subject to the following regulations.
  - i. A minimum of fifteen percent (15%) of homes along a block face shall have a porch.
  - ii. The minimum porch depth shall be seven feet (7').
  - iii. The minimum porch width for a house with a split garage door shall be seven feet (7').
  - iv. The minimum porch width for a house without a split garage door shall be ten feet (10').
- U. **House Pad Width.** Type F lots shall have a minimum pad width of twenty-nine feet, six inches (29' 6").
- g. **Type G Lots:** The area and building standards for Type G Lots are as follows and as set forth in Table 1:
  - A. **Minimum Lot Size.** The minimum lot size for Type G Lots shall be 6,000 square feet. A typical lot will be 50' x 130', but may vary as long as requirements in Table 1 are accommodated.
  - B. **Minimum Lot Width.** The minimum lot width for Type G Lots shall be fifty feet (50').
  - C. **Minimum Yard Setbacks.**
    - i. **Minimum Frontyard Setback:** The minimum frontyard setback for Type G Lots shall be twenty-five feet (25'). The minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as it currently exists, shall apply to Type G Lots.
    - ii. **Minimum Sideyard Setback:**

- (a) The minimum sideyard setback for Type G Lots shall be five feet (5').
- (b) For corner lots, the minimum sideyard setback shall be fifteen feet (15').

iii. **Minimum Rearyard Setback:**

- (a) The minimum rearyard setback shall be twenty-five feet (25'), with a twenty-foot (20') rearyard setback allowed on lots that have a thirty foot (30') frontyard setback.

iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to ten feet (10'). . Swing-in garages may encroach into required front yards up to ten feet (10'). Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.

D. **Minimum Floor Space.** Each dwelling constructed on a Type G Lot shall contain a minimum of one thousand seven hundred (1,700) square feet of floor space. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling

E. **Height.** The maximum height for structures on Type G Lots shall be forty feet (40').

F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are not permitted.

G. **Driveways.** Driveways fronting on a street on Type G Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.

H. **Exterior Surfaces.**

- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred percent (100%) masonry. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not

- part of an exterior wall, or other architectural features approved by the Building Official.
- ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
  - iii. **Address Plaque.** A cast stone address plaque is required for each Type G Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
  - iv. **Chimneys.** On Type G Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be one hundred percent (100%) brick or stone.
  - v. **Stucco.** Stucco on structures on Type G Lots shall be traditional 3-coat process cement plaster stucco.
  - vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type G Lots.
- I. **Windows.** All window framing on structures on Type G Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
- i. Window shutters may be used on structures on Type G Lots. Window shutters shall be painted, stained wood, or fiberglass.
  - ii. No reflective window coverings or treatments shall be permitted.
- J. **Roofing.**
- i. Structures constructed on the Type G Lots shall have a composition, slate or tile roof.
  - ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
  - iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.

- iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.
- v. A minimum of twenty-five percent (25%) of Type G Lots, shall have a main roof pitch greater than 8:12.

K. **Garages.**

- i. Homes shall have a garage sized for a maximum of two (2) cars in width. Three (3) car garages are acceptable by incorporating a tandem spot. Carports or three (3) car front facing garages shall not be permitted.
- ii. Homes with two (2) single car width garage doors facing the street shall have such garage doors separated by a masonry column of no less than twelve inches (12') in width.
- iii. Garage doors shall have a minimum frontyard setback of twenty-five feet (25').
- iv. A minimum of fifty percent (50%) shall have two (2) single garage doors split by a masonry column.
- v. A maximum two (2) garage spaces shall face the street.
- vi. Garage doors shall be constructed of wood, or a material that gives the appearance of a real wood door. Materials may consist of paint or stain grade wood (Cedar, Ash, Hemlock, etc.) or other material, including fiberglass or steel, that when stained or painted gives the appearance of a real wood door.
- vii. Two of the following garage door upgrades shall be incorporated:
  - (a) Carriage style door designs giving the appearance of a classic swing-open design with the flexibility of an overhead door operation
  - (b) Doors incorporating decorative hardware
  - (c) Doors with windows

- L. **Plate Height.** Each structure on a Type G Lot shall have a minimum principal plate height of nine feet (9') on the first floor.
- M. **Fencing.** No fence, wall or hedge on a Type G Lot shall exceed eight feet (8') in height or be less than four feet (4') in height unless otherwise specifically required by the Town of Prosper.
- i. All Type G Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.
  - ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
  - iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.
- N. **Landscaping.**
- i. A minimum of six caliper inches (6") of trees shall be planted on all Type G Lots (inclusive of street trees).
  - ii. Corner lots adjacent to a street shall plant (1) additional tree in the side yard.
  - iii. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
  - iv. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.
  - v. A minimum of one (1) tree shall be located in the front yard.
- O. **Mailboxes.** Mailboxes on a Type G Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, unless otherwise required by USPS (United States Postal Service).
- P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type F Lots.

- Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type G Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.
- R. **Plan Elevations.** On Type G Lots, plan elevations shall alternate every fourth (4<sup>th</sup>) homes on the same side of a street and every third (3<sup>rd</sup>) homes on opposite sides of the street. Illustrative examples of the elevations and floor plans for Type G Lots are attached hereto as Exhibit "F-7".
- S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten feet (10'), have a minimum rearyard setback of ten feet (10'), and a minimum sideyard setback of eight feet (8').
- T. **Porches.** A minimum of twenty-five percent (25%) of Type G Lots shall have a front porch, subject to the following regulations.
- i. A minimum of fifteen percent (15%) of homes along a block face shall have a porch.
  - ii. The minimum porch depth shall be seven feet (7').
  - iii. The minimum porch width for a house with a split garage door shall be seven feet (7').
  - iv. The minimum porch width for a house without a split garage door shall be ten feet (10').
- U. **House Pad Width.** Type G lots shall have a minimum pad width of thirty-nine feet, six inches (39' 6").
- h. **Type H Lots:** The area and building standards for Type H Lots are as follows and as set forth in Table 1:
- A. **Minimum Lot Size.** The minimum lot size for Type H Lots shall be 20,000 square feet. A typical lot will be 120' x 170', but may vary as long as requirements in Table 1 are accommodated.

- B. **Minimum Lot Width.** The minimum lot width for Type H Lots shall be one hundred twenty feet (120').
- C. **Minimum Yard Setbacks.**
- i. **Minimum Frontyard Setback:** The minimum frontyard setback for Type H Lots shall be thirty feet (30'). The minimum front yard and rear yard requirements for staggering the front yards, as set forth in Section 9.3.F of the Town's Zoning Ordinance, as amended shall apply to Type H Lots.
  - ii. **Minimum Sideyard Setback:**
    - (a) The minimum sideyard setback for Type H Lots shall be twenty feet (20').
    - (b) For courtyard homes, as defined herein, the minimum sideyard setback shall be twenty-six feet (26') for one side and fourteen feet (14') for the other side yard. Windows on the 14' side of the courtyard home will not be allowed unless they are opaque or consist of glass block.
    - (c) For corner lots, the minimum sideyard setback shall be twenty-five feet (25').
  - iii. **Minimum Rearyard Setback:**
    - (a) The minimum rearyard setback shall be thirty feet (30').
    - (b) For Courtyard Homes, as defined herein, the minimum rearyard setback is twenty feet (20').
  - iv. **Permitted Encroachment.** Architectural features and porches may encroach into required front and rear yards up to ten feet (10'). Swing-in garages may encroach into required front yards up to fifteen feet (15'). Front facing garages are permitted to extend to the front façade of the main structure, but may not encroach into the required front yard.
- D. **Minimum Floor Space.** Each dwelling constructed on a Type H Lot shall contain a minimum of three thousand (3,000) square feet of floor space if constructed as a single story structure and three thousand five hundred (3,500) if constructed as a two

story structure. Floor space shall include air-conditioned floor areas, exclusive of porches, garages, patios, terraces or breezeways attached to the main dwelling

- E. **Height.** The maximum height for structures on Type H Lots shall be forty feet (40').
- F. **Courtyard Home Option.** Courtyard Homes, which are defined as homes having an open-air courtyard surrounded on three sides by the home, are permitted.
- G. **Driveways.** Driveways fronting on a street on Type H Lots shall be constructed of the following materials: concrete, brick pavers, stone, interlocking pavers, stamped concrete, or concrete with stone or brick border.
- H. **Exterior Surfaces.**
- i. The exterior facades of a main building or structure, excluding glass windows and doors, shall be constructed of one hundred percent (100%) masonry. Cementitious fiber board is considered masonry, but may only constitute fifty percent (50%) of the area for stories other than the first story. However, cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story. Cementitious fiber board may also be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the Building Official.
  - ii. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, brick veneer, stone, or stone veneer wall area of a residence.
  - iii. **Address Plaque.** A cast stone address plaque is required for each Type H Lot. The style of the cast stone address plaque shall be uniform throughout each section of development.
  - iv. **Chimneys.** On Type H Lots, all exposed portions of the fire breast, flu and chimney shall be clad in cementitious lap siding, brick, stone or stucco. Chimneys located on an exterior wall must be one hundred percent (100%) brick or stone.

- v. **Stucco.** Stucco on structures on Type H Lots shall be traditional 3-coat process cement plaster stucco.
  - vi. **EIFS.** EIFS (Exterior Insulating and Finish Process) is not allowed on structures on Type H Lots.
- I. **Windows.** All window framing on structures on Type H Lots shall be bronzed, cream, sand or white anodized aluminum, vinyl or wood.
- i. Window shutters may be used on structures on Type H Lots. Window shutters shall be painted, stained wood, or fiberglass.
  - ii. No reflective window coverings or treatments shall be permitted.
- J. **Roofing.**
- i. Structures constructed on the Type H Lots shall have a composition, metal, slate or tile roof.
  - ii. The color of the composition roof must appear to be weathered wood shingles, black or slate, unless such other color is approved by the Director of Development Services.
  - iii. Composition roof shingles must be laminated and have a minimum warranty of 30 years.
  - iv. The main roof pitch of any structure shall have a minimum slope of 8" in 12". Clay tile roofs shall have a minimum slope of 3" in 12". Pitch ends shall be 100% guttered.
- K. **Garages.**
- i. Homes shall have a minimum of two (2) car garages but no more than five (5). Rear located carports shall be permitted.
  - ii. The maximum width of garage doors allowed to face the street shall be limited to three (3) car widths.
  - iii. Garage doors shall be constructed of either metal or wood.

- L. **Plate Height.** Each structure on a Type H Lot shall have a minimum principal plate height of ten feet (10') on the first floor.
- M. **Fencing.** No fence, wall or hedge on a Type H Lot shall exceed eight feet (8') in height or be less than four feet (4') in height unless otherwise specifically required by the Town of Prosper.
- i. All Type H Lots backing or siding to Open Space shall have a decorative metal fence abutting to said open space.
  - ii. All other fencing shall be constructed of cedar, board on board with a top rail, and shall be supported with galvanized steel posts. A common fence stain color as well as fence detail shall be established for the community by the developer.
  - iii. No fencing shall extend beyond a point ten feet (10') behind the front wall plane of the structure into the front yard.
- N. **Landscaping.**
- i. A minimum of twelve caliper inches (12") of trees shall be planted on all Type H Lots (inclusive of street trees).
  - ii. A minimum of one (1) tree shall be located in the front yard.
  - iii. Corner lots adjacent to a street shall plant (1) additional tree in the side yard.
  - iv. Trees shall be a minimum of three caliper inches (3") as measured at 1 foot above grade.
  - v. The front, side and rear yard must be irrigated by a programmable irrigation system and sodded with grass.
- O. **Mailboxes.** Mailboxes on a Type H Lot shall be consistent with the theme for the street and with the materials of the home on the respective lot, unless otherwise required by USPS (United States Postal Service).
- P. **Satellite Dishes.** Satellite dishes, limited to eighteen inches (18") in diameter or smaller, mounted below the ridgeline on the roof, and not in public view from the front of the home are permitted on Type H Lots.

- Q. **Air Conditioners.** No window or wall air conditioning units will be permitted on structures on Type H Lots. Outside condensing units (compressors) which are not located within a privacy fenced area shall be screened by shrubbery save and except access and service space to the condensing units which may not be visible from the street.
- R. **Plan Elevations.** On Type H Lots, specific plan elevations shall not be repeated within a given platted phase.
- S. **Accessory Structures.** Accessory structures used as a garage, a garage apartment, or guest house, will be allowed.
- i. Accessory structures shall be subject to the same exterior construction and architectural standards as the main dwelling.
  - ii. Accessory structures shall be separate from the main dwelling by a minimum of ten feet (10'), have a minimum rearyard setback of ten feet (10'), and a minimum sideyard setback of eight feet (8').

