



Agenda
Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, December 12, 2023
6:15 PM

Welcome to the Prosper Town Council Meeting.

Citizens may watch the meeting live by using the following link: www.prospertx.gov/livemeetings

Addressing the Town Council:

Those wishing to address the Town Council must complete the Public Comment Request Form located on the Town's website or in the Council Chambers.

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

If you are watching online, please submit this form to the Town Secretary prior to 4:00 p.m. on the day of the meeting in order for your comments to be read into the record. The Town assumes no responsibility for technical issues beyond our control.

In compliance with the Texas Open Meetings Act, the Town Council/Board/Commission may not deliberate or vote on any matter that does not appear on the agenda. The Council/Board/Commission, however, may provide statements of fact regarding the topic, request the topic be included as part of a future meeting, and/or refer the topic to Town staff for further assistance.

Citizens and other visitors attending Town Council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, profane or slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the meeting shall be removed from the room, if so directed by the Mayor or presiding officer, and the person shall be barred from further audience before the Town Council during that session. Disruption of a public meeting could constitute a violation of Section 42.05 of the Texas Penal Code.

Call to Order/ Roll Call.

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

Announcements of recent and upcoming events.

Presentations.

1. Presentation to the Town of Prosper for the Award for Excellence in Financial Reporting form the Government Finance Officers Association of Texas (GFOA). (CL)

CONSENT AGENDA:

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

- [2.](#) Consider and act upon the minutes from the November 28, 2023, Town Council Work Session meeting. (MLS)
- [3.](#) Consider and act upon the minutes from the November 28, 2023, Town Council Regular meeting. (MLS)
- [4.](#) Consider and act upon awarding RFP No. 2024-03-B for stop loss insurance for the Town's self-insurance fund, effective January 1, 2023, and authorizing the Town Manager to execute all documents for the same. (JE)
- [5.](#) Consider and act upon approving the purchase of a wastewater inspection software from ITpipes Opco, LLC, a sole source provider; and authorizing the Town Manager to execute documents for the same. (FJ)
- [6.](#) Consider and act upon approving the purchase of water meters from Core & Main, a sole source provider; and authorizing the Town Manager to execute documents for the same. (FJ)
- [7.](#) Consider and act upon approving a Master Cooperative Purchasing Agreement between the Town of Prosper and the Sheriffs' Association of Texas for the procurement of vehicles and authorize the Town Manager to execute documents for same. (CL)
- [8.](#) Consider and act upon the approval of purchases of new and replacement vehicles, upfitting and equipment for FY24 utilizing cooperative purchasing agreements and approved purchasing methods and authorize the Town Manager or his/her designee to execute documents related to said purchases. (CL)
- [9.](#) Consider and act upon approving an Interlocal Agreement between the Town of Prosper and the City of Denton for the procurement of goods and services and authorize the Town Manager to execute documents for the same. (CL)
- [10.](#) Consider and act upon accepting the 2023 FY23 COPS Hiring Program grant award from the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office). (DK)
- [11.](#) Consider and act upon awarding CSP No. 2024-01-B to DDM Construction Corporation, related to construction services for the Preston Road/Prosper Trail Dual Left Turn Lanes and Coit Road/US 380 Southbound Dual Left Turn projects; and authorizing the Town Manager to execute a construction agreement for same. (HW)

CITIZEN COMMENTS

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a "Public Comment Request Form" and present it to the Town Secretary prior to the meeting. Please limit your comments to three minutes. If multiple individuals wish to speak on a topic, they may yield their three minutes to one individual appointed to speak on their behalf. All individuals yielding their time must be present at the meeting, and the appointed individual will be limited to a total of 15 minutes.

REGULAR AGENDA:

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. [If you wish to address the Council, please fill out a "Public Comment Request Form" and present it to the Town Secretary, preferably before the meeting begins.]

Items for Individual Consideration:

- [12.](#) Consider and act upon a resolution of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Town's FM 1461 12-inch Water Line Relocation project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. (HW)
- [13.](#) Consider and act upon a resolution of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain wastewater line easements and temporary construction easements for the construction of the Town's Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful. (HW)
- [14.](#) Consider and act upon approval of Raymond Community Park Guaranteed Maximum Price Contract #1 for Site Preparation and authorize the Town Manager to execute documents for the same. (DB)
- [15.](#) Consider and act upon an ordinance amending Article 3.14 – Signs of the Town of Prosper Code of Ordinances to modify certain wall sign and development sign regulations. (DH)
- [16.](#) Consider and act upon amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024) (DH)
- [17.](#) Conduct a public hearing to consider amending Chapter 3, Section 1.4 – Conditional Development Standards and Chapter 4 – Development Requirements of the Town of Prosper Zoning Ordinance to modify requirements related to drive-throughs. (ZONE-23-0033) (DH)
- [18.](#) Consider and act upon the 2024 Prosper Town Council Regular meeting schedule. (MLS)
19. Discuss and consider Town Council Subcommittee reports. (DFB)

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

EXECUTIVE SESSION:

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

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

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

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

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

Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, December 8, 2023, and remained so posted at least 72 hours before said meeting was convened.

Michelle Lewis Sirianni, Town Secretary

Date Notice Removed

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

NOTICE

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

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

Call to Order/ Roll Call.

The meeting was called to order at 5:00 p.m.

Council Members Present:

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

Staff Members Present:

Mario Canizares, Town Manager
Michelle Lewis Sirianni, Town Secretary
Terry Welch, Town Attorney
Chuck Ewings, Assistant Town Manager
Robyn Battle, Executive Director
Hulon Webb, Director of Engineering Services
David Hoover, Development Services Director
Chris Landrum, Finance Director
Jessika Hotchkin, Help Desk Technician
Suzanne Porter, Planning Manager
Doug Kowalski, Police Chief
Stuart Blasingame, Fire Chief
Shaw Eft, Assistant Fire Chief

Items for Individual Consideration

1. Discuss Fire Department employees shift schedules. (SB)

Chief Blasingame presented an overview of a 48/96 shift schedule including advantages and disadvantages to switching, and how it affects recruitment, retention, and training. Staff is recommending, if the Town Council is in consensus, to start this shift schedule on a six-month trial basis. Staff would re-evaluate after six months and again in a year to ensure that staff is meeting all metrics accordingly.

The Town Council discussed how the change would affect scheduling, overtime hours, and communications within the department.

The Town Council supports a change to a 48/96 shift schedule with re-evaluations being conducted as noted.

2. Discussion regarding the Council’s Monthly Reports. (MC)

Mr. Canizares reviewed items currently in the monthly reports and it there is value in receiving the reports monthly versus quarterly.

The Town Council discussed the department reports and were in consensus to continue to receive monthly.

3. Discuss the Town’s employee holiday schedule. (JE)

Mr. Edwards stated the Human Resources Department has received feedback regarding the potential of adding an additional holiday to the Town’s policy. Staff reviewed the current holidays with our comparison cities. The Town currently has fewer holidays; therefore, based on the comparison, would recommend adding a day as a floating holiday to allow more flexibility.

The Town Council discussed the number of holidays versus vacation days, work at home policy, and the buyback policy for vacation and sick time.

Mayor Bristol requested staff to take to the Finance Subcommittee for their input and to bring back during the budget process for the Town Council to review.

Adjourn.

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

These minutes were approved on the 12th day of December 2023.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary



MINUTES
Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, November 28, 2023

Call to Order/ Roll Call.

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

Council Members Present:

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

Staff Members Present:

- Mario Canizares, Town Manager
- Michelle Lewis Sirianni, Town Secretary
- Terry Welch, Town Attorney
- Chuck Ewings, Assistant Town Manager
- Robyn Battle, Executive Director
- David Hoover, Development Services Director
- Hulon Webb, Director of Engineering
- Suzanne Porter, Planning Manager
- Chris Landrum, Finance Director
- Todd Rice, Communications Manager
- Jessika Hotckin, Help Desk Technician
- Doug Kowalski, Police Chief
- Scott Brewer, Assistant Police Chief
- Aiden Daily, Crime Analyst
- Stuart Blasingame, Fire Chief
- Shaw Eft, Assistant Fire Chief

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

Brad Wilkerson with Rock Creek Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

Announcements of recent and upcoming events.

Councilmember Kern made the following announcements:

Prosper residents and businesses are invited to dress up their locations for the annual Light the Night decorating contest sponsored by CoServ. Contest winners in several categories will receive a yard sign, gift card, and social media recognition. Those wishing to participate may sign up online through our Parks & Recreation Department. The deadline to enter is Sunday, December 10 with judging taking place on Wednesday, December 13. The winners will be announced on Friday, December 15.

The Prosper annual Christmas Festival will take place on Saturday, December 2 at Prosper Town Hall. Come experience the magic of Santa Claus in his Workshop, the Kids Christmas Shoppe, dazzling exhibits, community stage performances, horse-drawn wagon rides, and food truck

vendors. Also, don't miss out on the Prosper Rotary Club Christmas Parade at 2:30 p.m., and the Tree Lighting with Mayor Bristol at 7:00 p.m. followed by an exciting drone show. Visit the Town's website for more information.

The Prosper Ladies Association is sponsoring their annual Prosper Christmas Angel Program. A Christmas Angel Tree is located in the lobby of Town Hall. Residents may select a Wish Tag from the tree and scan the QR code to help a Prosper ISD child or a senior citizen have a Merry Christmas. Gift drop-off dates are December 4th through 6th.

Join Mayor Bristol and members of the Prosper Town Council and staff on Saturday, December 9 from 10:00 a.m. to 6:00 p.m. ringing the bell for the Salvation Army Red Kettle Challenge at the Kroger located at 1250 N. Preston Road. All money raised will support a range of services that combat poverty, addiction, and homelessness in Collin County.

Presentations.

1. Recognize Mike Howard with the prosper Police Department. (DK)

Chief Kowalski recognized Mr. Howard for his service to the country since 1951 highlighting his years in the Secret Service as a Special Agent working detail for President Kennedy. Mr. Howard continues to work as a Peace Officer for the Town.

2. Presentation to the Town of Prosper for the 2023 Award for Planning Excellence from the American Planning Association Texas Chapter. (DH)

Wendy Bonneau, FAICP, serving as Region 3 Director recognized and presented the Planning Department with the 2023 Award for Planning Excellence.

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 at the request of Council Members or staff.

3. Consider and act upon the minutes from the November 14, 2023, Town Council Work Session meeting. (MLS)

4. Consider and act upon the minutes from the November 14, 2023, Town Council Regular meeting. (MLS)

5. Consider acceptance of the October 2023 monthly financial report. (CL)

6. Consider and act upon Resolution 2023-78 suspending the September 1, 2023, effective date of a rate request from CoServ Gas Ltd, for the maximum period allowed by law. (TW)

7. Consider and act upon the approval of the purchase of a Forensics X7 Scanning System through the DIR-CPO-4504; and authorizing the Town Manager to execute documents for the same. (DK)

8. Consider and act upon authorizing the Town Manager to execute a Service Agreement between Flock Group Inc. and the Town of Prosper, Texas, related to the purchase of additional products and services. (DK)

9. Consider and act upon approval of the purchase of one Pegasus S5493 Mower with accessories and authorize the Town Manager to execute documents related to the purchase. (DB)

10. Consider and act upon authorizing the Town Manager to execute an Interlocal Agreement between the County of Collin, Texas, and the Town of Prosper, Texas, related to the Coit Road Intersection Improvements project. (HW)
11. Consider and act upon approving Change Order No. 02 for CSP No. 2022-50-B to McMahon Contracting, LP, related to construction services for the Fishtrap (Teel - Gee Road) & Gee Road (Fishtrap - Windsong Retail) project; and authorizing the Town Manager to execute Change Order No. 02 for same. (HW)
12. Consider and act upon Ordinance 2023-79 amending Section 12.08.022, "Definitions," and repealing Section 12.08.003, "Unlawful Act/Exemptions," with a new Section 12.08.003, "Approved and Prohibited Truck Routes; Exemptions,." of Article 12.08, "Truck Routes," of Chapter 12, "Traffic," of the Code of Ordinances. (HW)
13. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Blue Star Allen Land L.P., 701/709 Stadium Drive LLC, and the Town of Prosper, Texas, related to the construction of Safety Way. (HW)
14. Consider and act upon Ordinance 2023-80 to rezone for a Specific Use Permit (SUP) for a Drive-Thru Restaurant, on 1.5± acres, located south of West Frontier Parkway and east of North Dallas Parkway. (ZONE-23-0013) (DH)
15. Consider and act upon authorizing the Town Manager to execute a Development Agreement between DNT Frontier LP and the Town of Prosper relative to McDonald's. (DH)
16. Consider and act upon Ordinance 2023-81 to rezone 0.3± acres from Single Family-15 (SF-15) to Downtown Single Family (DTSF), for Hillside Addition, Block 2, Lot 4, located north of East Fifth Street and west of North Church Street. (ZONE-23-0018) (DH)
17. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Christopher & Jennifer Richter and the Town of Prosper relative to 209 East Fifth Street. (DH)
18. Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any Site Plans including Frontier South Retail 1, Gates of Prosper Park, St. Martin de Porres, and Lighthouse Church. (DH)

Mayor Pro-Tem Andres made a motion to approve items 3 through 18. Deputy Mayor Pro-Tem Ray seconded that motion. Motion carried unanimously.

CITIZEN COMMENTS

James Russell, 1091 Cassi, yielded his time to Ms. Rauba.

Ivanka Herrera, 1131 Belknap Way, yielded her time to Ms. Rauba.

Brandon Bogue, 951 Yellowcress Drive, expressed his continued concerns regarding the traffic, accidents occurring, and the need for a stop light at the intersection of Gee and Acacia.

Laura Rauba, 4890 Milby Drive, stated her appreciation for the work and time of staff regarding their concerns at the intersection of Gee and Acacia. Ms. Rauba noted based on crash data from TxDOT, that it warrants a traffic light at the mentioned intersection. She requested the Town Council to install a four-way traffic light at this intersection.

Mr. Canizares stated a warrant study would be conducted in mid to late January 2024. If the Town Council would agree, staff could have a discussion item on the December 12 Work Session regarding the criteria to warrant the installation of a traffic signal.

Items for Individual Consideration:

19. Discuss and consider Town Council Subcommittee reports. (DFB)

Deputy Mayor Pro-Tem Ray and Councilmember Kern provided a Downtown Advisory Committee report.

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

Councilmember Bartley requested staff to follow up on the donation boxes that are appearing around the Town.

EXECUTIVE SESSION:

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

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

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

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

Section 551.071 – To consult with the Town Attorney regarding In re Aqueous Film-Forming Foams Product Liability Litigation, a nationwide class action lawsuit involving 3M Company and DuPont Company, pending in the United States District Court for the District of South Carolina, Charleston Division.

The Town Council recessed into Executive Session at 6:57 p.m.

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

The Town Council reconvened into Regular Session at 8:45 p.m.

Mayor Pro-Tem Andres made a motion to authorize the Town Manager to execute on behalf of the Town Affidavits opting out of the PFAS class actions relative to 3M and DuPont, and to take all other actions incident and related thereto. Deputy Mayor Pro-Tem Ray seconded that motion. Motion carried unanimously.

Adjourn.

The meeting was adjourned at 8:46 p.m.

These minutes were approved on the 12th day of December 2023.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

DRAFT



HUMAN RESOURCES

To: Mayor and Town Council

From: James Edwards, Director of Human Resources

Through: Mario Canizares, Town Manager
Bob Scott, Deputy Town Manager

Re: Stop Loss Insurance

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon awarding RFP No. 2024-03-B for stop loss insurance for the Town's self-insurance fund, effective January 1, 2023, and authorizing the Town Manager to execute all documents for the same.

Description of Agenda Item:

The town's self-insurance fund has stop-loss insurance in place to safeguard against substantial claim losses. Annually, stop-loss insurance must be marketed for renewal. Holmes Murphy, Inc. has undertaken the marketing of this year's coverage on behalf of the town, setting a stop-loss level at \$100,000 and \$125,000.

The town received three responsive bids; however, all other bids necessitated additional claims data or were incomplete. Notably, HM Insurance Group's bid comes with a condition—it would not permit late 2023 claims, paid in 2024, to be eligible for stop-loss reimbursement.

Granular Insurance, with an AM Best Rating of A- and a limited book of business introduces uncertainty in their responsiveness as a stop-loss carrier.

The incumbent stop-loss insurance provider, QBE, proposed an 8.78% renewal increase at the \$100,000 level. Despite this increase, QBE boasts an A+ rating and a sizable client list. Importantly, this renewal increase is 6.22% lower than the budgeted 15% renewal increase. Bids at the \$125,000 level did not offer sufficient savings to justify the increase in liability for the self-insurance fund.

Budget Impact:

\$60,628.32 budgeted out of #730-5150-10-00.

Legal Obligations and Review:

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

Attached Documents:

1. Stop Loss Analysis
2. QBE Agreement

Town Staff Recommendation:

Town Staff recommends awarding RFP No. 2024-03-B for stop-loss insurance to QBE and authorizing the Town Manager to execute all documents for the same.

Proposed Motion:

I move to award RFP No. 2024-03-B for stop loss insurance to QBE and authorize the Town Manager to execute all documents for the same.



Self-Funded Proposal

prepared for

Town of Prosper

presented by

Avant HMA (Holmes Murphy) Dallas, TX



	IN FORCE POLICY	OPTION	OPTION	OPTION	OPTION	OPTION	OPTION	OPTION	OPTION
AM Best Rating		A	A-	A+	A+	A++	A		
Proposal Status		FIRM	FIRM	FIRM	ILLUSTRATIVE	ILLUSTRATIVE	ILLUSTRATIVE	ILLUSTRATIVE	ILLUSTRATIVE
Firm Through Date		11/16/23	11/16/23	11/16/23					
Incumbent				Incumbent					
Carrier\Underwriter	UMR	HM Insurance Group Dallas	Granular Insurance	QBE Insurance Corporation	Evolution Risk	Berkshire Hathaway	Crum & Forster	Optum - East	
Administrator	UMR	UMR	UMR	UMR	UMR	UMR	UMR	UMR	UMR
Network	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus	UHC Choice Plus
PBM	Sharx	Sharx	Sharx	Sharx	Sharx	Sharx	Sharx	Sharx	Sharx
Total Enrollment	284	284	284	284	284	284	284	284	284
Specific Terms									
Specific Contract Basis	Paid	24/12	24/12	Paid	24/12	24/12	24/12	24/12	24/12
Specific Deductible	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Aggregating Specific Deductible	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Benefits Covered Under Specific	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD
Lifetime Maximum		Unlimited	Unlimited	Unlimited	Unlimited	\$900,000	Unlimited	Unlimited	Unlimited
Rate Cap %	50.00%	50.00%	40.00%	50.00%	49.00%	50.00%	50.00%	50.00%	50.00%
No New Laser	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Laser Confirmation	Not Included	Not Included	Not Included	Not Included	Unconfirmed	Unconfirmed	Unconfirmed	Unconfirmed	Unconfirmed
Additional Laser Liability	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Specific Premium Rates									
Employee	\$0.00	\$0.00	\$212.20	\$213.64	\$0.00	\$200.60	\$0.00	\$123.43	
Family	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$312.77	
Composite	\$193.25	\$200.32	\$212.20	\$213.64	\$196.37	\$200.60	\$222.97	\$0.00	
Annual Specific Premium	\$658,596.00	\$682,690.56	\$723,177.60	\$728,085.12	\$669,228.96	\$683,644.80	\$759,881.76	\$779,638.08	
\$ Change		\$24,094.56	\$64,581.60	\$69,489.12	\$10,632.96	\$25,048.80	\$101,285.76	\$121,042.08	
% Change		3.66%	9.81%	10.55%	1.61%	3.80%	15.38%	18.38%	
Aggregate Terms									
Benefits Covered Under Aggregate	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD	MEDICAL, RX CARD
Aggregate Contract Basis	Paid	24/12	24/12	Paid	24/12	24/12	24/12	24/12	24/12
Aggregate Corridor	125%	125%	125%	125%	125%	125%	125%	125%	125%
Aggregate Run-In Limit						\$757,500.00			
Aggregate Maximum		\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Min Aggregate Deductible		\$4,188,398	\$3,680,579	\$4,164,678	\$4,172,040	\$4,208,232	\$4,316,573	\$4,111,236	
Aggregate Liability Factors									
Employee	\$0.00	\$0.00	\$1,199.98	\$1,222.03	\$0.00	\$1,234.81	\$0.00	\$0.00	\$0.00
Composite	\$1,230.97	\$1,228.99	\$0.00	\$0.00	\$1,224.19	\$0.00	\$1,266.60	\$1,206.35	
Annual Aggregate Liability	\$4,195,145.76	\$4,188,397.92	\$4,089,531.84	\$4,164,678.24	\$4,172,039.52	\$4,208,232.48	\$4,316,572.80	\$4,111,240.80	
Expected Claims	\$3,356,116.61	\$3,350,718.34	\$3,271,625.47	\$3,331,742.59	\$3,337,631.62	\$3,366,585.98	\$3,453,258.24	\$3,288,992.64	
\$ Change		(\$6,747.84)	(\$105,613.92)	(\$30,467.52)	(\$23,106.24)	\$13,086.72	\$121,427.04	(\$83,904.96)	
% Change		-0.16%	-2.52%	-0.73%	-0.55%	0.31%	2.89%	-2.00%	
Aggregate Premium Rates									
Composite Rate	\$9.35	\$9.67	\$7.00	\$6.75	\$2.96	\$6.63	\$10.50	\$5.79	
Annual Aggregate Premium	\$31,864.80	\$32,955.36	\$23,856.00	\$23,004.00	\$10,087.68	\$22,595.04	\$35,784.00	\$19,732.32	
\$ Change		\$1,090.56	(\$8,008.80)	(\$8,860.80)	(\$21,777.12)	(\$9,269.76)	\$3,919.20	(\$12,132.48)	
% Change		3.42%	-25.13%	-27.81%	-68.34%	-29.09%	12.30%	-38.07%	
Grand Totals									
Annual Specific Premium	\$658,596.00	\$682,690.56	\$723,177.60	\$728,085.12	\$669,228.96	\$683,644.80	\$759,881.76	\$779,638.08	
Annual Aggregate Premium	\$31,864.80	\$32,955.36	\$23,856.00	\$23,004.00	\$10,087.68	\$22,595.04	\$35,784.00	\$19,732.32	
Admin Fees	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Total Fixed Costs	\$690,460.80	\$715,645.92	\$747,033.60	\$751,089.12	\$679,316.64	\$706,239.84	\$795,665.76	\$799,370.40	
\$ Change		\$25,185.12	\$56,572.80	\$60,628.32	(\$11,144.16)	\$15,779.04	\$105,204.96	\$108,909.60	
% Change		3.65%	8.19%	8.78%	-1.61%	2.29%	15.24%	15.77%	
Additional Laser Liability	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Annual Aggregate Liability	\$4,195,145.76	\$4,188,397.92	\$4,089,531.84	\$4,164,678.24	\$4,172,039.52	\$4,208,232.48	\$4,316,572.80	\$4,111,240.80	
Total Fixed Costs	\$690,460.80	\$715,645.92	\$747,033.60	\$751,089.12	\$679,316.64	\$706,239.84	\$795,665.76	\$799,370.40	
Total Expected Cost	\$4,046,577.41	\$4,066,364.26	\$4,018,659.07	\$4,082,831.71	\$4,016,948.26	\$4,072,825.82	\$4,248,924.00	\$4,088,363.04	
Total Max Liability	\$4,885,606.56	\$4,904,043.84	\$4,836,565.44	\$4,915,767.36	\$4,851,356.16	\$4,914,472.32	\$5,112,238.56	\$4,910,611.20	
\$ Change		\$18,437.28	(\$49,041.12)	\$30,160.80	(\$34,250.40)	\$28,865.76	\$226,632.00	\$25,004.64	
% Change		0.38%	-1.00%	0.62%	-0.70%	0.59%	4.64%	0.51%	



Current Lasers

RFP ID	Underwriter		Individual Name/ID	Rel	Individual Spec Deductible	Contract Type	Max Reimb	Excluded Laser (Y/N)	Conditional Laser (Y/N)	Comments

Quoted Lasers

Quote ID	Underwriter	Option #	Individual Name/ID	Rel	Individual Spec Deductible	Contract Type	Max Reimb	Excluded Laser (Y/N)	Conditional Laser (Y/N)	Comments



Proposal For: Town of Prosper
Effective Date: 1/1/24

Item 4.

Quote ID	Underwriter	Qualifications & Contingencies



Underwriter	Proposal Due Date	Stage	First Response Date	Proposal Status	Reason (Lost/DTQ)	Additional Details
Berkley Accident & Health	10/31/2023	Submitted	10/30/2023			
Berkshire Hathaway	10/31/2023	Submitted	10/25/2023			
Crum & Forster	10/31/2023	Submitted	11/2/2023	Illustrativ		
Evolution Risk	10/31/2023	Submitted	10/31/2023	Illustrativ		
Granular	10/31/2023	Submitted	11/1/2023	Firm		
HM Insurance Group - Dallas	10/31/2023	Submitted	10/26/2023	Firm		
Optum - East	10/31/2023	Submitted	10/31/2023	Illustrativ		
QBE Insurance Corporation	10/31/2023	Submitted	11/2/2023			
SL Management Partners, LLC	10/31/2023	Submitted	11/1/2023			
Symetra	10/31/2023	Submitted	10/25/2023			
Tokio Marine HCC - Southwest	10/31/2023	Submitted	10/30/2023			
Swiss Re	10/31/2023	Underwriting				
BCS Insurance Co - Designated	10/31/2023	New				
Sun Life - Central Region	10/31/2023	New				
UNUM Life Insurance Company of America	10/31/2023	Declined			Pricing not competitive	
Voya	10/31/2023	Declined			Pricing not competitive	
Wellpoint Stop Loss	10/31/2023	Declined			Unsatisfied carrier requirements	UMR's decision not allowing competing carriers, with affiliated networks, to provide Stop Loss protection over an of their ASO or TPA (i.e UMR)

QBE A&H
123 Pleasant Street, 3rd Floor
Marblehead, MA 01945
Toll Free: 800.742.9279
qbeah.com



November 30, 2023

Cameron Dillion
Avant Specialty Benefits
12712 Park Central Drive Suite 100
Dallas, TX 75251

Dear Cameron,

Re:	Policy Issuance
Policyholder:	Town of Prosper, January 01, 2024
Policy Number:	LGS02268-24

Thank you for renewing coverage with QBE Insurance Corporation. We are pleased to have the opportunity to continue to service your client during the upcoming plan year.

Enclosed please find the appropriate renewal documents for completion. In order to bind coverage, the following requirements are needed.

- Signed and completed Application for Excess Loss Policy
- First month's renewal premium: (Specific)\$ 60,673.76 + (Aggregate)\$1,917.00 = \$62,590.76 is due within 30 days of effective date.
- ACH Claims Reimbursement Authorization form for completion; Provides faster claim reimbursement payment processing time, convenience, and security (if interested, please have this form completed and return).
- State Required Licensing: The signing agent must be licensed in the state where the prospective client is located, in the producer's resident state, and will need to be appointed with QBE where required.
- Signed Master Plan Document: If a new Plan Document is being drafted ensure it states all the provisions of the plan and delineates the various responsibilities for financing the plan, the eligibility, and all the other aspects of the plan (summary descriptions and certificates alone are not acceptable). If there have been no changes to the document on file with QBE, please provide written confirmation and ensure we have any Amendments not previously sent submitted.

The following Endorsement(s) modify the Excess Loss Policy and will be provided upon Policy Issuance.

- Advance Reimbursement Endorsement
- Amendatory Endorsement
- Plan Mirror Endorsement
- Rate Stabilization Endorsement (**50%**)
- Texas Endorsement

Please review the application and advise your underwriter of any requested changes prior to the client's signature. We will promptly re-issue the paperwork with any necessary changes.

Also enclosed is the Premium & Enrollment statement. Premium is due on the first of every month. Please note that premium must be remitted directly to the PO BOX address listed on the Premium & Enrollment statement. A completed copy of this statement should be remitted with each payment.

Item 4.

We appreciate your business partnership and the opportunity to service the needs of our mutual client. Please do not hesitate in contacting us with any questions or concerns.

Regards,



Account Manager
QBE A&H

Cc: Jared Allard



QBE INSURANCE CORPORATION
STATE OF DOMICILE: PENNSYLVANIA

APPLICATION FOR EXCESS LOSS INSURANCE POLICY (TEXAS)

Policy Number: **LGS02268-24**

1. Full legal name of Policyholder: **Town of Prosper** Tax ID Number: **75-6000642**
(as it will appear in the Policy)

2. Principal Office Address: **200 S. Main Street Prosper, TX 75078**
(street) (city) (state) (zip)

3. Contact Person: **James Edwards** Email: **jedwards@prospertx.gov**

4. Nature of Business: **9111-Executive Offices**

5. If Employee Benefit Plans of subsidiary or affiliated companies (companies under common control through stock ownership, contract, or otherwise) are to be included, list legal names and addresses of such companies and the nature of their business:

6. Full name of Your Employee Benefit Plan:

A copy of Your Employee Benefit Plan Document, and those of any subsidiary or affiliated companies that are to be included, must be attached to, and shall form a part of, this Application.

7. Effective Date: **January 01, 2024**

8. Endorsements:

Advance Reimbursement Endorsement	AH-MSL-5013
Amendatory Endorsement	AH-MSL-5002
Plan Mirroring Endorsement	AH-MSL-5003
Rate Stabilization Endorsement	AH-MSL-5005
Texas Endorsement	AH-MSL-5010-TX

9. N/A

10. Your Designated Third Party Administrator (for purpose of claims administration under Your Employee Benefit Plan):

Name: **UMR**
Address: **115 W. Wausau Avenue**
City, State, Zip: **Wausau, WI 54401**
Telephone: **(800) 992-8354**

11. Your broker/agent of record:

Name: **Avant Specialty Benefits**
Address: **12712 Park Central Drive Suite 100**
City, State, Zip: **Dallas, TX 75251**

- 4) Minimum Annual Aggregate Attachment Point Percentage: **100%**
- 5) Estimated Minimum Annual Aggregate Attachment Point: **\$4,164,678.24 (Estimated)**
- 6) Individual Claim Limit **\$100,000.00**
Per Covered Person.
- 7) Aggregate Policy Period Maximum Reimbursement (per Policy Period): **\$1,000,000.00**
- 8) Basis of Aggregate Excess Loss coverage benefit payment (Benefit Period):
Plan Benefits Incurred from **January 01, 2019** through **December 31, 2024**
and paid from **January 01, 2024** through **December 31, 2024**.
- Run-Out Period: 0 days
- Plan Benefits Incurred prior to the Effective Date (Run-In-Period) will be limited to:
N/A per Covered Person
N/A for all Covered Persons combined
- 9) Premium Rates (per month):
- | Covered Unit Description | Amount |
|-----------------------------------|----------------------|
| <u>Aggregate Composite</u> | <u>\$6.75</u> |
- 10) Estimated Annual Aggregate Premium: **\$23,004.00**.

18. Special Limitations and Additional Information: **N/A**

You have read the foregoing and understand and agree with the terms and conditions of the coverage as set forth by Us and as reflected in the Application. You represent that You have formed Your Employee Benefit Plan in compliance with all applicable state and federal laws. It is agreed that the statements in the Application or in any materials submitted with this Application or attached to it, including all disclosure information, are Your representations and shall be deemed material to acceptance of the risk by Us and that the Policy is issued by Us in reliance on the truth and accuracy of such representations. Should subsequent information become known which, if known prior to issuance of the Policy, would affect the premium rates, factors, terms or conditions for coverage thereunder, We will have the right to revise the premium rates, factors, terms or conditions as of the Effective Date, by providing written notice to You. Any fraudulent statement will render the Policy null and void and claims, if any, will be forfeited.

THIS APPLICATION DOES NOT BIND COVERAGE. Upon approval of the Application, the Policy evidencing that the coverage is in force will be issued by Us. Coverage will commence on the Effective Date set forth in the Policy. This Application will attach to and form part of the Policy.

FRAUD WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, submits an application for insurance or makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information may be guilty of insurance fraud. (Policyholders located in AL, AR, CA, CO, DC, FL, KS, KY, LA, ME, MD, NJ, NM, NY, OH, OK, PA, RI, TN, VA, WA and WV must read the Fraud Warning applicable to their state.)

ACCEPTED BY THE POLICYHOLDER:

Signed at _____

Policyholder (correct legal name)

Date _____

By (Officer's signature and title)

(Print Name)

Signature Broker/Agent of Record

(Print Name)

ACCEPTED BY THE COMPANY:

Signed at Marblehead, Massachusetts

On behalf of the Company

Date _____

Tara Krauss, Head of A&H
By (Officer's name and title)

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

NOTICE TO ARKANSAS APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit, or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO CALIFORNIA APPLICANTS: The falsity of any statement in the application for any policy shall not bar the right to recovery under the policy unless such false statement was made with actual intent to deceive or unless it materially affects either the acceptance of the risk or the hazard assumed by the insurer.