TABLE 1								
	Lot Type A	Lot Type B	Lot Type C	Lot Type D	Lot Type E	Lot Type F	Lot Type G	Lot Type H
Min. permitted lot sizes	8,000 sq. ft	9,000 sq. ft.	10,500 sq. ft	12,500 sq. ft.	5,000 sq.ft.	5,000 sq.ft	6,000 sq.ft	20,000 sq.ft.
Max. permitted number of lots <sup>1</sup>	850	1,100	600	160	250 Total units shared by Lot Types E & F; the total number of Final platted Type E Lots at any point in time shall not be more than 75 lots greater than the number of final platted Type F Lots.		250	40 <sup>2</sup>
<sup>1</sup> Max. permitted number of lots are transferrable from smaller Lot Type classifications to larger Lot Type classifications								
<sup>2</sup> 40 lots is also the <b>minimum number</b> of Type H lots required								
Min. Front Yard	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.	30 ft.
Min. Side Yard	8 ft. (14'/2' on courtyard option)	8 ft. (14'/2' on courtyard option)	8 ft. (14'/2' on courtyard option)	8 ft.	5 ft.	5 ft.	5 ft.	20 ft. (26'/14' on courtyard option)
Corner Lot	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	25 ft.
Min. Rear Yard	25 ft. (10' on courtyard option for no more than 75 Type A lots)	25 ft. (10' on courtyard option for no more than 110 Type B lots)	25 ft. (10' on courtyard option for no more than 110 Type C lots)	25 ft.	25 ft. (Thirty-foot (30') front setback, where a twenty-foot (20') rear setback is allowed)	25 ft. (Thirty-foot (30') front setback, where a twenty-foot (20') rear setback is allowed)	25 ft. (Thirty-foot (30') front setback, where a twenty-foot (20') rear setback is allowed)	30 ft.
Max. building Height	40 ft.	40 ft.	45 ft.	45 ft.	40 ft.	40 ft.	40 ft.	45 ft.
Max. Lot Coverage	55%	50%	45%	45%	60%	60%	60%	40%
Min. Lot Width	60 ft.	70 ft.	80 ft.	90 ft.	40 ft.	40 ft.	50 ft.	120 ft.
Min. Lot Depth	100 ft.	100 ft.	110 ft.	125 ft.	100 ft.	100 ft.	100 ft.	150 ft.
Min. Dwelling Area	1,900 sq. ft.	2,100 sq. ft.	2,300 sq. ft.	2,600 sq. ft.	1,500 sq. ft.	1,500 sq. ft.	1,700 sq. ft.	3,000 sq. ft. (Single Story) 3,500 sq.ft. (Two Story)

### 3. **Mixed-Use Tract**

- a. **Definition:** The term ‘Mixed-Use’ as applied to the Mahard Ranch Development shall include residential and non-residential land uses integrated vertically or horizontally along the property facing U.S. Highway 380 in a walkable, vibrant market driven neighborhood, giving residents the opportunity to live, work and shop in the same community. The architecture of the mixed-use portion of the development will blend with the surrounding residential neighborhood’s style. Non-residential uses include retail, restaurants and office. Retail uses are primarily intended to supply the community with everyday convenience goods and services and shall occur on the ground level of stand alone or integrated buildings. Office shall include neighborhood service oriented professional, financial, and medical uses and may occupy ground and/ or upper level building space. Residential land uses are intended to supply attached housing product helping act as a buffer between the more intense retail and office uses along U.S. Highway 380 and the less intense suburban single-family residential product to the north. Principal uses may include town homes and multi-family (condominiums, live/ work loft residential, and luxury apartments). However, it is acknowledged that all or a portion designated as the Mixed Use Tract may develop solely for retail or office uses. It is intended in these standards to provide the flexibility to develop either a multiple use project or traditional retail development.
- b. **Alternative Development Standards.** Property within the Mixed Use Tract may be developed solely for retail uses. The Mixed Use Tract development standards provide two sets of standards that allow for a pedestrian-oriented multiple use development (Section 3.c.) or, in the alternative, traditional retail development (Section 3.d.).
- c. **Mixed-Use Development Standards (pedestrian-oriented):** A maximum of 250 acres of mixed-use development is permitted on the Properties generally located between U.S. Highway 380 and the collector street (see Exhibit “D”). Development standards for a mixed-use development for this area within the development are described below.
- a. **Permitted Uses.** The following uses are permitted within the “Mixed Use” area: Uses followed by an **S** are permitted by Specific Use Permit. Uses followed by a **C** are permitted subject to conditional development standards. Conditional development standards are set forth in Chapter 3, Section 1 of the Town’s Zoning Ordinance.
- Accessory Building
  - Administrative, Medical, or Professional Office
  - Antenna and/or Antenna Support Structure, Commercial **S**
  - Antenna and/or Antenna Non-Commercial, attached to buildings or water towers (stand-above towers are prohibited) **C**
  - Antique Shop and Used Furniture
  - Artisan’s Workshop
  - Assisted Care or Living Facility **S**
  - Athletic Stadium or Field, Private **S**

- Athletic Stadium or Field, Public
- Bank, Savings and Loan, or Credit Union
- Beauty Salon/Barber Shop
- Bed and Breakfast Inn
- Beer & Wine Package Sales **C**
- Building Material and Hardware Sales, Minor
- Building Material and Hardware Sales, Major
- Business Service
- Caretaker's/Guard's Residence
- Civic/Convention Center
- Commercial Amusement, Indoor
- Community Center
- Convenience Store with Gas Pump **C**
- Convenience Store without Gas Pump
- Day Care Center, Adult **S**
- Day Care Center, Child **S**
- Drug Stores/Pharmacies
- Duplicating Centers, Mailing Services, Etc
- Dry Cleaning, Minor
- Farmer's Market
- Financial Institutions
- Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority
- Furniture, Home Furnishings and Appliance Store
- Garage Apartment
- Gas Pumps **C**
- Golf Course and/or Country Club
- Governmental Office
- Gymnastics/Dance Studio
- Health/Fitness Center
- Helistop **S**
- Home Occupation **C**
- Homebuilder Marketing Center
- Hospital
- Hotel **C**
- House of Worship
- Independent Living Facilities
- Laboratory, Medical and Dental.
- Insurance Office
- Locksmith/Security System Company
- Massage Therapy, Licensed
- Mini-Warehouse/Public Storage **S**
- Motel **S**
- Multifamily Dwelling (only within the Mixed Use pedestrian alternative)
- Municipal Uses
- Museum/Art Gallery
- Nursery, Major **S**

- Nursery, Minor
- Optical Stores – Sales and Services
- Office/Showroom
- Park or Playground
- Pet Day Care
- Post Office Facilities
- Print Shop, Minor
- Private Club **S**
- Private Recreation Center
- Private Street Development **S**
- Private Utility, Other Than Listed
- Retirement Housing
- Research and Development Center
- Recycling Collection Point
- Residence Hotel **C**
- Restaurant or Cafeteria **C**
- Restaurant, Drive In/ Drive-Thru
- Retail Stores and Shops
- Retail/Service Incidental Use
- Retirement Housing
- School, Private or Parochial
- School, Public
- Single Family Dwelling, Attached(Townhome)
- Stealth Antenna, Commercial
- Studio Dwelling
- Temporary Building **C**
- Theater, Neighborhood
- Theater, Regional
- Veterinarian Clinic and/or Kennel, Indoor
- Winery

b. **Multifamily Uses:** Multi-family units shall be allowed within the mixed use area. A maximum of three hundred, (300) multifamily units shall be allowed within the Mixed Use Tract. If portions of the designated Mixed Use Tract are developed with multi-family residential housing types, they shall be developed in accordance with the following criteria:

- A. **Required Parking:** Parking requirements for multi-family development shall be two spaces per one-bedroom unit, two spaces per two-bedroom unit, two and one-half spaces per three-bedroom unit and one-half space per each additional bedroom per unit. One (1) enclosed parking space per unit will be provided as part of the multi-family unit configuration. Enclosed parking will consist of an attached or detached garage or parking structure screened from public view.
- B. **Exterior Facade Building Materials:** All buildings within a multifamily development shall have an exterior finish of stone, stucco, brick, tile, concrete, glass or similar materials or any

combination thereof. The use of cementitious fiber board as a primary exterior building material shall be limited to a maximum of fifteen percent of the total exterior wall surfaces. All exterior finishes of buildings within a multifamily development shall have a minimum of ten percent (10%) stone accents.

- C. **Controlled Access:** All multi-family developments that contain limited gated access shall locate all gate controls, card pads and intercom boxes in driveway islands in a manner that provides a minimum of one hundred (100) feet of stacking distance from the gate. Such driveway islands shall also contain a break that allows for vehicular u-turn movements back onto a public street.
- c. **Townhouse Uses:** Townhouse units shall be allowed within the mixed use area or single family area as a buffer between non-residential and single family development. A maximum of three hundred (300) townhouse units shall be allowed. Townhouse units constructed in Single Family Residential Tract do not count against the maximum lot count of 3,500 single family lots. If portions of the designated mixed-use area are developed with townhouse residential housing types, they shall be developed in accordance with the following criteria:
- A. **Required Parking:** Parking requirements for townhouse development shall be two spaces per one-bedroom unit, two spaces per two-bedroom unit, two and one-half spaces per three-bedroom unit and one-half space per each additional bedroom per unit. Two (2) enclosed parking spaces per unit will be provided as part of the townhouse unit configuration. Enclosed parking will consist of an attached or detached garage or parking structure screened from public view.
- B. **Exterior Facade Building Materials:** All buildings within a townhouse development shall have an exterior finish of stone, stucco, brick, tile, concrete, glass or similar materials or any combination thereof. The use of cementitious fiber board as a primary exterior building material shall be limited to a maximum of fifteen percent of the total exterior wall surfaces. All exterior finishes of buildings within a townhouse development shall have a minimum of ten percent (10%) stone accents.
- C. **Controlled Access:** All townhouse developments that contain limited gated access shall locate all gate controls, card pads and intercom boxes in driveway islands in a manner that provides a minimum of one hundred (100) feet of stacking distance from the gate. Such driveway islands shall also contain a break that allows for vehicular u-turn movements back onto a public street.
- d. **Residential development standards:** Development shall be in accordance with the following table:

Development Requirement	Residential Product Type	
	Townhouse	Multi-family not on the second story of other uses
Max. Gross Density	10.0 du/ac	15.0 du/ac
Min. Lot Area	1,000 sq. ft.	1 acre.
Min. Lot Width	20'	100'
Min. Lot Depth	50'	150'
Min. Front Setback	0'	20' <sup>1</sup>
Min. Rear Setback	20'	20' <sup>1</sup>
Min. Side Setback (interior lot)	0'	20' <sup>1</sup>
Min. Side Setback (corner lot)	15'	25' <sup>1</sup>
Max. Lot Coverage	80%	70%
Min. Floor Area / Dwelling Unit	1,200 sq. ft.	650 sq. ft.
Max. Building Height / No. of stories <sup>2</sup>	48' / 3 <sup>2</sup>	48' / 3
Min. Open Space	20%	30%

<sup>1</sup> Multifamily setbacks include:

- a. Fifty (50) feet for one (1) or two (2) story structures adjacent to property lines with a single family residential use.
- b. One hundred and fifty (150) feet for three (3) story structures adjacent to property lines with a single family residential use.

<sup>2</sup> The maximum height of any building within 60 feet of a property line with a single family residential use shall be 36 feet or 2 stories.

e. **Non-residential uses**

- A. **Required Parking:** The total parking required shall be the sum of the specific parking space requirement for each use included within the Mixed Use Tract as required by Zoning Ordinance No. 05-20 as it currently exists or as amended.
- B. **Exterior Facade Building Materials:** All main buildings shall have an exterior finish of stone, stucco, brick, tile, concrete, glass or similar materials or any combination thereof. Cementitious fiber board may only be used as an accent material subject to 10% of a façade.
- C. **Commercial and Retail Development Standards:** Development regulations for development within the Mixed Use Tract are intended to allow mixed use development consisting of vertically and horizontally integrated retail, office, service and residential uses. Typically referred to as “new urbanism”-style development, this type of development is characterized by pedestrian-scaled development offering multiple services and amenities with unique landscape and streetscape design. Development for non-residential land uses shall conform to the following:

- i. Floor Area: The allowable floor area of buildings within the mixed-use area shall be unlimited, provided that all conditions described herein are met.
- ii. Lot Area: There is no minimum lot area.
- iii. Lot Coverage: In no case shall the combined areas of the main buildings and accessory buildings cover more than 90% of the total lot area. Parking facilities shall be excluded from lot coverage computation.
- iv. Lot Width: There is no minimum lot width.
- v. Lot Depth: There is no minimum lot depth.
- vi. Front Yard: The minimum depth of the front yard shall be ten (10) feet
- vii. Side Yard: No side yard is required unless vehicular access is provided/required, in which case the side yard shall have a depth of not less than twelve feet.  
  
A twenty-four-foot minimum side yard shall be provided where fire lane access is required and wherever a vehicular access/fire lane easement is not available on the adjoining property.
- viii. Rear Yard: No rear yard is required unless vehicular access is provided/required, in which case the rear yard shall have a depth of not less than twelve feet.  
  
A twenty-four-foot minimum rear yard shall be provided where fire lane access is required and wherever a vehicular access/fire lane easement is not available on the adjoining property.
- ix. Building Height: Buildings shall be a maximum of five (5) stories, not to exceed seventy (70) feet in height. Architectural features, parapets, mechanical equipment, chimneys, antennas and other such architectural projections may extend above this height limit.
- x. Pad Sites. There is no limit on the number of pad sites within the Mixed Use Tract for retail uses provided each pad site must satisfy the Area Requirements.

f. **Architectural.**

- A. **Maximum Building Length** -- Buildings shall not be longer than 550 feet without an unconnected physical separation of 25 feet between another building.
- B. **Building Articulation** -- All buildings should be designed to emphasize a “base, mid-section, and top.” Facades facing public and private streets and extending greater than one hundred (100) feet in length shall incorporate wall plane recesses having a minimum depth of at least three (3) percent of the length of the façade. Recesses shall comprise at least twenty-five percent (25%) of the length of the facade. No uninterrupted length of a façade shall exceed fifty (50) feet in length.
- C. **Roof Line Articulation** -- Variations in roof lines shall be used to add interest and reduce the scale of large buildings. Roof features shall complement the character of the overall development and shall have at least one of the following features:
- Parapets concealing flat roofs and rooftop equipment from public view. The average height shall not exceed 15% of the height of the supporting wall. Parapets shall feature three dimensional cornice treatment.
  - Overhanging eaves, extending no less than three (3) feet past the supporting walls
  - Supporting roofs that do not exceed the average height of the supporting walls with an average slope no greater than 3:1 slope.
  - Roof dormers interrupting the eave line.
- D. **Exterior of Buildings**
- i. **Façades** -- All façades oriented toward rights-of-ways, drives or public spaces shall have no less than three of the following elements:
- Overhangs
  - Canopies or Porticos
  - Recesses/Projections
  - Arcades
  - Raised corniced parapets over the entrance
  - Peaked roof forms
  - Arches
  - Outdoor patios
  - Display windows
  - Integral planters that incorporate landscaped areas or seating areas

g. **Parking Areas**

- A. Surface parking lots shall be screened from streets through the use of screening or liner development such as townhome, live-work, and loft office units. Parking garages may not be visible from streets on more than 2 sides of each block. Beyond these two sides, a development liner (such as loft residential, office, etc.) shall be constructed to shield the garage from view.
- B. Surface Parking Perimeter Screening – All surface parking lots shall be screened from street view. Such screening shall take the form of 3 foot, 7-gallon plantings of dense evergreen hedge at time of installation measured above the grade of the parking lot.
- C. Landscape Medians – All surface parking lots shall have a landscape median strip with a minimum width of 6 feet incorporated into the parking lot design to separate the parking area and drive aisle with direct connection to the street. 1 tree shall be planted for every 35 linear feet of median.

h. **Service and Equipment Areas.** Service areas are zones and loading docks where servicing of the site takes place and include wall-, ground- or roof-mounted mechanical or equipment areas.

- A. Placement of Service Areas – Service areas shall (i) not front or be visible from a street, and shall be placed within the building envelope they serve; or (ii) follow the screening requirements below. Dumpsters and trash enclosures be placed within a building's envelope, and no service areas be placed where they are visible from US Highway 380, Gee Road or Fields Road. Loading areas must not be located closer than fifty (50) feet to any single-family lot or public right-of-way, unless wholly within an enclosed building.
- B. Service Area Screening – Off-street loading and service areas must be placed at the side or rear of buildings and shall be screened in conformity with the requirements of the Zoning Ordinance.
- C. Service Area Screening Design – In general, the design of all service area screening shall be complementary to the design of the building it serves in terms of its material and color.
- D. Roof-Mounted Equipment Screening – All roof-mounted equipment shall be screened from public view through the use of design features that complement the building they serve in terms of material and color.

i. **Fencing**

- A. Fencing Length and Height – The maximum length of a fence shall be fifty (50) feet without a break of thirty (30) feet. No fencing shall be above three (3) feet in height.
- B. Fencing Material – All fencing must be wrought iron or decorative steel.

j. Site Landscaping

- A. Street Trees – Street trees shall be planted at an average of thirty (30) feet on-center across each block face and three and one-half (3 ½) feet from the back of curb. These trees shall have a minimum caliper of four (4) inches at installation, and shall not be closer than ten (10) feet from a street lamppost. Street tree material shall follow the recommendation of the Director of Development Services, and shall generally follow the type of canopy line created by red oak, live oak, etc. Street trees shall use a consistent species along both sides of each block.
- B. Tree Planters – Street trees shall be centered within five (5) foot by ten (10) foot planters as leave-outs within the sidewalk and screened with either a twelve (12) inch high ornamental steel fence or brick turn-up edge. Planters shall also consist of evergreen ground cover and perennial plantings. The street-facing leading edge of all planters shall be placed one foot, six inches (1.5 feet) from the face of the curb to allow clearance for passenger car doors to open.
- C. Prior to the issuance of a Certificate of Occupancy for any building, structure or improvement, all landscaping must be installed in accordance with the approved corresponding landscaping plan.
- D. Street Lights – Street lights shall be located four (4) feet from face of curb on average intervals of seventy-five (75) feet along all block faces. The light fixtures shall be mounted ten (10) to twelve (12) feet from the finished grade of the sidewalk and shall be of metal halide type.
- E. Bicycle Racks – Bicycle racks shall be provided on 150 foot intervals of all block faces, clustering at street lamp or building entry locations.
- F. Litter Containers and Benches – Litter containers and benches shall be provided on 150 foot intervals along all block faces and clustered at street lamp or building entry locations.

- d. **Mixed-Use Development Standards (Traditional Retail).** Retail development within the Mixed Use Tract is intended predominately for heavy retail, service, light intensity wholesale and commercial uses, but excluding warehousing uses. The

nature of uses in this District has operating characteristics and traffic service requirements generally compatible with typical office, retail, and some residential environments. Uses in this District may require open, but screened, storage areas for materials. In the event all or a portion of the Mixed Use Tract is developed solely for retail uses (i.e. not a mixed use development) then the development for retail uses shall conform to the following standards:

- a. Size of Yards:
  - 1. Minimum Front Yard: thirty (30) feet.
  - 2. Minimum Side Yard:
    - a. Fifteen (15) feet adjacent to a nonresidential district. The minimum side yard setback may be eliminated for attached retail buildings on separate lots as shown on an approved site plan.
    - b. Thirty (30) feet for a one (1) story building adjacent to a residential district and sixty (60) feet for a two (2) story building adjacent to a residential district.
    - c. Thirty (30) feet adjacent to a street.
  - 3. Minimum Rear Yard:
    - a. Fifteen (15) feet adjacent to a nonresidential district. The minimum side yard setback may be eliminated for attached retail buildings on separate lots as shown on an approved site plan.
    - b. Thirty (30) feet for a one (1) story building adjacent to a residential district and sixty (60) feet for a two (2) story building adjacent to a residential district.

- b. Size of Lots:
  - 1. Minimum Size of Lot Area: Ten thousand (10,000) square feet.
  - 2. Minimum Lot Width: One hundred (100) feet.
  - 3. Minimum Lot Depth: One hundred (100) feet.
- c. Maximum Height: Two (2) stories, no greater than forty (40) feet.
- d. Lot Coverage: Fifty (50) percent.
- e. Floor Area Ratio: Maximum 0.5:1.
- f. Permitted Uses: Uses followed by an **S** are permitted by Specific Use Permit. Uses followed by a **C** are permitted subject to conditional development standards. Conditional development standards are set forth in Chapter 3, Section 1 of the Town's Zoning Ordinance:

- Accessory Building
- Administrative, Medical, or Professional Office
- Antenna and/or Antenna Support Structure, Commercial **C**
- Antenna and/or Antenna Support Structure, Non-Commercial **C**
- Antique Shop and Used Furniture
- Artisan's Workshop
- Assisted Care or Living Facility **S**

- Athletic Stadium or Field, Private **S**
- Athletic Stadium or Field, Public
- Auto Parts Sales, Inside
- Automobile Paid Parking Lot/Garage
- Automobile Parking Lot/Garage
- Automobile Repair, Major **S**
- Automobile Repair, Minor
- Automobile Sales, Used **S**
- Automobile Sales/Leasing, New **S**
- Bank, Savings and Loan, or Credit Union
- Beauty Salon/Barber Shop
- Bed and Breakfast Inn
- Beer & Wine Package Sales **C**
- Bottling Works
- Building Material and Hardware Sales, Major
- Building Material and Hardware Sales, Minor
- Bus Terminal **C**
- Business Service
- Cabinet/Upholstery Shop
- Caretaker's/Guard's Residence
- Cemetery or Mausoleum **S**
- Civic/Convention Center
- College, University, Trade, or Private Boarding School
- Commercial Amusement, Indoor
- Commercial Amusement, Outdoor **S**
- Community Center
- Convenience Store with Gas Pumps **C**
- Convenience Store without Gas Pumps
- Dance Hall **S**
- Day Care Center, Adult **S**
- Day Care Center, Child **C**
- Day Care Center, Incidental **S**
- Dry Cleaning, Minor
- Equipment and Machinery Sales and Rental, Minor
- Fairgrounds/Exhibition Area **S**
- Farm, Ranch, Stable, Garden, or Orchard
- Farmer's Market
- Feed Store
- Flea Market, Inside
- Flea Market, Outside **S**
- Fraternal Organization, Lodge, Civic Club, Fraternity, or Sorority
- Furniture Restoration
- Furniture, Home Furnishings and Appliance Store
- Gas Pumps **C**
- General Manufacturing/Industrial Use Complying with Performance Standards **S**
- Golf Course and/or Country Club
- Governmental Office
- Gunsmith
- Gymnastics/Dance Studio
- Health/Fitness Center

- Homebuilder Marketing Center
- Hospital
- Hotel **C**
- House of Worship
- Indoor Gun Range **S**
- Insurance Office
- Limited Assembly and Manufacturing Use Complying with Performance Standards
- Locksmith/Security System Company
- Machine Shop
- Massage Therapy, Licensed
- Mini-Warehouse/Public Storage **S**
- Mobile Food Vendor **C**
- Mortuary/Funeral Parlor
- Motel **C**
- Motorcycle Sales/Service **S**
- Municipal Uses Operated by the Town of Prosper
- Museum/Art Gallery
- Nursery, Major **S**
- Nursery, Minor
- Office and Storage Area for Public/Private Utility
- Office/Showroom
- Office/Warehouse/Distribution Center
- Open Storage (subject to Chapter 4, Section 5 of the Zoning Ordinance)
- Park or Playground
- Pawn Shop
- Pet Day Care **C**
- Print Shop, Major **S**
- Print Shop, Minor
- Private Club
- Private Recreation Center
- Private Utility, Other Than Listed
- Recreational Vehicle Sales and Service, New/Used **S**
- Recreational Vehicle/Truck Parking Lot or Garage **S**
- Recycling Collection Point
- Rehabilitation Care Institution **S**
- Research and Development Center **C**
- Residence Hotel **C**
- Restaurant or Cafeteria
- Restaurant, Drive In
- Retail Stores and Shops
- Retail/Service Incidental Use
- School District Bus Yard **C**
- School, Private or Parochial
- School, Public
- Sewage Treatment Plant/Pumping Station **S**
- Small Engine Repair Shop
- Stealth Antenna, Commercial **C**
- Storage or Wholesale Warehouse **S**
- Taxidermist
- Telephone Exchange

- Temporary Building **C**
- Theater, Neighborhood
- Theater, Regional
- Trailer Rental **S**
- Transit Center **S**
- Truck Sales, Heavy Trucks **S**
- Utility Distribution/Transmission Facility **S**
- Veterinarian Clinic and/or Kennel, Indoor
- Veterinarian Clinic and/or Kennel, Outdoor
- Water Treatment Plant **S**
- Winery

4. **Parkland**

- a. Parkland shall consist of the following types:
- i. Neighborhood Park,
  - ii. Open space,
  - iii. Community Park containing a minimum of fifty (50) acres, and
- b. The schedule for providing Parkland shall be as follows:
- i. Neighborhood Park: The Neighborhood Parks shall be dedicated to the Town for public use and constructed simultaneously with the construction of the Public Improvements contained within the platted area in which the Neighborhood Parks is/are located. Developer shall, after consultation with the Town, use reasonable efforts to situate Neighborhood Parks adjacent to School Areas, with the specific location being subject to approval by the Town, which may not be unreasonably withheld, delayed, condition or denied.
  - ii. Open Space: Open Space identified on a General Development Plan shall be dedicated to the Town for public use, or reserved for private use by Developer, upon the earlier of: (A) within a reasonable period of time after receiving a written request by the Town for such dedication or reservation, such request being based upon the Park Plan in accordance with the General Development Plan wherein such Open Space is located; or (B) upon recordation of a final plat in which such Open Space is located, provided Developer owns the Open Space to be dedicated or reserved. If Developer is not the owner of the Open Space to be dedicated or reserved, the Owners shall, unless otherwise required herein, be required to comply with such requirements as set forth in the Subdivision Ordinance when the Properties, or portions thereof, develop.
  - iii. Community Park: Within three (3) years from the Effective Date of the Preannexation Agreement, the Community Park shall be

dedicated to the Town upon the earlier of: (A) within ninety (90) days of receiving a written request by the Town for such dedication; or (B) at the time the adjacent streets are dedicated to the Town provided Developer owns the land identified as the Community Park; provided, however, the Parties agree that the Community Park dedication shall be in cooperation with and furtherance of the Town's overall park grant efforts. Notwithstanding anything to the contrary herein, if the Developer has not dedicated the Community Park by the time prescribed in the preceding sentence, Owners as applicable, shall dedicate, at absolutely no cost to the Town, the Community Park within three (3) months of a written request by the Town for such dedication. Town shall be fully responsible for Maintenance Obligations of the Community Park upon the Town's acceptance of the dedication. The Town will, within a reasonable time, after receiving the proposed conveyance instrument, provide the Developer and/or Owner, as applicable, written notice of the Town's acceptance of the dedicated Community Park.

- c. Parkland reserved for private use shall be owned and maintained by a homeowners association, or other entity, and made available to owners, tenants, residents, occupants and members within the Properties and to their guests and invitees.
- d. Permitted uses within the Parkland are active and passive recreation uses including, but not limited to the following:
  - trails,
  - playfields,
  - game courts,
  - golf courses,
  - nature centers,
  - outdoor education centers,
  - community gardens, and
  - trail amenities.

## 5. **General Requirements for the Mahard Ranch.**

- a. Amenities: The intent of these development standards regarding the provision of amenities is for an integration of built and natural elements working together as a system that provides for the active and passive recreational needs of the Mahard Ranch community specifically and of the Town of Prosper generally. The distribution of natural beauty throughout the development, exemplified by mature trees and areas of rolling topography, provides the opportunity for a community-wide trail punctuated with nodes of built improvements such as pocket parks. In this way, neighborhood is linked to neighborhood and the Mahard Ranch community is linked to the Town.

To help preserve the open character of the Town of Prosper, it is the intent of these development standards that a significant amount of natural open space, particularly amid the floodplain and other sensitive land, be set aside to provide

additional open space for Mahard Ranch and for the Town. Design elements in these areas should support non-programmed passive recreational activities such as walking and picnicking.

- b. **Development Plan:** A Conceptual Development Plan is hereby attached (Exhibit "D") and made a part of these development standards. It establishes the most general guidelines for the district by identifying the project boundaries, land use types, approximate thoroughfare locations, R.O.W. dedication, roads and illustrates the integration of these elements into a master plan for the whole district.
- c. **Maintenance of Facilities:** The Developers shall establish a Homeowner's Association ("HOA") for single family residential areas and a Property Owner's Association ("POA") for mixed use areas, in which membership is mandatory for each lot, and that will be responsible for operation and maintenance of all common areas and/or common facilities contained within the area of the respective residential or mixed use development or adjacent Right-of-Way ("ROW"). The HOA or POA will be created with Phase 1 and each subsequent phase shall be annexed into the association or a separate HOA/POA may be created for each respective phase at the Developer's discretion. Upon completion of fifty percent (50%) buildout of any phase of residential development and creation of the corresponding HOA, the Developer shall provide that all HOA Boards have an advisory position to be filled by individual homeowners residing within the corresponding phase. Prior to transfer of the ownership to the HOA or POA, all specified facilities shall be constructed by the Developer and approved by the Town. The Developer shall provide the Town a mandatory HOA/POA agreement that will be recorded in the deed records of Denton County, Texas. In lieu of the HOA and POA, the Town and Developer may elect to create another entity to undertake the same responsibilities of the HOA or POA.
6. **Definitions.** The definitions of the Town's Zoning Ordinance (as it currently exists or may be amended) shall apply to these regulations except as otherwise amended herein. For purposes of these Development Standards, the following terms shall have the following meaning:

"Masonry" shall mean stone, stucco, brick, tile, concrete, glass or similar materials or any similar material approved by the Town's Director of Development Services.