NOTICE TO COLORADO APPLICANTS: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

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

NOTICE TO FLORIDA APPLICANTS: Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete or misleading information is guilty of a felony in the third degree.

NOTICE TO KANSAS APPLICANTS: Any person who commits a fraudulent insurance act is guilty of a crime and may be subject to restitution, fines and confinement in prison. A fraudulent insurance act means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer or insurance agent or broker, any written, electronic, electronic impulse, facsimile, magnetic, oral or telephonic communication or statement as part of, or in support of, an application for insurance, or the rating of an insurance policy, or a claim for payment or other benefit under an insurance policy, which such person knows to contain materially false information concerning any material fact thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

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

NOTICE TO LOUISIANA & WEST VIRGINIA APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

NOTICE TO MAINE, TENNESSEE, VIRGINIA & WASHINGTON APPLICANTS: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

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

NOTICE TO NEW JERSEY APPLICANTS: Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

NOTICE TO NEW MEXICO APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

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

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

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

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

NOTICE TO RHODE ISLAND APPLICANTS: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.



PUBLIC WORKS

To: Mayor and Town Council

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

Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager

Re: Wastewater Inspection Software

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving the purchase of a wastewater inspection software from ITpipes Opco, LLC, a sole source provider; and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

The purpose of this request is to purchase a computer-based system that integrates with our current Asset Management System (AMS), Cityworks, to help manage our wastewater collection system. This integration not only covers unplanned/emergency inspections, but live field scheduling from a map, rescheduling of inspections, inspection completion, upload and closing, and inspection sharing. The video inspection footage will now be attached to the asset in GIS. We will be able to compare videos taken in the past to a current inspection. Once the work order is created in the new system, a work order will be generated in Cityworks as well, cutting the data entry in half. This vendor is the only provider that can operate in the Town's hosted environment and integrate with existing software.

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

Budget Impact:

This is an approved budget item for FY23-24. The total for this item is \$49,500 this year and \$20,000 for subsequent years and will be paid from IT Licenses account number 200-5419-50-03.

Legal Obligations and Review:

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

Attached Documents:

1. Quote
2. Sole Source Letter

Town Staff Recommendation:

Town staff recommends approving the purchase of a wastewater inspection software from ITpipes Opco, LLC, a sole source provider; and authorizing the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve the purchase of a wastewater inspection software from ITpipes Opco, LLC, a sole source provider; and authorize the Town Manager to execute documents for the same



ITpipes Opco, LLC.
 Ph: +1.505.341.0109
 Email: bookkeeping@itpipes.com

Quote #: 223708

Bill To:
 Town of Prosper, TX
 Tristan Cisco

Ship To:
 Town of Prosper, TX
 Tristan Cisco

Date: Feb 27, 2023
Valid Till: Jan 31, 2024
Preparer: Ross Brown
Terms: Due upon license activation.

Quote Notes: Annual Subscription \$20,000 Starting Year 2

- To continue using ITpipes software, an annual software subscription is required at the renewal cost displayed below.
- ITpipes on-demand software subscriptions may incur annual price updates. Set pricing and better conditions are available in 3-year agreements, for further information, please let your sales rep know.
- Payment for implementation costs is due 30 days after order is placed. Payment for all software licensing costs is due upon receipt of license activation key(s) or 90 days after the start of the implementation (whichever comes first) and may be made via credit card, wire transfer, or check deposit (with special arrangements).

PRODUCT DETAILS	QTY
ITpipes Web initial setup. This includes general setup for a new asset. This does require an ongoing annual subscription. #: <i>websetup-i</i>	1
ITpipes Mobile Initial Setup with mapping. Field inspection application for data collection to include one asset and inspection type with sync setup if applicable. This does require an ongoing annual subscription. #: <i>mobilesetup-m</i>	2
ITpipes Mobile H.264 Recording Module #: <i>mobileh264</i>	2
ITpipes integration to Cityworks initial setup. This includes configuration of ITpipes software integration-not Cityworks. This does require an ongoing annual subscription. This line item is for integration of a single asset or inspection type. #: <i>ams-cityworkssetup</i>	1
Convert media referenced in an ITpipes database into a streaming video format. This requires the data and media to be uploaded by the Client to AWS directly. If hard drives are required there is an upcharge and an additional quote can be provided upon request. This only includes converting non-proprietary video files. #: <i>consultconvmedia</i>	1
Consultation online for setup and testing. #: <i>consultsetup</i>	1
ITpipes Web Subscription-per user. #: <i>webusersub</i>	2
ITpipes Web Asset Add-on Subscription. - Manhole and Lateral #: <i>webassetsub</i>	2
ITpipes Web View Inspection Subscription- unlimited users. #: <i>webviewsub</i>	1
ITpipes Mobile Subscription. This subscription covers one asset type. #: <i>mobilesub</i>	2

Terms & Conditions: Shipping costs may be invoiced separately. Orders ship 10-14 days after payment is received. We are not liable for backorders, but will notify customers as we are informed. A 10-day warranty applies for parts/labor on depot basis. We disclaim any warranties, express or implied, and a restocking fee applies for returns. Prices are subject to change. Sales are direct to end-users or authorized resellers. Invoices not paid on time accrue interest at 1.25% per month, and unpaid checks result in a \$50 charge. Licenses are non-transferable. Legal action to collect unpaid amounts entitles ITpipes to attorney's fees, damages and penalties as per NM law.

PRODUCT DETAILS		Item 5.
ITpipes Mobile Asset Add-on Subscription for one CCTV system - Manhole and Lateral #: mobileassetsub		2
ITpipes integration to Cityworks annual subscription for a single specified asset or inspection type. - Mainline ONLY #: ams-cityworkssub		1

Signature:

Grand Total

\$ 49,500.00

Name: Date:.....

Terms & Conditions: Shipping costs may be invoiced separately. Orders ship 10-14 days after payment is received. We are not liable for backorders, but will notify customers as we are informed. A 10-day warranty applies for parts/labor on depot basis. We disclaim any warranties, express or implied, and a restocking fee applies for returns. Prices are subject to change. Sales are direct to end-users or authorized resellers. Invoices not paid on time accrue interest at 1.25% per month, and unpaid checks result in a \$50 charge. Licenses are non-transferable. Legal action to collect unpaid amounts entitles ITpipes to attorney's fees, damages and penalties as per NM law.

November 28, 2023

Tristan Cisco
Town of Prosper
250 W. First Street
Prosper, TX 75078

Dear Tristan:

This letter is being provided to document proof of sole source for ITpipes software and related services.

ITpipes Opco, LLC is the sole provider of ITpipes software, systems, programs and services related to the software. ITpipes software is unique in the way it captures, analyzes, and collaborates inspection data and merges this into the existing City software system. From a services standpoint, tasks such as training related to ITpipes, setting up an inspection deliverable portal, reviewing data integrity and quality, are all specific and unique to only the ITpipes software.

If we can provide any additional details, please do call or email at your convenience.

Regards,

A handwritten signature in black ink that reads "Lucas Domingues Lima".

Lucas Domingues Lima, Chief Operating Officer



PUBLIC WORKS

To: Mayor and Town Council

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

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Meter Purchases

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving the purchase of water meters from Core & Main, a sole source provider; and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

In November 2006, Town Council approved the installation of an automated meter reading system. Staff continues to exclusively maintain Neptune water meters to ensure the pairing and interaction of the MTU to the meter. The MTU transmits the reading from the meter to the Utility Billing system.

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

Budget Impact:

The annual purchase of water meters is \$552,000.00. Will be funded from 200-5545-50-02, Meter Purchases, from budgeted and currently available funds.

Attached Documents:

1. Sole Source Letter
2. Price List

Town Staff Recommendation:

Town staff recommends approving the purchase of water meters from Core & Main, a sole source provider; and authorizing the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve the purchase of water meters from Core & Main, a sole source provider; and authorize the Town Manager to execute documents for the same.



November 28, 2023

To Whom it may concern:

I am writing this letter to confirm that Core and Main is the sole authorized distributor for Neptune Technology Group in the State of Texas.

Core and Main handles our full line of Neptune Meters, Radio Frequency Meter Reading Systems, and parts. Their local salesperson for the Dallas and North Dallas Metro area is John Thompson and he can be reached at (940) 391-3900.

If you have any question or need anything else, please give me a call at (281) 794-3133. We appreciate your business.

Sincerely,

A handwritten signature in black ink that reads "Charlie Trimble". The signature is fluid and cursive.

Charlie Trimble
Senior Territory Manager



Bid Proposal for PROSPER-METERS 8/23/23

CUSTOMER	<p>TOWN OF PROSPER 601 W FIFTH ST PROSPER, TX 75078 Contact: James Rodriguez (T) 972-347-9969 jrodriguez@prospertx.gov</p>	<p>Job PROSPER-METERS 8/23/23 P, TX Bid Date: 08/23/2023 01:00 pm Bid #: 3087808</p>
	<p>Sales Representative John Thompson (M) 940-391-3900 (T) 940-391-3900 John.Thompson@coreandmain.com</p>	<p>Core & Main 4650 Hwy 377 Krugerville, TX 76227 (T) 940-365-9117</p>
CONTACT		
NOTES		



Bid Proposal for PROSPER-METERS 8/23/23

TOWN OF PROSPER

Job Location: P, TX

Bid Date: 08/23/2023 01:00 pm

Core & Main 3087808

Core & Main

4650 Hwy 377

Krugerville, TX 76227

Phone: 940-365-9117

Fax: 940-365-9240

Seq#	Qty	Description	Units	Price	Ext Price
10	1	T10 5/8X3/4 PROCODER METER PIT USG CI 302 W/ECLAIR PROGRAM ED2B31RPHG21SA50	EA	174.00	174.00
20	1	ED2F21RPHG21SA50 1" T10	EA	368.00	368.00
30	1	T10 1-1/2 PROCODER METER PIT USG CI 302 W/ECLAIR PROGRAM ED2H11RPHG21SA50	EA	688.00	688.00
40	1	T10 2 PROCODER METER PIT USG CI 302 W/ECLAIR PROGRAM ED2J11RPHG21SA50	EA	878.00	878.00
50	1	ET4HRPHG21SA50 1-1/2" HPT	EA	928.00	928.00
60	1	ET4ARPHG21SA50 2" HPT	EA	928.00	928.00
70	1	EC3BRPHG21SA50 3 TRU/FLO	EA	2,975.00	2,975.00
				Sub Total	6,939.00
				Tax	0.00
				Total	6,939.00

Branch Terms:
NET30

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: <https://coreandmain.com/TandC/>



FINANCE

To: Mayor and Town Council

From: Chris Landrum, Finance Director

**Through: Mario Canizares, Town Manager
Bob Scott, Deputy Town Manager**

Re: Interlocal Agreement with the Sheriffs' Association of Texas

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving a Master Cooperative Purchasing Agreement between the Town of Prosper and the Sheriffs' Association of Texas for the procurement of vehicles and authorize the Town Manager to execute documents for same.

Description of Agenda Item:

The Sheriffs' Association of Texas has current contracts in place for the purchase of vehicles. The interlocal agreement provides the Town with additional resources to source vehicles for purchase in the current and subsequent fiscal years.

Section 271.102 of the Texas Local Government Code authorizes a local government to participate in a cooperative purchasing program with another local government or a local cooperative organization. This agreement is in compliance with the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

Budget Impact:

Purchases will be made with approved funds available in the current and subsequent fiscal year operating budgets.

Legal Obligations and Review:

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

Attached Documents:

1. Purchasing Agreement

Town Staff Recommendation:

Town Staff recommends approving a Master Cooperative Purchasing Agreement between the Town of Prosper and the Sheriffs' Association of Texas for the procurement of vehicles and authorize the Town Manager to execute documents for same

Proposed Motion:

I move to approve a Master Cooperative Purchasing Agreement between the Town of Prosper and the Sheriffs' Association of Texas for the procurement of vehicles and authorize the Town Manager to execute documents for same.

MASTER COOPERATIVE PURCHASING AGREEMENT

This Master Cooperative Purchasing Agreement (“Agreement”), effective December 12, 2023 is made by and between the Sheriffs’ Association of Texas, Inc. (“SAT”), a Texas non-profit corporation, and the Town of Prosper, Texas (“End User”), a local government created under the laws of the State of Texas.

WITNESSETH

WHEREAS, SAT’s Vehicle Procurement Program (“VPP”) is a cooperative bid program where SAT solicits bids for vehicles to be purchased directly from vehicle vendors by units of local government or political subdivisions, including, but not limited to, municipalities and counties, local county boards of public instruction, and local public safety agencies or authorities; and

WHEREAS, the purpose of the VPP is to provide public procurement of quality goods to support effective and efficient government, ensuring the prudent use of public funds. This includes providing efficient delivery of products and services; obtaining best value through competition; offering fair and equitable competitive contracting opportunities for suppliers; and maintaining public confidence through ethical and transparent procurement practices; and

WHEREAS, SAT will serve as the “Contract Administrator” in the solicitation of bids process. The purpose of the solicitation for bids is to identify the most suitable manufacturer’s authorized dealer for the purchase of vehicles on a “no trade-in basis;” and

WHEREAS, the SAT Contract Administrator will award the bid to the lowest and best responsive bidder by specification and by manufacturer. The award will be determined by the price of the bid, qualifications based on a dealer’s facilities and financial resources, and demonstrated ability to perform the work in a satisfactory manner;

NOW, THEREFORE, SAT and the End User agree as follows:

1.0 **Responsibilities of the parties.**

- 1.1 The SAT will identify, solicit, and invite interested vehicle vendors, including but not limited to vehicle manufacturers, dealers and certified representatives, to submit bids for vehicles.
- 1.2 The SAT will develop and provide all necessary solicitation, bid, and contract award documents which will enable End User to purchase vehicles directly from vendors at a competitive price.
- 1.3 The SAT will consult with the End User as needed to facilitate End User’s purchase of vehicle through the VPP.

- 1.4 The SAT will prepare "solicitation for bid" documents in order to obtain price commitments from manufacturers and dealers for the sale of vehicles to End User.
- 1.5 The End User agrees to be bound by the SAT Vehicle Procurement Program Solicitation for Bids and Contract Terms and Conditions, which is attached hereto and incorporated by reference as if fully set forth herein.
- 1.6 The End User agrees to provide to the SAT all information and assistance requested by the SAT that is reasonably necessary to remain in compliance with the Vehicle Procurement Program Solicitation for Bids and Contract Terms and Conditions.

2.0 **Compliance with Laws.** SAT and End User each represent and warrant to the other party that each has obtained all regulatory approvals and licenses necessary to enter into and perform under the terms and conditions of this Agreement. Further, the SAT and the End User represent and warrant to the other party that each is in compliance with all applicable laws and regulations and each party covenants to remain in compliance with such laws and regulations during the term of this Agreement.

3.0 **Term.** The term of this Agreement shall commence on the date set out above and shall continue in effect for one (1) year. Thereafter, this Agreement shall renew automatically for successive one (1) year terms ending on the initial anniversary date each year.

4.0 **Termination.** This Agreement may be terminated by either party at any time without cause by written notice to the other party given at least ninety (90) days in advance of the effective date of termination.

5.0 **Trademarks and Copyrights.** The parties reserve the right to the control and use of their names and all seals, symbols, trademarks, or service marks presently existing or later established. Neither party shall use the other party's name, seals, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the prior written consent of such other party unless agreed to in this document. Any use by a party, without the approval of the other party, of the name, symbols, trademarks or service marks of such other party shall cease immediately upon the earlier of written notice of such other party or termination of this Agreement. Each party hereby grants the other party the right to use its name, address, and telephone number in connection with the other party's obligations hereunder.

6.0 **Notices.** Any notice required to be given pursuant to the terms of this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid to the recipient at its respective address designated on the signature page of this Agreement.

7.0 **Independent Contractors.** The SAT and the End User are each acting as independent contractors under this Agreement and not as a partner, joint venture or employee of any other party to this Agreement. Each party shall be responsible for all taxes or similar charges payable with respect to any amounts received by such party under this Agreement. End User shall have no authority to bind SAT to any agreement or obligation. SAT shall have no authority to bind End User to any agreement or obligation. No party shall make any representations to the contrary.

The responsibilities of the SAT in administering the VPP are limited to those specified in the SAT Vehicle Procurement Program Solicitation for Bids and Contract Terms and Conditions, attached hereto and incorporated by reference as if fully set forth herein. This Agreement shall not create additional legal obligations for SAT beyond those specified in the attached Terms and Conditions.

8.0 **Amendments.** The parties reserve the right to amend or terminate this Agreement, as provided herein or as specified by amendment. All amendments or modifications to this Agreement must be mutually agreed to in writing by the End User and the SAT.

9.0 **Severability.** If any portion of this Agreement shall, for any reason, be invalid or unenforceable, such portion shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portion or portions shall nevertheless be valid, enforceable, and of full force and effect.

10.0 **Waiver.** The waiver by either party of any breach of, or failure to insist upon strict compliance with, any provision of this Agreement or warranty or representation set forth herein, shall not be construed as a waiver of any prior or subsequent breach of or failure of strict compliance with the same or any other provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided for herein are cumulative.

11.0 **Entire Agreement.** This Agreement, including any exhibits or attachments hereto, contains all of the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement and supersedes any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement.

12.0 **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single instrument.

13.0 **Assignment.** Neither party shall in any manner assign, subcontract, or otherwise delegate its rights, duties or obligations under this Agreement unless the other party approves of such assignment, subcontract, or delegation by prior written consent thereto.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14.0 **Force Majeure.** The obligations of the SAT and the End User hereunder shall be excused during any period of delay or inability to perform caused by matters such as strikes, acts of God, shortages of raw materials or power, an inability to obtain products or services after the parties use their best efforts to provide such products or services, governmental action or compliance with governmental requirements, whether voluntary or pursuant to order, or any other matter which is beyond the reasonable efforts of the parties to control.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement to be effective as of the day and year shown on the first page.

Sheriffs' Association of Texas, Inc.
1601 S. Interstate 35
Austin, Texas 78741-2503

Town of Prosper
250 West First Street
Prosper, Texas 75078



SAT Authorized Signature

X



Finance

To: Mayor and Town Council

From: Chris Landrum, Finance Director

**Through: Mario Canizares, Town Manager
Bob Scott, Deputy Town Manager**

Re: Annual Spend for Vehicle and Equipment Purchases

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon the approval of purchases of new and replacement vehicles, upfitting and equipment for FY24 utilizing cooperative purchasing agreements and approved purchasing methods and authorize the Town Manager or his/her designee to execute documents related to said purchases. (CL)

Description of Agenda Item:

In previous years, the Town acquired its vehicles through Enterprise Leasing. As discussed with the Finance Sub-Committee, staff determined it is in the financial best interest of the Town to purchase vehicles directly, necessitating this agenda item. Vehicles acquired through Enterprise will continue to be utilized until the lease term ends. To conform with State purchasing law and best practices we are requesting approval to place purchase orders for the town for new and VERF replacement vehicles, upfitting and equipment.

Section 271.102 of the Texas Local Government Code authorizes a local government to participate in a cooperative purchasing program with another local government or a local cooperative organization. Requested agreements are in compliance with the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and town purchasing policies.

Each purchase will meet all aspects of state purchasing laws as well as town purchasing policies. At this time approval for purchasing from the following cooperatives and vendors in the amounts listed and approved in the FY24 budget for new and VERF replacement vehicles, upfitting and equipment is requested.

Cooperative Purchasing Contracts: Buyboard, Tarrant County, Sheriffs' Association of Texas, TIPS 210907, Omnia Partners.

Vendors: Silsbee Fleet (Silsbee Ford, Silsbee Toyota, Lake Country Chevrolet, Donalson CDJR, LLC), Rush Truck Centers of Texas, Sam Pack Five Star Ford, Sam Pack's Five Star Chevrolet, Caldwell Country Chevrolet, Defender Supply, Prosper Ford, Reliable Chevrolet, Doering Fleet Management.

Budget Impact:

Purchases will be made with approved funds budgeted in FY24.

FY24 New Fleet Additions Approved in Budget

Police	Police Officers-Patrol - Pursuit Vehicles	\$653,595
Development Services	Code Compliance Officer - Sedan	\$27,000
Public Works	Ice Pre-Treatment - Heavy Duty Truck	\$80,010
Public Works	Facilities/Advanced Facilities Tech - Medium Duty Truck	\$68,500
Parks Ops	Heavy Equip Operator - Light Duty Truck	\$41,350
Parks Ops	Chemical Technician - Light Duty Truck	\$41,350
Parks Ops	Crew Leader- Medium Duty Truck	\$63,760
Public Works	Systems Technician- Light Duty Truck	\$41,740
Public Works	Backflow Inspector -Light Duty Truck	\$41,740
Engineering	Stormwater Inspector -Light Duty Truck	\$38,240

FY24 VERF Vehicle Replacements Approved in Budget

Police	Unit 2139 Pursuit Vehicle	\$90,000.00
Police	Unit 2144 Pursuit Vehicle	\$90,000.00
Police	Unit 2145 Pursuit Vehicle	\$90,000.00
Police	Unit 2147 Pursuit Vehicle	\$90,000.00
Streets	Unit 5106 Medium Duty Truck	\$70,000.00
Park Operations	Unit 6214 Medium Duty Truck	\$55,000.00
Public Works Water	Unit 5210 Light Duty Truck	\$46,000.00
Public Works Water	Unit 5212 SUV	\$67,500.00
Public Works Water	Unit 5215 Light Duty Truck	\$42,000.00
Building Inspections	Unit 4102 Light Duty Truck	\$42,000.00

Legal Obligations and Review:

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

Attached Documents:

- 1.Cooperative Purchasing Contract Summaries

Town Staff Recommendation:

Town Staff recommends the approval of the purchase of new and replacement vehicles, upfitting and equipment for FY24 utilizing cooperative purchasing agreements and approved purchasing methods and authorize the Town Manager or his/her designee to execute documents related to said purchases. (CL)

Proposed Motion:

I move to approve the purchase of new and replacement vehicles, upfitting and equipment for FY24 utilizing cooperative purchasing agreements and approved purchasing methods and authorize the Town Manager or his/her designee to execute documents related to said purchases.

Awarded Vendors for Contract 210907 (Automobiles)

- BOSWELL ELLIFF FORD LT BOSWELL LLC
- E and J Auto Sales Inc
- Silsbee Fleet (4 locations) 1.Silsbee Ford 2.Silsbee Toyota 3.Lake Country Chevrolet 4.Donalson CDJR, LLC



EMAIL PO & VENDOR QUOTE TO: TIPSP0@TIPS-USA.COM
PO MUST REFERENCE VENDOR TIPS CONTRACT NUMBER
ATTACH PO AS A PDF - ONLY ONE PO (WITH QUOTE) PER ATTACHMENT.

Notice:

Many Vendors utilize specific warranties, subscription agreements, license agreements, EULA's, etc. ("Supplemental Agreements") when you purchase specific goods or services from that Vendor. Since the Supplemental Agreements do not necessarily apply to every Member, every jurisdiction, or every purchase, TIPS does NOT now negotiate the terms of those agreements on Members' behalf. If you are required to sign such a supplementary agreement by the TIPS Vendor, TIPS strongly encourages Members not to proceed with a purchase until they have carefully reviewed and negotiated all applicable Supplemental Agreements. TIPS recommends you work with your entity's legal counsel to ensure compliance with the legal requirements of your entity and your jurisdiction.

[TIPS Purchase Order Procedure here](#)

OVERVIEW

DUE DILIGENCE

CONTACTS

PRINT PROFILE



VENDOR **Silsbee Fleet (4 locations) 1.Silsbee Ford 2.Silsbee Toyota 3.Lake Country Chevrolet 4.Donalson CDJR, LLC**

1211 US HIGHWAY 96 N. SILSBEE TEXAS,77656

WEBSITE silsbeefleet.com

SERVICE/PRODUCTS DESCRIPTION SILSBEE FLEET (SILSBEE TOYOTA)

CONTRACT: **210907** Automobiles

End Date: Nov-30-2024 EDGAR COMPLIANCE: [View Doc.](#)





Vendor Contract Information Summary

Vendor Rush Truck Centers of Texas, L.P.
 Contact Colton Kruse
 Phone (830) 302-5219
 Phone Extension 5219
 Email krusec@rushenterprises.com
 Vendor Website www.rushtruckcenters.com
 TIN 74-2786264
 Address Line 1 555 IH 35 South, Suite 500
 Vendor City New Braunfels
 Vendor Zip 78130
 Vendor State TX
 Vendor Country USA
 Delivery Days 10
 Freight Terms FOB Destination
 Payment Terms NET30 see Exhibit A: Paym
 Shipping Terms Freight prepaid by vendor and added to invoice
 Ship Via Common Carrier
 Designated Dealer No
 EDGAR Received Yes
 Service-disabled Veteran Owned No
 Minority Owned No
 Women Owned No
 National No
 No Foreign Terrorist Orgs Yes
 No Israel Boycott Yes
 MWBE No
 ESCs All Texas Regions
 States All States
 Contract Name Medium and Heavy-Duty Trucks, Parts, and Maintenance
 Repair Services
 Contract No. 723-23
 Effective 12/01/2023
 Expiration 11/30/2026
 Accepts RFQs Yes
 Service Fee Note Vehicle purchase orders are subject to a \$400 service fee

12/5/2023 1:25 PM



Vendor Contract Information Summary

Vendor Rush Truck Centers of Texas, L.P.
 Contact Colton Kruse
 Phone (830) 302-5219
 Phone Extension 5219
 Email krusec@rushenterprises.com
 Vendor Website www.rushtruckcenters.com
 TIN 74-2786264
 Address Line 1 555 IH 35 South, Suite 500
 Vendor City New Braunfels
 Vendor Zip 78130
 Vendor State TX
 Vendor Country USA
 Delivery Days 10
 Freight Terms FOB Destination
 Payment Terms Please see Exhibit A: Pay
 Shipping Terms Freight prepaid by vendor and added to invoice
 Ship Via Common Carrier
 Designated Dealer No
 EDGAR Received Yes
 Service-disabled Veteran Owned No
 Minority Owned No
 Women Owned No
 National No
 No Foreign Terrorist Orgs Yes
 No Israel Boycott Yes
 MWBE No
 ESCs All Texas Regions
 States All States
 Contract Name Vehicles, Police Motorcycles, Parts, and Maintenance Repair Services
 Contract No. 724-23
 Effective 12/01/2023
 Expiration 11/30/2026
 Accepts RFQs Yes
 Service Fee Note Vehicle purchase orders are subject to a \$400 service fee

12/5/2023 1:26 PM



Vendor Contract Information Summary

Vendor Sam Packs Five Star Ford
 Contact Alan Rosner
 Phone 888-835-3389
 Phone Extension 6
 Email bidtx@spford.com
 Vendor Website www.spford.com
 TIN 75-1007322
 Address Line 1 1635 IH 35E
 Vendor City Carrollton
 Vendor Zip 75006
 Vendor State TX
 Vendor Country USA
 Delivery Days 10
 Freight Terms FOB Destination
 Payment Terms Net 30
 Shipping Terms Freight prepaid by vendor and added to invoice
 Ship Via Common Carrier
 Designated Dealer No
 EDGAR Received Yes
 Service-disabled Veteran Owned No
 Minority Owned No
 Women Owned No
 National No
 No Foreign Terrorist Orgs Yes
 No Israel Boycott Yes
 MWBE No
 ESCs All Texas Regions
 States All States
 Contract Name Medium and Heavy-Duty Trucks, Parts, and Maintenance Repair Services
 Contract No. 723-23
 Effective 12/01/2023
 Expiration 11/30/2026
 Accepts RFQs Yes
 Service Fee Note Vehicle purchase orders are subject to a \$400 service fee
 Return Policy As allowed by law.

12/5/2023 2:11 PM



Vendor Contract Information Summary

Vendor Sam Pack's Five Star Chevrolet
 Contact Jessica Wooten
 Phone 888-835-3389
 Phone Extension 1
 Email bidtx@sampack.com
 Vendor Website www.sampacksfivestarchevrolet.com
 TIN 61-1674720
 Address Line 1 1735 IH 35E
 Vendor City Carrollton
 Vendor Zip 75006
 Vendor State TX
 Vendor Country USA
 Delivery Days 10
 Freight Terms FOB Destination
 Payment Terms Net 30
 Shipping Terms Freight prepaid by vendor and added to invoice
 Ship Via Common Carrier
 Designated Dealer No
 EDGAR Received Yes
 Service-disabled Veteran Owned No
 Minority Owned No
 Women Owned No
 National No
 No Foreign Terrorist Orgs Yes
 No Israel Boycott Yes
 MWBE No
 ESCs All Texas Regions
 States All States
 Contract Name Vehicles, Police Motorcycles, Parts, and Maintenance Repair Services
 Contract No. 724-23
 Effective 12/01/2023
 Expiration 11/30/2026
 Accepts RFQs Yes
 Service Fee Note Vehicle purchase orders are subject to a \$400 service fee

12/5/2023 2:14 PM



Vendor Contract Information Summary

Return Policy If vehicle does not meet specifications, it may be returned within 5 days of delivery without being titled and we will either replace it or cancel PO.



Vendor Contract Information Summary

Vendor Caldwell Country Chevrolet
 Contact AVERYT KNAPP
 Phone 979-567-1500
 Email averyt@caldwellcountry.com
 Vendor Website www.caldwellcountrychevrolet.com
 TIN 87-3266036
 Address Line 1 800 E Highway 21
 Vendor City Caldwell
 Vendor Zip 77836
 Vendor State TX
 Vendor Country USA
 Delivery Days 10
 Freight Terms FOB Destination
 Payment Terms NET 30
 Shipping Terms Freight prepaid by vendor and added to invoice
 Ship Via Common Carrier
 Designated Dealer No
 EDGAR Received Yes
 Service-disabled Veteran Owned No
 Minority Owned No
 Women Owned No
 National No
 No Foreign Terrorist Orgs Yes
 No Israel Boycott Yes
 MWBE No
 ESCs All Texas Regions
 States All States
 Contract Name Medium and Heavy-Duty Trucks, Parts, and Maintenance
 Repair Services
 Contract No. 723-23
 Effective 12/01/2023
 Expiration 11/30/2026
 Accepts RFQs Yes
 Service Fee Note Vehicle purchase orders are subject to a \$400 service fee

12/5/2023 1:28 PM



Vendor Contract Information Summary

Vendor Caldwell Country Chevrolet
 Contact AVERYT KNAPP
 Phone 979-567-1500
 Email averyt@caldwellcountry.com
 Vendor Website www.caldwellcountrychevrolet.com
 TIN 87-3266036
 Address Line 1 800 E Highway 21
 Vendor City Caldwell
 Vendor Zip 77836
 Vendor State TX
 Vendor Country USA
 Delivery Days 10
 Freight Terms FOB Destination
 Payment Terms NET 30
 Shipping Terms Freight prepaid by vendor and added to invoice
 Ship Via Common Carrier
 Designated Dealer No
 EDGAR Received Yes
 Service-disabled Veteran Owned No
 Minority Owned No
 Women Owned No
 National No
 No Foreign Terrorist Orgs Yes
 No Israel Boycott Yes
 MWBE No
 ESCs All Texas Regions
 States All States
 Contract Name Vehicles, Police Motorcycles, Parts, and Maintenance Repair Services
 Contract No. 724-23
 Effective 12/01/2023
 Expiration 11/30/2026
 Accepts RFQs Yes
 Service Fee Note Vehicle purchase orders are subject to a \$400 service fee



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER _____

PAGE 1 OF 4

DATE: 12/13/2022

SUBJECT: BID NO. 2023-026 - ANNUAL CONTRACT FOR EMERGENCY VEHICLE EQUIPMENT INSTALLATION - COUNTYWIDE - VARIOUS VENDORS - PER UNIT PRICE

COMMISSIONERS COURT ACTION REQUESTED

It is requested that the Commissioners Court award Bid No. 2023-026, Annual Contract for Emergency Vehicle Equipment Installation, Countywide, to the following vendors at the per unit price:

Primary	Pursuit Safety
Secondary	Stolz Telecom, Inc.
Alternate	Defender Supply, LLC

BACKGROUND

Notice of the County’s intent to bid was advertised in local newspapers, as required by State statute, and posted on the Internet, the Arlington Black Chamber of Commerce, the Fort Worth Hispanic Chamber of Commerce, the Fort Worth Metropolitan Black Chamber of Commerce, and the Tarrant County Asian American Chamber of Commerce. One hundred eighty-four (184) vendors were contacted and requested to participate in this bid process. All documents pertaining to this bid were posted on the Tarrant County website and were downloaded by interested bidders. Three (3) bids were received.

Bids were evaluated by Transportation Services and Purchasing representatives. Award recommendations are to low bids meeting specifications.

The term of the contract is twelve (12) months, effective January 7, 2023, with two (2) options for renewal periods of twelve (12) months each.

Therefore, it is the joint recommendation of Transportation Services and Purchasing that Bid No. 2023-026, Annual Contract for Emergency Vehicle Equipment Installation, be awarded to the vendors listed above at the per unit price.