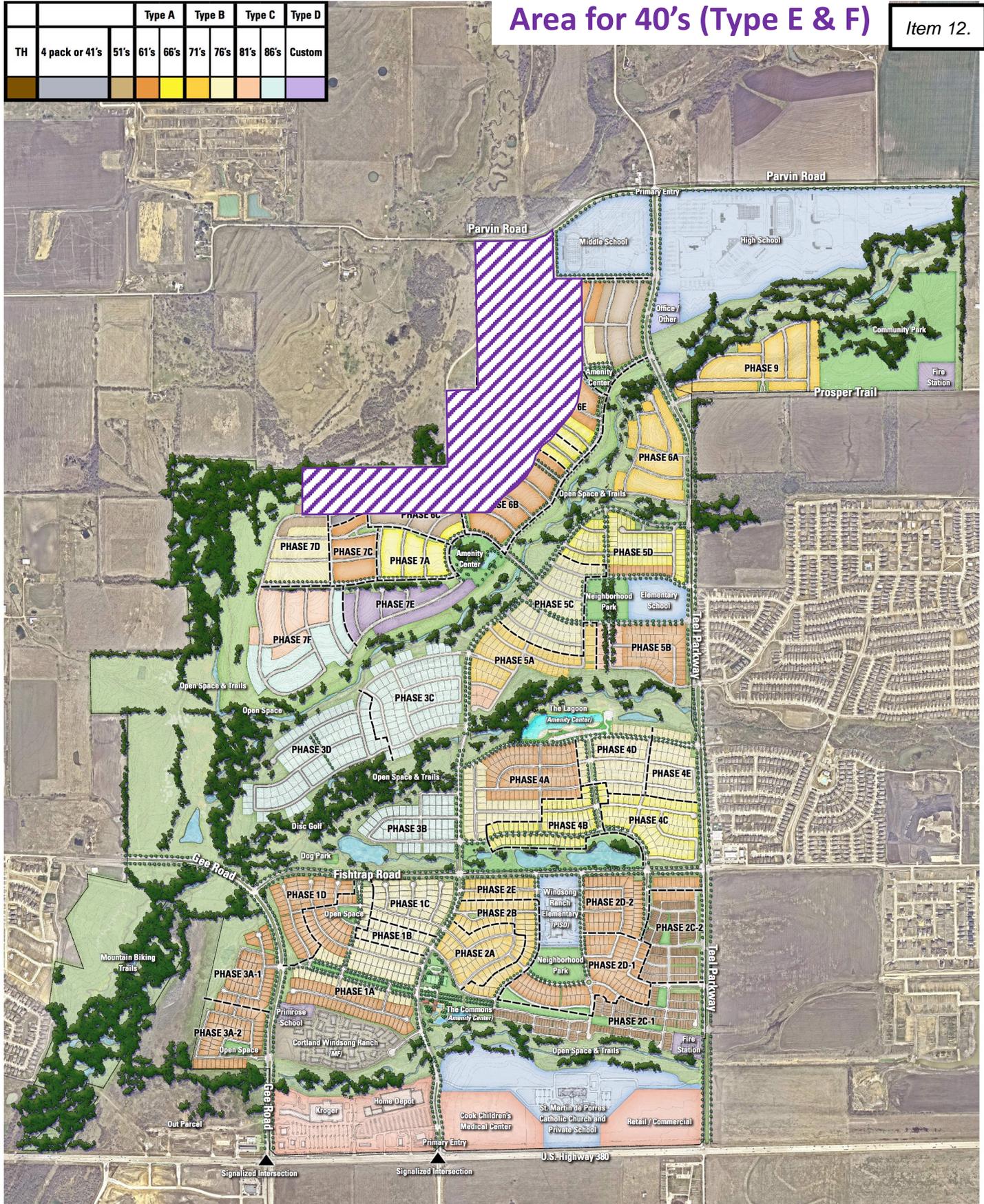
"Independent Living Facilities" means a facility containing dwelling units, accessory uses and support services specifically designated for occupancy by persons 55 years of age or older, in accordance with the housing for older persons provisions of the Federal Fair Housing Act of 1988 (42 U.S.C. section 3607 et seq.), as amended, who are fully ambulatory or who require no medical or personal assistance or supervision. The dwelling units may consist of either multifamily, single-family detached or attached residences, or a combination of such uses.

WINDSONG RANCH PRODUCT SUMMARY

		Type A	Type B	Type C	Type D				
TH	4 pack or 41's	51's	61's	66's	71's	76's	81's	86's	Custom

Area for 40's (Type E & F)

Item 12.



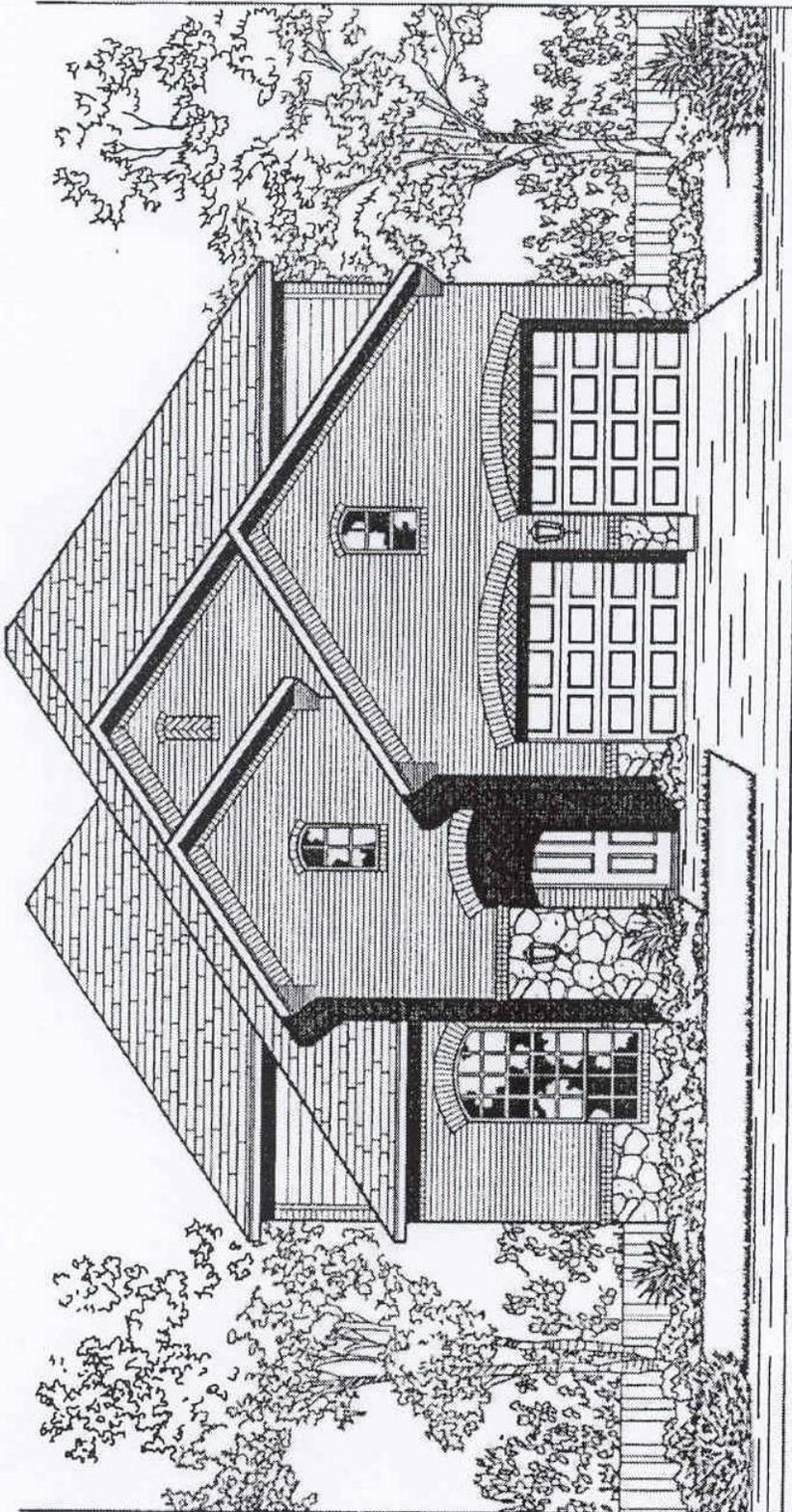
**EXHIBIT "F"**

Illustrative Elevations and Plans for Mahard Ranch, Town of Prosper, Texas

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.

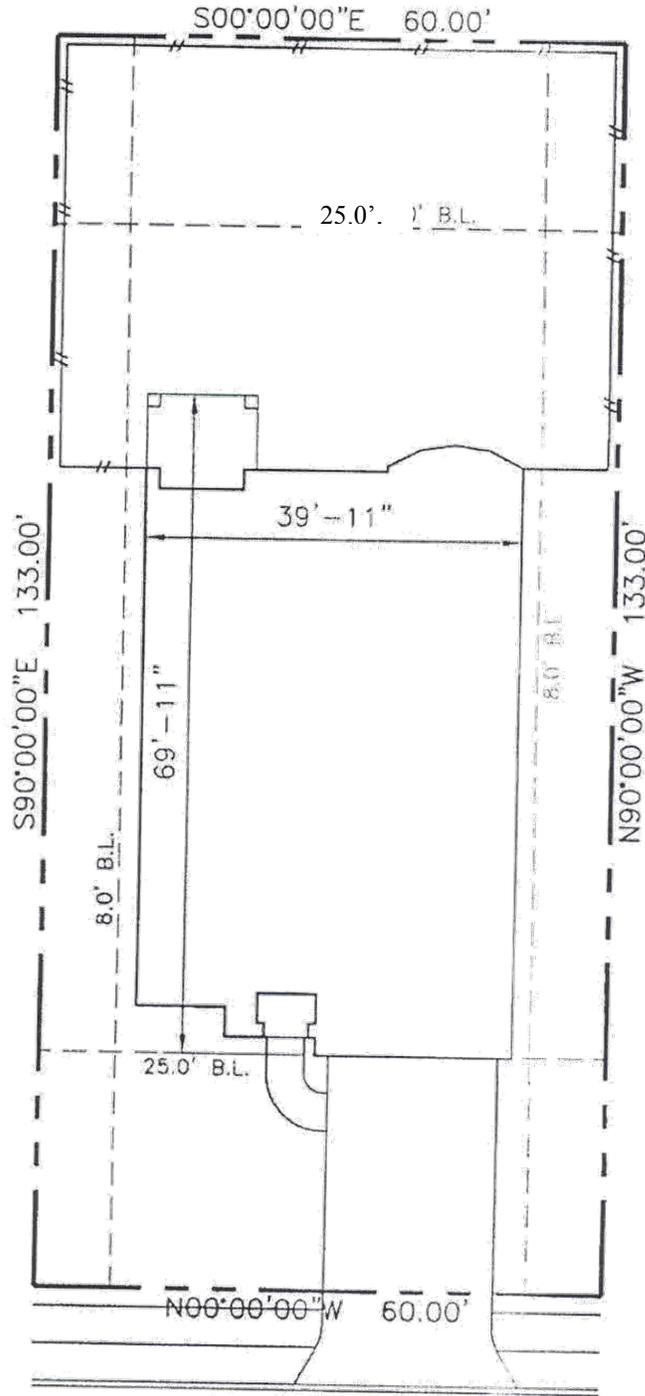
**EXHIBIT "F-1"**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.



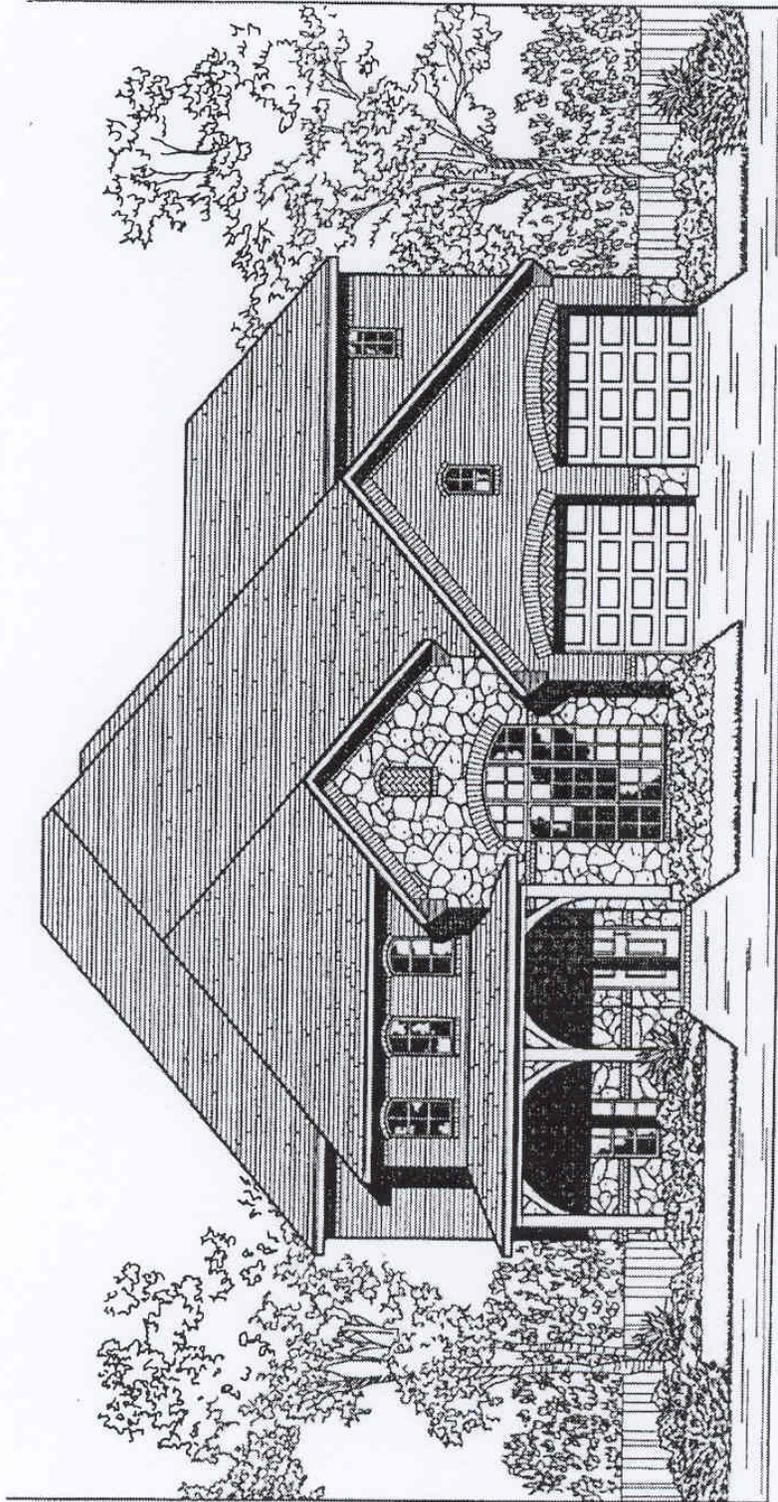


SCALE: 1 = 20'



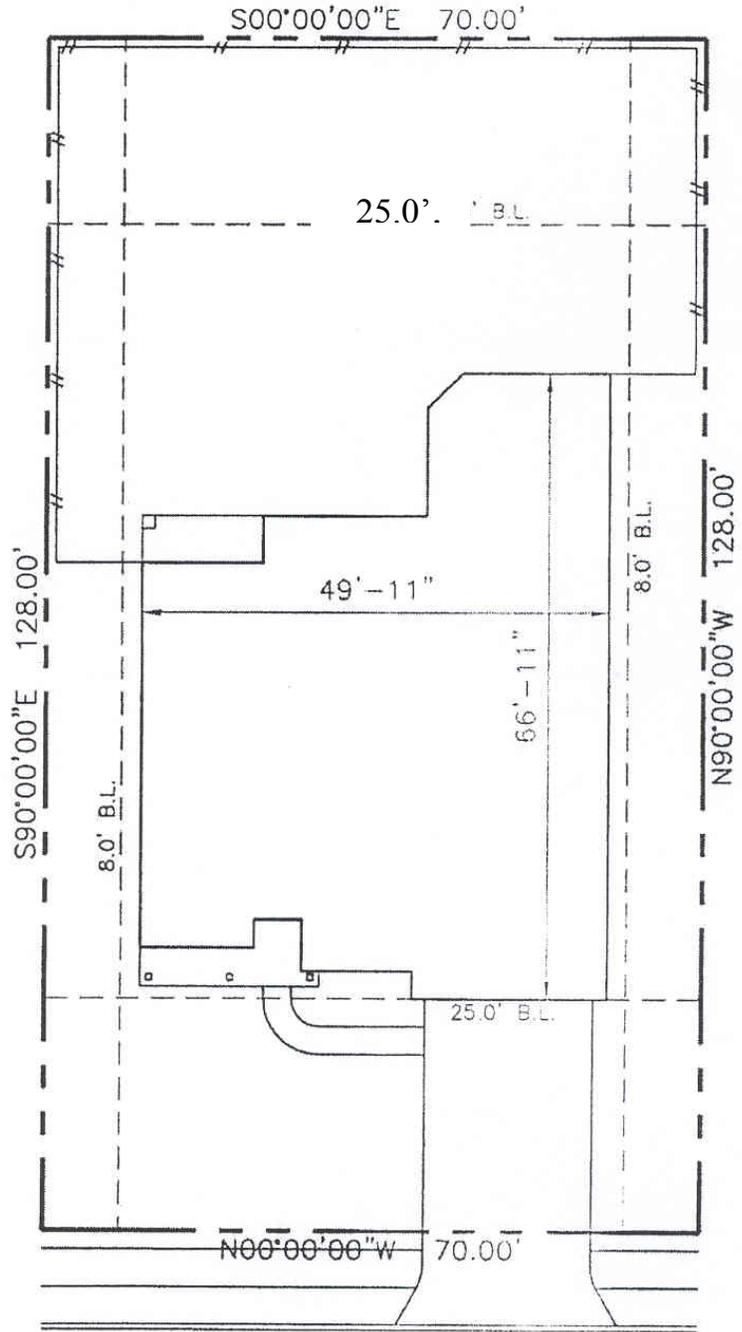
**EXHIBIT "F-2"**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.



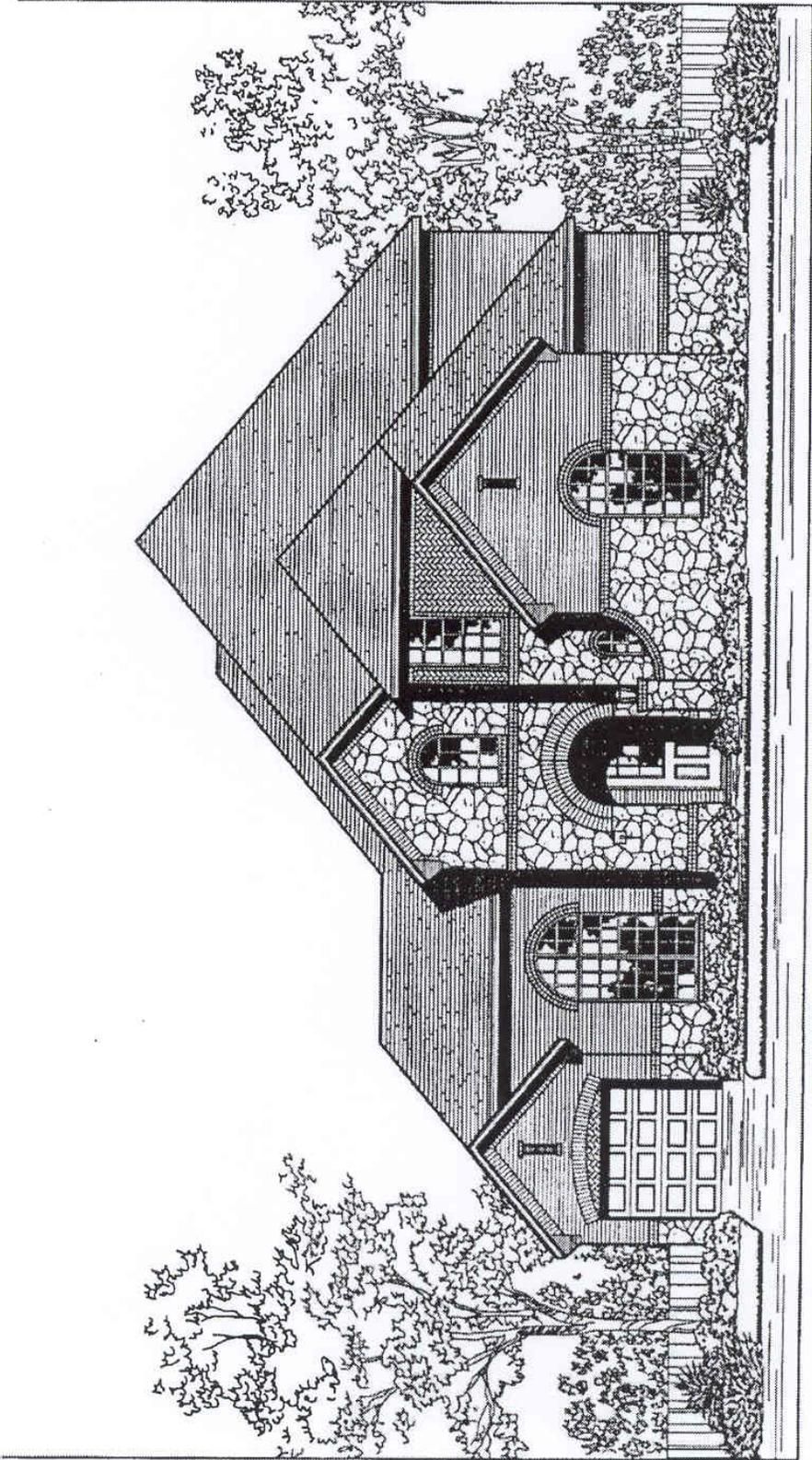
2A

SCALE: 1 = 20'



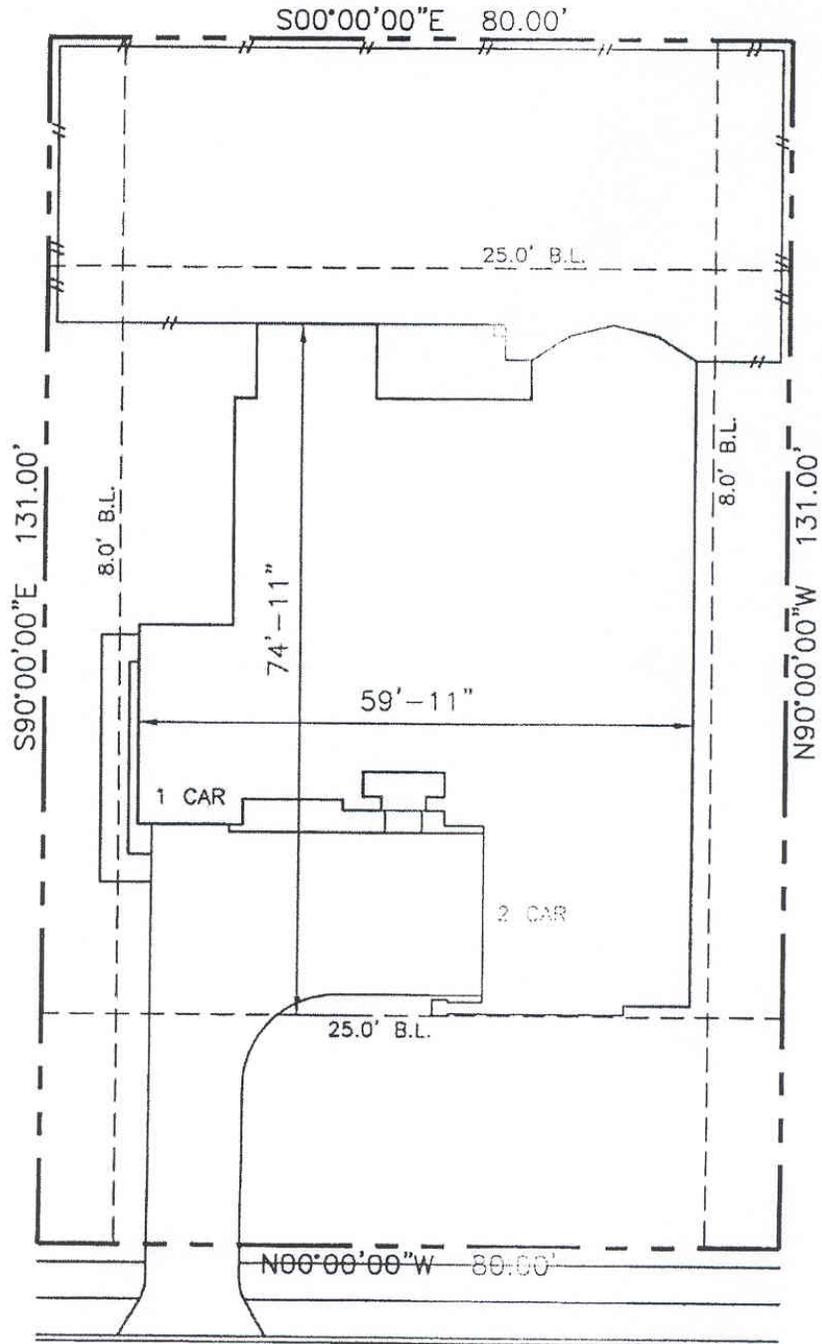
**Exhibit “F-3”**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.



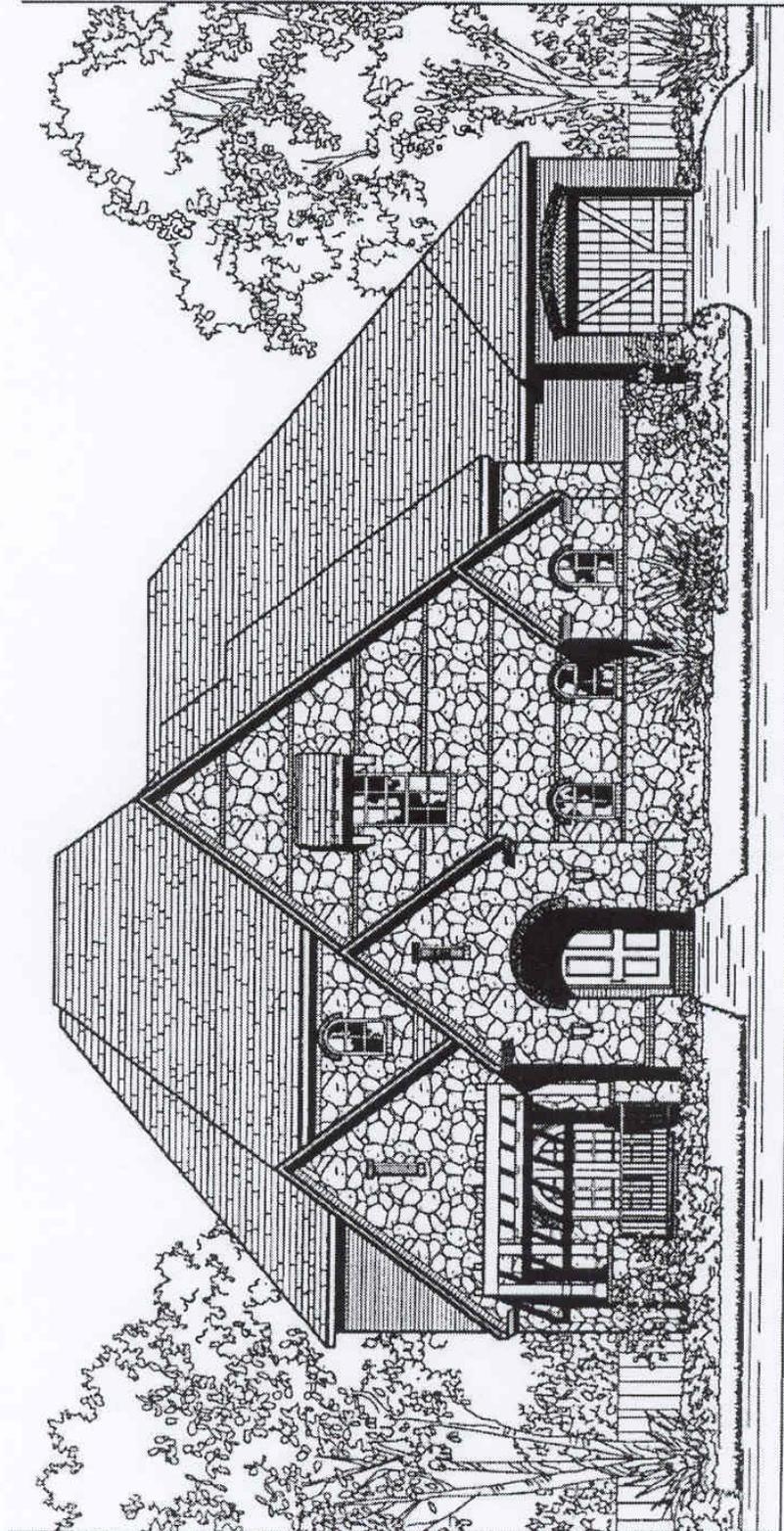
29

SCALE: 1 = 20'