SUBMITTED BY:	Purchasing	PREPARED BY: APPROVED BY:	Krystal Garibay Chris Lax, CPSM, CPSD, CPCP
---------------	------------	------------------------------	--



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER: _____ DATE: 12/13/2022 PAGE 2 OF 4

FISCAL IMPACT

Expenses for last year were approximately \$85,060.05. Services are provided on an as-needed basis. Funding is available in the following accounts:

540000/45400-2023/6840200000

540000/45100-2023/6840200000



TAKINGS IMPACT ASSESSMENT CHECKLIST

Complete this form for any county action that involves the adoption of a regulation, policy, guideline, court resolution, or order.

Project/Regulation Name: Bid No. 2023-026 - Annual Contract for Emergency Vehicle Equipment Installation - Countywide - Various Vendors - Per Unit Price

County Department: PURCHASING

Contact Person: Melissa Lee, C.P.M., A.P.P.

Phone Number for Contact Person: (817) 884-3245

Type of TIA Performed: SHORT TIA or FULL TIA. Circle one after answering the questions in Sections II and III below.

I. Stated Purpose

Attach to this checklist an explanation of the purpose of the regulation, policy, guideline, court resolution, or order.

Note: The remainder of this Takings Impact Assessment Checklist should be completed in consultation with the Criminal District Attorney's Office.

II. Potential Effect on Private Real Property

1. Does the county action require a physical invasion, occupation, or dedication of real property?

Yes _____ No √

2. Does the county action limit or restrict a real property right, even partially, or temporarily?

Yes _____ No √

If you answered yes to either question, go to Section III. If you answered no to both, STOP HERE and circle SHORT TIA at the top of the form.

RFB 2023-026 Emergency Vehicle Equipment Installation

		Alternate	Primary	Secondary
		Defender Supply, LLC Argyle, TX HUB - No CO-OP - Yes	Pursuit Safety Inc. Royse City, TX HUB - No CO-OP - Yes	Stoltz Telecom. Inc Denton, TX HUB - No CO-OP - Yes
Item				
	Hourly Rate	\$ 103.68	\$ 87.00	\$ 90.00
1	Part Mark-Up Percentage	27.30%	5% Minimum off list	20.00%
	Turnaround time for Installation	10 Days	6 Business Days	21 Days

**Sheriffs' Association of Texas
SAT Vehicle Procurement Program
2023-2024 Awarded Dealers**
(Effective November 1, 2023 - October 31, 2024)

Bid 22-03-1008RR										
Awarded Dealers	Contact Name	Address	City	State	Zip Code	E-Mail Address	Office	Mobile	Fax	
Caldwell Country Chevrolet	Ben Laureano	800 East Highway 21	Caldwell	TX	77836	ben@caldwellcountry.com	(979) 567-6155	(979) 567-6155		
Caldwell Country Chevrolet	Chris Collins	800 East Highway 21	Caldwell	TX	77836	chris@caldwellcountry.com	(979) 567-6129	(979) 567-6129		
Caldwell Country Chevrolet	David Lowry	800 East Highway 21	Caldwell	TX	77836	dlowry@caldwellcountry.com	(903) 513-2316	(903) 513-2316		
Caldwell Country Chevrolet	Jake Schobinger	800 East Highway 21	Caldwell	TX	77836	jake@usaautomotivepartners.com	(979) 429-8847	(979) 429-8847		
Caldwell Country Ford	Chris Collins	479 West Highway 79	Rockdale	TX	76567	chris@caldwellcountry.com	(979) 567-6129	(979) 567-6129		
Caldwell Country Ford	Ben Laureano	479 West Highway 79	Rockdale	TX	76567	ben@caldwellcountry.com	(979) 567-6116	(979) 567-6116		
Caldwell Country Ford	Marcus Shaw	479 West Highway 79	Rockdale	TX	76567	mshaw@usaautomotivepartners.com	(979) 567-1500	(979) 567-1500		
Caldwell Country Ford	Jake Schobinger	479 West Highway 79	Rockdale	TX	76567	jake@usaautomotivepartners.com	(979) 429-8847	(979) 429-8847		
Donalson CDJR, LLC	Seth Gamblin	1305 Hwy 96 Bypass	Silsbee	TX	77656	sgamblin.silsbeefleet@gmail.com	(512) 436-1313	(512) 436-1313		
Lake Country Chevrolet	Seth Gamblin	2152 N. Wheeler Street	Jasper	TX	75951	sgamblin.silsbeefleet@gmail.com	(512) 436-1313	(512) 436-1313		
Parkway Chevrolet, Inc.	Colleen Fal	25500 SH 249	Tomball	TX	77375	cfal@parkwayfamily.com	(281) 351-8211	(832) 515-2408	(281) 357-3416	
Randall Reed's Planet Ford 635	Admir Sarac	3601 S. Shiloh Road	Garland	TX	75041	asarac@planetford635.com	(972) 864-6815	(214) 914-0802	(972) 864-3610	
Randall Reed's Planet Ford 635	Susanne Baker	3601 S. Shiloh Road	Garland	TX	75041	sbaker@planetford635.com	(972) 864-6831		(972) 864-3610	
Reliable Chevrolet	Doug Adams	800 N. Central Expressway	Richardson	TX	75080	dadams@reliablechevrolet.com	(972) 952-1561	(214) 460-2890	(972) 952-8172	
Reliable Chevrolet	Tonya Eakins	800 N. Central Expressway	Richardson	TX	75080	teakins@reliablechevrolet.com	(972) 952-1510		(972) 952-8172	
Reliable Chevrolet	Dave Anderson	800 N. Central Expressway	Richardson	TX	75080	danderson@reliablechevrolet.com	(972) 952-1500		(972) 952-8172	
Sam Pack's Five Star Ford	Alan Rosner	1635 IH 35 East	Carrollton	TX	75006	bidtx@spford.com	(888) 835-3389		(972) 245-5278	
Sam Pack's Five Star Ford	Kevin Moore	1635 IH 35 East	Carrollton	TX	75006	kevinmoore@spford.com	(888) 835-3389		(972) 245-5278	
Sam Pack's Five Star Ford	Jorge Guerra	1635 IH 35 East	Carrollton	TX	75006	iguerra@spford.com	(888) 835-3389		(972) 245-5278	
Sam Pack's Five Star Ford	Jessica Wooten	1635 IH 35 East	Carrollton	TX	75006	jwooten@spford.com	(888) 835-3389		(972) 245-5278	
Silsbee Ford	Seth Gamblin	1211 US Highway 96 N	Silsbee	TX	77656	sgamblin.silsbeefleet@gmail.com	(512) 436-1313	(512) 436-1313		
Bid 23-04-1011R										
Awarded Dealers	Contact Name	Address	City	State	Zip Code	E-Mail Address	Office	Mobile	Fax	
Caldwell Country Chevrolet	Ben Laureano	800 East Highway 21	Caldwell	TX	77836	ben@caldwellcountry.com	(979) 567-6155	(979) 567-6155		
Caldwell Country Chevrolet	Chris Collins	800 East Highway 21	Caldwell	TX	77836	chris@caldwellcountry.com	(979) 567-6129	(979) 567-6129		
Caldwell Country Chevrolet	David Lowry	800 East Highway 21	Caldwell	TX	77836	dlowry@caldwellcountry.com	(903) 513-2316	(903) 513-2316		
Caldwell Country Chevrolet	Jake Schobinger	800 East Highway 21	Caldwell	TX	77836	jake@usaautomotivepartners.com	(979) 429-8847	(979) 429-8847		
Caldwell Country Ford	Chris Collins	479 West Highway 79	Rockdale	TX	76567	chris@caldwellcountry.com	(979) 567-6129	(979) 567-6129		
Caldwell Country Ford	Ben Laureano	479 West Highway 79	Rockdale	TX	76567	ben@caldwellcountry.com	(979) 567-6116	(979) 567-6116		
Caldwell Country Ford	Marcus Shaw	479 West Highway 79	Rockdale	TX	76567	mshaw@usaautomotivepartners.com	(979) 567-1500	(979) 567-1500		
Caldwell Country Ford	Jake Schobinger	479 West Highway 79	Rockdale	TX	76567	jake@usaautomotivepartners.com	(979) 429-8847	(979) 429-8847		
Randall Reed's Planet Ford 635	Admir Sarac	3601 S. Shiloh Road	Garland	TX	75041	asarac@planetford635.com	(972) 864-6815	(214) 914-0802	(972) 864-3610	
Randall Reed's Planet Ford 635	Susanne Baker	3601 S. Shiloh Road	Garland	TX	75041	sbaker@planetford635.com	(972) 864-6831		(972) 864-3610	
Reliable Chevrolet	Doug Adams	800 N. Central Expressway	Richardson	TX	75080	dadams@reliablechevrolet.com	(972) 952-1561	(214) 460-2890	(972) 952-8172	
Reliable Chevrolet	Tonya Eakins	800 N. Central Expressway	Richardson	TX	75080	teakins@reliablechevrolet.com	(972) 952-1510		(972) 952-8172	
Reliable Chevrolet	Dave Anderson	800 N. Central Expressway	Richardson	TX	75080	danderson@reliablechevrolet.com	(972) 952-1500		(972) 952-8172	
Reliable Chevrolet	Dave Anderson	800 N. Central Expressway	Richardson	TX	75080	danderson@reliablechevrolet.com	(972) 952-1500		(972) 952-8172	
Bid 24-05-1010										
Awarded Dealers	Contact Name	Address	City	State	Zip Code	E-Mail Address	Office	Mobile	Fax	
I Country Chevrolet	Ben Laureano	800 East Highway 21	Caldwell	TX	77836	ben@caldwellcountry.com	(979) 567-6155	(979) 567-6155		
I Country Chevrolet	Chris Collins	800 East Highway 21	Caldwell	TX	77836	chris@caldwellcountry.com	(979) 567-6129	(979) 567-6129		

Item 8.

Caldwell Country Chevrolet	David Lowry	800 East Highway 21	Caldwell	TX	77836	dlowry@caldwellcountry.com	(903) 513-2316	(903) 513-2316	(903) 513-2316
Caldwell Country Chevrolet	Jake Schobinger	800 East Highway 21	Caldwell	TX	77836	jake@usaautomotivepartners.com	(979) 429-8847	(979) 429-8847	(979) 429-8847
Caldwell Country Ford	Chris Collins	479 West Highway 79	Rockdale	TX	76567	chris@caldwellcountry.com	(979) 567-6129	(979) 567-6129	(979) 567-6129
Caldwell Country Ford	Ben Laureano	479 West Highway 79	Rockdale	TX	76567	ben@caldwellcountry.com	(979) 567-6116	(979) 567-6116	(979) 567-6116
Caldwell Country Ford	Marcus Shaw	479 West Highway 79	Rockdale	TX	76567	mshaw@usaautomotivepartners.com	(979) 567-1500	(979) 567-1500	(979) 567-1500
Caldwell Country Ford	Jake Schobinger	479 West Highway 79	Rockdale	TX	76567	jake@usaautomotivepartners.com	(979) 429-8847	(979) 429-8847	(979) 429-8847
Cameron Country CDJR	David Lowry	2102 Thornton Street	Cameron	TX	76520	dlowry@caldwellcountry.com	(254) 697-4903	(903) 513-2316	(903) 513-2316
Cameron Country CDJR	Chris Collins	2102 Thornton Street	Cameron	TX	76520	chris@caldwellcountry.com	(254) 697-4903	(979) 255-8252	(979) 255-8252
Cameron Country CDJR	Adrienne Gattis	2102 Thornton Street	Cameron	TX	76520	agattis@caldwellcountry.com	(979) 315-7502	(979) 574-3800	(979) 574-3800
Cameron Country CDJR	Averyt Knapp	2102 Thornton Street	Cameron	TX	76520	averyt@caldwellcountry.com	(979) 315-7502	(713) 304-4572	(713) 304-4572
Parkway Chevrolet, Inc.	Colleen Fal	25500 SH 249	Tomball	TX	77375	cfal@parkwayfamily.com	(281) 351-8211	(832) 515-2408	(281) 357-3435
Randall Reed's Planet Ford 635	Admir Sarac	3601 S. Shiloh Road	Garland	TX	75041	asarac@planetford635.com	(972) 864-6815	(214) 914-0802	(972) 864-3610
Randall Reed's Planet Ford 635	Susanne Baker	3601 S. Shiloh Road	Garland	TX	75041	sbaker@planetford635.com	(972) 864-6831	(972) 864-3610	(972) 864-3610
Reliable Chevrolet	Doug Adams	800 N. Central Expressway	Richardson	TX	75080	dadams@reliablechevrolet.com	(972) 952-1561	(214) 460-2890	(972) 952-8172
Reliable Chevrolet	Tonya Eakins	800 N. Central Expressway	Richardson	TX	75080	teakins@reliablechevrolet.com	(972) 952-1510		(972) 952-8172
Reliable Chevrolet	Dave Anderson	800 N. Central Expressway	Richardson	TX	75080	danderson@reliablechevrolet.com	(972) 952-1500		(972) 952-8172



Doering Fleet Management

Fleet Management & Services

Doering Fleet is a nationwide fleet management and leasing company that serves customers throughout the United States. Our team of experts are available to help you with the fleet management products and services that work best for you. Voted the #1 Leasing Company in Customer Service throughout the United States in 2022, our teams' experience combined with OMNIA Partners provides you the opportunity to right-size your fleet with ever-increasing costs of vehicles and decreasing availability of funds by leveraging a competitively solicited contract.

Click Your Industry

Education | Government

Nonprofit

Public Sector

K-12 Education

Higher Education

State & Local Government

Doering Leasing Co, dba Doering Fleet Management is not your typical leasing company. Our Motto, "Expect the Unexpected" is how we approach every day. We work closely with each customer so that we learn your business, your budgets, your needs and your mission goals. We understand that every town, city, county and state agency has to work under different mandates. We do not require all clients to purchase all available services. We take an "a la carte" approach to the available fleet options. We also work with fleet dealers throughout the country and find you the lowest cost vehicles in your state, utilizing state contracts, local contracts, and manufacturer incentives. Finally, we are available to assist with the transition to electric and other alternative-fuel solutions for your fleet. Doering Fleet Management has been at the forefront of integration and has one of the largest electric vehicle fleets in the United States.

- **Fleet Management and Leasing**

Region 14 ESC -TX | 05-83

[VIEW CONTRACT
DOCUMENTATION](#)

[CONTACT US](#)

Doering Leasing Contract Documentation

U.S. Communities, National IPA, & NCPA are wholly-owned subsidiaries of OMNIA Partners, dba OMNIA Partners, Public Sector. All public sector participants already registered with National IPA, U.S. Communities, or NCPA continue to have access to all contracts, with certain exceptions, in the portfolio and do not need to re-register to use a legacy National IPA, legacy U.S. Communities, legacy NCPA, or new OMNIA Partners contract. U.S. Communities, National IPA, and NCPA remain separate legal entities and lead agency contracts completed under each brand are effective and available for use through the contract's approved term. In the event we believe re-registration is necessary for any reason, OMNIA Partners will let you know.

Fleet Management and Leasing

Region 14 ESC - TX

Contract Number: 05-83

May 1, 2023 through April 30, 2026

Option to renew for two (2) additional one-year periods through April 30, 2028

Executive Summary

- [Due Diligence](#)

Master Agreement Documents

- [Official Signed Contract](#)
- [Contract Award Letter](#)

Response Evaluation

Item 8.

- Supplier Response to RFP
- Evaluation Documents

Solicitation Process

- Original RFP Document
- Proof of Publication



5001 Aspen Grove Drive
Franklin, TN 37067

info@omniapartners.com
(866) 875-3299



Region XIV Education Service Center

1850 Highway 351
Abilene, TX 79601-4750
325-675-8600
FAX 325-675-8659

Monday, May 1st, 2023

Doering Leasing Co DBA Doering Fleet Management
ATTN: Bob Crowe
15300 W. Capitol Drive
Brookfield, WI 53005

Dear Bob:

Region XIV Education Service Center is happy to announce that Doering Leasing Co DBA Doering Fleet Management has been awarded an annual contract for Fleet Management and Leasing based on the proposal submitted to Region XIV ESC.

The contract is effective immediately and will expire on April 30th, 2026. The contract can then be renewed annually for an additional two years, if mutually agreed on by Region XIV ESC and Doering Leasing Co DBA Doering Fleet Management.

We look forward to a long and successful partnership underneath this contract.

If you have any questions or concerns, feel free to contact me at 325-675-8600.

Sincerely,

Shane Fields

Shane Fields
Region XIV, Executive Director



FINANCE

To: Mayor and Town Council

From: Chris Landrum, Finance Director

**Through: Mario Canizares, Town Manager
Bob Scott, Deputy Town Manager**

Re: Interlocal Agreement with the City of Denton

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving an Interlocal Agreement between the Town of Prosper and the City of Denton for the procurement of goods and services and authorize the Town Manager to execute documents for the same.

Description of Agenda Item:

Participation in the cooperative purchasing program will be beneficial to the taxpayers of the parties through anticipated savings and provides the Town with additional resources to source goods and services for the Town.

Section 271.102 of the Texas Local Government Code authorizes a local government to participate in a cooperative purchasing program with another local government or a local cooperative organization. This agreement is in compliance with the Texas Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

Budget Impact:

Purchases will be made with approved funds available in the current and subsequent fiscal year operating budgets.

Legal Obligations and Review:

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

Attached Documents:

1. Interlocal Agreement

Town Staff Recommendation:

Town Staff recommends approving an Interlocal Agreement between the Town of Prosper and the City of Denton for the procurement of goods and services and authorize the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve an Interlocal Agreement between the Town of Prosper and the City of Denton for the procurement of goods and services and authorize the Town Manager to execute documents for the same.

**INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN TOWN OF PROSPER AND CITY OF DENTON, TEXAS**

STATE OF TEXAS

COUNTY OF DENTON

THIS INTERLOCAL COOPERATIVE PURCHASING AGREEMENT (the "Agreement") is made on the _____ day of _____, 20____, between the City of Denton, and the Town of Prosper; jointly referred to herein as "parties" and each separately as a "party."

WHEREAS, each party is authorized by Chapter 791 of the Texas Government Code (the "Interlocal Cooperation Act"), 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 supplies;

WHEREAS, Section 271.102 of the Texas Local Government Code authorizes a local government to participate in a cooperative purchasing program with another local government or a local cooperative organization;

WHEREAS, the parties recognize that participation in this cooperative purchasing program will be highly beneficial to the taxpayers of the parties through anticipated savings to be realized;

WHEREAS, the parties cannot normally obtain the best possible purchase price for materials and supplies acting individually and without cooperation;

WHEREAS, it is deemed in the best interest of all parties that said governments enter into a mutually satisfactory agreement for the purchase of certain materials and supplies; and

WHEREAS, the parties, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein and pursuant to the authority permitted under the Interlocal Cooperation Act, promise and agree as follows:

**I.
Purpose**

- A. The purpose of this Agreement is to establish a cooperative purchasing program between the parties, which will allow each party to purchase goods and services under each other's competitively bid contracts pursuant to Subchapter F, Chapter 271 of the Texas Local Government Code.

II. Duration of Agreement

- A. This Agreement shall be in full force and effect from the date it is duly executed by all parties until terminated by either party to this Agreement. Any party may modify and/or terminate this Agreement in accordance with the following terms and conditions:
- The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
 - This Agreement may be terminated at any time by either party, with or without cause, upon thirty days' written notice to the other party. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent (i) as an attachment to an email, (ii) by fax with a successful send confirmation, or (iii) by certified mail to the address as listed herein:

City of Denton: Procurement Division
 Attn: Purchasing Manager
 City of Denton
 901 B Texas Street
 Denton, TX 76209
 Phone: 940-349-7100
 Fax: 940-293-1837
 purchasing@cityofdenton.com

Town of Prosper: Procurement Division
 Attn: Purchasing Manager
 Town of Prosper
 250 W. First Street
 Prosper, TX 75069
 972-56-1018
 jcarter@prospertx.gov

III. Relationship of Parties

- A. It is agreed that the parties, in receiving products and/or services specified in this Agreement, shall each act as an independent purchaser and shall have control of its needs and the way any such products and/or services are acquired. Neither party is an agent, employee or joint enterprise of the other, and each party is responsible for its own actions, forbearance, negligence and deeds, and for those of its agents or employees, in conjunction with the

utilization and/or cooperative solicitation of any supplier agreement obtained in accordance with Texas law.

- B. The parties shall notify, using the notice procedures set forth in Section II.A, all participating entities of available contracts to include terms of contract, commodity cost, contact names and addresses, and shall keep participating parties informed of all changes to the list of contracts available for cooperative purchasing.
- C. Each party shall ensure that all applicable laws and ordinances have been satisfied with respect to any action taken by such party pursuant to this Agreement.
- D. Nothing in this Agreement shall prevent any participating party from accepting and awarding bids for commodities subject to this Agreement individually and on its own behalf.
- E. Purchasing Agent or their designee, is the official representative to act for the City of Denton in all matters relating to this Agreement.
- F. Purchasing Manager or their designee, is the official representative to act for City of Waxahachie in all matters relating to this Agreement.

IV.

Purchase of Goods and Services

- A. All products and services shall be procured in accordance with all appropriate procedures governing competitive bids and competitive proposals, as required by the laws of the State of Texas.
- B. The parties will be able to purchase from those contracts established by the other party where notice has been given in the bid specifications and the successful bidder has accepted terms for cooperative purchasing agreements for local governments.
- C. The parties hereto agree that the ordering of products and services through this Agreement shall be their individual responsibility and that the successful bidder or bidders shall bill each party directly or, if deemed advantageous by the parties, to both parties.
- D. The parties agree to pay successful bidders directly for all products or services received from current revenues available for such purchase. Each party shall be liable to the successful bidder only for products and services ordered by and received by such party and shall not, by the execution of this Agreement, assume any additional liability.
- E. The parties do not warrant and are not responsible for the quality or delivery of products or services from the successful bidder. The participating parties shall receive all warranties provided by the successful bidder for the products or services purchased.

- F. If any dispute arises between individual parties and a successful bidder, such dispute shall be handled by and between the participating party's governmental body and the bidder.

V.

Liability and Immunity Provisions

- A. It is understood and agreed between the parties that each party hereto shall be responsible for its own and its employees' acts of negligence in connection with this Agreement. Neither party shall be responsible for any negligent act or omission of the other party or its employees in connection with this Agreement. It is specifically agreed that, as between the parties, each party to this Agreement shall be individually and respectively responsible for responding to, dealing with, insuring against, defending, and otherwise handling and managing liability and potential liability of itself and its employees pursuant to this Agreement.
- B. Notwithstanding the foregoing, each party hereto reserves and expressly does not waive any immunity or defense available at law or in equity, including governmental immunity, for any claim or cause of action whatsoever that may arise or result from the services provided and/or any circumstances arising under this Agreement. These provisions are solely for the benefit of the parties hereto and are not for the benefit of any person or entity not a party hereto; this Agreement shall not be interpreted nor construed to give any claim or cause of action to any third party. Neither party shall be held legally liable for any claim or cause of action arising pursuant to or out of the services provided under this Agreement, except as specifically provided by law. Where injury or property damages results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party based on comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity.
- C. This Agreement is expressly made subject to the parties' governmental immunity under the Texas Civil Practice and Remedies Code and all applicable federal, state, and local laws, rules, regulations, ordinances, and policies. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either party or to create any legal rights or claim on behalf of any third party. Neither party waive, modify, or alter, to any extent whatsoever, the availability of the defense of governmental immunity under the laws of the State of Texas.

VI.

Miscellaneous

- A. Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective party.
- B. In the event any one or more of the provisions contained in this Agreement shall be held, for any reason, to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality,

or unenforceability shall not affect the other provisions and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

- C. This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives, and assigns. Neither party will assign or transfer an interest in this Agreement without the prior written consent of the other party.
- D. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in, or claims by, third parties who are not signatories to this Agreement.
- E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any cause of action concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.
- F. This Agreement, together with any referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, has no legal force or effect whatsoever, unless properly executed in writing in accordance with Section II.A, and if appropriate, recorded as an amendment of this Agreement.
- G. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement or the right of either party thereafter to enforce each provision hereof. No term of this Agreement shall be deemed waived or any breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver or excuse of any other different or subsequent breach.
- H. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- I. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers thereon the day and the year first above written.

TOWN OF PROSPER, TEXAS
MARIO CANIZARES

CITY OF DENTON, TEXAS
SARA HENSLEY

TOWN MANAGER

CITY MANAGER

ATTEST:
MICHELLE LEWIS SIRIANNI,
TOWN SECRETARY

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

BY: _____

APPROVED AS TO LEGAL FORM:
TERRY WELCH, TOWN ATTORNEY

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

BY: _____



POLICE DEPARTMENT

To: Mayor and Town Council

From: Whitney Rehm, Budget Officer & Grants Administrator

**Through: Mario Canizares, Town Manager
Doug Kowalski, Chief of Police**

Re: FY23 COPS Hiring Program Award Acceptance

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon accepting the 2023 FY23 COPS Hiring Program grant award from the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office).

Description of Agenda Item:

On November 2, 2023, the Town was notified that it had been awarded funding for five (5) officers, for a federal cost share total of \$625,000 over three years.

The purpose of the COPS Hiring Program is to advance the practice of community policing through the hire or rehire of additional career law enforcement officers. Funding under this award program will be utilized by local law enforcement agencies to hire and rehire career law enforcement officers necessary to increase the jurisdiction’s community policing capacity to prevent and disrupt crime and violence.

The \$625,000 2023 FY23 COPS Hiring Program grant award is a reimbursable grant and will fund 37.45% of the total cost of five (5) entry-level sworn police officers’ salaries and fringe benefits for 36 months at a decreasing cost share rate. The funding percentage decreases from 66.6% in the first year to 30% in the second year and 20% in the third and final year for an aggregate funding percentage of 37.45%. The Project Period is October 1, 2023, to September 30, 2028, with an anticipated start date after October 1, 2024, for the officers, if approved in the FY25 budget. This will begin the 36-month funding period.

The breakdown of the match is as follows:

	Year 1 Awarded	Year 2 Awarded	Year 3 Awarded	Total Awarded
Local Match (62.55%)	166,667	388,889	488,439	1,043,995

Federal Share (37.45%)	333,333	166,667	125,000	625,000
Total	500,000	555,556	613,439	1,668,995

The below are notable grant award conditions and requirements:

Local Match: COPS Hiring Program award recipients are required to contribute a local match of at least 25 percent towards the total cost of the approved award project, unless waived in writing by the COPS Office. The local match must be a cash match from funds not previously budgeted for law enforcement purposes and must be paid during the award period. The local match contribution must be made on an increasing basis during each year of the three-year award period, with the federal share decreasing accordingly. 34 U.S.C. § 10381(g).

Supplementing, not Supplanting: State, local, and tribal government recipients must use award funds to supplement, and not supplant, state, local, or Bureau of Indian Affairs (BIA) funds that are already committed or otherwise would have been committed for award purposes (hiring, training, purchases, and/or activities) during the award period. In other words, state, local, and tribal government recipients may not use COPS Office funds to supplant (replace) state, local, or BIA funds that would have been dedicated to the COPS Office-funded item(s) in the absence of the COPS Office award. 34 U.S.C. § 10384(a).

Retention: At the time of award application, your agency committed to retaining all sworn officer positions awarded under the CHP award with state and/or local funds for a minimum of 12 months following the conclusion of 36 months of federal funding for each position, over and above the number of locally funded sworn officer positions that would have existed in the absence of the award. Your agency cannot satisfy the retention requirement by using CHP-funded positions to fill locally funded vacancies resulting from attrition. 34 U.S.C. § 10382 (c)(8).

Grant acceptance is required to be electronically certified by the Town Authorized Representatives by December 17, 2023.

Budget Impact:

The Town's cost share for salaries and benefits over the 36-month funding period is \$1,043,995 (62.55%). All other expenses, including salary and benefit expenses above the allowed award amount, will be the responsibility of the Town.

The five officers associated with this grant will be requested as a separate discretionary package as part of the fiscal year 2024-2025 budget process.

All expenses will be paid out of the appropriate Police Department Expense accounts and revenue allocated to grant revenue in the matching fund. Grant program is on a reimbursement basis.

Legal Obligations and Review:

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

Attached Documents:

1. COPS Office Award Letter

Town Staff Recommendation:

Town Staff recommends accepting the 2023 FY23 COPS Hiring Program grant award from the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office).

Proposed Motion:

I move to accept the 2023 FY23 COPS Hiring Program grant award from the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office).



Department of Justice (DOJ)

Office of Community Oriented Policing Services (COPS Office)

Washington, D.C. 20531

Name and Address of Recipient:	TOWN OF PROSPER 250 W FIRST ST
City, State and Zip:	PROSPER, TX 75078
Recipient UEI:	U87NETLMANX5
Project Title: FY23 COPS Hiring Program (CHP)	Award Number: 15JCOPS-23-GG-05051-UHPX
Solicitation Title: FY23 COPS Hiring Program	
Federal Award Amount: \$625,000.00	Federal Award Date: 11/2/23
Awarding Agency:	Office of Community Oriented Policing Services
Funding Instrument Type:	Grant
Opportunity Category: D	
Assistance Listing: 16.710 - Public Safety Partnership and Community Policing Grants	
Project Period Start Date: 10/1/23	Project Period End Date: 9/30/28
Budget Period Start Date: 10/1/23	Budget Period End Date: 9/30/28
Project Description: The purpose of the COPS Hiring Program (CHP) program is to advance the practice of community policing through the hire or rehire of additional career law enforcement officers. Funding under this award program will be utilized by local law enforcement agencies to hire and rehire career law enforcement officers necessary to increase the jurisdiction's community policing capacity to prevent and disrupt crime and violence.	

Award Letter

November 2, 2023

Dear Scott Brewer,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Community Oriented Policing Services (the COPS Office) has approved the application submitted by TOWN OF PROSPER for an award under the funding opportunity entitled 2023 FY23 COPS Hiring Program. The approved award amount is \$625,000. Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by the COPS Office, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

HUGH CLEMENTS

COPS Director

Office for Civil Rights Notice for All Recipients

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from DOJ from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see <https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm>.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria. These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department

are providing services in a nondiscriminatory manner to their service population or have employment practices meet equal-opportunity standards.

Item 10.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEO requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at askOCR@ojp.usdoj.gov.

Award Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Recipient Information

Recipient Name

UEI

U87NETLMANX5

ORI Number

Street 1

250 W FIRST ST

Street 2

City

PROSPER

State/U.S. Territory

Texas

Zip/Postal Code

75078

Country

United States

County/Parish

Province

Award Details

Federal Award Date

11/2/23

Award Type

Initial

Award Number

15JCOPS-23-GG-05051-UHPX

Supplement Number

00

Federal Award Amount

\$625,000.00

Funding Instrument Type

Grant

Assistance Listing Number	Assistance Listings Program Title
16.710	Public Safety Partnership and Community Policing Grants

Statutory Authority

The Public Safety Partnership and Community Policing Act of 1994, 34 U.S.C. § 10381 et seq.

[]
I have read and understand the information presented in this section of the Federal Award Instrument.

Project Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Solicitation Title 2023 FY23 COPS Hiring Program	Awarding Agency COPS
--	--------------------------------

Application Number
GRANT13871679

Grant Manager Name
FRANCISCO BERNAL

Phone Number
[202-812-5473](tel:202-812-5473)

E-mail Address
Francisco.A.Bernal@usdoj.gov

Project Title
FY23 COPS Hiring Program (CHP)

Performance Period Start Date 10/01/2023	Performance Period End Date 09/30/2028
--	--

Budget Period Start Date 10/01/2023	Budget Period End Date 09/30/2028
---	---

Project Description

The purpose of the COPS Hiring Program (CHP) program is to advance the practice of community policing through the hire or rehire of additional career law enforcement officers. Funding under this award program will be utilized by local law enforcement agencies to hire and rehire career law enforcement officers necessary to increase the jurisdiction's community policing capacity to prevent and disrupt crime and violence.

[]
I have read and understand the information presented in this section of the Federal Award Instrument.

Financial Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

A financial analysis of budgeted costs has been completed. All costs listed in the approved budget below were programmatically approved based on the final proposed detailed budget and budget narratives submitted by your agency to the COPS Office. Any adjustments or edits to the proposed budget are explained below.

Budget Clearance Date: 9/18/23 4:18 PM

Comments

No items

Budget Category	Proposed Change Budget	Approved Budget	Percentages
Sworn Officer Positions:		\$1,668,995	
Civilian or Non-Sworn Personnel:		\$0	
Travel:		\$0	
Equipment:		\$0	
Supplies:		\$0	
SubAwards:		\$0	
Procurement Contracts:		\$0	
Other Costs:		\$0	
Total Direct Costs:		\$1,668,995	
Indirect Costs:		\$0	
Total Project Costs:		\$1,668,995	
Federal Funds:		\$625,000	37.45%
Match Amount:		\$1,043,995	62.55%
Program Income:		\$0	0.00%
Budget Category			
Sworn Officer			

Civilian Personnel

Travel

Equipment

Supplies

SubAwards

Procurement Contracts

Other Costs

Indirect Costs

[]

I have read and understand the information presented in this section of the Federal Award Instrument.

Award Conditions

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

1

Reporting Subawards and Executive Compensation

The recipient agrees to comply with the following requirements of 2 C.F.R. Part 170, Appendix A to Part 170 – Award Term:

I. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined CFR 170.320;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization; and,
 - iv. A domestic or foreign for-profit organization
3. Executive means officers, managing partners, or any other employees in management positions.
4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
5. Subrecipient means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

2

Restrictions on Internal Confidentiality Agreements: No recipient or subrecipient under this award, or entity that receives a contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts the lawful reporting of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information. Consolidated Appropriations Act, 2023, Public Law 117-328, Division E, Title VII, Section 742.

3

Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and COPS Office authority to terminate award): The recipient and subrecipient agree to comply with the requirements in 2 C.F.R. § 175.15(b) – Award Term:

I. Trafficking in persons.

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a

prohibition in paragraph a.1 of this award term through conduct that is either—

- A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOJ at 2 C.F.R. Part 2867.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOJ at 2 C.F.R. Part 2867.
- c. Provisions applicable to any recipient.
- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended 22 U.S.C. 7104(g), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
- 1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
 - 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

4

Duplicative Funding: The recipient understands and agrees to notify the COPS Office if it receives, from any other source, funding for the same item or service also funded under this award.

5

Termination: Recipient understands and agrees that the COPS Office may terminate funding, in whole or in part, for the following reasons:

- (1) When the recipient fails to comply with the terms and conditions of a Federal award.
- (2) When an award no longer effectuates the program goals or agency priorities, to the extent such termination is authorized by law.
- (3) When the recipient agrees to the termination and termination conditions.
- (4) When the recipient provides the COPS Office written notification requesting termination including the reasons, effective date, and the portion of the award to be terminated. The COPS Office may terminate the entire award if the remaining portion will not accomplish the purposes of the award.
- (5) Pursuant to any other termination provisions included in the award.

6

Award Owner's Manual: The recipient agrees to comply with the terms and conditions in the applicable 2023 COPS Office Program Award Owner's Manual; DOJ Grants Financial Guide; COPS Office statute (34 U.S.C. § 10381, et seq.) as applicable; Students, Teachers, and Officers Preventing (STOP) School Violence Act of 2018 (34 U.S.C. § 10551, et seq.) as applicable; the requirements of 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted by the U.S. Department of Justice in 2 C.F.R. § 2800.101; 48 C.F.R. Part 31 (FAR Part 31) as applicable (Contract Cost Principles and Procedures); the Cooperative Agreement as applicable; representations made in the application; and all other applicable program requirements, laws, orders, regulations, or circulars.

Failure to comply with one or more award requirements may result in remedial action including, but not limited to, withholding award funds, disallowing costs, suspending, or terminating the award, or other legal action as appropriate.

Should any provision of an award condition be deemed invalid or unenforceable by its terms, that provision will be applied to give it the maximum effect permitted by law. Should the provision be deemed invalid or unenforceable in its entirety, such provision will be severed from this award.

7

Authorized Representative Responsibility: The recipient understands that, in accepting this award, the Authorized Representatives declare and certify, among other things, that they possess the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accept (or adopt) all material requirements throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

8

Award Monitoring Activities: Federal law requires that recipients receiving federal funding from the COPS Office must be monitored to ensure compliance with their award conditions and other applicable statutes and regulations. The COPS Office is also interested in tracking the progress of our programs and the advancement of community policing. Both aspects of award implementation—compliance and programmatic benefits—are part of the monitoring process coordinated by the U.S. Department of Justice. Award monitoring activities conducted by the COPS Office include site visits, enhanced office-based grant reviews, alleged noncompliance reviews, financial and programmatic reporting, and audit resolution. As a COPS Office award recipient, you agree to cooperate with and respond to any requests for information pertaining to your award. This includes all financial records, such as general accounting ledgers and all supporting documents. All information pertinent to the implementation of the award is subject to agency review throughout the life of the award, during the close-out process and for three-years after the submission of the final expenditure report. 34 U.S.C. § 10385(a) and 2 C.F.R. §§ 200.334 and 200.337.

9

Contract Provision: All contracts made by the award recipients under the federal award must contain the provisions required under 2 C.F.R. Part 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. Please see appendices in the Award Owner's Manual for a full text of the contract provisions.

10

Assurances and Certifications: The recipient acknowledges its agreement to comply with the Assurances and Certifications forms that were signed as part of its application.

11

Conflict of Interest: Recipients and subrecipients must disclose in writing to the COPS Office or pass-through entity, as applicable, any potential conflict of interest affecting the awarded federal funding in 2 C.F.R. § 200.112.

12

Debarment and Suspension: The recipient agrees not to award federal funds under this program to any party which is

debarred or suspended from participation in federal assistance programs. 2 C.F.R. Part 180 (Government-wide Nonprocurement Debarment and Suspension) and 2 C.F.R. Part 2867 (DOJ Nonprocurement Debarment and Suspension).

13

Employment Eligibility: The recipient agrees to complete and keep on file, as appropriate, the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States. Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603.

14

Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information: Recipients and subrecipients agree not to discharge, demote, or otherwise discriminate against an employee as reprisal for the employee disclosing information that he or she reasonably believes is evidence of gross mismanagement of a federal contract or award, a gross waste of federal funds, an abuse of authority relating to a federal contract or award, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or award. Recipients and subrecipients also agree to provide to their employees in writing (in the predominant native language of the workforce) of the rights and remedies provided in 41 U.S.C. § 4712. Please see appendices in the Award Owner's Manual for a full text of the statute.

15

Equal Employment Opportunity Plan (EEOP): All recipients of funding from the COPS Office must comply with the federal regulations pertaining to the development and implementation of an Equal Employment Opportunity Plan. 28 C.F.R. Part 42 subpart E.

16

False Statements: False statements or claims made in connection with COPS Office awards may result in fines, imprisonment, debarment from participating in federal awards or contracts, and/or any other remedy available by law. 31 U.S.C. § 3729-3733.

17

Federal Civil Rights: The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by the Department based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition—

- a. the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);
- b. the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 809(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. § 10228(c)); section 1407(e) of the Victims of Crime Act of 1984 (34 U.S.C. § 20110(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (34 U.S.C. § 11182(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (34 U.S.C. § 12291(b)(13)), which will apply to all awards made by the Office on Violence Against Women, also may apply to an award made otherwise;
- c. the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and
- d. on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.

The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by the Department based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), 38 (regarding faith-based or religious organizations participating in federal financial assistance programs), and 46 (human subjects protection).

18

Mandatory Disclosure: Recipients and subrecipients must timely disclose in writing to the Federal awarding agency or pass-through entity, as applicable, all federal criminal law violations involving fraud, bribery, or gratuity that may potentially affect the awarded federal funding. Recipients that receive an award over \$500,000 must also report certain civil, criminal, or administrative proceedings in SAM and are required to comply with the Term and Condition for Recipient Integrity and Performance Matters as set out in 2 C.F.R. Part 200, Appendix XII to Part 200. Failure to make required disclosures can result in any of the remedies, including suspension and debarment, described in 2 C.F.R. § 200.339. 2 C.F.R. § 200.113.

19

Reports/Performance Goals: To assist the COPS Office in monitoring and tracking the performance of your award, your agency will be responsible for submitting semi-annual programmatic performance reports that describe project activities during the reporting period and quarterly Federal Financial Reports using Standard Form 425 (SF-425). 2 C.F.R. §§ 200.328 - 200.329. The performance report is used to track your agency’s progress toward implementing community policing strategies and to collect data to gauge the effectiveness of increasing your agency’s community policing capacity through COPS Office funding. The Federal Financial Report is used to track the expenditures of the recipient’s award funds on a cumulative basis throughout the life of the award.

20

Recipient Integrity and Performance Matters: For awards over \$500,000, the recipient agrees to comply with the following requirements of 2 C.F.R. Part 200, Appendix XII to Part 200 – Award Term and Condition for Recipient Integrity and Performance Matters:

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conform with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

- (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
- (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

21

System for Award Management (SAM) and Universal Identifier Requirements: The recipient agrees to comply with the following requirements of 2 C.F.R. Part 25, Appendix A to Part 25 – Award Term:

I. System for Award Management and Universal Identifier Requirements

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier

If you are authorized to make subawards under this Federal award, you:

- 1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.
- 2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:

- a. A foreign organization;
- b. A foreign public entity;
- c. A domestic for-profit organization; and
- d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

22

Additional High-Risk Recipient Requirements: The recipient agrees to comply with any additional requirements that may be imposed during the award performance period if the awarding agency determines that the recipient is a high-risk recipient. 2 C.F.R. § 200.208.

23

Supplementing, not Supplanting: State, local, and tribal government recipients must use award funds to supplement, and not supplant, state, local, or Bureau of Indian Affairs (BIA) funds that are already committed or otherwise would have been committed for award purposes (hiring, training, purchases, and/or activities) during the award period. In other words, state, local, and tribal government recipients may not use COPS Office funds to supplant (replace) state, local, or BIA funds that would have been dedicated to the COPS Office-funded item(s) in the absence of the COPS Office award. 34 U.S.C. § 10384(a).

24

Background Investigations: Recipients agree to ensure that each officer(s) hired with CHP funding will be subject to a background investigation, notify the COPS Office upon completion of the background investigation for each officer hired under the CHP award, and cooperate with the COPS Office and provide updates on the status of background investigations upon request. 2 C.F.R. § 200.208

If the COPS Office determines that CHP funds are being used to pay the salary and fringe benefits of an officer who has not undergone a background investigation, the COPS Office may temporarily suspend grant funds in accordance with 2 C.F.R. §200.339 until the agency can demonstrate the background investigation has been completed.

25

Evaluations: The COPS Office may conduct monitoring or sponsor national evaluations of its award programs. The recipient agrees to cooperate with the monitors and evaluators. 34 U.S.C. § 10385(b).

26

Modifications: Occasionally, a change in an agency's fiscal or law enforcement situation necessitates a change in its COPS Office CHP award. Award modifications under CHP are evaluated on a case-by-case basis in accordance with 2 C.F.R. § 200.308. For federal awards in excess of \$250,000, any modification request involving the reallocation of funding between budget categories that exceed or are expected to exceed 10 percent (10%) of the total approved budget requires prior written approval by the COPS Office. Regardless of the federal award amount or budget modification percentage, any reallocation of funding is limited to approved budget categories. In addition, any budget modification that changes the scope of the project requires prior written approval by the COPS Office. In addition, please be aware that the COPS Office will not approve any modification request that results in an increase of federal

funds.

In addition, modification requests should be submitted to the COPS Office when an agency determines that it will need to shift officer positions awarded in one hiring category into a different hiring category and/or reduce the total number of positions awarded. For example, if an agency was awarded CHP funding for two new, additional sworn officer positions, but due to fiscal distress/constraints the agency needs to change the hiring category from the new hire category to the rehire category for officers laid off or scheduled for layoff on a specific future date post-application, the agency would have to request a modification. The COPS Office will only consider a modification request after an agency makes final, approved budget and/or personnel decisions. An agency may implement the modified award following written approval from the COPS Office. Please be aware that the COPS Office will not approve any modification request that results in an increase of federal funds.

During the CHP award period, it may become necessary for an agency to modify its CHP award due to changes in an agency's fiscal or law enforcement situation. Modification requests should be submitted to the COPS Office when an agency determines that it will need to shift officer positions awarded in one hiring category into a different hiring category, reduce the total number of positions awarded, shift funds among benefit categories, and/or reduce the entry-level salary and fringe benefit amounts. For example, an agency may have been awarded CHP funding for 10 new, additional full-time sworn officer positions, but due to severe fiscal distress/constraints, the agency determines it is unable to sustain all 10 positions and must reduce its request to five full-time positions; or an agency may have been awarded CHP funding for two new, additional sworn officer positions, but due to fiscal distress/constraints the agency needs to change the hiring category from the new hire category to the rehire category for officers laid off or scheduled for layoff on a specific future date post-application. Award modifications under CHP are evaluated on a case-by-case basis. The COPS Office will only consider a modification request after an agency makes final, approved budget and/or personnel decisions. An agency may implement the modified award following written approval from the COPS Office. Please be aware that the COPS Office will not approve any modification request that results in an increase of federal funds.

27

Retention: At the time of award application, your agency committed to retaining all sworn officer positions awarded under the CHP award with state and/or local funds for a minimum of 12 months following the conclusion of 36 months of federal funding for each position, over and above the number of locally-funded sworn officer positions that would have existed in the absence of the award. Your agency cannot satisfy the retention requirement by using CHP-funded positions to fill locally-funded vacancies resulting from attrition. 34 U.S.C. § 10382 (c)(8).

28

Local Match: COPS Hiring Program award recipients are required to contribute a local match of at least 25 percent towards the total cost of the approved award project, unless waived in writing by the COPS Office. The local match must be a cash match from funds not previously budgeted for law enforcement purposes and must be paid during the award period. The local match contribution must be made on an increasing basis during each year of the three-year award period, with the federal share decreasing accordingly. 34 U.S.C. § 10381(g).

29

School Resource Officer (SRO) Training Requirement: COPS Office-funded SRO(s) are required to complete an SRO 40-hour basic training course from a list of COPS Office approved provider(s). Training must be completed no later than nine months after the date shown on the award congratulatory letter or six months from the SRO hire date; whichever comes first. If a COPS Office-funded SRO leaves the recipient agency after completing the training, the recipient agrees to pay for the new SRO, who is assigned to backfill this position, to attend a 40 hour basic training course. The new SRO must complete the training no later than nine months after being placed in the school. If the officer has completed 40-hour basic training within the last 12 months prior to the award date, the condition has been fulfilled. Any longer than 12 months will require the officers to retake the course. The agency must coordinate with the training provider if they want funds to cover registration and travel costs.

30

Extensions: Your agency may request an extension of the 60-month award performance period to receive additional time to implement your award program. Such extensions do not provide additional funding. Any request for an extension will be evaluated on a case-by-case basis. Only those recipients that can provide a reasonable justification for delays will be granted no-cost extensions. Reasonable justifications may include difficulties in filling COPS Office-funded positions, officer turnover, or other circumstances that interrupt the 36-month funding period. An extension

allows your agency to compensate for such delays by providing additional time to complete the full 36 months of funding for each position awarded. Extension requests must be received prior to the end date of the award.

Item 10.

31

Contracts and/or MOUs with other Jurisdictions: Sworn law enforcement officer positions awarded must be used for law enforcement activities or services that benefit your agency and the population that it serves. The items funded under the CHP award cannot be utilized by other agencies unless the items benefit the population that your agency serves. Your agency may use items funded under the CHP award to assist other law enforcement agencies under a resource sharing, mutual aid, or other agreement to address multi-jurisdictional issues as described in the agreement.

32

Community Policing: Community policing activities to be initiated or enhanced by your agency and the officers funded by this award program were identified and described in your CHP award application. Your agency developed a community policing plan for the CHP award with specific reference to a crime or disorder problem and the following elements of community policing: (a) problem solving—your agency’s plan to assess and respond to the problem identified; (b) community partnerships and support, including related governmental and community initiatives that complement your agency’s proposed use of CHP funding; and (c) organizational transformation—how your agency will use the funds to reorient its mission to community policing or enhance its involvement in and commitment to community policing. Throughout the CHP award period, your agency is required to implement the community policing plan it set forth in the CHP award application.

The COPS Office defines community policing as a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. CHP awards through the specific officers funded (or an equal number of redeployed veteran officers) must be used to initiate or enhance community policing activities. All newly hired additional or rehired officers (or an equal number of redeployed veteran officers) funded under CHP must implement your agency’s approved community policing plan, which you described in your award application.

33

Career Law Enforcement Officer: Officer hiring funds may only be used to pay entry-level salaries and fringe benefits for full-time “career law enforcement officers” for 36 months. The COPS Office’s statute defines a “career law enforcement officer” as “a person hired on a permanent basis who is authorized by law or by a State or local public agency to engage in or supervise the prevention, detection, or investigation of violations of criminal laws.” 34 U.S.C. §10389(1). A recipient agency may use officer hiring funds to pay the salary and benefits of recruits while in academy training to become “career law enforcement officers” if it is the standard practice of the agency to do so with locally-funded recruits. The State of Alaska, and any Indian tribe or tribal organization in that State, may also use officer hiring funds for a “village public safety officer” defined as “an individual employed as a village public safety officer under the program established by the State pursuant to Alaska Statute 18.65.670.” Tribal Law and Order Act of 2010, Pub. L. 111-211, title II, § 247 (a)(2).

34

Memorandum of Understanding Requirement (for School Resource Officers only)

Recipients using award funding to hire and/or deploy School Resource Officers into schools understand and agree to the following:

- Your agency must submit a signed Memorandum of Understanding (MOU) between the law enforcement agency and the school partner(s) to the COPS Office before obligating or drawing down funds under this award. The MOU must be submitted to the COPS Office within 90 days of the date shown on the award letter.
- Your agency’s MOU must contain the following information?
 - o The purpose of the MOU
 - o Clearly defined roles and responsibilities of the school district and the law enforcement agency, focusing officers’ roles on safety
 - o Information sharing
 - o Supervision responsibility and chain of command for the SRO
 - o Signatures

Note: Please refer to the MOU Fact Sheet for a detailed explanation of the requirements under each of the bullets. Your agency’s implementation of the CHP award without submission and acceptance of the required MOU may result in expenditures not being reimbursed by the COPS Office and/or award de-obligation.

35

Allowable Costs Condition: The funding under this project is for the payment of three years (36 months) of approved full-time entry-level salaries and fringe benefits during the five-year (60 months) period of performance. The maximum federal share is \$125,000 per officer position (unless a local match waiver is approved) for career law enforcement officer positions hired and/or rehired on or after the official award start date. Any salary and fringe benefit costs higher than entry-level that your agency pays a CHP-funded officer must be paid with local funds. Your agency is required to use CHP award funds for the specific hiring categories awarded. Funding under this program may be used for the following categories:

- Hiring new officers, which includes filling existing officer vacancies that are no longer funded in your agency's budget;
- Rehiring officers laid off by any jurisdiction as a result of state, local, or Bureau of Indian Affairs (BIA) budget reductions; and/or
- Rehiring officers who were, at the time of award application, scheduled to be laid off (by your jurisdiction) on a specific future date as a result of state, local, or BIA budget reductions.

If your agency's local fiscal conditions have changed and your agency needs to change one or more of the funded hiring categories, your agency should request an award modification and receive prior approval before spending CHP funding under the new category. The approved budget in the award package specifies the amount of CHP funds awarded to your agency. Please note that the salary and fringe benefit costs requested in your CHP application may have been adjusted or removed. Your agency may only be reimbursed for the approved cost categories up to the amounts specified in the approved budget. Only actual allowable costs incurred during the award period will be eligible for reimbursement and drawdown. If your agency experiences any cost savings over the course of the award (for example, your award application overestimated the total entry-level officer salary and fringe benefits package), your agency may not use that excess funding to continue salary payments to the officers beyond 36 months. Any funds remaining after your agency has drawn down for the costs of approved salaries and fringe benefits incurred for each awarded position during the 36-month funding period will be deobligated during the closeout process and should not be spent by your agency.

36

Advancing Department of Justice Priority Problem Focus Areas: This condition applies to agencies that selected one of the following priority crime problem/focus areas to address in their COPS Hiring Program (CHP) application:

- Building Legitimacy and Trust
- Violent Crime/Gun Violence
- Combatting Hate and Domestic Extremism
- Police-based Response to Persons in Crisis

Your agency understands and agrees to the following: Your agency will implement the one specific community policing plan identified in your CHP award application?

Your agency will address its specific priority crime problem throughout the entire CHP award period?

Your agency will implement any organizational changes identified in its CHP award application;

Your agency will cooperate with any award monitoring by the COPS Office to ensure that it is initiating or enhancing its community policing efforts to address its priority crime problem, which may include your agency having to respond to additional or modified reporting requirements.

[]

I have read and understand the information presented in this section of the Federal Award Instrument.

Award Acceptance

Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.

B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.

C. Accept this award on behalf of the applicant.

D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

Agency Approval

Title of Approving Official	Name of Approving Official	Signed Date And Time
COPS Director	HUGH CLEMENTS	9/25/23 11:15 PM

Authorized Representative



ENGINEERING SERVICES

To: Mayor and Town Council

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

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

**Re: Bid Award Preston Road/Prosper Trail Dual Left Turn Lanes and
Coit Road/US 380 Southbound Dual Left Turn**

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 1. Acceleration of Infrastructure

Agenda Item:

Consider and act upon awarding CSP No. 2024-01-B to DDM Construction Corporation, related to construction services for the Preston Road/Prosper Trail Dual Left Turn Lanes and Coit Road/US 380 Southbound Dual Left Turn projects; and authorizing the Town Manager to execute a construction agreement for same.

Description of Agenda Item:

On November 7, 2023, at 3:00 PM, six (6) Competitive Sealed Proposals were received for the Preston Road/Prosper Trail Dual Left Turn Lanes and Coit Road/US 380 Southbound Dual Left Turn projects. The projects consist of all the work needed to construct additional left turn lanes for the east and westbound directions at Preston Road and Prosper Trail, and the southbound direction at Coit Road and US 380. The projects were advertised using the Competitive Sealed Proposal Construction alternative procurement method to allow the Town to award the projects to the contractor that offers the best value proposal based on the following criteria, which includes recently revised standard percentages based on direction from the Town Council:

- Qualifications and Experience (10%)
 - Outline contractor and subcontractor experience with similar projects.
 - Outline qualifications of key personnel assigned to this project.
 - Provide references.
- Project Timeline (25%)
- Cost Proposal (65%)

The verified proposal totals ranged between \$511,605.00 and \$759,456.00. The Engineer's Estimate was \$570,821.57. The proposal final completion times ranged from 90 calendar days to 240 calendar days. DDM Construction Corporation was the firm that ranked the highest after consideration of Costs, Time, and Qualifications with a cost of \$560,261.00, and a project timeline of 90 calendar days.

The contractor that provided the proposal with the lowest cost had a project timeline of 160 calendar days, nearly twice the time of DDM Construction Company's proposal. In addition, DDM Construction Corporation has more experience with similar projects in the Town of Prosper. They successfully completed the East First Street, North Street and South Lane project and most recently, the Teel/US 380 Intersection Improvements project. Staff checked the references provided and received positive feedback.

Budget Impact:

The cost for the construction of Preston Road/Prosper Trail Dual Left Turn Lanes is \$320,741 and Coit Road/US 380 Southbound Dual Left Turn is \$239,520 for a total project cost for the intersection improvements of \$560,261. The total construction budget for these projects is \$980,000, which includes \$730,000 for the Preston Road/Prosper Trail Dual Left Turn project in Account No. 750-6610-10-00-2121-ST and \$250,000 for the Coit Road/US 380 Southbound Dual Left Turn project in Account No. 750-6610-10-00-2207-ST.

Legal Obligations and Review:

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

Attachments:

- 1. Location Map
- 2. Bid Tabulation Summary
- 3. Construction Agreement

Town Staff Recommendation:

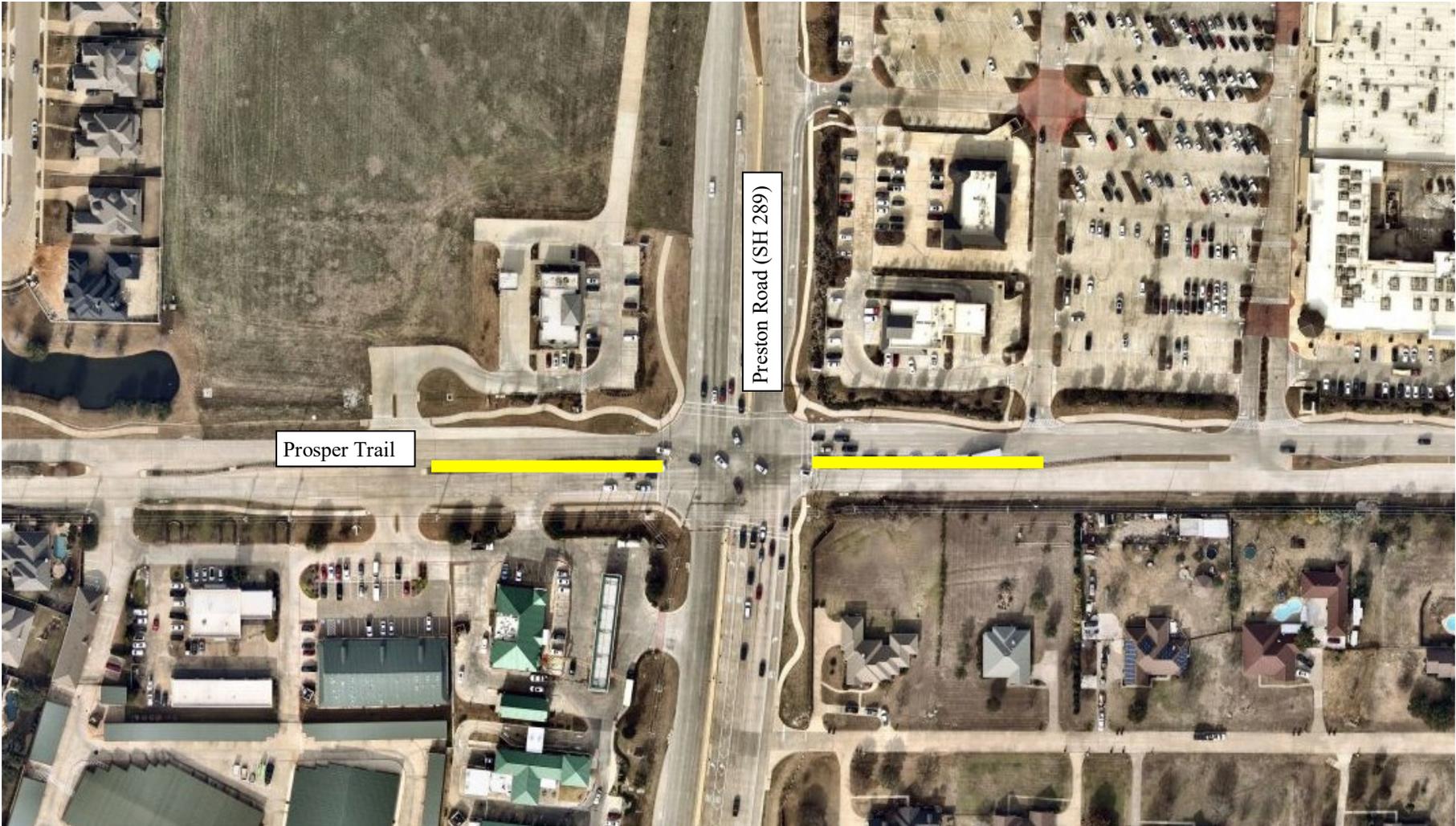
Town staff recommends that the Town Council award CSP No. 2024-01-B to DDM Construction Corporation, related to construction services for the Preston Road/Prosper Trail Dual Left Turn Lanes and Coit Road/US 380 Southbound Dual Left Turn projects; and authorizing the Town Manager to execute a construction agreement for same.

Proposed Motion:

I move to award CSP No. CSP No. 2024-01-B to DDM Construction Corporation, related to construction services for the Preston Road/Prosper Trail Dual Left Turn Lanes and Coit Road/US 380 Southbound Dual Left Turn projects; and authorize the Town Manager to execute a construction agreement for same.

LOCATION MAP

Preston Road/Prosper Trail Dual Left Turns



LOCATION MAP

Coit Road/US 380 SB Dual Left Turns





**TOWN OF PROSPER
PROPOSAL TABULATION SUMMARY**

Solicitation Number	CSP No. 2024-01-B
Solicitation Title	Preston Rd/Prosper Trail Dual Left Turn Lanes (2121-ST) and Coit Rd/US380 Southbound Dual Left Turns (2207-ST)
Close Date	11/7/2023 @ 2:00PM

Responding Supplier	City	State	Response Submitted	Response Total
HQS Construction	Plano	TX	11/7/2023 01:44:50 PM (CT)	\$511,605.00
DDM Construction Corporation	Addison	TX	11/7/2023 12:14:45 PM (CT)	\$560,261.00
2L Construction LLC	Boyd	TX	11/7/2023 01:40:23 PM (CT)	\$564,730.60
XIT Paving and Construction, Inc.	Waxahachie	TX	11/7/2023 01:42:50 PM (CT)	\$565,888.00
Jonestar Construction LLC	Cedar park	TX	11/7/2023 09:23:22 AM (CT)	\$617,795.00
GRod Construction, LLC	Aurora	TX	11/7/2023 10:22:17 AM (CT)	\$759,456.00

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

Certified by:	Jay Carter, NIGP-CPP, CPPB, C.P.M. Purchasing Manager Town of Prosper, Texas	Certified on:	November 7, 2023
---------------	--	---------------	------------------

CONSTRUCTION AGREEMENT

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS:

This Construction Agreement (the "Agreement") is made by and between **DDM Construction Corporation**, a company authorized to do business in Texas, (the "Contractor") and the **Town of Prosper, Texas**, a municipal corporation (the "Owner"). For and in consideration of the payment, agreements and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

**CSP NO. 2024-01-B
Preston Road/Prosper Trail Dual Left Turn Lanes (2121-ST) and Coit Road/US380 Southbound dual Left Turns (2207-ST).**

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

A. Contract Documents and Order of Precedence

The Contract Documents shall consist of the following documents:

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

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

**CSP NO: 2024-01-B Preston Road/Prosper Trail Dual Left Turn Lanes (2121-ST) and Coit Road/US380 Southbound dual Left Turns (2207-ST)
(Document Version 05/22)**

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

B. Total of Payments Due Contractor

For performance of the Work in accordance with the Contract Documents, the Owner shall pay the Contractor in current funds an amount not to exceed **Five Hundred Sixty Thousand Two Hundred Sixty-one dollars and zero cents (\$560,261.00)**. This amount is subject to adjustment by change order in accordance with the Contract Documents.

C. Dates to Start and Complete Work

Contractor shall begin work within ten (10) calendar days after receiving a written Notice to Proceed or written Work Order from the Owner. All Work required under the Contract Documents shall be substantially completed within **75** calendar days after the date of the Notice to Proceed for the base proposal. Within **15** additional calendar days after Substantial Completion, all outstanding issues shall be addressed and ready for final payment.

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

D. CONTRACTOR'S INDEMNITY TO THE OWNER AND OTHERS

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

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

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

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

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

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

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

E. Insurance Requirements

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

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

re: CSP No. 2024-01-B Preston Road/Prosper Trail Dual Left Turn Lanes (2121-ST) and Coit Road/US380 Southbound dual Left Turns (2207-ST).

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

2. Minimum Limits of Insurance

Contractor shall maintain throughout contract limits not less than:

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

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

3. Deductible and Self-Insured Retentions

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

4. Other Insurance Provisions

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

- a. General Liability and Automobile Liability Coverage
 - 1) The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.

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

b. Workers' Compensation and Employer's Liability Coverage

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

c. All Coverages

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

5. Acceptability of Insurers

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

6. Verification of Coverage

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

F. Performance, Payment and Maintenance Bonds

The Contractor shall procure and pay for a Performance Bond applicable to the work in the amount of one hundred fifteen percent (115%) of the total proposed price, and a Payment Bond applicable to the work in the amount of one hundred percent (100%) of the total proposed price. The Contractor shall also procure and pay for a Maintenance Bond applicable to the work in the amount of one hundred percent (100%) of the total proposed price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in this Construction Agreement. The performance, payment and maintenance bonds shall be issued in the form attached to this Construction Agreement as Exhibits A, B and C. Other performance, payment and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

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

G. Progress Payments and Retainage

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

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

1. copies of documents reasonably necessary to aid the Owner in preparing an estimate of the value of Work properly completed;
2. full or partial releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Owner releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;

3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

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

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

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

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

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

H. Withholding Payments to Contractor

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

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

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

I. Acceptance of the Work

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

It is specifically provided that Work shall be deemed accepted on the date specified in the Owner's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on "substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Owner's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

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

J. Acceptance of Erosion Control Measures

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

K. Final Payment

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens from the Contractor and its subcontractors, or other evidence satisfactory to the Owner to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been

paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Owner may, but is not obligated to issue final payment using joint checks.

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

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

L. Contractor's Warranty

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

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

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

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

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed

during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

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

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

M. Compliance with Laws

The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

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

N. "Anti-Israel Boycott" Provision

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

O. Other Items

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

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided, however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to

Contractor at any time before the Owner delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure:

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

THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST OWNER, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE OWNER BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE OWNER DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.

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

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

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

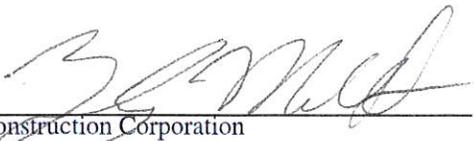
The Contract Documents are binding upon the Owner and Contractor and shall insure to their benefit and as well as that of their respective successors and assigns.