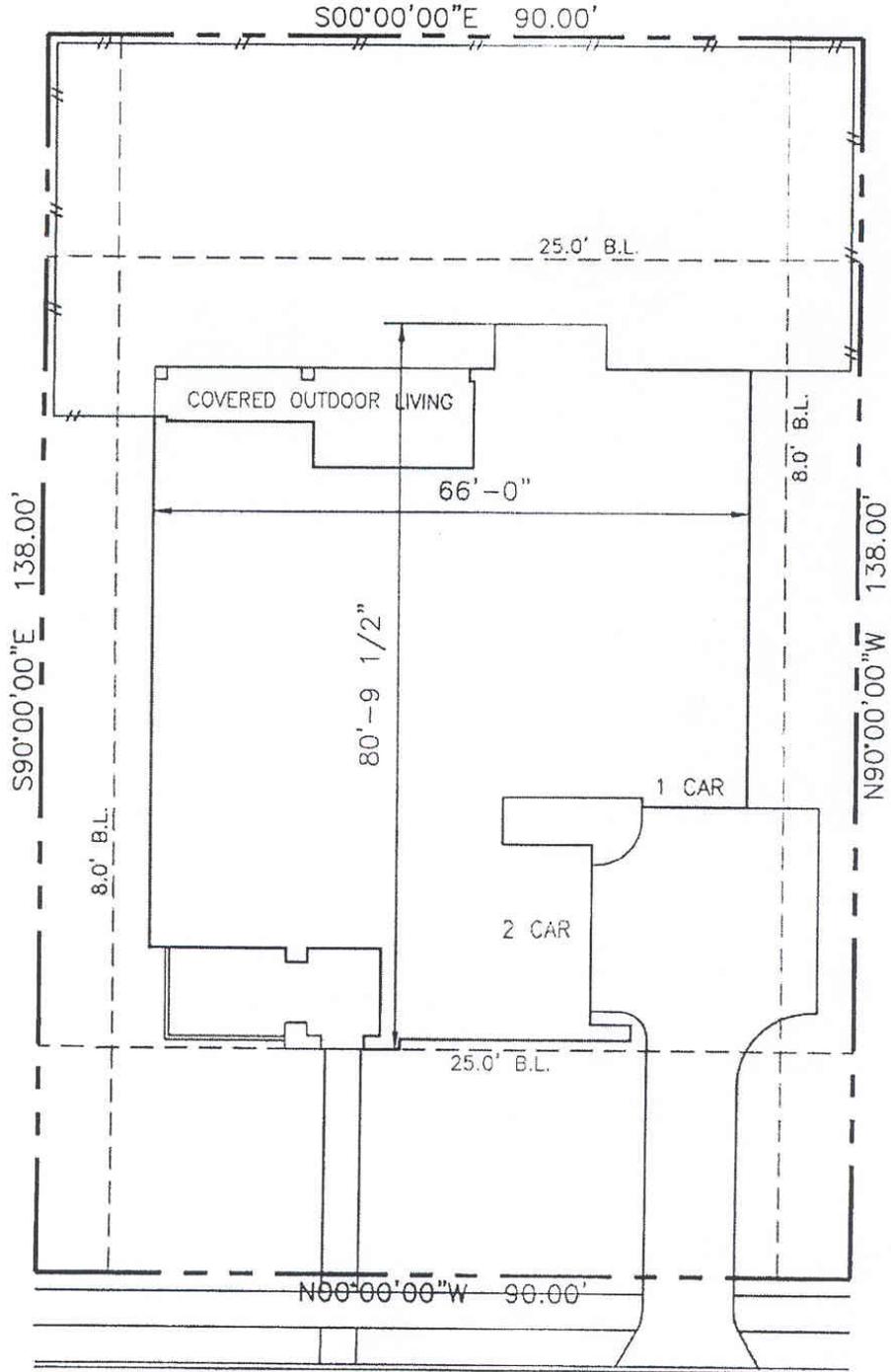
**Exhibit "F-4"**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.





SCALE: 1 = 20'



**Exhibit "F-5"**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.







**Exhibit "F-6"**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.





**Exhibit "F-7"**

The illustrations that are included with this Exhibit are for the purpose of illustrative example only and do not constitute exact renderings or plans of the buildings and items depicted.











November 15, 2019

**VIA: e-Mail**

Town of Prosper  
Planning Department  
Attn: Alex Glushko  
200 S. Main Street  
Prosper, Texas 75078  
[alex\\_glushko@prospertx.gov](mailto:alex_glushko@prospertx.gov)

**RE: Windsong Ranch Rezoning Response Letter**

Hi Alex:

Thanks to you and Town staff for your continued time and effort on this case. It is always a challenge when something “new” is proposed and I think for all involved this really brings into focus how quickly things have changed in our Town, and in the general housing market, since the last FLUP was completed in 2012 (seven (7) years ago) and the original PD in 2008 (eleven (11) years ago).

Please allow this letter to serve as our response to the recent recommendation from the Planning and Zoning Commission meeting of November 5th. We are prepared to make revisions from our original submission and incorporate some of the items agreed upon at the public hearing.

It is our understanding that P&Z Motion for Approval included the following modifications:

1. Eliminate the Type E (Garden Home/4-pack) lots.
2. Eliminate the Type F (40' min. width) lots.
3. Provide for a maximum of 375 lots for Type G (50's).
4. Provide for an additional 225 lots for Type A (60's).
5. Require a Development Agreement that will lock in the building standards in our proposal so that the remainder of Windsong is held to those stated standards.

While not officially part of the P&Z Motion, the Commission did express interest in the following development standards/conditions which we are committed to:

1. Require a provision that prohibits the underbuilding of the Type G lots by establishing a minimum foundation width of forty feet (40'). We are willing to add this to the proposed PD amendment with a requirement for a minimum foundation width of thirty-nine feet six inches (39'6").
2. Draft and record further deed restrictions that prohibit the rental of homes in Windsong while still complying with Texas Property Code Section 209.

We will be submitting revisions that will respectfully request approval from Town Council that would differ from P&Z's recommendation as follows:

1. Keep the 40' minimum width lots (specific minimum to be 39'6"), and provide for a maximum of 250 of these lots. We have provided a clause that limits the number of front entry (Type F) lots that can be developed before we have to develop rear entry (Type E) lots.
2. Maintain the maximum number of 250 lots for Type G lots (50's).
3. Maintain the 100 unit increase of Type A lots (60's) as originally proposed.

We are prepared to provide a brief presentation to council that will highlight the following points in support of our proposed revisions:

1. The historic rise in the DFW home market over the past 5 years has created a large void in our product offering (\$375K to \$525K). This is inconsistent with a master planned community in that a large segment of buyers are effectively eliminated due to affordability.
2. Our average single-family home price over the past twelve (12) months is \$600K, which negatively affects the pace of homebuilding. This directly affects the ability to continue to provide timely improvements of CIP roads and utilities that affect the region of west Prosper, not just Windsong.
3. The density we are proposing fits within the existing 2012 Future Land Use Plan ("FLUP") for Medium Density Residential (1.6 to 2.5). This is true even when you divide the Windsong plan into north and south halves (with the north being the land subject to re-zoning).
4. The existing PD was approved in 2008. Eleven years later, the Town and the market have changed dramatically. The proposed PD simply allows a re-orientation to a price range of \$400K to \$1.5 million that will encompass a multi-generational range of homebuyers, consistent with the Town's intent as stated in several places in the FLUP.
5. The proposed new lot types are geographically separated from existing homeowners by a significant margin. Existing homeowners that have expressed concern will not be able to see the future full range of lot types being created via this proposal.
6. The approval of Type E (now 40's rear entry) and F lots (40's front entry) would set a precedent for the Town and provides an opportunity for the Town to raise the bar for future Master Plan developments by recognizing that the Type E and F lots are warranted in conjunction with and the support of all the other things that Windsong has provided:
  - a. Active and passive open space that totals seven (7) times what is required by the Town.
  - b. Provision of \$1.6 million in scholarship and professional training funds to PISD through the Prosper Education Foundation. This is a continuing funding mechanism.
  - c. Provision of three school sites at no cost to PISD.
  - d. Establishment of \$25 million in commitments through development agreements that require the developer to front the capital required to construct CIP roads and utilities.
  - e. Seven (7) different lot types.
  - f. Dedication of right-of-way over and above normal requirements (3.5 acres for Parvin Road west of future Teel Parkway).

Here is how the existing Windsong residents benefit from our request:



1. Establishes certainty over the high standards by which the remainder of Windsong is developed and built out.
2. Re-establishes the range of product into a more diversified product offering and facilitates a Master Plan development which meets the intent behind the original PD-40 and the stated goals of the Town (reference pages 29, 48, 49 and 111 in the FLUP).
3. Helps to ensure a consistent rate of infrastructure improvements, which would also mitigate the impact of regional traffic that comes through the west side of Prosper.

As is clearly evident within the original entitlements, Windsong was never intended to be an exclusively high-end community that borders on elitism. That is not what Windsong has ever been about and is not what a master planned community is about.

We believe we have established several precedents by the manner in which we have built this community. We are simply asking for the ability to continue the same mission we started, which is providing a high-quality master-planned community for a wide range of families, while meeting all of the guidelines and principles of the FLUP and the Town's desire for quality development.

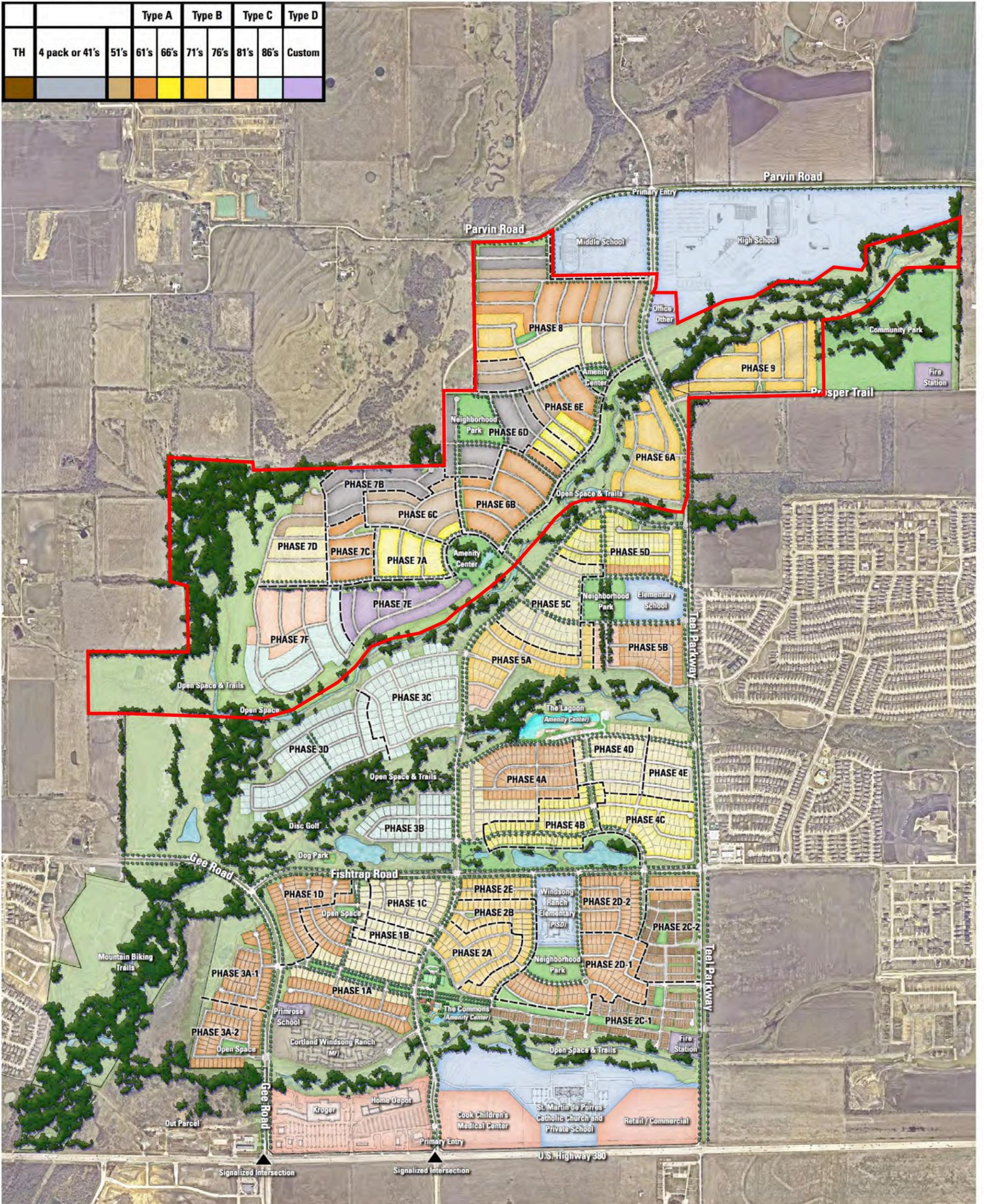
Kind Regards,

David R. Blom

Partner/Vice President  
Tellus Group LLC  
[dblom@tellusgroupllc.com](mailto:dblom@tellusgroupllc.com)

WINDSONG RANCH PRODUCT SUMMARY

		Type A		Type B		Type C		Type D	
TH	4 pack or 41's	51's	61's	66's	71's	76's	81's	86's	Custom



WINDSONG RANCH REZONING MASTER PLAN

OCTOBER 21, 2019

The information shown is based on the best information available and is subject to change without notice.



WINDSONG RANCH - COMPARATIVE TABLE OF CUMULATIVE LOT SIZES (AS OF 10/31/19)

	Multiple Amenity Centers	Crystal Lagoon	Multiple PISD Schools on Site	Multiple Neighborhood Parks	Acres of Open Space	Lot Sizes														TOTAL	Notes
						40		50		60		70		80		90		Custom			
Star Trail	1 Community / 1 Neighborhood (west of Legacy Drive)	No	No / 1 Elem	30.9 ac Community Park / 3x 7.5 ac Neighborhood Parks = 53.4 ac	min of 70 ac	0	0%	709	38%	784	42%	231	12%	143	8%	0	0%	0	0%	1867	55x125 - 25' front setback, 7' sideyard setback, 1800/2000 min sq ft home, 100% masonry
<b>Star Trail Cumulative</b>						0	0%	709	38%	1493	80%	1724	92%	1867	100%	1867	100%	1867	100%		
Brookhollow / Lakewood		No		22.84 ac park		0	0%	659	25%	0	0%	970	36%	966	36%	70	3%	0	0%	2665	55x125 - 5' front setback, 5' sideyard setback, 2220 min sq ft home, 100% masonry (street view) / 80% masonry side/rear elevations not cumulative
<b>Brookhollow / Lakewood Cumulative</b>						0	0%	659	25%	659	25%	1629	61%	2595	97%	2665	100%	2665	100%		
Light Farms						204	6%	1007	29%	1938	57%	168	5%	98	3%	0	0%	0	0%	3415	
<b>Light Farms Cumulative</b>						204	6%	1211	35%	3149	92%	3317	97%	3415	100%	3415	100%	3415	100%		
Windsong (Existing Entitlements)	4 Community	Yes	Yes / 2 Elems, 1 MS, 1 HS	50 ac Community Park / 3x 7.5 ac Neighborhood Parks = 72.5 ac	at least 552 ac	0	0%	0	0%	750	22%	1100	31%	1100	31%	550	16%	0	0%	3500	
<b>Windsong (Existing Entitlements) Cumulative</b>						0	0%	0	0%	750	21%	1850	53%	2950	84%	3500	100%	3500	100%		
Windsong (Proposed Entitlements)	4 Community	Yes	Yes / 2 Elems, 1 MS, 1 HS	51.4 ac Community Park / 3x 7.5 ac Neighborhood Parks = 73.9 ac	746 ac	250	8%	250	8%	850	26%	1100	34%	600	18%	160	5%	40	1%	3250	
<b>Windsong (Proposed Entitlements) Cumulative</b>						250	8%	500	15%	1350	42%	2450	76%	3050	94%	3210	99%	3250	100%		