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

[Signatures continued on following page.]

CONTRACTOR

TOWN OF PROSPER, TEXAS



DDM Construction Corporation
By: Zackery Markwardt

By: **MARIO CANIZARES**

Title: President

Title: Town Manager

Date: 12/01/2023

Date: _____

Address: 306 W. Overly Drive
Lake Dallas, TX 75001

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

Phone: (940) 726-1121

Phone: (972) 346-2640

Email: Estimators@ddmcc.net

Email: mcanizares@prospertx.gov

ATTEST:

MICHELLE LEWIS SIRIANNI
Town Secretary



ENGINEERING SERVICES

To: Mayor and Town Council

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

Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager

Re: Eminent Domain Authorization Resolution
FM 1461 12-inch Water Line Relocation

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 1. Acceleration of Infrastructure

Agenda Item:

Consider and act upon a resolution of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain water line easements and temporary construction easements for the construction of the Town's FM 1461 12-inch Water Line Relocation project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Description of Agenda Item:

The Town is in the process of developing engineering plans for the construction of the FM 1461 12-inch Water Line Relocation project. To facilitate the construction of the project, it is necessary for the Town to acquire certain water line easements and temporary construction easements. The location of which is generally set forth in the attached resolution. The Location Map included with the resolution depicts the eighteen (18) properties currently known to be affected. As with other similar water line construction projects, it is not anticipated that all easements will require the use of eminent domain to complete the acquisition process, however, staff is requesting advance authorization to pursue acquisition by eminent domain if standard negotiations are unsuccessful.

Under the Property Code, water, wastewater, flood control and drainage projects are treated differently than other public uses in two ways:

- First, the Town is not required to identify the specific parcels or tracts of properties that the Town will condemn. The Town is allowed to adopt a condemnation ordinance, resolution or order that will "identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that

the owners' properties may be subject to condemnation proceedings during the planning or construction of the project." Tex. Gov't Code Ann. §§ 2206.053(g).

Item 12.

What this means is that for these covered projects, the Town may use a route map or other general diagram that gives fair notice that an owner's property may be condemned for a water line, sewer line, flowage easement or drainage easement, even if the precise location of the planned public improvement has not been determined.

- Second, the law allows the Town, for those projects which require multiple tracts of land for water lines, sewer lines, flowage easements and drainage easements, to adopt one ordinance or resolution for the project that "delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity." Tex. Gov't Code Ann. §§ 2206.053(f).

Utilization of this provision of the law allows the Town Manager, and presumably his/her designee, to authorize condemnation once the precise metes and bounds of the parcels needed for the project are determined by the engineers without having to go back to the Town Council again for additional authorization.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

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

Attached Documents:

1. Resolution
2. Location Map

Town Staff Recommendation:

Town staff recommends that the Town Council of the Town of Prosper, Texas, approve the attached resolution declaring the necessity to acquire certain water line easements and temporary construction easements for the construction of the Town's FM 1461 12-inch Water Line Relocation project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Proposed Motion:

I move to approve the attached resolution declaring the necessity to acquire certain water line easements and temporary construction easements for the construction of the Town's FM 1461 12-inch Water Line Relocation project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorize the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Please note: Pursuant to Section 2206.053(c) of the Texas Government Code, if two (2) or more councilmembers object to adopting this single Resolution for all the properties referenced therein, a separate record vote must be taken for each unit of property.

Item 12.

This item requires a roll call vote.

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2023-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, DECLARING THE PUBLIC NECESSITY TO ACQUIRE CERTAIN WATER LINE EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE CONSTRUCTION OF THE TOWN'S FM 1461 12-INCH WATER RELOCATION PROJECT; DETERMINING THE PUBLIC USE AND NECESSITY FOR SUCH ACQUISITION; AUTHORIZING THE ACQUISITION OF PROPERTY RIGHTS NECESSARY FOR SAID PROJECT; APPOINTING AN APPRAISER AND NEGOTIATOR AS NECESSARY; AUTHORIZING THE TOWN MANAGER OF THE TOWN OF PROSPER, TEXAS, TO ESTABLISH JUST COMPENSATION FOR THE PROPERTY RIGHTS TO BE ACQUIRED; AUTHORIZING THE TOWN MANAGER TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE NEEDED PROPERTY RIGHTS IN COMPLIANCE WITH ALL APPLICABLE LAWS AND RESOLUTIONS; AND AUTHORIZING THE TOWN ATTORNEY TO INSTITUTE CONDEMNATION PROCEEDINGS TO ACQUIRE THE PROPERTY RIGHTS IF PURCHASE NEGOTIATIONS ARE NOT SUCCESSFUL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council"), has determined that there exists a public necessity to acquire permanent water line easements and temporary construction easements from properties located from Preston Road (SH 289) east along the southern side of FM 1461 approximately two-miles to Custer Road for the construction of the Town's FM 1461 12-inch Water Line Relocation project ("Project"), the location of which water line and temporary construction easements is generally set forth in the location map exhibit attached to this resolution; and

WHEREAS, the Town Council desires to acquire the permanent water line easements and temporary construction easements (hereinafter referred to as "Required Easements"), as more particularly reflected in the location map exhibit attached to this Resolution, for this governmental public use and public necessity in conjunction with the Project; and

WHEREAS, the Town Council desires that the Town Manager, or his designee, take all necessary steps to acquire the Required Easements for the Project including, but not limited to, the retention of appraisers, engineers, and other consultants and experts, and that the Town Attorney, or his designee, negotiate the purchase of the Required Easements for the Project, and if unsuccessful in purchasing the Required Easements for the Project, to institute condemnation proceedings to acquire the Required Easements.

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

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Prosper, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

The Town Council hereby finds and determines that a public use and necessity exists for the Town of Prosper, Texas, to acquire the Required Easements for the Project, in the locations

generally shown in the location map exhibit attached hereto,

SECTION 3

The Town Manager, or his designee, is authorized and directed to negotiate for and to acquire the Required Easements for the Project, for the Town of Prosper, Texas, and to acquire said rights in compliance with State and Federal law. The Town Manager is specifically authorized and directed to do each and every act necessary to acquire the Required Easements for the Project including, but not limited to, the authority to negotiate, give notices, make written offers to purchase, prepare contracts, to retain and designate a qualified appraiser of the property interests to be acquired, as well as any other experts or consultants that he deems necessary for the acquisition process and, if necessary, to institute proceedings in eminent domain.

SECTION 4

The Town Manager, or any individual he may so designate, is appointed as negotiator for the acquisition of the Required Easements for the Project, and, as such, the Town Manager is authorized and directed to do each and every act and deed hereinabove specified or authorized by reference, subject to the availability of funds appropriated by the Town Council for such purpose. The Town Manager is specifically authorized to establish just compensation for the acquisition of the Required Easements. If the Town Manager or his designee determines that an agreement as to damages or compensation cannot be reached, then the Town Attorney or his designee is hereby authorized and directed to file, or cause to be filed, against the owners and interested parties of the Required Easements, proceedings in eminent domain to acquire the Required Easements for the Project.

SECTION 5

This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, BY A VOTE OF ___ TO ___ ON THIS THE 12TH DAY OF DECEMBER, 2023.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

EXHIBIT 1



FM 1461 Water Line Easement Acquisition Overall Location Map

TxDOT PROPOSED ROW LINE -----
 PROPOSED WATERLINE ALIGNMENT -----
 * TEMPORARY CONSTRUCTION EASEMENT ONLY



PARCEL #	OWNER	PARCEL #	OWNER	PARCEL #	OWNER
1	REMINGTON PRESTON LLC	7*	ZUEHL SCOTT M & CHRISTY JO ZUEHL	15*	KAMBOJI ABHIMANYU
2a	MERITAGE HOMES OF TEXAS LLC/ FRONTIER ESTATES PHASE 2	8	TWIN CREELS PROSPER LLC	16*	QSI PARTNERS LLC
2b	MERITAGE HOMES OF TEXAS LLC/ FRONTIER ESTATES PHASE 2	9	ANIAZ ARSHAD	17*	CASHON NANCY
3a	CHRISTIAN CHAPEL ASSEMBLY OF GOD	10	OM FRONTIER ESTATES LLC	18*	PROPSER STORAGE LP
3b	CHRISTIAN CHAPEL ASSEMBLY OF GOD	11*	AMBERWOOD FARMS HOMEOWNERS ASSN INC		
4*	WHITE R L LIVING TRUST	12	DUNN RODNEY W & CHARLA		
5*	HE JIANMING	13	NAVA LUIS C & CLAUDIA		
6*	DA HOOD TRUST	14	JOHNSON PHILLIP		



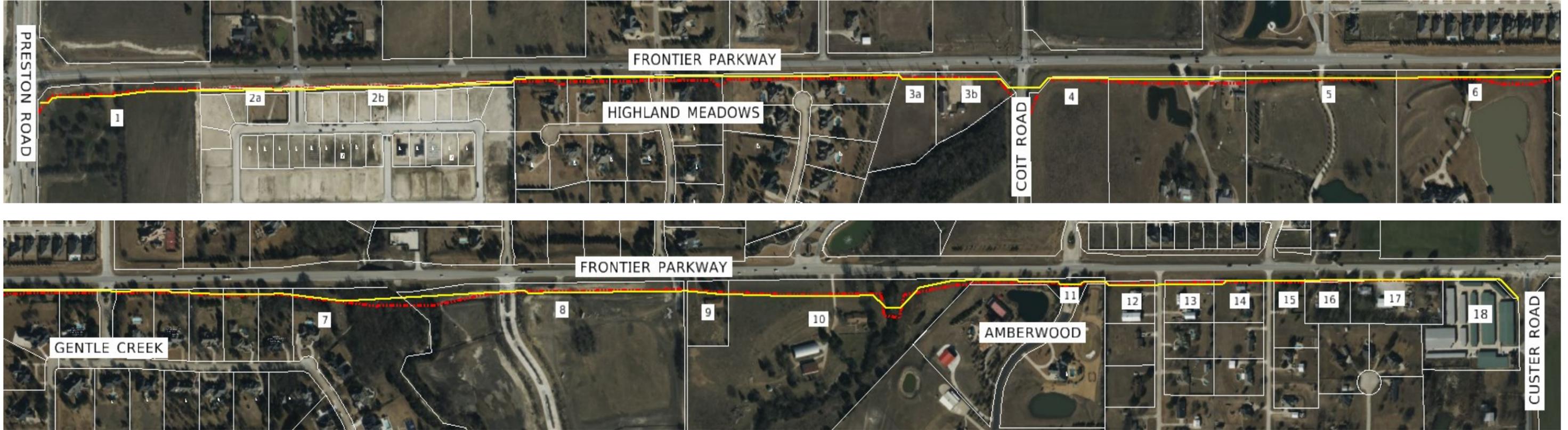
FM 1461 Water Line Easement Acquisition

Overall Location Map

TxDOT PROPOSED ROW LINE -----

PROPOSED WATERLINE ALIGNMENT -----

* TEMPORARY CONSTRUCTION EASEMENT ONLY



PARCEL #	OWNER	PARCEL #	OWNER	PARCEL #	OWNER
1	REMINGTON PRESTON LLC	7*	ZUEHL SCOTT M & CHRISTY JO ZUEHL	15*	KAMBOJI ABHIMANYU
2a	MERITAGE HOMES OF TEXAS LLC/ FRONTIER ESTATES PHASE 2	8	TWIN CREELS PROSPER LLC	16*	QSI PARTNERS LLC
2b	MERITAGE HOMES OF TEXAS LLC/ FRONTIER ESTATES PHASE 2	9	NIAZ ARSHAD	17*	CASHON NANCY
3a	CHRISTIAN CHAPEL ASSEMBLY OF GOD	10	OM FRONTIER ESTATES LLC	18*	PROPSER STORAGE LP
3b	CHRISTIAN CHAPEL ASSEMBLY OF GOD	11*	AMBERWOOD FARMS HOMEOWNERS ASSN INC		
4*	WHITE R L LIVING TRUST	12	DUNN RODNEY W & CHARLA		
5*	HE JIANMING	13	NAVA LUIS C & CLAUDIA		
6*	DA HOOD TRUST	14	JOHNSON PHILLIP		



ENGINEERING SERVICES

To: Mayor and Town Council

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

Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager

Re: Eminent Domain Authorization – Upper Doe Branch Wastewater Line (Teel – PISD Stadium)

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 1. Acceleration of Infrastructure

Agenda Item:

Consider and act upon a resolution of the Town Council of the Town of Prosper, Texas, declaring the public necessity to acquire certain wastewater line easements and temporary construction easements for the construction of the Town's Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Description of Agenda Item:

The Town is in the process of developing engineering plans for the construction of the Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project. To facilitate the construction of the project, it is necessary for the Town to acquire certain water line easements and temporary construction easements. The location of which is generally set forth in the attached resolution. The Location Map included with the resolution depicts the twelve (12) properties, not including two (2) Town owned properties, currently known to be affected. As with other similar wastewater line construction projects, it is not anticipated that all easements will require the use of eminent domain to complete the acquisition process, however, staff is requesting advance authorization to pursue acquisition by eminent domain if standard negotiations are unsuccessful.

Under the Property Code, water, wastewater, flood control and drainage projects are treated differently than other public uses in two ways:

- First, the Town is not required to identify the specific parcels or tracts of properties that the Town will condemn. The Town is allowed to adopt a condemnation ordinance, resolution or order that will "identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that

provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project." Tex. Gov't Code Ann. §§ 2206.053(g).

What this means is that for these covered projects, the Town may use a route map or other general diagram that gives fair notice that an owner's property may be condemned for a water line, sewer line, flowage easement or drainage easement, even if the precise location of the planned public improvement has not been determined.

- Second, the law allows the Town, for those projects which require multiple tracts of land for water lines, sewer lines, flowage easements and drainage easements, to adopt one ordinance or resolution for the project that "delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity." Tex. Gov't Code Ann. §§ 2206.053(f).

Utilization of this provision of the law allows the Town Manager, and presumably his/her designee, to authorize condemnation once the precise metes and bounds of the parcels needed for the project are determined by the engineers without having to go back to the Town Council again for additional authorization.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

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

Attached Documents:

1. Resolution
2. Location Map

Town Staff Recommendation:

Town staff recommends that the Town Council of the Town of Prosper, Texas, approve the attached resolution declaring the necessity to acquire certain wastewater line easements and temporary construction easements for the construction of the Town's Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorizing the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Proposed Motion:

I move to approve the attached resolution declaring the necessity to acquire certain wastewater line easements and temporary construction easements for the construction of the Town's Upper Doe Branch Wastewater Line (Teel – PISD Stadium) project; determining the public use and necessity for such acquisition; authorizing the acquisition of property rights necessary for said Project; appointing an appraiser and negotiator as necessary; authorizing the Town Manager to establish just compensation for the property rights to be acquired; authorize the Town Manager to take all steps necessary to acquire the needed property rights in compliance with all applicable laws and resolutions; and authorizing the Town Attorney to institute condemnation proceedings to acquire the property rights if purchase negotiations are not successful.

Please note: Pursuant to Section 2206.053(c) of the Texas Government Code, if two (2) or more councilmembers object to adopting this single Resolution for all the properties referenced therein, a separate record vote must be taken for each unit of property.

Item 13.

This item requires a roll call vote.

TOWN OF PROSPER, TEXAS

RESOLUTION NO. 2023-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, DECLARING THE PUBLIC NECESSITY TO ACQUIRE CERTAIN WASTEWATER LINE EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE CONSTRUCTION OF THE TOWN'S UPPER DOE BRANCH WW LINE (TEEL-PISD STADIUM) PROJECT; DETERMINING THE PUBLIC USE AND NECESSITY FOR SUCH ACQUISITION; AUTHORIZING THE ACQUISITION OF PROPERTY RIGHTS NECESSARY FOR SAID PROJECT; APPOINTING AN APPRAISER AND NEGOTIATOR AS NECESSARY; AUTHORIZING THE TOWN MANAGER OF THE TOWN OF PROSPER, TEXAS, TO ESTABLISH JUST COMPENSATION FOR THE PROPERTY RIGHTS TO BE ACQUIRED; AUTHORIZING THE TOWN MANAGER TO TAKE ALL STEPS NECESSARY TO ACQUIRE THE NEEDED PROPERTY RIGHTS IN COMPLIANCE WITH ALL APPLICABLE LAWS AND RESOLUTIONS; AND AUTHORIZING THE TOWN ATTORNEY TO INSTITUTE CONDEMNATION PROCEEDINGS TO ACQUIRE THE PROPERTY RIGHTS IF PURCHASE NEGOTIATIONS ARE NOT SUCCESSFUL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council"), has determined that there exists a public necessity to acquire permanent wastewater line easements and temporary construction easements from properties located from Teel Road and heading easterly to Legacy Drive, then north to Frontier Parkway, east to the future Shawnee Trail, south approximately 1,500 linear feet, east approximately 3,000 linear feet crossing Dallas Parkway and the Dallas North Tollway, north approximately 1,500 linear feet and then east along Frontier Parkway to connect to the existing lift station associated with the Prosper Independent School District Stadium for the construction of the Town's Upper Doe Branch WW Line (Teel-PISD Stadium) project ("Project"), the location of which wastewater line and temporary construction easements is generally set forth in the location map exhibit attached to this resolution; and

WHEREAS, the Town Council desires to acquire the permanent wastewater line easements and temporary construction easements (hereinafter referred to as "Required Easements"), as more particularly reflected in the location map exhibit attached to this Resolution, for this governmental public use and public necessity in conjunction with the Project; and

WHEREAS, the Town Council desires that the Town Manager, or his designee, take all necessary steps to acquire the Required Easements for the Project including, but not limited to, the retention of appraisers, engineers, and other consultants and experts, and that the Town Attorney, or his designee, negotiate the purchase of the Required Easements for the Project, and if unsuccessful in purchasing the Required Easements for the Project, to institute condemnation proceedings to acquire the Required Easements.

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

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Prosper, Texas, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

The Town Council hereby finds and determines that a public use and necessity exists for the Town of Prosper, Texas, to acquire the Required Easements for the Project, in the locations generally shown in the location map exhibit attached hereto,

SECTION 3

The Town Manager, or his designee, is authorized and directed to negotiate for and to acquire the Required Easements for the Project, for the Town of Prosper, Texas, and to acquire said rights in compliance with State and Federal law. The Town Manager is specifically authorized and directed to do each and every act necessary to acquire the Required Easements for the Project including, but not limited to, the authority to negotiate, give notices, make written offers to purchase, prepare contracts, to retain and designate a qualified appraiser of the property interests to be acquired, as well as any other experts or consultants that he deems necessary for the acquisition process and, if necessary, to institute proceedings in eminent domain.

SECTION 4

The Town Manager, or any individual he may so designate, is appointed as negotiator for the acquisition of the Required Easements for the Project, and, as such, the Town Manager is authorized and directed to do each and every act and deed hereinabove specified or authorized by reference, subject to the availability of funds appropriated by the Town Council for such purpose. The Town Manager is specifically authorized to establish the just compensation for the acquisition of the Required Easements. If the Town Manager or his designee determines that an agreement as to damages or compensation cannot be reached, then the Town Attorney or his designee is hereby authorized and directed to file, or cause to be filed, against the owners and interested parties of the Required Easements, proceedings in eminent domain to acquire the Required Easements for the Project.

SECTION 5

This Resolution is effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, BY A VOTE OF ___ TO ___ ON THIS THE 12TH DAY OF DECEMBER, 2023.

David F. Bristol, Mayor

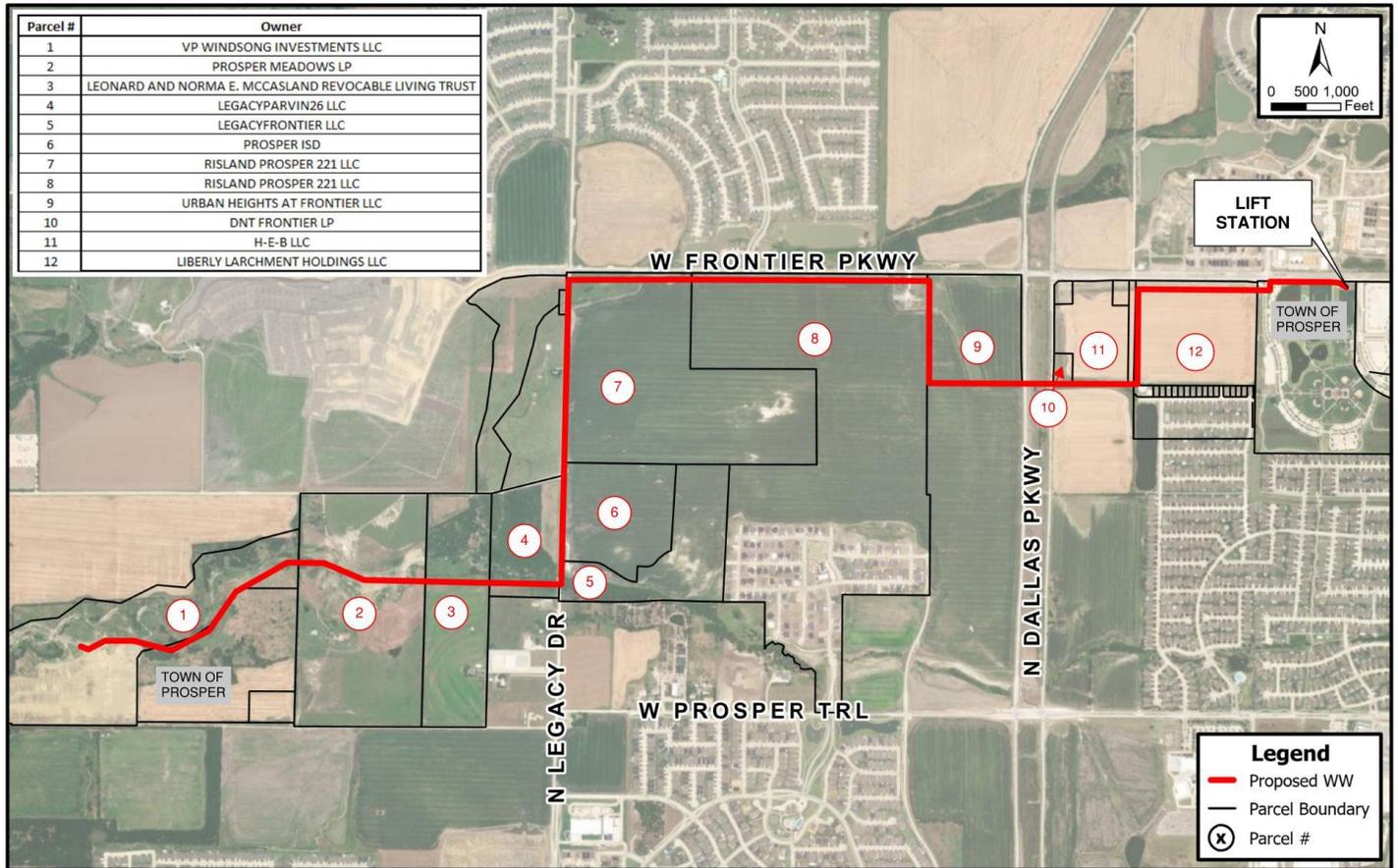
ATTEST:

Michelle Lewis Sirianni, Town Secretary

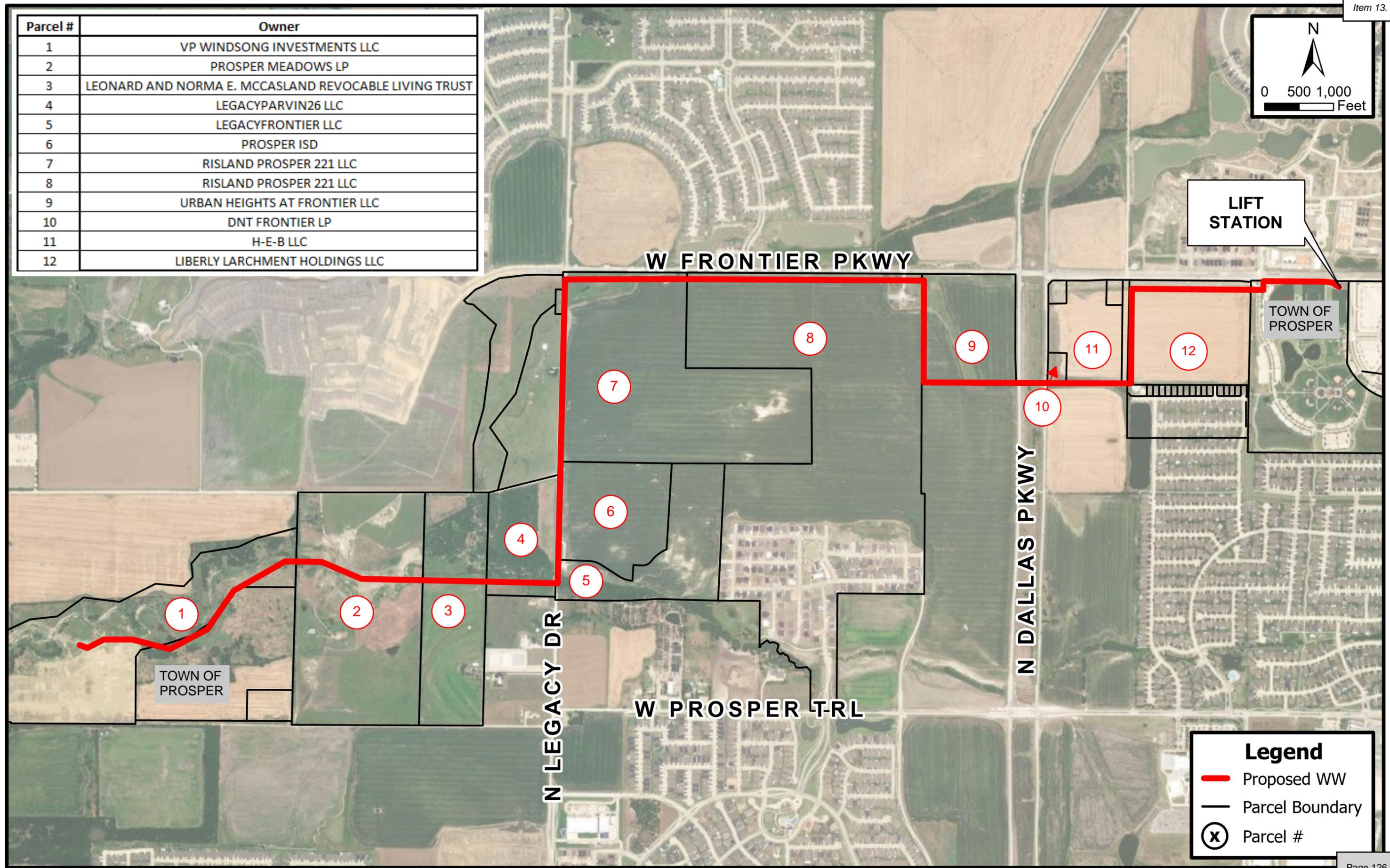
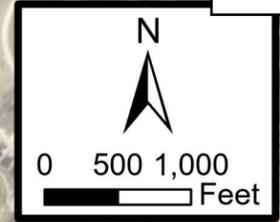
APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

EXHIBIT 1



Parcel #	Owner
1	VP WINDSONG INVESTMENTS LLC
2	PROSPER MEADOWS LP
3	LEONARD AND NORMA E. MCCASLAND REVOCABLE LIVING TRUST
4	LEGACYPARVIN26 LLC
5	LEGACYFRONTIER LLC
6	PROSPER ISD
7	RISLAND PROSPER 221 LLC
8	RISLAND PROSPER 221 LLC
9	URBAN HEIGHTS AT FRONTIER LLC
10	DNT FRONTIER LP
11	H-E-B LLC
12	LIBERLY LARCHMENT HOLDINGS LLC



LIFT STATION

TOWN OF PROSPER

TOWN OF PROSPER

Legend

- Proposed WW
- Parcel Boundary
- Parcel #



PARKS AND RECREATION

To: Mayor and Town Council

From: Dan Baker, Parks and Recreation Director

**Through: Mario Canizares, Town Manager
Robyn Battle, Executive Director**

**Re: Raymond Community Park – Award of Guaranteed Maximum Price
Contract #1 for Site Preparation**

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approval of Raymond Community Park Guaranteed Maximum Price Contract #1 for Site Preparation and authorize the Town Manager to execute documents for the same.

Description of Agenda Item:

Staff are asking for the approval of Raymond Community Park GMP Contract #1 award in the amount of \$8,543,775.91 for the initial phase of the project including all components of site preparation.

It is expressly understood by the Owner and Construction Manager this GMP Contract # 1 has been prepared solely to expedite the initial phase of construction of the work as defined by Exhibit "C" - Specifications and Exhibit "D" - Drawings. The Owner and Construction Manager further acknowledge GMP #1 is intended to be supplemented by a future Guaranteed Maximum Price Number Two ("GMP # 2"), if agreed by the Owner to be in the Owner's best interests. GMP #2, if approved by the Owner, will provide the Owner's authorization for the construction of the balance of the Work required to provide a complete and functional project.

Budget Impact:

The Contract Sum is guaranteed by the Construction Manager not to exceed eight million five hundred forty-three thousand seven hundred seventy-five dollars and ninety-one cents (\$8,543,775.91), subject to additions and deductions by Change Order as provided in the Contract Documents.

Funding is provided via the 2020 Bond Program. 750-6610-10-00-2122-PK

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the Parks and Recreation Department moving forward utilizing two GMP packages.

Attached Documents:

1. AIA Document A133 – Guaranteed Maximum Price Amendment

Town Staff Recommendation:

Town staff recommends the approval and award of Raymond Community Park Guaranteed Maximum Price Contract #1 for Site Preparation and authorize the Town Manager to execute documents for the same.

Proposed Motion:

I move to approve and award the Raymond Community Park Guaranteed Maximum Price Contract #1 for Site Preparation and authorize the Town Manager to execute documents for the same.



AIA Document A133[®] – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the _____ day of _____ in the year _____, is incorporated into the accompanying AIA Document A133TM-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the Twenty-Third day of November in the year Twenty Twenty-Two (the "Agreement")
(In words, indicate day, month, and year.)

for the following **PROJECT:**
(Name and address or location)

Raymond Community Park
Prosper, TX

THE OWNER:
(Name, legal status, and address)

Town of Prosper
250 W First Street
Prosper, TX 75078

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

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

TABLE OF ARTICLES

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

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

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

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed eight million five hundred forty-three thousand seven hundred seventy-five dollars and ninety-one cents (\$ 8,543,775.91), subject to additions and deductions by Change Order as provided in the Contract Documents.

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

AIA Document A201TM-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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

See Attachment "A" – Itemized Guaranteed Maximum Price Number One ("GMP # 1").

It is expressly understood by the Owner and Construction Manager this GMP # 1 has been prepared solely to expedite the initial phase of construction of the Work as defined by Exhibit "C" - Specifications and Exhibit "D" - Drawings.

The Owner and Construction Manager further acknowledge GMP #1 is intended to be supplemented by a future Guaranteed Maximum Price Number Two ("GMP # 2"), if agreed by the Owner to be in the Owner’s best interests. GMP #2, if approved by the Owner, will provide the Owner’s authorization for the construction of the balance of the Work required to provide a complete and functional project.

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

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

§ A.1.1.5 Alternates

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

Item	Price
<u>None included.</u>	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<u>Not applicable.</u>		

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>Not applicable.</u>		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of execution of this Amendment.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
- See Attachment "B" – Schedule

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

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

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work: (Check one of the following boxes and complete the necessary information.)

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

[] ~~By the following date:~~ **X**] See Attachment "B" – Schedule

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

Portion of Work	Substantial Completion Date
Not applicable.	

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

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages
See Attachment "C" –A201 – General Conditions of the Contract for Construction			

§ A.3.1.2 The following Specifications: (Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See Attachment "D" – Specifications

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

§ A.3.1.3 The following Drawings: (Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See Attachment "E" – Drawings

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any: (If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Construction Manager’s roles

and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
Not applicable.		

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
Not applicable.	

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

The exclusions from the Scope of Work not included in GMP #1 are the S3 poles; powder coating the Musco poles; materials testing costs and electric power company charges.

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

Not applicable.

§ A.3.1.8 In the event of conflict(s) between or among this GMP Amendment; its Attachments; the A133 Owner-Construction Manager Agreement; and its Addendum, the precedence of controlling documents shall be as follows:

- .1 The Addendum to the A133 Owner-Construction Manager Agreement;
- .2 The A133 Owner-Construction Manager Agreement;
- .3 This Exhibit "A" - Guaranteed Maximum Price Amendment;
- .4 Attachment "C" - The A201 General Conditions of the Contract for Construction;
- .5 Attachment "D" - Specifications
- .6 Attachment "E" - Drawings; and then
- .7 Attachment "A" - Itemized Guaranteed Maximum Price.

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

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

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

See Attachment "A" – Itemized Guaranteed Maximum Price

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

Init.

OWNER *(Signature)*

Mario Canizares, Town Manager
(Printed name and title)


CONSTRUCTION MANAGER *(Signature)*

Gregory Firebaugh, President
(Printed name and title)

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM:

Terrence S. Welch, Town Attorney

Init.

/

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Squadra, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 17:48:58 ET on 11/28/2023 under Order No. 2114392363 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, other than changes shown in the attached final document by underscoring added text and striking over deleted text.



(Signed)

Chris Squadra, Principal

(Title)

28 NOV 2023

(Dated)

Town of Prosper's Raymond Community Park GMP #1 - Attachment A - Itemized Guaranteed Maximum Price

Subcontractor	Description	Cost Detail	GMP Amount
Prime Erosion Control	Erosion Control SWPPP		\$51,178.00
Dean Construction	Tree protection/ temporary fence		\$48,000.00
Vista Earthwork	Demo & Earthwork		\$1,189,075.00
Tri Dal Utilities	Utilities		\$1,454,750.00
L.H. Lacy Company, LTD	Fire Lane & Vehicular Paving		\$1,800,000.00
A New Deal	Irrigation Sleeves		\$75,000.00
Nema 3 Electric	Site Electrical		<u>\$2,662,125.00</u>
	Subtotal - Cost of the Work (without Insurance, General Conditions or Fee)		\$7,280,128.00
	Performance & Payment Bond	\$86,269.00	
	General Liability Insurance + 2 Year Maintenance Bond	\$36,634.75	
	General Conditions Costs (w/o Insurances Above)	<u>\$221,810.31</u>	
	Total General Conditions + Insurances (4.735 % vs. 5.02 % Allowed per Contract)		<u>\$344,714.06</u>
	Subtotal - Cost of the Work + Insurance + General Conditions (without Fee)		\$7,624,842.06
	Fee (2.5%)		<u>\$190,621.05</u>
	Subtotal - Cost of the Work + Insurance + General Conditions + Fee		\$7,815,463.11
	Owner Controlled Contingency at 9.31 % of Contractor's Costs + Fee		<u>\$728,012.80</u>
	Guaranteed Maximum Price Including Owner's Contingency		\$8,543,475.91

The "Owner Controlled Contingency" above is for the Owner's exclusive use in absorbing the increased scope of Cost of the Work items (if any) within the Contractor's Guaranteed Maximum Price.

Any Owner's authorization of use of the Owner's Contingency shall be in writing; and will ultimately require documentation in a "Contingency Use Authorization," showing both the amount reallocated to Cost of the Work, and the balance remaining in the Owner's Contingency.

There is no Contractor's Contingency included in this Guaranteed Maximum Price.

TOWN OF PROSPER'S RAYMOND PARK

GMP #1 AMENDMENT ATTACHMENT B - SCHEDULE

Work Element	December	January	February	March	April	May	June	July	August	September
GMP # 1 Activities										
Notice to Proceed w/GMP 1 - 19 DEC 2024	█									
Erosion Control	█	█	█	█	█	█	█	█	█	█
Tree protection/ Temporary fence	█	█	█	█	█	█	█	█	█	█
Demo / Earthwork	█	█	█	█	█	█	█			
Utilities - Storm Sewer				█	█	█				
Paving and Firelane with Lime				█	█	█	█			
Electrical				█	█	█	█	█	█	█
Irrigation Sleeving				█	█					
GMP # 1 Substantial Completion - 31 JUL 2024								█		
GMP # 1 Punchlist Completion								█	█	
GMP # 1 Final Completion/City Acceptance 31 AUG									█	
GMP # 2 Activities (If Approved by the City)										
Notice to Proceed w/GMP #2 - 05 MAR 2024				█						
Erosion Control										█
Tree Protection/ Temporary Fence										█
GMP #2 Construction Work				█	█	█	█	█	█	█
Electrical (Long Lead Items from GMP # 01)										█
GMP # 2 Substantial Completion - 31 JAN 2025										
GMP # 2 Punchlist Completion										
GMP # 2 Final Completion/City Acceptance 28 FEB										

GMP #1 AMENDMENT
ATTACHMENT B - SCHEDULE

Work Element	October	November	December	January	February
GMP # 1 Activities					
Notice to Proceed w/GMP 1 - 19 DEC 2024					
Erosion Control					
Tree protection/ Temporary fence					
Demo / Earthwork					
Utilities - Storm Sewer					
Paving and Firelane with Lime					
Electrical					
Irrigation Sleeving					
GMP # 1 Substantial Completion - 31 JUL 2024					
GMP # 1 Punchlist Completion					
GMP # 1 Final Completion/City Acceptance 31 AUG					
GMP # 2 Activities (If Approved by the City)					
Notice to Proceed w/GMP #2 - 05 MAR 2024					
Erosion Control	Yellow	Yellow	Yellow	Yellow	
Tree Protection/ Temporary Fence	Green	Green	Green	Green	
GMP #2 Construction Work	Yellow	Yellow	Yellow	Yellow	
Electrical (Long Lead Items from GMP # 01)	Red	Red	Red	Red	
GMP # 2 Substantial Completion - 31 JAN 2025					Black
GMP # 2 Punchlist Completion					Black
GMP # 2 Final Completion/City Acceptance 28 FEB					Black



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Raymond Community Park
Prosper, TX

THE OWNER:

(Name, legal status and address)

Town of Prosper
250 W First Street
Prosper, TX 75078

THE ARCHITECT:

(Name, legal status and address)

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 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
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

Init.

User Notes:

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Init.

/

User Notes:

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3****Access to Work****3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing9.4.2, 9.8.3, 12.2.1, **13.4****Additional Time, Claims for**3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6****Administration of the Contract**3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances**3.8****Applications for Payment**4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration8.3.1, 15.3.2, **15.4****ARCHITECT****4****Architect**, Definition of**4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work**5.2****Basic Definitions****1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5****Building Information Models Use and Reliance****1.8**

Building Permit

3.7.1

Capitalization**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

/

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1**CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for 3.7.4

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up**3.15**, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2**Communications****3.9.1**, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND 9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder**15.4.4****CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1**Construction Change Directives**

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance**15.1.4**

Contract, Definition of

1.1.2**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1**CONTRACTOR****3**

Contractor, Definition of

3.1, **6.1.2****Contractor's Construction and Submittal Schedules**

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

/

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

3.2, **3.7.4**, **5.2.3**, **7.2.1**, **7.3.1**, **7.4**, **8.3**, **9.5.1**, **9.7**, **10.3.2**, **10.4**, **14.3.2**, **15.1.6**, 15.2.5

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

Emergencies

10.4, 14.1.1.2, **15.1.5**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Init.

/

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,

14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,

10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,

9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,

11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,

15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,

10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,

15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

Init.

/

MISCELLANEOUS PROVISIONS**13****Modifications, Definition of****1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility**6.2****Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,
8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6,
15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,
14.3.1

OWNER**2****Owner, Definition of****2.1.1****Owner, Evidence of Financial Arrangements**

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,
15.2.7

Owner's Insurance**11.2**

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up**6.3****Owner's Right to Perform Construction and to Award Separate Contracts****6.1****Owner's Right to Stop the Work****2.4**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,
5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION**9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF**10**

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of**3.12.2****Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

/

Project, Definition of**1.1.4**

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.2

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY**10**

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field**Conditions by Contractor**

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, 13.3, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Init.

/

Subsurface Conditions

3.7.4

Successors and Assigns**13.2****Superintendent**

3.9, 10.2.6

Supervision and Construction Procedures1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4**Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience**14.3****Suspension of the Work**

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause5.4.1.1, **14.2**, 15.1.7**Termination by the Owner for Convenience****14.4****Termination of the Architect**

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT**14****Tests and Inspections**3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4****TIME****8****Time, Delays and Extensions of**3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5**Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK**12****Uncovering of Work****12.1****Unforeseen Conditions, Concealed or Unknown**

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site**3.13**, 6.1.1, 6.2.1**Values, Schedule of****9.2**, 9.3.1**Waiver of Claims by the Architect**

13.3.2

Waiver of Claims by the Contractor9.10.5, 13.3.2, **15.1.7****Waiver of Claims by the Owner**9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7****Waiver of Consequential Damages**

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation6.1.1, **11.3****Warranty****3.5**, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2**Weather Delays**

8.3, 15.1.6.2

Work, Definition of**1.1.3****Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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 or proposal requirements.

§ 1.1.1.1 In the event of conflict(s) between or among these A201 General Conditions for Construction and the A133 Owner-Construction Manager Agreement, and its Addendum, the precedence of controlling documents shall be as follows:

- .1 The Addendum to the A133 Owner-Construction Manager Agreement;
- .2 The A133 Owner-Construction Manager Agreement; and then
- .3 This Attachment "C" – the A201 General Conditions of the Contract for Construction.

§ 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. The Initial Decision Maker shall not show partiality to the ~~Owner or Contractor~~ Contractor or Architect and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the 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 suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

Init.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

Init.

/

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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.

§ 2.3.5 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.

§ 2.3.6 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.

§ 2.4 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.

§ 2.5 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 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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.

Init.

/

§ 3.1.3 The Contractor shall not be relieved of its 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 2.3.4, 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 submit 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, subject to Section 15.1.7, 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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

§ 3.5.1 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.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 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 14 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 that an equitable adjustment be made 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim 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 notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice 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 and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved 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 make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and 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 how 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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.

§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and 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.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 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, 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its 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 and 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 the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the 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 Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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.

§ 4.2 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.

§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's

Init.

/

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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 13.4.2 and 13.4.3, whether or not the 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, 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 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 order 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 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 the 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, 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 that the Contractor, by these Contract 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; 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 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor 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. The Contractor shall proceed promptly with changes in the Work, 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

Init.

/

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 7.3.4 shall be limited to the following:

- .1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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, directly related to the change; and
- .5** Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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.

§ 7.3.7 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.

§ 7.3.8 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended 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**

§ 9.1.1 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and 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 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, suppliers, or other persons or entities that 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 (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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. 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 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

Init.

/

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 suppliers 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 either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 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 supplier 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 Contractor shall reflect such payment on its next Application 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both,

Init.

/

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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 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' 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 shutdown, 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 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,

Init.

/

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 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. 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 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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, 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, corrected, 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 the 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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, a Subcontractor, or a Sub-subcontractor; 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards.

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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, notice of the 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 and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, 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 hazardous 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 hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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 reimburse 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 Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals

Init.

/

and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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

Init.

/

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 any 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 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 2.5.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, 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, excluding that jurisdiction's choice of law rules. 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 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

§ 13.4.4 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.

§ 13.4.5 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.

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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' 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 or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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 reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner 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' 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 under 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 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 Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

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, a change in the Contract Time, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by 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 under this Section 15.1.3.1 shall 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 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.

§ 15.1.7 Waiver of 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The ~~Architect~~ Owner 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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~~ Maker, as it is the Owner, may 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 the request, and shall either (1) provide a

Init.

/

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 as 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, 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 15.1.7, 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.~~ mediation. 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.~~order.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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 (Intentionally Deleted)

§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing,~~

Init.

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. Not Used.

§ 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. Not Used.

§ 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. Not Used.

§ 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. Not Used.

§ 15.4.4 Consolidation or Joinder (Intentionally Deleted)

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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). Not Used.

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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. Not Used.

§ 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 those of the Owner and Contractor under this Agreement. Not Used.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Squadra, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 17:27:36 ET on 11/28/2023 under Order No. 2114490280 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™ – 2017, General Conditions of the Contract for Construction, other than changes shown in the attached final document by underscoring added text and striking over deleted text.



(Signed)

Chris Squadra, Principal

(Title)

28 NOV 2023

(Dated)

ATTACHMENT D

RAYMOND COMMUNITY PARK – PHASE I
PROSPER, TEXAS

Item 14.

CONTRACT DOCUMENTS AND SPECIFICATIONS TABLE OF CONTENTS

TABLE OF CONTENTS

FRONT END DOCUMENTS

Advertisement for Bids
Instructions to Bidders
Bid Form
Contractor Qualification Form
Sample Subcontract Agreement

DIVISION 1 - GENERAL REQUIREMENTS

01010 Summary of Work
01025 Measurement and Basis of Payment
01027 Application for Payment
01040 Coordination
01045 Cutting and Patching
01200 Project Meetings
01300 Administrative Submittals
01340 Shop Drawings, Product Data and Sample Submittals
01350 Progress Schedule
01440 Testing and Laboratory Control
01500 Construction Facilities
01605 Warranties and Maintenance
01610 Product Handling
01630 Product Options, Equal Materials and Substitutions
01705 Project Closeout
01710 Cleaning
01720 Project Record Documents

DIVISION 2 - SITE WORK

02050 Demolition
02105 Preservation & Protection of Plant Materials
02220 Earthwork
02221 Topsoil
02225 Excavating, Backfilling and Compacting for Utilities
02270 Erosion and Sediment Control
02305 Topsoil
02310 Laser Grading
02512 Concrete Vehicular Paving
02515 Concrete Walks
02520 Infield Surfacing
02521 Infield Conditioner
02580 Pavement Marking
02730 Stabilized Decomposed Granite Surfacing

ATTACHMENT D

RAYMOND COMMUNITY PARK – PHASE I
PROSPER, TEXAS

Item 14.

CONTRACT DOCUMENTS AND SPECIFICATIONS TABLE OF CONTENTS

TABLE OF CONTENTS

02830	Chain Link Fencing
02930	Hydraulic Seeding
02938	Sodding
02950	Trees, Shrubs and Ground Cover
02975	Landscape Irrigation System

DIVISION 3 – CONCRETE

03100	Concrete Formwork
03200	Reinforcing Steel
032000-S	Concrete Reinforcing
033000-S	Cast-in-Place Concrete
03310	Cast-in-Place Concrete
03366	Integrally Colored and Stamped Concrete

DIVISION 4 – MASONRY – NOT USED

04100-A	Mortar and Masonry Grout
042200-S	Concrete Unity Masonry
04720-A	Cast Stone Masonry
04800-A	Masonry Assemblies

DIVISION 5 – METALS

051200-S	Structural Steel
05500	Miscellaneous Metals
055000-S	Metal Fabrications
055213-S	Pipe and Tube Railings

DIVISION 6 - WOODS AND PLASTICS – NOT USED

061000-S	Rough Carpentry
061753-S	Shop Fabricated Wood Trusses
061800-S	Glulam Beams

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

07213-A	Thermal Insulation
07410-A	Preformed Metal Roofing
07530-A	Elastomeric Membrane Roofing
07620-A	Sheet Metal Flashing and Trim
07725-A	Roof Specialties
07900	Joint Sealants

ATTACHMENT D

RAYMOND COMMUNITY PARK – PHASE I
PROSPER, TEXAS

Item 14.

CONTRACT DOCUMENTS AND SPECIFICATIONS TABLE OF CONTENTS

TABLE OF CONTENTS

07900-A Joint Selants

DIVISION 8 - DOORS AND WINDOWS – NOT USED

08111-A Standard Steel Doors and Frames
08560-A Special Function Windows
08710-A Door Hardware
08840-A Plastic Glazing
08920-A Louvers and Vents

DIVISION 9 – FINISHES – NOT USED

097010-A Special Wall Surfaces
09705-A Resinous Flooring
09810-A Special Masonry Coatings
09900-A Painting
09970-A Coating Systems for Steel

DIVISION 10 – SPECIALTIES – NOT USED

10425-A Identifying Devices
10801-A Toilet Accessories
313116-A Termite Control

DIVISION 11 – EQUIPMENT

011510 Site Furnishings and Park Equipment

DIVISION 12 - FURNISHINGS – NOT USED

DIVISION 13 - SPECIAL CONSTRUCTION – NOT USED

DIVISION 14 - CONVEYING SYSTEMS - NOT USED

DIVISION 15 – MECHANICAL – NOT USED

ATTACHMENT D

RAYMOND COMMUNITY PARK – PHASE I
PROSPER, TEXAS

Item 14.

CONTRACT DOCUMENTS AND SPECIFICATIONS TABLE OF CONTENTS

TABLE OF CONTENTS

15010-A	General Requirements for Mechanical Work
15020-A	Basic Materials and Methods
15070-A	Trenching, Backfilling, and Compacting for Pipes, Cables, and Ducts
15110-A	Valves
15120-A	Pipes and Fittings
15250-A	Insulation
15440-A	Plumbing Fixtures
15480-A	Domestic Water Heaters
15750-A	Vertical Terminal AC Unites
15820-A	Exhaust Fans
15830-A	Low Velocity Metal Ductwork
15850-A	Ductwork Accessories
15870-A	Air Diffusers

DIVISION 16 – ELECTRICAL

16010	General Requirements for Electrical Work
16010-A	Electrical General Provisions
16030-A	Testing
16111	Raceways and Fittings
16111-A	Conduit
16112	Surface Raceways
16120	Wire and Cable
16120-A	Wire and Cable
16130	Boxes
16130-A	Boxes
16141-A	Wiring Devices
16160	Cabinets and Enclosures
16190-A	Supporting Devices
16195	Electrical Identification
16195-A	Electrical Identification
16440-A	Disconnect Switches
16450	Grounding and Bonding
16461	Transformers
16470-A	Panelboards
16471	Panelboards
16485	Contractors
16485-A	Contactors
16491	Disconnect Switches
19503	Poles and Standards
16505-A	Lighting Fixtures
16510	Site Lighting Fixtures

ATTACHMENT D

RAYMOND COMMUNITY PARK – PHASE I
PROSPER, TEXAS

Item 14.

CONTRACT DOCUMENTS AND SPECIFICATIONS TABLE OF CONTENTS

TABLE OF CONTENTS

APPENDIX

Geotechnical Investigation Report

ATTACHMENT E - DRAWINGS

NO.	SHEET NAME				
* INDEX	SHEET INDEX				
SP	SITE PLAN				
* GN.00	GENERAL NOTES				
* GN.01	TOWN GENERAL NOTES - 1				
* GN.02	TOWN GENERAL NOTES - 2				
* GN.03	TOWN GENERAL NOTES - 3				
* GN.04	TOWN GENERAL NOTES - 4				
* GN.05	TOWN GENERAL NOTES - 5				
* GN.06	TOWN GENERAL NOTES - 6				
* L0.00	OVERALL EX. CONDITIONS & DEMO PLAN				
* L0.01	EX. CONDITIONS & DEMO PLAN - AREA 1				
* L0.02	EX. CONDITIONS & DEMO PLAN - AREA 2				
* L0.03	EX. CONDITIONS & DEMO PLAN - AREA 3				
* L0.04	EX. CONDITIONS & DEMO PLAN - AREA 4				
* L0.05	EX. CONDITIONS & DEMO PLAN - AREA 5				
* L0.06	EX. CONDITIONS & DEMO PLAN - AREA 6				
* L0.07	EX. CONDITIONS & DEMO PLAN - AREA 7				
* L0.08	EX. CONDITIONS & DEMO PLAN - AREA 8				
* L0.09	EX. CONDITIONS & DEMO PLAN - AREA 9				
* L0.10	EX. CONDITIONS & DEMO PLAN - AREA 10				
* L0.11	EX. CONDITIONS & DEMO PLAN - AREA 11				
* L0.12	EX. CONDITIONS & DEMO PLAN - AREA 12				
* L0.13	EX. CONDITIONS & DEMO PLAN - AREA 13				
* L0.14	EX. CONDITIONS & DEMO PLAN - AREA 14				
* L0.15	EX. CONDITIONS & DEMO PLAN - AREA 15				
* L0.16	EX. CONDITIONS & DEMO PLAN - AREA 16				
* L0.17	EX. CONDITIONS & DEMO PLAN - AREA 17				
* L0.18	EX. CONDITIONS & DEMO PLAN - AREA 18				
* L0.19	EX. CONDITIONS & DEMO PLAN - AREA 19				
* L0.20	TREE PRESERVATION DETAILS				
* L1.00	SITE ORIENTATION PLAN				
* L1.01	LAYOUT PLAN - AREA 1				
* L1.02	LAYOUT PLAN - AREA 2				
* L1.03	LAYOUT PLAN - AREA 3				
* L1.04	LAYOUT PLAN - AREA 4				
* L1.05	LAYOUT PLAN - AREA 5				
* L1.06	LAYOUT PLAN - AREA 6				
* L1.07	LAYOUT PLAN - AREA 7				
* L1.08	LAYOUT PLAN - AREA 8				
* L1.09	LAYOUT PLAN - AREA 9				
* L1.10	LAYOUT PLAN - AREA 10				
* L1.11	LAYOUT PLAN - AREA 11				
* L1.12	LAYOUT PLAN - AREA 12				
* L1.13	LAYOUT PLAN - AREA 13				
* L1.14	LAYOUT PLAN - AREA 14				
* L1.15	LAYOUT PLAN - AREA 15				
* L1.16	LAYOUT PLAN - AREA 16				
* L1.17	LAYOUT PLAN - AREA 17				
* L1.18	LAYOUT PLAN - AREA 18				
* L1.19	LAYOUT PLAN - AREA 19				
L1.20	CONCESSION PLAZA ENLARGEMENT				
L1.21	TENNIS & PICKLEBALL COURT ENLARGEMENT				
L1.22	PLAYGROUND ENLARGEMENT				
L1.23	PLAYGROUND SECTIONS				
* L2.00	OVERALL GRADING PLAN				
* L2.01	GRADING PLAN - AREA 1				
* L2.02	GRADING PLAN - AREA 2				
* L2.03	GRADING PLAN - AREA 3				
* L2.04	GRADING PLAN - AREA 4				
* L2.05	GRADING PLAN - AREA 5				
* L2.06	GRADING PLAN - AREA 6				
* L2.07	GRADING PLAN - AREA 7				
* L2.08	GRADING PLAN - AREA 8				
* L2.09	GRADING PLAN - AREA 9				
* L2.10	GRADING PLAN - AREA 10				
* L2.11	GRADING PLAN - AREA 11				
* L2.12	GRADING PLAN - AREA 12				
* L2.13	GRADING PLAN - AREA 13				
* L2.14	GRADING PLAN - AREA 14				
* L2.15	GRADING PLAN - AREA 15				
* L2.16	GRADING PLAN - AREA 16				
* L2.17	GRADING PLAN - AREA 17				
* L2.18	GRADING PLAN - AREA 18				
* L2.19	GRADING PLAN - AREA 19				
* L3.01	SITE DETAILS - 1				
* L3.02	SITE DETAILS - 2				
L3.03	SITE DETAILS - 3				
L3.04	SITE DETAILS - 4				
L3.05	SITE DETAILS - 5				
L3.06	SITE DETAILS - 6				
* L3.07	SITE DETAILS - 7				
L3.08	SITE DETAILS - 8				
L3.09	SITE DETAILS - 9				
L3.10	SITE DETAILS - 10				
L3.11	SITE DETAILS - 11				
L3.12	PLAYGROUND DETAILS				
L3.13	SITE DETAILS - STRUCTURAL				
L3.14	SITE DETAILS - STRUCTURAL				
L3.15	SITE DETAILS - STRUCTURAL				
L4.00	OVERALL PLANTING PLAN				
L4.01	PLANTING PLAN - AREA 1				
L4.02	PLANTING PLAN - AREA 2				
L4.03	PLANTING PLAN - AREA 3				
L4.04	PLANTING PLAN - AREA 4				
L4.05	PLANTING PLAN - AREA 5				
L4.06	PLANTING PLAN - AREA 6				
L4.07	PLANTING PLAN - AREA 7				
L4.08	PLANTING PLAN - AREA 8				
L4.09	PLANTING PLAN - AREA 9				
L4.10	PLANTING PLAN - AREA 10				
L4.11	PLANTING PLAN - AREA 11				
L4.12	PLANTING PLAN - AREA 12				
L4.13	PLANTING PLAN - AREA 13				
L4.14	PLANTING PLAN - AREA 14				
L4.15	PLANTING PLAN - AREA 15				
L4.16	PLANTING PLAN - AREA 16				
L4.17	PLANTING PLAN - AREA 17				
L4.18	PLANTING PLAN - AREA 18				
L4.19	PLANTING PLAN - AREA 19				
L4.20	PLANTING NOTES & DETAILS				
L5.00	OVERALL IRRIGATION PLAN				
L5.01	IRRIGATION PLAN - AREA 1				
L5.02	IRRIGATION PLAN - AREA 2				
L5.03	IRRIGATION PLAN - AREA 3				
L5.04	IRRIGATION PLAN - AREA 4				
L5.05	IRRIGATION PLAN - AREA 5				
L5.06	IRRIGATION PLAN - AREA 6				
L5.07	IRRIGATION PLAN - AREA 7				
L5.08	IRRIGATION PLAN - AREA 8				
L5.09	IRRIGATION PLAN - AREA 9				
L5.10	IRRIGATION PLAN - AREA 10				
L5.11	IRRIGATION PLAN - AREA 11				
L5.12	IRRIGATION PLAN - AREA 12				
L5.13	IRRIGATION PLAN - AREA 13				
L5.14	IRRIGATION PLAN - AREA 14				
L5.15	IRRIGATION PLAN - AREA 15				
L5.16	IRRIGATION PLAN - AREA 16				
L5.17	IRRIGATION PLAN - AREA 17				
L5.18	IRRIGATION PLAN - AREA 18				
L5.19	IRRIGATION PLAN - AREA 19				
L5.20	IRRIGATION NOTES & DETAILS				
L5.21	IRRIGATION DETAILS				
L5.22	IRRIGATION DRIP & PUMP DETAILS				
L5.23	IRRIGATION DATA CHARTS				
* L5.24	IRRIGATION SLEEVING PLAN				
* C0.00	PROJECT LAYOUT AND CONTROL PLAN				
* C0.01	CIVIL LEGENDS				
* C1.01	DIMENSION CONTROL - AREA 1				
* C1.02	DIMENSION CONTROL - AREA 2				
* C1.03	DIMENSION CONTROL - AREA 3				
* C1.04	DIMENSION CONTROL - AREA 4				
* C1.05	DIMENSION CONTROL - AREA 5				
* C1.06	DIMENSION CONTROL - AREA 6				
* C1.07	DIMENSION CONTROL - AREA 7				
* C1.08	DIMENSION CONTROL - AREA 8				
* C1.09	DIMENSION CONTROL - AREA 9				
* C1.10	DIMENSION CONTROL - AREA 10				
* C1.11	DIMENSION CONTROL - AREA 11				
* C1.12	DIMENSION CONTROL - AREA 12				
* C1.13	DIMENSION CONTROL - AREA 13				
* C1.14	DIMENSION CONTROL - AREA 14				
* C1.15	DIMENSION CONTROL - AREA 15				
* C1.16	DIMENSION CONTROL - AREA 16				
* C1.17	DIMENSION CONTROL - AREA 17				
* C1.18	DIMENSION CONTROL - AREA 18				
* C1.19	DIMENSION CONTROL - AREA 19				
* C2.00	PROPOSED TYPICAL SECTIONS				
* C2.01	PAVING PLAN				
* C2.02	PAVING PLAN				
* C2.03	PAVING PLAN				
* C2.04	PAVING PLAN				
* C3.01	EXISTING DRAINAGE AREA MAP				
* C3.02	PROPOSED DRAINAGE AREA MAP				
* C3.03	DETAILED AREA A3				
* C3.04	DETAILED AREAS A4 & B4				
* C3.05	DETAILED AREAS B3 & B5				
* C3.06	DRAINAGE CALCULATIONS				
* C3.07	DRAINAGE CALCULATIONS				
* C3.08	DRAINAGE CALCULATIONS				
* C3.09	DRAINAGE CALCULATIONS				
* C3.10	DRAINAGE CALCULATIONS				
* C4.01	STORM DRAIN A STA 0+00 TO 4+00				
* C4.02	STORM DRAIN A STA 4+00 TO STA 8+00				
* C4.03	STORM DRAIN A STA 8+00 TO END				
* C4.04	STORM DRAIN B1 STA 0+00 TO END				
* C4.05	STORM DRAIN B2 STA 0+00 TO END				
* C4.07	DETENTION POND A				
* C4.08	DETENTION POND B				
* C4.09	DETENTION POND C				
* C5.01	EROSION CONTROL PLAN				
* C5.02	EROSION CONTROL NOTES & DETAILS				
* C6.00	WATER PLAN LAYOUT				
* C6.01	12-IN WATER LINE A STA 0+00 TO STA 4+00				
* C6.02	12-IN WATER LINE A STA 4+00 TO 8+50				
* C6.03	12-IN WATER LINE A STA 8+50 TO 13+00				
* C6.04	12-IN WATER LINE A STA 13+00 TO END				
* C6.05	12-IN WATER LINE B STA 0+00 TO 4+50				
* C6.06	12-IN WATER LINE B STA 4+50 TO END				
* C6.07	3-IN WATER LINE C STA 0+00 TO END				
* C7.00	SANITARY SEWER PLAN LAYOUT				
* C7.01	SANITARY SEWER CALCS				
* C7.02	SANITARY SEWER GRAVITY LINE 1 STA 0+00 TO STA 5+50				
* C7.03	SANITARY SEWER GRAVITY LINE 1 STA 5+50 TO STA 10+00				
* C7.04	SANITARY SEWER GRAVITY LINE 1 STA 10+00 TO END				
* C7.05	FORCEMAIN LINE 1 STA 0+00 TO STA 6+00				
* C7.06	FORCEMAIN LINE 1 STA 6+00 TO STA 12+00				
* C7.07	FORCEMAIN LINE 1 STA 12+00 TO END				
* C8.01	STANDARD DETAILS				
* C8.02	STANDARD DETAILS				
* C8.03	STANDARD DETAILS				
* C8.04	STANDARD DETAILS				
* C8.05	STANDARD DETAILS				
* C8.06	STANDARD DETAILS				
* C8.07	STANDARD DETAILS				
* SE-0	ELECTRICAL SYMBOL LEGEND				
* SE-1	SITE PLAN - ELECTRICAL SERVICE				
* SE-2	SITE PLAN - LIGHTING				
* SE-3	4 PLEX PLAN - ELECTRICAL				
* SE-4	PICKLEBALL / TENNIS COURTS PLAN - ELECTRICAL				
* SE-5	SECURITY CONDUIT ROUTING PLAN				
* SE-6	ELECTRICAL RISER DIAGRAMS				
* SE-7	ELECTRICAL PANEL SCHEDULES				
* SE-8	ELECTRICAL DETAILS				
A0.0	LIFE SAFETY PLAN				
A0.1	TAS DETAILS				
A1.0	OVERALL FLOOR PLAN & RCP				
A1.1	FLOOR PLAN				
A1.2	RCP, ROOF PLAN AND ELEVATIONS				
A2.0	ELEVATIONS				
A2.1	BUILDING SECTIONS				
A2.2	BUILDING AND WALL SECTIONS				
A2.3	SECTION DETAILS				
A2.4	SECTION AND DETAILS				
A3.0	DETAILS				
A4.0	4PLEX BLEACHER CANOPY				
A5.0	BLEACHER CANOPIES + DUGOUT COVERS				
MP-2.1	MECHANICAL FLOOR PLAN RESTROOM BUILDING PLANS				
MP-2.2	PLUMBING FLOOR PLAN RESTROOM BUILDING PLANS				
MP-3.1	MECHANICAL AND PLUMBING DETAILS AND RISERS				
MP-4.1	MECHANICAL AND PLUMBING SCHEDULES				
E-2.1	POWER FLOOR PLAN RESTROOM BUILDING PLANS				
E-2.2	LIGHTING FLOOR PLAN RESTROOM BUILDING PLANS				
E-3.1	ELECTRICAL RISER AND SCHEDULES RESTROOM BUILDING PLANS				
S1	STRUCTURAL GENERAL NOTES				
S2	FOUNDATION PLAN				
S3	FOUNDATION SECTIONS AND DETAILS				
S4	ROOF FRAMING PLAN				
S					



**TOWN OF PROSPER, TEXAS
PARKS AND RECREATION DEPARTMENT**

October 20, 2023

ADDENDUM NO. 1

Twenty-One (21) Pages

Raymond Community Park Phase 1: Bid Package #1

To: All Plan Holders of Record

From: Town of Prosper – Parks and Recreation Department (Kurt Beilharz) & Dunaway Associates (Ashley Lewis)

Acknowledge receipt of the Addendum by inserting its number and date on the Proposal Form. This Addendum forms a part of the Contract Documents and modifies, amends, deletes, and/or adds to the Drawings and Project Manual as follows:

The following items are noted for clarification and information:

GENERAL:

1. Bid opening has been extended to **1:00 pm on November 16th (Thursday)**.

PLANS:

1. Sheet L2.00-L2.19 (see attached) have been reissued for clarification with additional spot grade information and contour adjustments.