RE ENTITLEMENT LOT TYPE TABLE - PD 40

	Lot Type A	Lot Type B	Lot Type C	Lot Type D	Lot Type E 40s - Rear Entry	Lot Type F 40s - Front Entry	Lot Type G 50s	Lot Type H Custom	TOTAL	
Min. permitted lot sizes	8,000 sq. ft.	9,000 sq. ft.	10,500 sq. ft.	12,500 sq. ft.	5,000 sq. ft.	5,000 sq. ft.	6,000 sq. ft.	20,000 sq. ft.		
Max. permitted number of lots <sup>1</sup>	850 750	1,100	600 <del>1,100</del>	160 550	250 Total units shared by Lot Types E & F; the total number of final platted Type E Lots at any point in time shall not be more than 75 lots greater than the number of final platted Type F Lots.		250	40 <sup>2</sup>	3,250 3,500	
<sup>1</sup> Max. permitted number of lots are transferrable from smaller Lot Type classifications to larger Lot Type classifications										
<sup>2</sup> 40 lots is also the <u>minimum number</u> of Type H lots required										
Min. Front Yard	25 ft.	25 ft.	25 ft.	25 ft.	25 ft. (Porch may encroach 10' into front yard setback)	25 ft. (Porch may encroach 10' into front yard setback)	25 ft. (Porch may encroach 10' into front yard setback)	30 ft. (Porch may encroach 10' into front yard setback)		
Min. Side Yard	8 ft. (14'/2' on courtyard option)	8 ft. (14'/2' on courtyard option)	8 ft. (14'/2' on courtyard option)	8 ft.	5 ft.	5 ft.	5 ft.	20 ft. (26'/14' on courtyard option)		
Corner Lot	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	15 ft.	25 ft.		
Min. Rear Yard	25 ft. (10' on courtyard option for no more than 75 Type A lots)	25 ft. (10' on courtyard option for no more than 110 Type B lots)	25 ft. (10' on courtyard option for no more than 110 Type C lots)	25 ft.	25 ft. (Unless thirty foot (30') front setback, where a twenty foot (20') rear setback is allowed)	25 ft. (Unless thirty foot (30') front setback, where a twenty foot (20') rear setback is allowed)	25 ft. (Unless thirty foot (30') front setback, where a twenty foot (20') rear setback is allowed)	30 ft.		
Max. Building Height	40 ft.	40 ft.	45 ft.	45 ft.	40 ft.	40 ft.	40 ft.	45 ft.		
Max. Lot Coverage	55%	50%	45%	45%	60%	60%	60%	40%		
Min. Lot Width	60 ft.	70 ft.	80 ft.	90 ft.	40 ft.	40 ft.	50 ft.	120 ft.		
Min. Lot Depth	100 ft.	100 ft.	110 ft.	125 ft.	100 ft.	100 ft.	100 ft.	150 ft.		
Porch Requirements					At least 25% shall have front porches	At least 25% shall have front porches	At least 25% shall have front porches			
					15% of home along a block face shall have a porch	15% of home along a block face shall have a porch	15% of home along a block face shall have a porch			
					Min. porch depth is 7'	Min. porch depth is 7'	Min. porch depth is 7'			
					Min. porch width is 10'	Min. porch width for split garage door is 7' Min. porch width for single garage door is 10'	Min. porch width for split garage door is 7' Min. porch width for single garage door is 10'			
Garage Requirements					Max of two (2) car garages	Max of two (2) car garages; max of two (2) garage spaces shall face the street	Max of two (2) car garages; max of two (2) garage spaces shall face the street	Min. of two (2) car garages, but no more than five (5)		
						Min. garage door front setback is 25'	Min. garage door front setback is 25'			
						Garage doors shall be recessed a min. of 5' behind front-face of building, inclusive of porch columns	Min. single garage doors split by a masonry column is 50%	Min. single garage doors split by a masonry column is 50%	Max. garage doors facing street is three (3) car widths	
						Min. single garage doors split by a masonry column is 50%				
Min. Dwelling Area	1,900 sq. ft.	2,100 sq. ft.	2,300 sq. ft.	2,600 sq. ft.	1,500 sq. ft.	1,500 sq. ft.	1,700 sq. ft.	3,000 sq.ft. (Single Story) 3,500 sq.ft. (Two Story)		



**DEVELOPMENT SERVICES  
DEPARTMENT**  
250 W. First Street  
Prosper, TX 75078  
Phone: 972-346-3502

**REPLY FORM**

**SUBJECT:**

Zoning Case Z19-0020: The Town of Prosper has received a request to amend 654.0± acres of Planned Development-40 (PD-40), for Windsong Ranch, in order to modify the residential development standards, including but not limited to; decreasing the overall lot count; incorporating smaller lot types; and providing architectural and landscape regulations.

**LOCATION OF SUBJECT PROPERTY:**

The property is generally located on the west side of Teel Parkway, south of Parvin Road.

I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition.

I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

Prosper ISD does not oppose

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Greg Bradley  
Name (please print)

*Greg Bradley*  
Signature

605 E 7<sup>th</sup> St  
Address

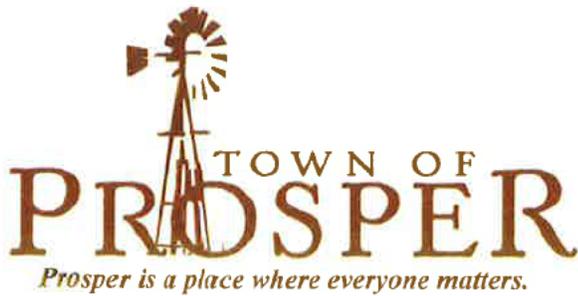
10/31/19  
Date

Prosper, TX 75078  
City, State, and Zip Code

gkbradley@prosper-isd.net  
E-mail Address

RECEIVED  
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BY: .....



**DEVELOPMENT SERVICES  
DEPARTMENT**  
250 W. First Street  
Prosper, TX 75078  
Phone: 972-346-3502

**REPLY FORM**

**SUBJECT:**

Zoning Case Z19-0020: The Town of Prosper has received a request to amend 654.0± acres of Planned Development-40 (PD-40), for Windsong Ranch, in order to modify the residential development standards, including but not limited to; decreasing the overall lot count; incorporating smaller lot types; and providing architectural and landscape regulations.

**LOCATION OF SUBJECT PROPERTY:**

The property is generally located on the west side of Teel Parkway, south of Parvin Road.

I **OPPOSE** the request as described in the notice of Public Hearing. If in opposition, please provide a reason for opposition.

I **DO NOT OPPOSE** the request as described in the notice of Public Hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

654 ACRES WITH SMALLER LOTS? THIS WILL CAUSE  
SPRAWLING, DECREASED VALUE OF MY PROPERTY, CONGESTION,  
OVER BUILDING, etc. . RESPECTFULLY ASK THE TOWN OF PROSPER  
TO LOOK AT TINY LOTS BY WINDSON RANCH IN THE ALREADY  
DEVELOPED AREAS. QUALITY OVER QUANTITY IN PROSPER!

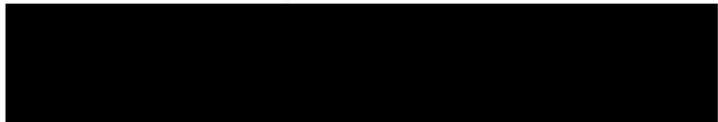
A P. SOMMERHALDER, LLC  
Name (please print)

A P Sommerhalder  
Signature

1804 NORTHWEST DR  
Address

10/28/19  
Date

LONGVIEW, TX 75604  
City, State, and Zip Code



**RECEIVED**  
NOV 04 2019

BY: .....

## PLANNING



**To: Mayor and Town Council**

**From: Alex Glushko, AICP, Planning Manager**

**Through: Harlan Jefferson, Town Manager**

**Re: Town Council Meeting – November 26, 2019**

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**Agenda Item:**

Presentation of recent administrative updates to the Thoroughfare Plan, reflecting existing roadway conditions, right-of-way dedication, and/or easement acquisition.

**Description of Agenda Item:**

The Town's Comprehensive Plan includes the Thoroughfare Plan, which is a guide intended to show the Town's intended transportation network, roadway alignments, and street classifications. In the past, it has not been a matter of practice for Town staff to update the Thoroughfare Plan as roadways are constructed, rights-of-way are dedicated, or easements are acquired.

During discussions at a recent Planning & Zoning Commission meeting, resulting from consideration of a Preliminary Plat, the topic of the Thoroughfare Plan and ongoing updates, emerged. As a follow-up to that discussion, on October 8, 2019, the Town Council held a discussion regarding updates to the Thoroughfare Plan. Staff has received direction regarding updates to the Comprehensive Plan and Thoroughfare Plan, which will be accomplished in two (2) phases.

This item is a result of the first phase, during which the Town will commence updates to the Thoroughfare Plan on an as-needed and/or annual basis to reflect existing roadway conditions, right-of-way dedication, or easement acquisition. The previous Thoroughfare Plan, an updated Thoroughfare Plan, and an exhibit showing the updated alignments are attached for review.

The second phase, which will occur during the Spring of 2020, will involve Public Hearings to amend the Comprehensive Plan and Thoroughfare Plan, including but not limited to an update of all the base maps, demographics, map disclaimers, and anticipated roadway overpasses.

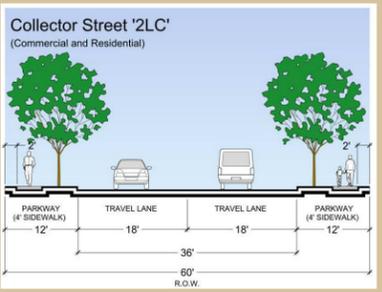
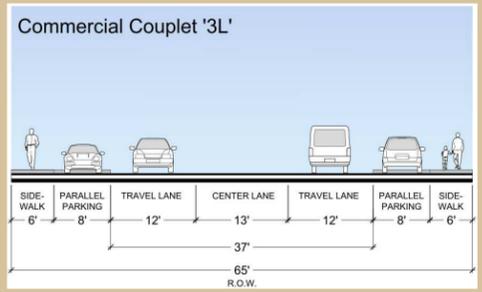
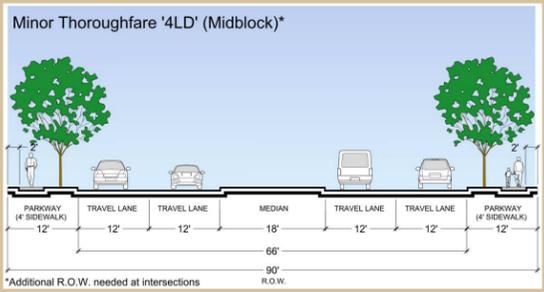
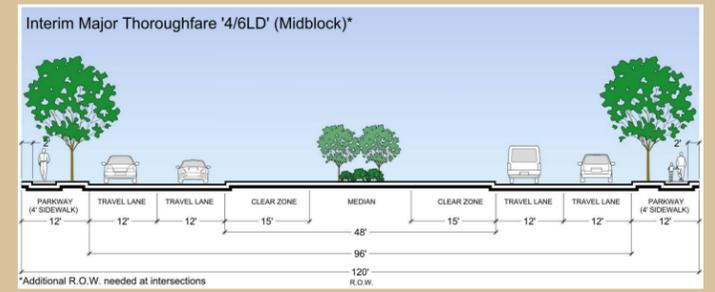
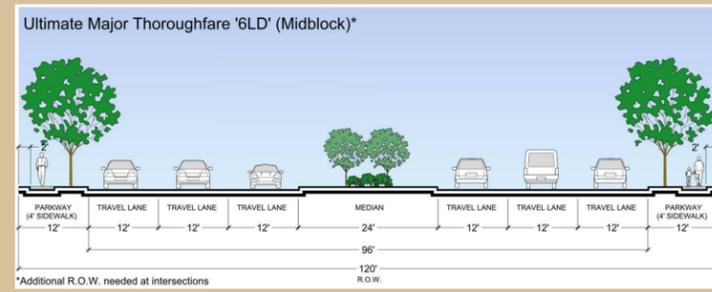
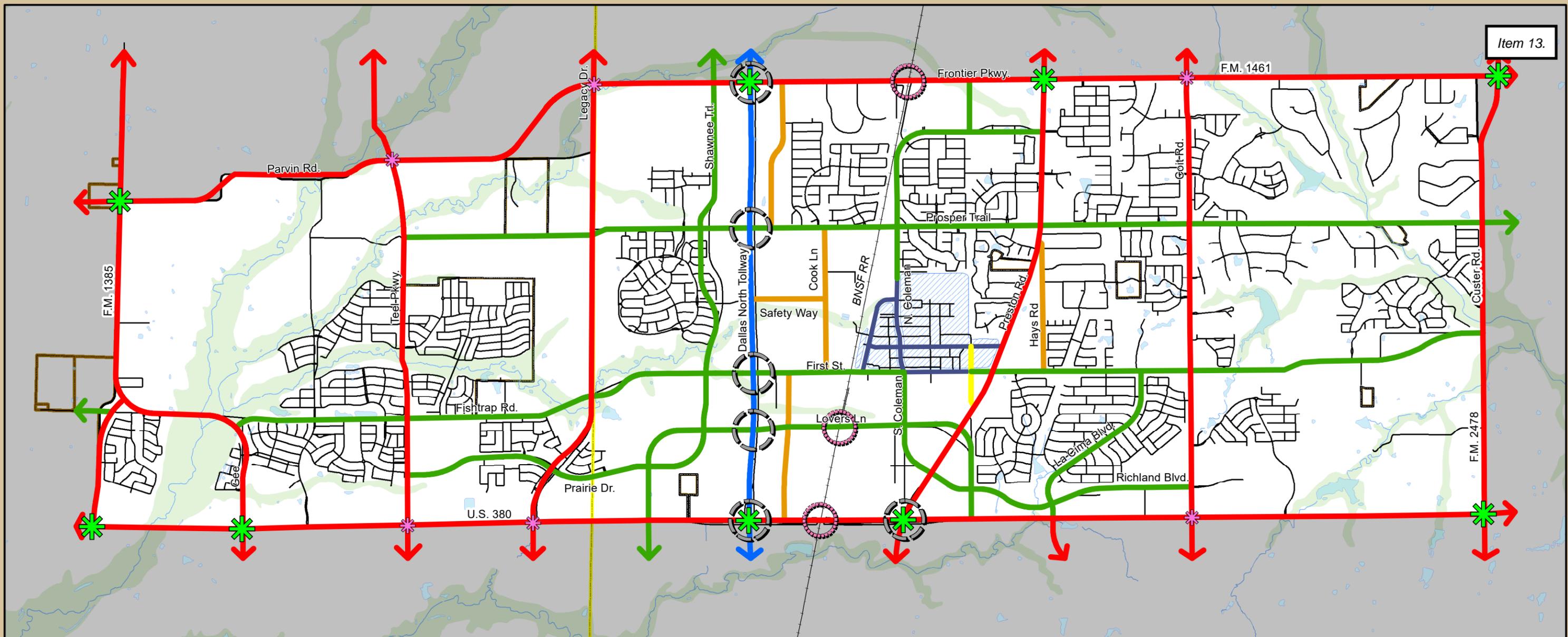
The Planning & Zoning Commission received the presentation at their November 5, 2019, meeting.