END OF ADDENDUM NO. 1



**TOWN OF PROSPER, TEXAS
PARKS AND RECREATION DEPARTMENT**

October 31, 2023

ADDENDUM NO. 2

Eight (8) Pages

Raymond Community Park Phase 1: Bid Package #1

To: All Plan Holders of Record

From: Town of Prosper – Parks and Recreation Department (Kurt Beilharz) &
Dunaway Associates (Ashley Lewis)

Acknowledge receipt of the Addendum by inserting its number and date on the Proposal Form. This Addendum forms a part of the Contract Documents and modifies, amends, deletes, and/or adds to the Drawings and Project Manual as follows:

The following items are noted for clarification and information:

PLANS:

1. Sheet C8.01-C8.07 (see attached) have been issued.

END OF ADDENDUM NO. 2



**TOWN OF PROSPER, TEXAS
PARKS AND RECREATION DEPARTMENT**

November 9, 2023

ADDENDUM NO. 4

Two (2) Pages

Raymond Community Park Phase 1: Bid Package #1

To: All Plan Holders of Record

From: Town of Prosper – Parks and Recreation Department (Kurt Beilharz) & Dunaway Associates (Ashley Lewis)

Acknowledge receipt of the Addendum by inserting its number and date on the Proposal Form. This Addendum forms a part of the Contract Documents and modifies, amends, deletes, and/or adds to the Drawings and Project Manual as follows:

The following items are noted for clarification and information:

1. The typical section(s) shown on sheet C8.06 released with Addendum #2
 - Further RFI's Regarding these sections on sheet C8.06:
 - Which turn lane pavement is TxDOT ROW vs. Town ROW? I don't believe there is any TxDOT ROW?
 - o *Turn lanes shall be Town ROW. Pavement section shall be 8" reinforced concrete with #3 bars at 18" O.C.E.W. over 6" lime stabilized subgrade per Town standards.*
 - What is classified as light, medium, and heavy-duty pavement? Sheets C2.01-C2.04 only show fire lane and (parking) pavement
 - o *See answer for #2 below.*
 - Where is the 'Helistop' pavement located?
 - o *There is no 'helistop' pavement.*
2. Which of the above should govern?
 - a. *Refer to C2.01 to C2.04 for pavement sections. Details indicating light, medium, and heavy-duty pavement sections on C8.08 shall be updated to reflect the legends of C2.01 to C2.04 and the indicated Town ROW shown above.*
3. There is a lift station for the sanitary sewer scope. Is this a part of utility scopes? If so, I do not see any details regarding constructing a lift station. Please provide one.
 - a. *The lift station shall be a packaged lift station to meet the required load as provided in the plans.*
4. The drainage area map shows different contours in area 9/10.

- a. Please reference grading plans. Drainage area map should reflect the contours shown in the grading plans.*
5. Can the excess excavation be left on site?
 - a. The Architect will review the grading and raise / lower the site to avoid excessive haul-off. Topsoil will be the primary import for the project.*
6. Are we preparing the subgrade for the concession, 2 restrooms, and the batting cages? Any foundation plans, if so?
 - a. Subgrade and foundation plans for these areas will be bid separately within the next package. This package is for mass cut/fill only.*
7. Are there spec's / sections for the baseball and multipurpose fields?
 - a. Yes, but note this package is for mass cut/fill only; review the below specifications sections located in the Contract Documents and Specifications Manual:*
 - i. 02310 – Laser Grading*
 - ii. 02520 – Infield Surfacing*
 - iii. 02521 – Infield Conditioner*

END OF ADDENDUM NO. 4



PLANNING

To: Mayor and Town Council

From: David Hoover, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Ordinance Amending Sign Requirements of the Building Code

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance amending Article 3.14 – Signs of the Town of Prosper Code of Ordinances to modify certain wall signs and development sign regulations.

Description of Agenda Item:

This amendment addresses the standards for a wall sign and a development sign, as described below.

Wall sign – Currently, a wall sign can be placed on all sides (facades) of a building. The only restriction is when the side or rear of a building is facing and within 150 feet of a property zoned or designated on the Future Land Use Plan for single-family uses, in which case a wall sign is not allowed.

The proposed amendment will limit the location of wall signs to two sides of the building. For a single-tenant building, any two facades of the structure could contain wall signs. For a multi-tenant building, each tenant would be limited to wall signs on two facades (front and back). The amount of surface area allowed to be occupied by a sign on each façade would remain at a maximum 60 square feet or ten percent of the façade, whichever is greater.

Development sign – A development sign is a type of freestanding sign. It is any temporary sign intended for display for a limited period of time. The sign is located on a lot that does not contain a structure. The maximum size of a development sign of sixty-four (64) square feet has been identified as being too large. Therefore, Staff proposes an amendment to the standards to limit the size of these signs to thirty-two (32) square feet.

Staff finds that a thirty-two (32) square foot sign would be visible when placed in the location stipulated by Code, as described below:

The sign may be located on the property in the following locations:

1. A minimum of 15 feet from any property line; however, a one-foot minimum setback from the front property line shall be allowed within the area designated as the "Old Town District" in the town's future land use plan.
2. The minimum setback from the right-of-way may be reduced to one foot when located in the City of Irving waterline easement adjacent to US 380 with approval documentation from the City of Irving.
3. Shall not face a residential neighborhood, unless separated by a major thoroughfare.

When the size of the sign is reduced, the height of the sign could be reduced. Currently, the maximum height allowed is twelve (12) feet. Since the size of the sign is being reduced by half (32 square feet), Staff recommends that the height of the sign be reduced by two (2) feet to ten (10) feet.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

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

Attached Documents:

1. Redlined Ordinance
2. Proposed Ordinance

Town Staff Recommendation:

Town Staff recommends approval of an ordinance amending Article 3.14 – Signs of the Town of Prosper Code of Ordinances to modify certain wall signs and development sign regulations.

Proposed Motion:

I move to approve/deny the ordinance amending Article 3.14 – Signs of the Town of Prosper Code of Ordinances to modify certain wall signs and development sign regulations.

Attachment No. 1

A red lined version of the current Zoning Ordinance sections that are proposed to be amended with additions shown in **blue** and underlined, and the deleted sections shown in **red** with ~~strike~~ through.

ARTICLE 3.14. SIGNS

Sec. 3.14.012. - Criteria for permissible signs.

The following signs are permissible, subject to the following conditions and the specifications listed in section 3.14.008 of this article. Signs that do not comply with the following conditions and specifications or are not covered within this article are considered prohibited.

(1) *Attached signage.*

(l) *Wall sign.*

(i) *Location.*

- a. Permitted in conjunction with nonresidential uses for which a building permit and/or certificate of occupancy has been issued.
- b. Shall not be allowed on any facade (other than the main front of the building) that faces property zoned or designated on the future land use plan, for single-family uses, if the sign is within 150 feet of the property line of said residential property.
- c. For a single-tenant building, only two facades of the building may contain wall signs. For a multi-tenant building, each tenant will be limited to wall signs on two facades (front and back).
- ~~e.~~ d. Tenant within a strip center: Signage shall be restricted to the facade of the tenant space on the building.

(2) *Freestanding signage.*

(A) *Development sign.*

- (ii) *Maximum effective sign area.* ~~Sixty-four~~ Thirty-two square feet.
- (iii) *Maximum height.* ~~Twelve~~ Ten feet.

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING SUBSECTIONS (1), "ATTACHED SIGNAGE," AND (2), "FREESTANDING SIGNAGE," OF SECTION 3.14.012, "CRITERIA FOR PERMISSIBLE SIGNS," OF ARTICLE 3.14, "SIGNS," OF CHAPTER 3, "BUILDING REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER BY AMENDING PROVISIONS RELATED TO CERTAIN WALL SIGN AND DEVELOPMENT SIGN CRITERIA; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council"), has determined that maintaining certain standards is critical to preserve the image of the Town; and

WHEREAS, the Town Council has also determined that modifications to certain wall sign and development sign criteria enhance the image of the Town.

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, existing Subsections (1), "Attached Signage," and (2), "Freestanding Signage," of Section 3.14.012, "General Regulations," of Article 3.14, "Signs," of Chapter 3, "Building Regulations," of the Code of Ordinances of the Town of Prosper Texas, are hereby amended to read as follows:

"ARTICLE 3.14 SIGNS

Sec. 3.14.012. - Criteria for permissible signs.

The following signs are permissible, subject to the following conditions and the specifications listed in section 3.14.008 of this article. Signs that do not comply with the following conditions and specifications or are not covered within this article are considered prohibited.

- (1) *Attached signage.*

- (l) *Wall sign.*
 - (i) Location.

- a. Permitted in conjunction with nonresidential uses for which a building permit and/or certificate of occupancy has been issued.
- b. Shall not be allowed on any facade (other than the main front of the building) that faces property zoned or designated on the future land use plan, for single-family uses, if the sign is within 150 feet of the property line of said residential property.
- c. For a single-tenant building, only two facades of the building may contain wall signs. For a multi-tenant building, each tenant will be limited to wall signs on two facades (front and back).
- d. Tenant within a strip center: Signage shall be restricted to the facade of the tenant space on the building.

(2) *Freestanding signage.*

(A) *Development sign.*

- (ii) *Maximum effective sign area.* Thirty-two square feet.
- (iii) *Maximum height.* Ten feet.

***"

SECTION 3

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

SECTION 4

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5

Any person, firm, corporation, or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of Five Hundred Dollars (\$500.00), and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 12TH DAY OF DECEMBER, 2023.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



PLANNING

To: Mayor and Town Council

From: David Hoover, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Zoning Amendment Multi-Family

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024)

This item was tabled at the November 14, 2023, Town Council meeting.

Description of Agenda Item:

The regulations for Multifamily development are addressed within the Town’s Zoning Ordinance. The purpose of this amendment is to modify the regulations and standards for Multifamily development to align with the Comprehensive Plans’ guiding principle of Quality Development, which is to maintain the community’s small-town feel by ensuring quality development occurs in a cohesive manner, compatible with neighboring developments.

A summary of the modifications is as follows:

1. Limits Multifamily developments to the areas designated for this use in the Comprehensive Plan and as identified on the Future Land Use Plan.
2. Requires that Multifamily development can only be approved within a Planned Development.
3. Establishes a minimum density of 40 units per acre.
4. Removes setbacks and lot area requirements, as these can be determined on a case-by-case basis within the Planned Development standards.
5. Requires compliance with the Dallas North Tollway Design Guidelines.
6. Increases the maximum height allowance from three stories and 50 feet to eight stories and 110 feet.
7. Establishes a building configuration for Multifamily structures, requiring a wrap-around configuration with a central garage surrounded by the residential units.

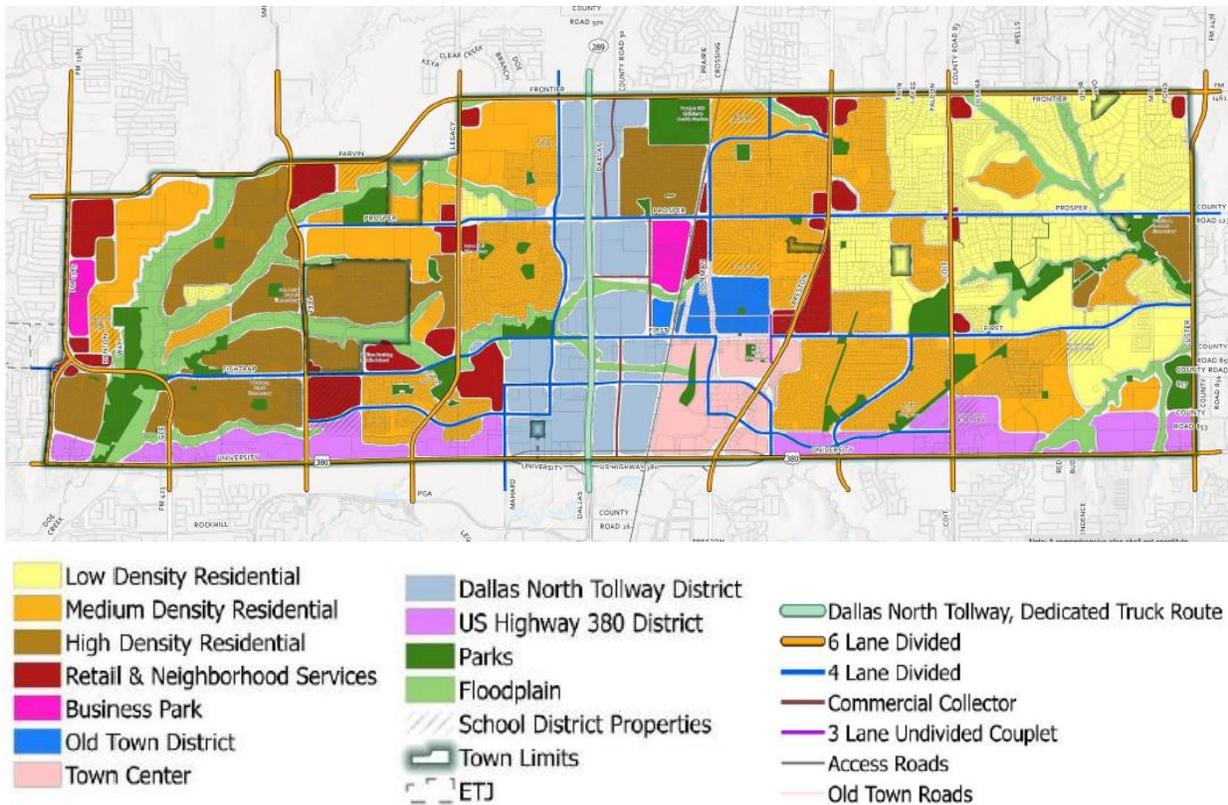
8. Creates a mixed-use opportunity by allowing the first floor of the building to be used for residential or retail uses. A minimum fourteen feet ceiling height for the first floor will accommodate retail uses.
9. Limits the height of the interior garage so that it will not exceed the height of the exterior building, and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.
10. Modifies parking stall dimensions for structured parking garages from 18 feet by 8.5 feet to 20 feet by 9 feet.
11. Modifies Multifamily parking standards to reflect the updated parking garage requirement from individual unit parking garages.
12. Removes Multifamily design and development standards. These criteria will be addressed in Planned Development standards.

Comprehensive Plan:

The Comprehensive Plan identifies Multifamily in the following Districts, which are identified on the Future Land Use Plan:

- High Density Residential - Apartments are to be a conditional primary use.
- Dallas North Tollway District - Apartments are to be a conditional primary use.
- Town Center District - Apartments are to be secondary in nature to a primary use.
- Old Town District - Apartments are to be a conditional primary use.

Future Land Use Plan Map:



In the Town Center District and Old Town District, there is zoning for Multifamily and construction underway on apartments developments. High Density Residential is recommended for development of higher density single family, townhomes, duplexes and senior housing, in addition to apartments. The Dallas North Tollway District is identified for apartments as a primary use with conditional standards. As such, Staff recommends that all future Multifamily zoning be limited to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan, and

within Planned Developments. This recommendation is in conformance with the following goals from the Comprehensive Plan.

Goal 1. Provide a variety of desirable land uses that diversify the tax base and enable all types of people to live, work, shop, eat, and relax in Prosper.

Objective 1.11: Utilize the Dallas North Tollway (DNT) District to accommodate all new multi-family developments in a mixed-use setting with structured garage parking.

Goal 3. Protect the quality and integrity of Prosper’s neighborhoods.

Objective 3.1: Encourage the development of quality housing throughout Prosper that meets the needs of a diversity of housing needs, taking into consideration, among other things, data relating to age and income, for the full life cycle of citizens to include, but not limited to:

- Promote housing types and affordability for families with children, single parents with children, young adults just leaving home, young professionals, empty-nesters, retirees, and the elderly.
- Promote an adequate supply of workforce housing throughout Prosper for those who work in the service industry in Prosper.
- Promote neighborhood desirability, value, and reinvestment.

The following section is from the Comprehensive Plan and describes the Dallas North Tollway District. Staff responses are included to indicate how the proposed amendments to the Zoning Ordinance fulfill the directives and vision for this District.

Dallas North Tollway District

The Dallas North Tollway District will consist of the most intense land uses within Prosper. A diverse mixture of office, retail, and residential will likely develop along the corridor. Mid-rise office (up to 12 stories) may be permitted throughout the corridor. Office buildings should be designed for a “campus feel”—they should be oriented towards common public space with significant landscaping and should be linked by a pedestrian network. A common architectural theme should also be established for a consistent visual appearance. Mixed-use development should be encouraged and should contain a mixture of office, retail and residential uses. Mixed-use lofts/apartments would be the most appropriate residential use within this District. Structured parking should be encouraged in more intense areas to limit the presence and visibility of large parking lots. Structured parking should be oriented to minimize visibility from the Tollway. The Town may explore an overlay zoning district to better accommodate the preferred development outcomes in the Dallas North Tollway District.

Multi-family development must be well-planned and accounted for within Town limits. With more multi-family development requests, locations and standards for such development must be carefully considered to meet the Town’s expectations.

Proposed Amendments:

- Limit Multifamily developments to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan.
- Multifamily development can only be approved within a Planned Development.

While North Texas multi-family development has historically been associated with sprawling, garden-style apartments from the 20th century, multi-family developments have greatly improved since the start of the 21st century. For instance, many multi-family developers are not constructing garden-style apartment complexes, but modern, higher density, multi-family developments that are attractive to young professionals and empty nesters.

Proposed Amendments:

- Multifamily structures will have a wrap-around configuration with a central garage surrounded by the residential units.
- The height of the garage shall not exceed the height of the exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.
- Modification of parking stall dimensions for structured parking garages from 18 feet by 8.5 feet to 20 feet by 9 feet.
- Modification of Multifamily parking standards to reflect the updated parking garage requirement from individual unit parking garages.

These developments are typically of a high-quality appearance and provide luxury amenities like dog parks and pet cleaning stations, saltwater pools, structured or covered parking, saunas, and innovative clubhouses.

Proposed Amendments:

- Multifamily development can only be approved within a Planned Development, and amenity standards can be determined with the zoning criteria for the development.
- Compliance with the Dallas North Tollway Design Guidelines.

Additionally, some multi-family developments incorporate other uses on the ground floor like office spaces, retail shops, and restaurants to create a vibrant, inclusive, and cohesive development.

Proposed Amendment:

- The first floor of the building may be used for residential or retail uses. A minimum fourteen feet ceiling height for the first floor will accommodate retail uses.

In Prosper's instance, multi-family development should occur at strategic locations and have strict development standards and offer a high level of amenities to residents. This will create attractive multi-family developments that serve a critical housing need for a rapidly growing community like Prosper.

Any new multi-family development product should:

- 1) Meet the Town's vision of providing housing excellence,*
- 2) Provide quality-of-life amenities to foster the development and the Town as a desirable and unique community,*
- 3) Be compatible with neighboring developments,*
- 4) Be at a high density (more than 40 dwelling units per acre), and*
- 5) Be located in the DNT District.*

The community prefers to see modern apartments with some retail services located in the DNT District. The Town should consider increasing density requirements to at least a minimum of 40 dwelling units per acre to achieve such an apartment style.

Proposed Amendments:

- Establishes a minimum density of 40 units per acre. The density can be increased in the Planned Development standards.
- Removes setbacks and lot area requirements, as these can be determined on a case-by-case basis within the Planned Development standards.
- Increases the maximum height allowance from three stories and 50 feet to eight stories and 110 feet.

Amenities, structured parking, range of unit densities, types, and size, integration into the street and trails network, public art and industry leading building designs and materials should guide the Town's preferences for multi-family development.

Proposed Amendment:

- Removes Multifamily design and development standards. These criteria will be addressed in Planned Development standards.

In Prosper's instance, multi-family may be preferable near intersections in the Dallas North Tollway District. Additionally, multi-family development may be suitable in other locations behind commercial nodes where a transition from commercial to single-family residential development may be necessary.

Proposed Amendments:

- Limit Multifamily developments to areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan.
- Multifamily development can only be approved within a Planned Development.

Staff finds that the proposed amendments uphold the Town's Comprehensive Plan.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

Notification was provided as required by the Zoning Ordinance and state law. Staff has not received any response to the proposed zoning request to date.

Attached Documents:

1. Redlined Text Amendments
2. Proposed Text Amendments

Town Staff Recommendation:

Town Staff recommends the Town Council approve amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. The Planning & Zoning Commission unanimously recommended approval at their November 7, 2023, meeting.

Proposed Motion:

I move to approve amending Chapter 2, Section 13 – Multifamily District; Chapter 4, Section 4.3 – Non-residential and multifamily parking provisions; and Chapter 4, Section 8 – Non-Residential & Multifamily Design and Development of the Town of Prosper Zoning Ordinance to modify Multifamily development standards. (ZONE-23-0024)

Attachment No. 1

A red lined version of the current Zoning Ordinance sections that are proposed to be amended with additions shown in **blue** and underlined, and the deleted sections shown in **red** with strike through.

CHAPTER 2 ZONING DISTRICTS

SECTION 13. MULTIFAMILY DISTRICT

13.1 General purpose and description.

Multifamily Districts shall be limited to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan, and must be in a Planned Development District. The Multifamily District will provide for development of high density attached residential dwelling units, ~~not to exceed 15 units per acre~~ built at a minimum 40 units per acre. The standards in this district are intended to promote stable, quality multiple occupancy residential development at high densities. The principal permitted land uses will include apartment complexes ~~and townhomes. Other uses, such as religious and educational facilities, parks, and open spaces will be provided for to maintain a balanced, orderly, convenient, and attractive residential area. This zoning district should be located adjacent to a major thoroughfare and is appropriate in areas designated as high density residential on the Future Land Use Plan. Limited amounts of this district may also be appropriate in areas designated as Tollway Corridor or U.S. 380 Adjacency Corridor on the Future Land Use Plan.~~ Development shall comply with the Dallas North Tollway Design Guidelines, as it exists or may be amended.

13.2 REGULATIONS.

- A. **Maximum Minimum Permitted Density:** ~~15~~ 40 units per acre.
- B. **Size of Yards:** The size of Front, Side, and Rear Yards shall be determined at the time of development.
- ~~1. **Minimum Front Yard** — 50 feet for one or two story structures.
— One hundred fifty feet for three story structures.~~
 - ~~2. **Minimum Side Yard** — 50 feet for one or two story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for single family or two family uses.
— One hundred fifty feet for three story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for single family or two family uses.
— Thirty feet for one or two story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for multifamily or nonresidential uses.
— One hundred feet for one or two story structures adjacent to property that is either zoned or designated on the Future Land Use Plan for multifamily or nonresidential uses.
— Multiple structures constructed on the same lot shall maintain a minimum separation of 30 feet.~~

~~3. Minimum Rear Yard — Same as Minimum Side Yard requirements above.~~

C. **Size of Lots:** The size of lots shall be determined at the time of development.

~~1. Minimum Lot Area — One acre.~~

~~2. Minimum Lot Width — 100 feet.~~

~~3. Minimum Lot Depth — 150 feet.~~

D. **Minimum Dwelling Area:**

1. One or two bedroom — 850 square feet.

2. Additional bedrooms — 150 square feet per additional bedroom.

E. **Maximum Height:** ~~Three~~ Eight stories, no greater than ~~50~~ 110 feet.

F. **Lot Coverage:** 45 percent.

G. **Minimum Usable Open Space:** 30 percent.

H. **Building Configuration:** Multifamily structures shall have a wrap-around configuration that consists of central garage surrounded by the residential units on the exterior of the building.

I. **First Floor:** The ceiling height of the first floor shall be a minimum fourteen feet (14') in height. The first floor of the building may be used for residential or retail uses that are specified in the Planned Development ordinance.

J. **Garage Height:** The height of the garage shall not exceed the height of the exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.

13.3 Permitted uses.

Permitted uses shall be in accordance with the "Schedule of Uses" as outlined in Section 1.3 of Chapter 3.

CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.3 Non-residential and multifamily parking provisions.

* * *

- E. Each head-in parking space shall be a minimum of nine feet wide and 20 feet long, exclusive of driveways and maneuvering aisles, and shall be of usable shape and condition (see Chapter 5, Section 2.3, Illustrations A-G). Where it is possible for a vehicle to overhang the front of a parking space above a paved, stoned, mulched, or grassed area other than a sidewalk, street right-of-way, or adjacent property, the depth of the standard space may be reduced to 18 feet. No parking space shall overhang required landscape areas. Parallel parking spaces must be a minimum of eight feet wide and 22 feet long. Parking spaces within non-residential and multifamily structured parking garages shall be a minimum of ~~eight and one-half~~ nine feet wide and ~~18~~ 20 feet long.

* * *

- U. Multifamily parking shall be in a structured garage that is wrapped by the residential units, as described in Chapter 2, Section 13.2.H. Any surface parking associated with a Multifamily development for leasing area, guest parking, retail uses, etc. ~~Multifamily parking~~ is only allowed between the building and a public street when located at or beyond the required landscape setback and screened with a headlight screen of earthen berms and/or a row of shrubs. ~~Buildings with enclosed garages, when adjacent to a public street, must face garage doors internally to the development. Garage doors may not face a public street. No detached garages may be located between residential buildings and a public street. Enclosed garage parking spaces shall be a minimum of ten by 20 feet.~~

SECTION 8. NON-RESIDENTIAL & MULTIFAMILY DESIGN AND DEVELOPMENT

* * *

8.1 Applicability.

The regulations provided in Sections ~~8.2—8.6~~ shall apply to all office, retail, restaurant, service, automobile, and commercial uses. The regulations provided in ~~sections~~ [Section 8.7—8.10](#) [8.3](#) shall apply to all industrial, wholesale, and institutional uses. Where the regulations of this section conflict with other sections of this ordinance, the regulations of this section shall apply.

The intent of these provisions is to promote high-quality architecture that relates to the street, scale of development, and surrounding land uses by utilizing three properties of good design: massing, use of materials, and attention to detail.

* * *

8.4 Multifamily development standards.

~~A. All exterior facades for a main building or structure, excluding glass windows and doors, in the MF District shall be constructed of 100 percent masonry as defined in Chapter 3, Section 2. The use of stucco and EIFS are only permitted as secondary or accent materials.~~

~~1. The Town Council, after recommendation by the Planning and Zoning Commission, may grant an exception to the foregoing exterior façade and design requirements, based upon consideration of the criteria listed in subpart 2, below.~~

~~2. In considering an exception to the exterior façade requirements, the Planning and Zoning Commission and Town Council may consider whether a proposed alternate material:~~

- ~~a. Is a unique architectural expression;~~
- ~~b. Includes unique building styles and materials;~~
- ~~c. Is consistent with high quality development;~~
- ~~d. Is or would be visually harmonious with existing or proposed nearby buildings;~~
- ~~e. Has obvious merit based upon the quality and durability of the materials; and~~
- ~~f. Represents an exterior building material that is in keeping with the intent of this chapter to balance the abovementioned objectives.~~

~~3. Any exterior façade exception shall be considered in conjunction with a preliminary site plan or site plan application.~~

~~B. The Town Council may approve materials which are equivalent to, or exceed, the standards set forth in herein.~~

~~C. Structure Separation. Multifamily structures on the same parcel shall have the following minimum distance between structures:~~

- ~~1. From main structure to main structure with walls that have openings for doors or windows on facades facing each other.~~
 - ~~a. Face to Face: 50 feet~~
 - ~~b. Face to End: 30 feet~~
 - ~~c. Corner to Face or End: 30 feet~~
 - ~~d. End to End: 30 feet~~

- ~~2. From main structure to main structure with walls that do not have openings, the minimum distance between structures is 20 feet for one and two-story buildings and 30 feet for three-story buildings.~~
- ~~3. From main structure to accessory buildings or pools, the minimum distance between structures is 20 feet.~~
- ~~4. From main structure to free-standing garage building, the minimum distance between structures is 30 feet.~~

~~D. All multifamily buildings shall be designed to incorporate a form of architectural articulation every 30 feet, both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:~~

- ~~• Canopies, awnings, or porticos;~~
- ~~• Recesses/projections;~~
- ~~• Arcades;~~
- ~~• Arches;~~
- ~~• Architectural details (such as tile work and moldings) integrated into the building facade;~~
- ~~• Articulated ground floor levels or base;~~
- ~~• Articulated cornice line;~~
- ~~• Integrated planters or wing walls that incorporate landscape and sitting areas;~~
- ~~• Offsets, reveals or projecting rib used to express architectural or structural bays;~~
- ~~• Accent materials (minimum 15 percent of exterior facade);~~
- ~~• Varied roof heights;~~
- ~~• Or other architectural features approved by the Director of Development Services or his/her designee.~~

~~E. All buildings shall be designed to incorporate a form of window articulation. Acceptable articulation may include the following:~~

- ~~• Detailed/patterned mullions~~
- ~~• Glass depth from wall minimum eight inches~~
- ~~• Projected awnings/sunshades~~
- ~~• Water table in lieu of floor to ceiling glass~~

- Articulated lintel (i.e. soldier course in brick or material change EIFS or cast stone with minimum one-half inch projection)
- Articulated sill (i.e. soldier course in brick or material change EIFS or cast stone with minimum one-half inch projection)
- Cast stone surrounds on entire window



F.—All buildings constructed primarily of brick shall incorporate a form of brick patterning (excluding typical traditional brick patterning, i.e. Running Bond). Acceptable patterning may include those represented below, or similar subject to approval by the Director of Development Services:



G.—All multifamily buildings shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a three in 12 inch minimum slope. Wood shingles are prohibited.

Attachment No. 2

A final version of the proposed text amendments.

CHAPTER 2 ZONING DISTRICTS

SECTION 13. MULTIFAMILY DISTRICT

13.1 General purpose and description.

Multifamily Districts shall be limited to the areas designated in the Comprehensive Plan, as identified on the Future Land Use Plan, and must be in a Planned Development District. The Multifamily District will provide for development of high density attached residential dwelling units, built at a minimum 40 units per acre. The standards in this district are intended to promote stable, quality multiple occupancy residential development at high densities. The principal permitted land uses will include apartment complexes Development shall comply with the Dallas North Tollway Design Guidelines, as it exists or may be amended.

13.2 REGULATIONS.

- C. **Minimum Permitted Density:** 40 units per acre.
- D. **Size of Yards:** The size of Front, Side, and Rear Yards shall be determined at the time of development.
- C. **Size of Lots:** The size of lots shall be determined at the time of development.
- D. **Minimum Dwelling Area:**
 - 1. One or two bedroom — 850 square feet.
 - 2. Additional bedrooms — 150 square feet per additional bedroom.
- E. **Maximum Height:** Eight stories, no greater than 110 feet.
- F. **Lot Coverage:** 45 percent.
- G. **Minimum Usable Open Space:** 30 percent.
- H. **Building Configuration:** Multifamily structures shall have a wrap-around configuration that consists of central garage surrounded by the residential units on the exterior of the building.
- I. **First Floor:** The ceiling height of the first floor shall be a minimum fourteen feet (14') in height. The first floor of the building may be used for residential use or retail uses that are specified in the Planned Development ordinance.
- J. **Garage Height:** The height of the garage shall not exceed the height of the exterior building and all associated appurtenances, such as an elevator shaft or mechanical equipment, shall be completely screened.

13.3 Permitted uses.

Permitted uses shall be in accordance with the "Schedule of Uses" as outlined in Section 1.3 of Chapter 3.

CHAPTER 4 DEVELOPMENT REQUIREMENTS

* * *

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.3 Non-residential and multifamily parking provisions.

* * *

- E. Each head-in parking space shall be a minimum of nine feet wide and 20 feet long, exclusive of driveways and maneuvering aisles, and shall be of usable shape and condition (see Chapter 5, Section 2.3, Illustrations A-G). Where it is possible for a vehicle to overhang the front of a parking space above a paved, stoned, mulched, or grassed area other than a sidewalk, street right-of-way, or adjacent property, the depth of the standard space may be reduced to 18 feet. No parking space shall overhang required landscape areas. Parallel parking spaces must be a minimum of eight feet wide and 22 feet long. Parking spaces within non-residential and multifamily structured parking garages shall be a minimum of nine feet wide and 20 feet long.

* * *

- U. Multifamily parking shall be in a structured garage that is wrapped by the residential units, as described in Chapter 2, Section 13.2.H. Any surface parking associated with a Multifamily development for leasing area, guest parking, retail uses, etc. is only allowed between the building and a public street when located at or beyond the required landscape setback and screened with a headlight screen of earthen berms and/or a row of shrubs.

SECTION 8. NON-RESIDENTIAL & MULTIFAMILY DESIGN AND DEVELOPMENT

* * *

8.1 Applicability.

The regulations provided in Section 8.2 shall apply to all office, retail, restaurant, service, automobile, and commercial uses. The regulations provided in Section 8.3 shall apply to all industrial, wholesale, and institutional uses. Where the regulations of this section conflict with other sections of this ordinance, the regulations of this section shall apply.

The intent of these provisions is to promote high-quality architecture that relates to the street, scale of development, and surrounding land uses by utilizing three properties of good design: massing, use of materials, and attention to detail.