**Attached Documents:**

1. Previous Thoroughfare Plan
2. Updated Thoroughfare Plan
3. Thoroughfare Plan Exhibit

**Proposed Motion:**

No action is required.



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

**Thoroughfare Description**

- █ Dallas North Tollway
- █ Major Thoroughfare (6 lane; 120' ROW)
- █ Minor Thoroughfare (4 lane; 90' ROW)
- █ Commercial Couplet (3 lane; 65' ROW)
- █ Commercial Collector (2 lane; 60' ROW)
- █ Old Town District (Section varies)

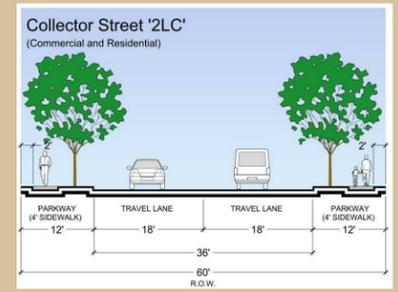
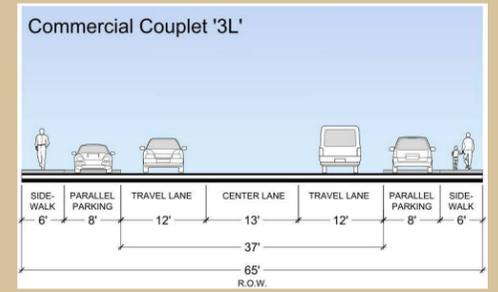
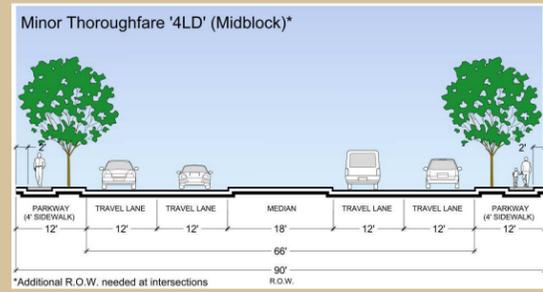
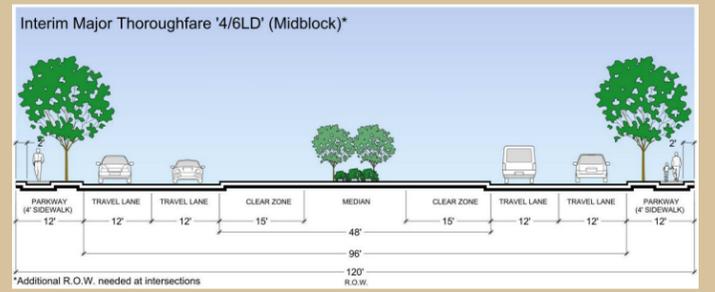
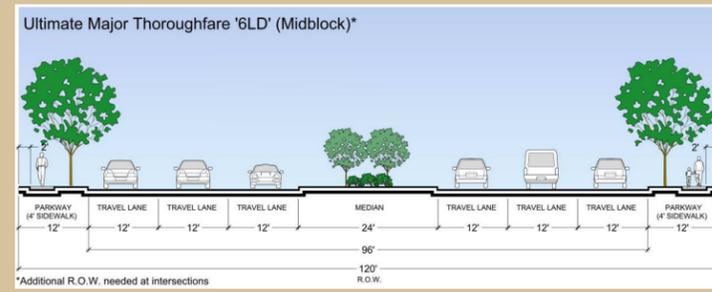
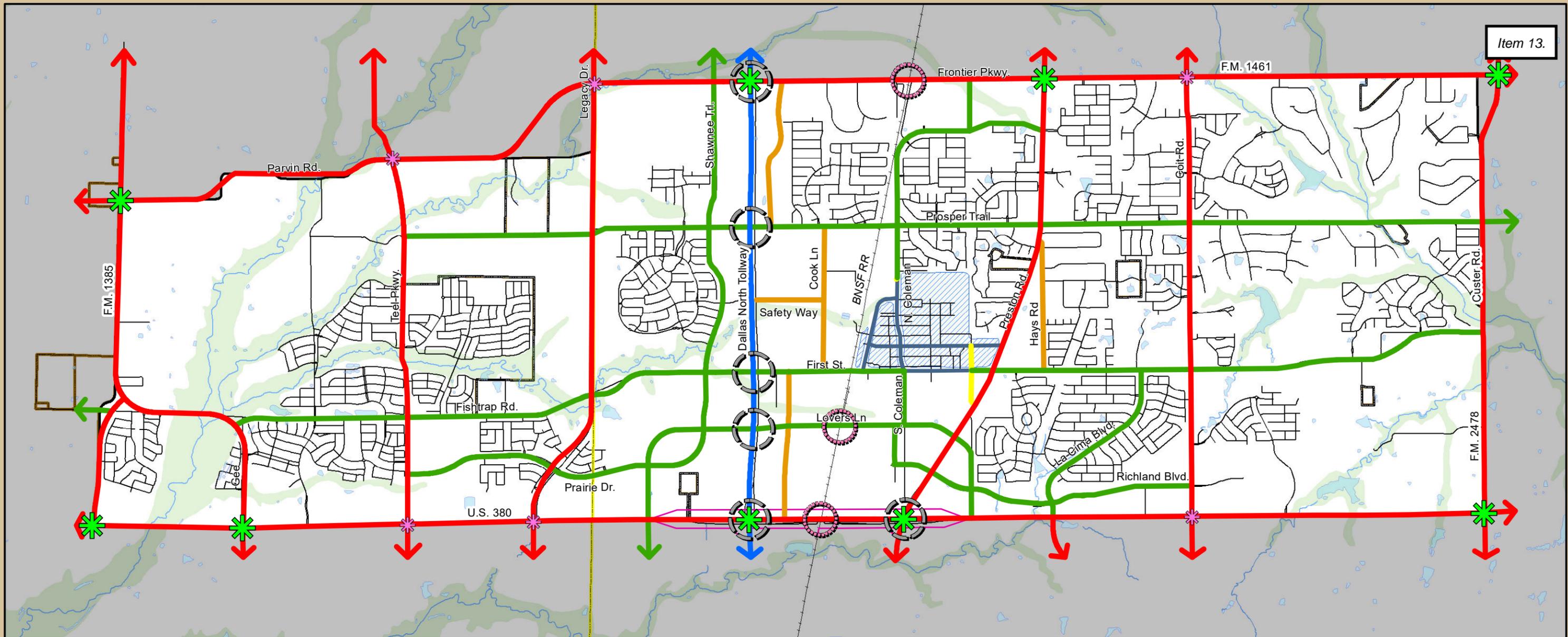
★ Major Gateway  
★ Minor Gateway  
○ Grade Separation  
○ RR Grade Separation

+ Town of Prosper  
+ ETJ  
█ 100 Year Floodplain

# Thoroughfare Plan

**Plate 3**  
May 2018

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

**Thoroughfare Description**

- █ Dallas North Tollway
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- █ Commercial Collector (2 lane; 60' ROW)
- █ Old Town District (Section varies)
- █ Access Roads

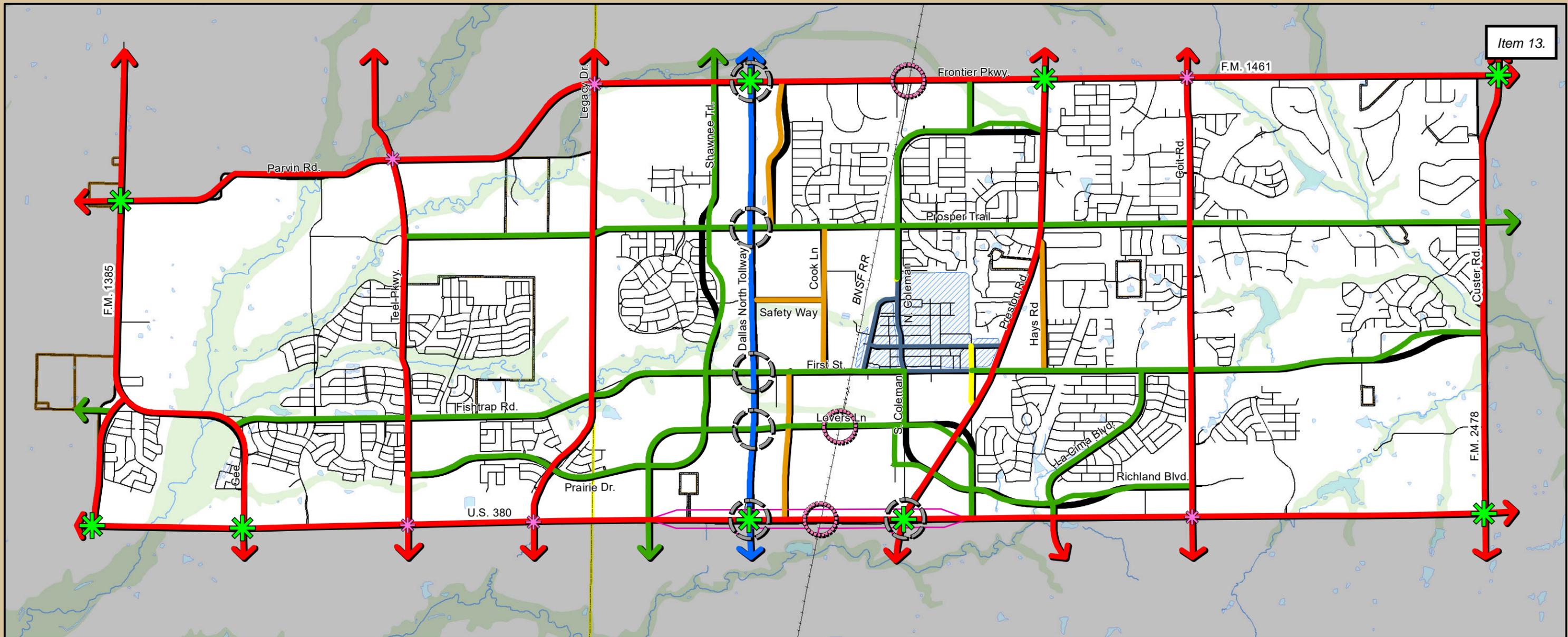
- Major Gateway
- Minor Gateway
- Grade Separation
- RR Grade Separation
- Town of Prosper
- ETJ
- 100 Year Floodplain

Miles  
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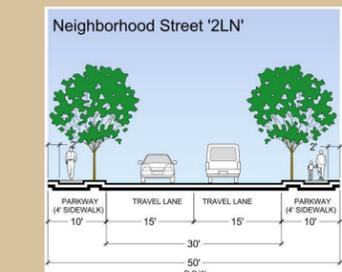
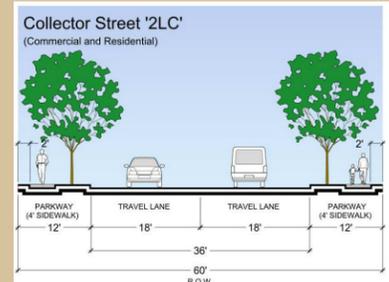
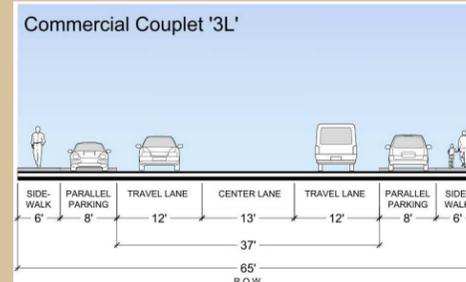
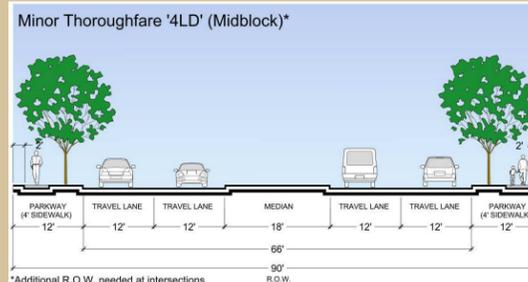
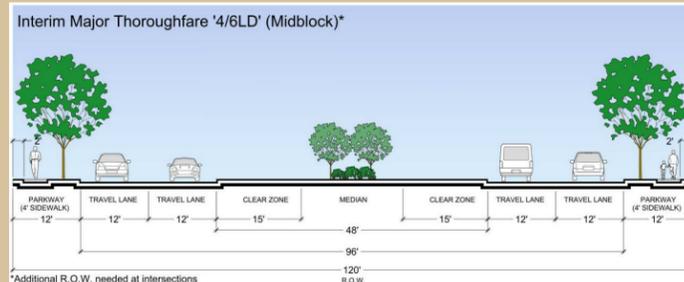
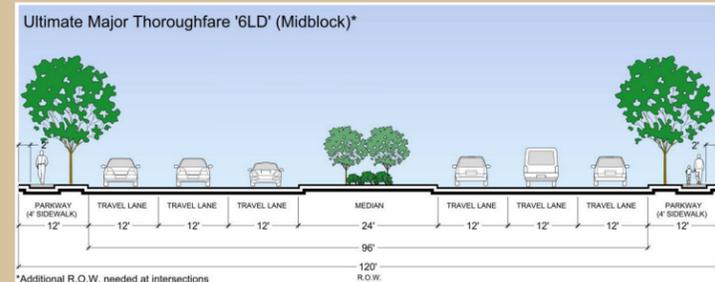
**Plate 3**  
November 2019

**Thoroughfare Plan**

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Item 13.



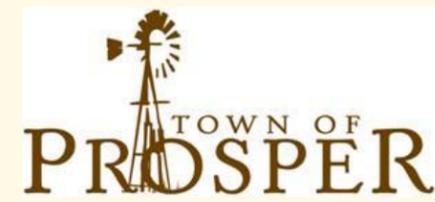
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- ✱ Major Gateway
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- Grade Separation
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- Town of Prosper
- ETJ
- █ 100 Year Floodplain

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# Thoroughfare Plan

**Plate 3**  
May 2018  
&  
November 2019