OFFICE, RETAIL, RESTAURANT, SERVICE, AUTOMOBILE, AND COMMERCIAL DEVELOPMENT STANDARDS

8.2 Exterior appearance of buildings and structures.

* * *

INDUSTRIAL, WHOLESALE, AND INSTITUTIONAL DEVELOPMENT STANDARDS

8.3 Exterior appearance of buildings and structures.

* * *



PLANNING

To: Mayor and Town Council

From: David Hoover, Director of Development Services

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Zoning Amendment – Drive-Thru Landscaping

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Conduct a public hearing to consider amending Chapter 3, Section 1.4 – Conditional Development Standards and Chapter 4 – Development Requirements of the Town of Prosper Zoning Ordinance to modify requirements related to drive-throughs. (ZONE-23-0033)

Description of Agenda Item:

In accordance with the Comprehensive Plan's recommendations regarding establishments with drive-throughs, Staff is proposing several amendments to the Town's Zoning Ordinance regarding the location of drive-throughs, landscape screening, and stacking and escape lane standards.

Often, when thinking of drive-throughs, one may picture a restaurant where you can order and pick up food without exiting a vehicle. This is one type of drive-through and one type of business that requires stacking. There are several types of businesses that have drive-throughs and/or stacking, and the development standards for these establishments can vary based on use and proximity to residential zoning. These standards are found in several sections of the ordinance. Below is some information to assist in distinguishing the requirements of the Ordinance.

The Zoning Ordinance makes a distinction between Restaurants, which can be with or without a drive-through, and Restaurants with Drive-Ins. Examples of each would be:

- Restaurant: Olive Garden
- Restaurant with a drive-through: McDonald's
- Restaurant, Drive In: Sonic

Restaurants (without a drive-through) are permitted as follows:

- Permitted in the Office Zoning District only if the subject property is located along a roadway classified as a major or minor thoroughfare, as defined by the Thoroughfare Plan.

- Permitted by right in the Office, Downtown Retail, Retail, Downtown Commercial, Commercial, and Commercial Corridor Zoning Districts subject.
- Permitted by Specific Use Permit in the Neighborhood Services Zoning District.

Restaurants with a drive-through are permitted as follows:

- Permitted by Specific Use Permit in the Retail, Commercial, and Commercial Corridor Zoning Districts.
- A distance requirement from residential zoning is applied.

Restaurants, Drive-In are permitted as follows:

- Permitted by right in Retail, Downtown Commercial, Commercial, and Commercial Corridor
- A distance requirement from residential zoning is applied.

Restaurants are not the only type of establishment that can include a drive-through. A bank or pharmacy, for example, are uses that could have a drive-through. Unlike a restaurant, when these types of uses include drive-throughs, they do not trigger a requirement for a Specific Use Permit.

Every business that has a drive-through must have adequate stacking behind the order point, whether that be a service window, call box or service island. Businesses that do not have drive-throughs but would also require stacking include automobile oil change facilities and similar establishments.

Standards for the length of stacking, according to use, are established in the Zoning Ordinance. An escape lane must also be provided in conjunction with the stacking lane. There are specific screening requirements for drive-throughs, stacking lanes, and escape lanes.

Description of Amendments:

The proposed amendments will establish additional requirements when drive-throughs and stacking are proposed. The following is a summary of the proposed amendments:

Chapter 3, Section 1.4, Subpart 26

- Prohibit Restaurants with drive-throughs being on lots adjacent to each other.

Chapter 4, Section 2.6(C)

- Where a non-residential development is adjacent to the property line of residential zoned parcels or areas shown as residential on the future land use plan, a 15-foot landscape area is required along the perimeter of the non-residential use. There are different landscape requirements for uses that have truck docks or loading spaces and for any lot that contains a drive-through restaurant, drive-in restaurant and/or automotive use.
 - *Typical Requirement* – The current requirement is for one large tree, three-inch caliper minimum, planted on 30 foot centers.
 - *Uses with truck docks or loading spaces* – The current requirement is for one evergreen tree, three-inch caliper minimum, planted on 20-foot centers where the truck docks or loading spaces are adjacent to single family property.

The amendment will clarify that the evergreen trees will need to reach a minimum height of 15 feet and that the landscaping is required where adjacent to all residentially zoned properties and areas shown as residential on the future land use plan. The height standard was added to match the current standard applied to lots containing a drive-through restaurant, drive-in restaurant and/or automotive use.

- *Drive-through restaurant, drive-in restaurant, and/or automotive use as defined in Chapter 4, Section 9.11(A)* – The current requirement is for one large tree, three-inch caliper minimum, planted on 20-foot centers adjacent to a residential zoning district. A minimum of 50 percent of the trees shall be of an evergreen variety that will reach a minimum of 15 feet in height. All landscape screening materials shall be maintained in a manner to provide the intended screening.

The amendment will change the tree type requirement so that all trees will be evergreen and will reach a minimum height of 15 feet so that the screening is consistent throughout all seasons. It will also clarify that these standards are to be applied not only when these uses are adjacent to property in a residential zoning district but also when identified as residential on the future land use plan.

- Where a non-residential development is adjacent to the property line of another non-residentially zoned property or property shown for non-residential on the future land use plan, a five-foot wide area is required along the property line with one small tree and one five-gallon shrub planted every 15 linear feet. These trees and shrubs may be clustered. There is an allowance for the 5-foot-wide area to be shifted or eliminated when drive-aisles/fire lanes allow access to parking along the property line, per Staff's discretion. It may also be eliminated where buildings attach along a common property line.

The amendment adds a new section specifically for all uses containing a drive-in, drive-through, or that require stacking. For these lots, the landscape area along the property lines will be 10 feet, which is twice the current width. The landscaping will be enhanced with a minimum three-inch caliper evergreen tree planted every 15 linear feet, rather than small tree that could be deciduous. This will ensure a consistent screen throughout the year. There will be five-gallon shrubs every three feet rather than one every 15 feet. For these uses, there is no allowance to cluster the trees and shrubs in order to ensure a solid screen. The landscape area can be shifted to the edge of a fire lane/drive aisle, but there is no situation where it could be eliminated.

- The standards include a requirement for a 10-foot-wide landscape island around the outer edge of the drive-through lane. As the standard is written, it may be misconstrued that the landscape island is only required for the stacking area, which is located behind the order point. The intent is that the island wrap around the entire drive-through facility from the point of entry into the stacking area to the exit of the drive-through lanes. Essentially, it would wrap the outer edge of the escape lane. If the landscape island is located on the perimeter of the property, perimeter landscaping requirements may be applied towards this requirement.

The language has been updated to clarify that the island is required for uses containing a drive-in, drive-through, or that require stacking. Clarity is provided regarding the location of the island and uses the escape lane as a reference. The landscape standards for the island have been modified to remove the use of deciduous trees and requires that all trees are evergreen. The current allowance for ornamental trees to be substituted for shrubs has been revised to allow a mixture of ornamental trees and shrubs. The reason for this is that shrubs can give year-round coverage.

Chapter 4, Sections 4.9 and 4.10

- Stacking and escape lane requirements for drive-throughs are currently within the section describing loading areas.

The amendment creates a new section (Section 4.10) for stacking requirements and breaks down the standards into individual subsections. It prohibits the placement of stacking and drive-through lanes between the building and the adjacent public right-of-way. Escape lanes are better defined and described as a nine-foot-wide aisle that provides access around the entirety of the drive-through facility from the point of entry, around the stacking lane, and to the exit. Finally, the landscape standards are mentioned by referencing Chapter 4, Section 2.6(C).

Chapter 4, Section 5.2(A)

- The screening wall requirements for lots containing drive-through restaurant, drive-in restaurant, and/or automotive uses were moved from Chapter 4, Section 9.11(A) into this section. The amendment to this section will clarify that these standards apply when adjacent to residentially zoned property or areas shown as residential on the future land use plan rather than simply a “residential zoning district.”

Chapter 4, Section 9.11

- This section of the ordinance provides additional standards for when a drive-thru restaurant, drive-in restaurant, and/or an automotive use, as defined in this section, are adjacent to residential zoning.

Throughout this section, additional language was added to specify that the distance requirements apply not only when adjacent property is any residential zoning district but also when adjacent property is shown as residential on the future land use plan.

- The current ordinance states that all buildings, structures, and outdoor speakers used in conjunction with any drive-through or drive-in restaurant shall be located a minimum of 200 feet from any residential zoning district. Then, there is a stipulation that buildings and outdoor speakers may be located closer than 200 feet from a residential zoning district when the building is located between the speaker box and adjacent residentially zoned property.

The proposed amendment removes the stipulation that would allow the buildings, structures and outdoor speakers to be closer to the residential zoning district if the building is between the speaker and the residential property.

This section currently contains landscape and screening wall requirements that are best located in Sections 2.6(C) and 5.2(A). These standards have been moved to the corresponding sections with this amendment proposal. All that is needed in Section 9.11 is a reference to the location of the landscape and screening standards.

Comprehensive Plan:

The Comprehensive Plan includes a section regarding drive-throughs. The following is an excerpt addressing this use:

Commercial development and traffic go hand in hand, and developments that provide drive-thru access exacerbate traffic concerns. Drive-thru proliferation in commercial areas can cause unsightly development, excessive ingress and egress points, queuing complications, noise, and clunky internal circulation. Although this plan can suggest where drive-thru locations may be most desirable, the Town’s development regulations control development design. In Prosper’s instance, it may be beneficial for the Town to revisit its development regulations pertaining to drive-thrus and revise standards that create traffic issues.

Six possible regulations are proposed to reduce the adverse impact of large multi-use developments on the Town. These regulations are listed below with Staff's response regarding how each was considered with the proposed amendments:

- *Require increased standards that specify queuing and drive-thru lane requirements* – The escape lane and stacking lanes have been clarified. Landscape standards have been updated to include a 10-foot perimeter landscape width and evergreen plantings.
- *Restrict drive-thru allowances for buildings that front higher classified roadways* – This item was not addressed with the proposed amendments.
- *Apply a distance requirement from residential uses and zoning districts* – The allowance for a reduction of the 200-foot separation for drive-throughs restaurants, drive-in restaurants, and automotive uses, as defined in Chapter 4, Section 9.11, has been removed. This distance requirement does not apply to other establishments that would have a drive-through, such as a bank or pharmacy.
- *Require uses that incorporate drive-thrus to have an increased minimum setback to ensure vehicle queuing does not occur at the front of the property* – The minimum setback has not been increased; however, a requirement has been added that stacking/drive-through lanes are not permitted between a building and an adjacent public right-of-way.
- *Require drive-thru approval through the specific use permit process* – Restaurants with drive-throughs currently require a Specific Use Permit in certain zoning districts. The amendments do not impose a Specific Use Permit requirement for other uses that may include a drive-through.
- *Restrict drive-thrus by lot size* – The amendment does not restrict drive-throughs by lot size; however, the lot size will likely be increased to ensure compliance with the wider perimeter landscape area and the defined escape lane around which a 10-foot-wide landscape island must wrap. The amended language also prohibits restaurants with drive-throughs from being on adjacent properties.

Staff finds that the proposed amendments uphold the Town's Comprehensive Plan.

Budget Impact:

There is no budgetary impact affiliated with this item.

Legal Obligations and Review:

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

Attached Documents:

1. Redlined Zoning Ordinance
2. Proposed Text Amendments

Town Staff Recommendation:

Town Staff recommends approval of amending Chapter 3, Section 1.4 – Conditional Development Standards and Chapter 4 – Development Requirements of the Town of Prosper Zoning Ordinance

to modify requirements related to drive-throughs. The Planning & Zoning Commission recommended approval of this item (5-2) at their meeting on December 5, 2023. The Commissioners who voted against this motion were not disagreeable to the concepts proposed but had specific concerns regarding the landscaping and associated maintenance requirements. They requested that Staff present their concerns to the Council during the review of this item.

Proposed Motion:

I move to approve/deny amending Chapter 3, Section 1.4 – Conditional Development Standards and Chapter 4 – Development Requirements of the Town of Prosper Zoning Ordinance to modify requirements related to drive-throughs.

Attachment No. 1

A red lined version of the current Zoning Ordinance sections that are proposed to be amended with additions shown in **blue** and underlined, and the deleted sections shown in **red** with ~~strike through~~.

CHAPTER 3 PERMITTED USES

Section 1. USE OF LAND AND BUILDINGS

1.4 Conditional development standards.

26. Restaurant.

- a) A Restaurant is permitted by Specific Use Permit in the NS Zoning District and is permitted by right in the O, DTR, R, DTC, C, and CC Zoning Districts subject.
- b) Restaurants with a drive-through are only permitted in the R, C, and CC Zoning Districts upon approval of a Specific Use Permit. Restaurants with drive-throughs shall not be developed on adjacent lots.
- c) Restaurants are only permitted in the O Zoning District, if the subject property is located along a roadway classified as a major or minor thoroughfare as defined by the Thoroughfare Plan.
- d) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 applies to restaurants with a drive-through.
- e) Restaurants that sell Alcoholic Beverages for on-premise consumption shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended, and any applicable local option elections.
- f) A Restaurant that sells Alcoholic Beverages for on-premise consumption shall not be located within the following:
 1. Three hundred feet from a church, public hospital, public school and/or private school. However, Alcoholic Beverage Sales may be located within 300 feet of a private school if the holder of a license or permit holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
 2. One thousand feet from a private school if the Town Council receives a request for this additional spacing requirement from the board of the private school, and the Town Council adopts such additional spacing requirements by resolution. Measurement for the distance between a Restaurant or Cafeteria where Alcoholic Beverages for on-premise consumption are sold and a church or public

hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections.

- g) Measurement for the distance between a Restaurant where Alcoholic Beverages for on-premise consumption are sold and a public and/or private school shall be:
1. In a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, and in a direct line across intersections; or
 2. If the Restaurant that sells Alcoholic Beverages for on-premise consumption is located on or above the fifth story of a multistory building, in a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, in a direct line across intersections, and vertically up the building at the Property Line to the base of the floor on which the Restaurant or Cafeteria is located.
- h) If a Restaurant receives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of Alcoholic Beverages for on-premise consumption, the use will no longer qualify as a Restaurant and will be classified and regulated by the Town as an Alcoholic Beverage Establishment under the Zoning Ordinance.
- i) There shall be no variances considered with regard to the regulations set forth herein.

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 2. LANDSCAPING

* * *

2.6 Landscape area requirements.

* * *

C. Non-residential landscaped area requirements. These standards apply to all non-residential uses. Any area within a PD containing landscaping standards shall comply with the standards set forth in the PD district.

1. Perimeter requirements:

- a. A landscaped area consisting of living trees (as specified below), turf, or other living ground cover and being at least 25 feet in width measured from the property line interior to the property shall be provided adjacent to and outside of the right-of-way on all properties located adjacent to a major or minor thoroughfare as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - i. The landscaped area may be reduced to 15 feet for the portion of a property adjacent to a collector or equivalent street as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - ii. The landscaped area shall be increased to 30 feet for properties adjacent to Preston Road, University Drive, and Dallas Parkway.
 - iii. One large tree, three-inch caliper minimum per 30 linear feet of roadway frontage shall be planted within the required landscape area. The trees may be planted in groups with appropriate spacing for species.
 - iv. In the DTO District, one large tree, three inch caliper minimum per 30 linear feet of roadway frontage, excluding the width of driveways at the property line, shall be planted within the required landscape area. Where the width of the roadway frontage is greater than 80 feet, excluding the width of driveways at the property line, the number of large trees may be planted at a rate of one, three-inch large tree per 40 feet of roadway frontage, in lieu of the required one tree per 30 linear feet. The trees may be planted in groups with appropriate spacing for species. In the DTO District, the substitution of three small, ornamental trees for one large tree shall not be permitted.
 - v. A minimum of 15 shrubs with a minimum size of five gallons each will be planted in the landscaped area for each 30 feet of linear frontage.
 - vi. Parking abutting the landscape area shall be screened from the adjacent roadway. The required screening may be accomplished with shrubs or earthen berms.
 - vii. Unless there is parking adjacent to the landscape area, shrubs are not required in the landscape area in the DTO District.

- viii. Required landscape areas adjacent to public streets shall be exclusive easements or other restrictions which could inhibit planting, growth, or permanence of landscaping.
 - ix. Berms ranging in height from three feet to six feet, and an overall minimum average of four and a half feet, shall be required along US 380, Frontier Parkway/FM 1461/Parvin Road, Custer Road/FM 2478, Preston Road, Dallas Parkway, and FM 1385.
- b. Where a non-residential development is adjacent to the property line of residential zoned parcels or areas shown as residential on the future land use plan, one large tree, three inch caliper minimum, will be planted on 30 foot centers in a 15 foot landscape area-, with the following exceptions:
- i. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area where truck docks or loading spaces are adjacent to ~~single family property~~ residentially zoned property or areas shown as residential on the future land use plan.
 - ii. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area on any lot containing a drive-through restaurant, drive-in restaurant, and/or automotive use as defined in Chapter 4, Section 9.11(A) that is adjacent to a residential zoning district or area shown as residential on the future land use plan. All landscape screening materials shall be maintained in a manner to provided the intended screening.
 - iii. In the DTO District, regardless of the adjacent use, zoning or future land use designation; the width of perimeter landscape area adjacent to the property line may be reduced to a minimum of five feet.
 - iiii. In the DTO District, in lieu of the required large trees, one small (ornamental) tree shall be planted 30 foot centers along the adjacent property lines."
- c. Where a non-residential development is adjacent to the property line of parcels zoned for uses other than residential or parcels not shown as residential on the future land use plan:
- i. A five foot wide landscape area is required.
 - ii. If the property line is the centerline of a fire lane or drive aisle, the five foot wide landscape area will begin at the edge of the lane/aisle. If the drive aisle or fire lane only allows access to parking spaces, the landscape area may be eliminated or moved at the discretion of the town.
 - iii. The five foot wide landscape area may be eliminated for a building where the building is attached to another building and the attached buildings are shown on an approved site plan.

iv. One small tree and one five-gallon shrub shall be planted every 15 linear feet. These trees and shrubs may be clustered in lieu of placing them every 15 feet.

v. All uses containing a drive-in, drive-through, or that require stacking shall provide a ten foot wide landscape area along the perimeter of the property. If the property line is the centerline of a fire lane or drive aisle, the ten foot wide landscape area will begin at the edge of the lane/aisle. The landscape area shall contain a minimum three-inch caliper evergreen trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center.

2. Interior parking requirements. Any non-residential parking area that contains 20 or more parking spaces shall provide interior landscaping, in addition to the required landscaped edge, as follows:
 - a. Fifteen square feet of landscaping for each parking space shall be provided within the paved boundaries of the parking lot area.
 - b. Where an existing parking lot area is altered or expanded to increase the number of spaces to 20 or more, interior landscaping shall be provided on the new portion of the lot in accordance with this section.
 - c. All landscaped areas shall be protected by a raised six inch concrete curb. Pavement shall not be placed closer than four feet from the trunk of a tree unless a town approved root barrier is utilized.
 - d. Landscaped islands shall be located at the terminus of all parking rows, and shall contain at least one large tree, three inch caliper minimum, with no more than 15 parking spaces permitted in a continuous row without being interrupted by a landscaped island. Where there is a minimum eight foot wide landscaped median between two rows of head-in parking, landscaped islands are required every 20 spaces.
 - e. Landscaped islands shall be a minimum of 160 square feet, not less than nine feet wide and a length equal to the abutting space.
 - f. Subject to approval by the town, islands may be grouped to form one large island.
 - g. There shall be at least one large tree, three-inch caliper minimum, within 150 feet of every parking space. This minimum distance may be expanded with town approval in the event that required islands are grouped to form larger islands.
 - h. Required parking lot trees may be consolidated into groups under the following conditions:
 - i. The number of required trees is one per ten parking spaces.
 - ii. Consolidated tree islands require 180 square feet per tree.
 - iii. The maximum run of parking spaces is increased from 15 to 30.

- iv. This consolidation does not include the tree islands at the end of a row of parking or along perimeter parking rows that face a drive aisle or street.
- v. A consolidated tree island shall not be located closer than five parking spaces from an end of row tree island.
- i. All uses containing a drive-in, ~~or drive-thru~~ drive-through, or that require stacking shall be subject to the following standards:
 - i. A minimum ten foot wide landscape island shall be constructed around the outer edge of the ~~drive-thru lane for a minimum distance to equal the length of stacking required for the drive-thru facility.~~ drive-through lane(s) along the outer edge of the escape lane, extending from the point entry to the exit.
 - ~~j.~~ ii. The landscape island shall contain minimum three inch caliper evergreen ~~or deciduous~~ trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center. ~~Ornamental trees evenly interspersed between the evergreen or deciduous trees may be substituted for the shrubs.~~ Ornamental trees may be used in place of a portion of shrubs to create a mixture of species and types of vegetation. If the landscape island is located on the perimeter of the property, perimeter landscaping requirements may be applied towards this requirement.

* * *

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.9 Loading space requirements.

- A. A minimum of one loading space shall be required for big box uses. Loading spaces for other non-residential uses may be required as determined by the Director of Development Services, if it is determined the use or configuration of the site warrants such.
- B. All non-residential uses providing loading spaces shall provide such loading spaces in accordance with the following requirements:
 1. A loading space shall consist of an area of a minimum of 12 feet wide and 30 feet long.
 2. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks. Each site shall provide a designated maneuvering area for trucks. (See Chapter 5, Section 2.3, Illustration H)

~~C.~~ 4.10 Stacking Requirements.

1. Stacking Space Definition

Stacking spaces provide the ability for vehicles to queue on site prior to receiving a service.

2. Stacking Space Size and Location

- a. A stacking space shall be a minimum of nine feet wide and 20 feet long and shall not be located within or interfere with any other circulation driveway, parking space, or maneuvering aisle.
- b. Stacking spaces shall be provided behind the vehicle bay door, middle of the service window, or middle of the service island, whichever is applicable.
- c. The stacking/drive-through lanes shall not placed be between the building and the adjacent public right-of-way.

3. Number of Required Stacking Spaces (All Districts)

In all zoning districts, at the time any building or structure is erected or altered, stacking spaces shall be provided in the number and manner set forth in the following list of property uses:

- **Automated teller machine (ATM):** Three stacking spaces.
- **Automobile oil change and similar establishments:** Three stacking spaces per bay.

- **Car wash:** Three stacking spaces for drive-through, or one stacking space per bay.
- **Dry cleaning, pharmacy, or other retail establishments with a ~~drive-thru~~ drive-through:** Three stacking spaces for first service window.
- **Financial institution:** Five stacking spaces per window or service lane.
- **Kiosk (with food service):** Five stacking spaces for first window, order board, or other stopping point.
- **Kiosk (without food service):** Two stacking spaces for first window, order board, or other stopping point.
- **Restaurant with ~~drive-thru~~ drive-through:** Five stacking spaces for first window, order board, or other stopping point.

4. Single Stacking Space Required after the Final Window, Order Board, or Stopping Point

A single stacking space shall be provided after the final window, order board, or stopping point to allow vehicles to pull clear of the transaction area prior to entering an intersecting on-site driveway or maneuvering aisle.

5. Setback Requirement

Buildings and other structures shall be setback a minimum of ten feet from the back of the curb of the intersecting driveway or maneuvering aisle to provide adequate visibility and to allow vehicles to safely exit ~~drive-thru~~ drive-through lanes and escape lanes prior to merging into intersecting driveways or maneuvering aisles.

6. Escape Lane Requirement for Drive-Through Facilities

- a. An escape lane shall be provided for any use containing a drive-through facility.
- b. An escape lane shall be provided in proximity to the first stopping point for any use containing a ~~drive-thru~~ drive-through facility.
- c. An escape lane shall be nine (9) feet in width and shall provide access around the entirety of the drive-through facility from the point of entry, around the stacking lane, and to the exit.

7. Landscape Requirements

Landscaping shall comply with the requirements set forth in Chapter 4, Section 2.6(C).

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 5. SCREENING FENCES AND WALLS

5.1 Purpose.

Standards set forth in this section are intended to encourage the appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of various screening devices to be used when required in the various zoning districts or in this section in accordance with the following standards.

5.2 Location of required screening.

- A. When a boundary of a multifamily, institutional, or non-residential use sides or backs to a property that is zoned or designated on the future land use plan for residential (non-multifamily) uses, or when any institutional or non-residential use sides or backs to a MF District, a solid screening wall or fence of not less than six feet nor more than eight feet in height shall be erected on the property line separating these uses. The purpose of the screening wall or fence is to provide a visual barrier between the properties.

Any lot a containing drive-through restaurant, drive-in restaurant, and/or automotive use, as defined in Chapter 4, Section 9.11(A), and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan, shall have a screening wall eight feet in height and shall be maintained in a manner to provide the intended screening.

The owner of such property of the lesser restrictive use shall be responsible for and shall build the required wall or fence on his property line dividing his property from the more restrictive zoning district. In cases where the Planning and Zoning Commission finds this requirement to be better met by an irrigated living screen, the same may be substituted for the screening wall after a landscape plan has been prepared to demonstrate equal visual screening.

A screening wall or fence required under the provisions of this section, under a specific use permit, a Planned Development District, or other requirement shall be constructed of clay-fired brick masonry units or other suitable permanent materials which do not contain openings constituting more than 40 square inches in each one square foot of wall or fence surface, and the surface of such wall or fence shall constitute a visual barrier. All wall or fence openings shall be equipped with gates equal in height and screening characteristics to the wall or fence. Concrete masonry units, poured in place concrete, tilt-up concrete, or concrete panels may be used upon approval by the Planning and Zoning Commission.

Properties zoned for the DTC, DTR, or DTO District are only required to provide screening along property lines that are adjacent to properties shown as residential on the future land use plan. The screening shall consist of an eight foot cedar board-on-board wooden fence constructed in accordance with the fence ordinance as it exists or may be amended. In the DTO District, the height of the fence may be reduced to six feet.

* * *

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 9. ADDITIONAL AND SUPPLEMENTAL

* * *

9.11 Adjacency of certain uses to residential zoning.

- A. All buildings, gasoline pump islands, vacuums, outdoor speakers, gasoline or fuel storage tanks, air and water dispensers, and other structures in conjunction with any automotive use shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan. No service bay shall face a residential zoning district or areas shown as residential on the future land use plan. An automotive use shall be defined as the sales, leasing, renting, servicing, repair, or washing of automobiles, boats, motorcycles, trucks, or any other motor vehicle.
- B. All buildings, structures, and outdoor speakers used in conjunction with any ~~drive-thru~~ drive-through restaurant or drive-in restaurant shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan. ~~Buildings and outdoor speakers may be located closer than 200 feet from a residential zoning district provided that the building is located between the speaker box and adjacent residentially-zoned property.~~
- C. Any lot containing a ~~drive-thru~~ drive-through restaurant, drive-in restaurant, and/or an automotive use as defined in Chapter 4, Section 9.11(A) and that is adjacent to a ~~residential zoning district~~ residentially zoned property or areas shown as residential on the future land use plan shall comply with the ~~following requirements:~~ landscape requirements set forth in Chapter 4, Section 2.6(C) and screening wall requirements set forth in Chapter 4, Section 5.2.
- ~~1.—One large tree, three-inch caliper minimum shall be planted on 20-foot centers within the 15-foot landscape area, required by Chapter 4, Section 2.6(C). Of the trees required within the 15-foot landscape area, a minimum of 50 percent of the trees shall be of an evergreen variety that will reach a minimum of 15 feet in height.~~
 - ~~2.—The screening wall, required by Chapter 4, Section 5.2, shall be eight feet in height.~~
 - ~~3.—All screening materials, both wall and landscape materials, shall be maintained in a manner to provide the intended screening.~~
- D. The requirements listed in Chapter 4, Section 9.11(A) and 9.11(B) shall not apply to a ~~drive-thru~~ drive-through restaurant, drive-in restaurant, and/or an automotive use within 200 feet of a residential zoning district that is separated from the residential area by an existing or future major thoroughfare identified on the town's thoroughfare plan.

Attachment No. 2

A final version of the proposed text amendments.

CHAPTER 3 PERMITTED USES

Section 1. USE OF LAND AND BUILDINGS

1.4 Conditional development standards.

26. Restaurant.

- a) A Restaurant is permitted by Specific Use Permit in the NS Zoning District and is permitted by right in the O, DTR, R, DTC, C, and CC Zoning Districts subject.
- b) Restaurants with a drive-through are only permitted in the R, C, and CC Zoning Districts upon approval of a Specific Use Permit. Restaurants with drive-throughs shall not be developed on adjacent lots.
- c) Restaurants are only permitted in the O Zoning District, if the subject property is located along a roadway classified as a major or minor thoroughfare as defined by the Thoroughfare Plan.
- d) The distance requirement from any residential zoning district as established in Section 9.11 of Chapter 4 applies to restaurants with a drive-through.
- e) Restaurants that sell Alcoholic Beverages for on-premise consumption shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended, and any applicable local option elections.
- f) A Restaurant that sells Alcoholic Beverages for on-premise consumption shall not be located within the following:
 1. Three hundred feet from a church, public hospital, public school and/or private school. However, Alcoholic Beverage Sales may be located within 300 feet of a private school if the holder of a license or permit holds a food and beverage certificate covering a premise that is located within 300 feet of a private school; or
 2. One thousand feet from a private school if the Town Council receives a request for this additional spacing requirement from the board of the private school, and the Town Council adopts such additional spacing requirements by resolution. Measurement for the distance between a Restaurant or Cafeteria where Alcoholic Beverages for on-premise consumption are sold and a church or public hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections.

- g) Measurement for the distance between a Restaurant where Alcoholic Beverages for on-premise consumption are sold and a public and/or private school shall be:
1. In a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, and in a direct line across intersections; or
 2. If the Restaurant that sells Alcoholic Beverages for on-premise consumption is located on or above the fifth story of a multistory building, in a direct line from the Property Line of the public and/or private school to the Property Line of the place of business, in a direct line across intersections, and vertically up the building at the Property Line to the base of the floor on which the Restaurant or Cafeteria is located.
- h) If a Restaurant receives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of Alcoholic Beverages for on-premise consumption, the use will no longer qualify as a Restaurant and will be classified and regulated by the Town as an Alcoholic Beverage Establishment under the Zoning Ordinance.
- i) There shall be no variances considered with regard to the regulations set forth herein.

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 2. LANDSCAPING

* * *

2.6 Landscape area requirements.

* * *

C. Non-residential landscaped area requirements. These standards apply to all non-residential uses. Any area within a PD containing landscaping standards shall comply with the standards set forth in the PD district.

1. Perimeter requirements:

- a. A landscaped area consisting of living trees (as specified below), turf, or other living ground cover and being at least 25 feet in width measured from the property line interior to the property shall be provided adjacent to and outside of the right-of-way on all properties located adjacent to a major or minor thoroughfare as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - i. The landscaped area may be reduced to 15 feet for the portion of a property adjacent to a collector or equivalent street as defined by the Town of Prosper Thoroughfare and Circulation Designs Standards.
 - ii. The landscaped area shall be increased to 30 feet for properties adjacent to Preston Road, University Drive, and Dallas Parkway.
 - iii. One large tree, three-inch caliper minimum per 30 linear feet of roadway frontage shall be planted within the required landscape area. The trees may be planted in groups with appropriate spacing for species.
 - iv. In the DTO District, one large tree, three inch caliper minimum per 30 linear feet of roadway frontage, excluding the width of driveways at the property line, shall be planted within the required landscape area. Where the width of the roadway frontage is greater than 80 feet, excluding the width of driveways at the property line, the number of large trees may be planted at a rate of one, three-inch large tree per 40 feet of roadway frontage, in lieu of the required one tree per 30 linear feet. The trees may be planted in groups with appropriate spacing for species. In the DTO District, the substitution of three small, ornamental trees for one large tree shall not be permitted.
 - v. A minimum of 15 shrubs with a minimum size of five gallons each will be planted in the landscaped area for each 30 feet of linear frontage.
 - vi. Parking abutting the landscape area shall be screened from the adjacent roadway. The required screening may be accomplished with shrubs or earthen berms.
 - vii. Unless there is parking adjacent to the landscape area, shrubs are not required in the landscape area in the DTO District.

- viii. Required landscape areas adjacent to public streets shall be exclusive easements or other restrictions which could inhibit planting, growth, or permanence of landscaping.
 - ix. Berms ranging in height from three feet to six feet, and an overall minimum average of four and a half feet, shall be required along US 380, Frontier Parkway/FM 1461/Parvin Road, Custer Road/FM 2478, Preston Road, Dallas Parkway, and FM 1385.
- b. Where a non-residential development is adjacent to the property line of residential zoned parcels or areas shown as residential on the future land use plan, one large tree, three inch caliper minimum, will be planted on 30 foot centers in a 15 foot landscape area, with the following exceptions:
- i. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area where truck docks or loading spaces are adjacent to residentially zoned property or areas shown as residential on the future land use plan.
 - ii. Evergreen trees, three-inch caliper minimum, that will reach a minimum of 15 feet in height, shall be planted on 20 foot centers within the 15 foot landscape area on any lot containing a drive-through restaurant, drive-in restaurant, and/or automotive use as defined in Chapter 4, Section 9.11(A) that is adjacent to a residential zoning district or area shown as residential on the future land use plan. All landscape screening materials shall be maintained in a manner to provided the intended screening.
 - iii. In the DTO District, regardless of the adjacent use, zoning or future land use designation; the width of perimeter landscape area adjacent to the property line may be reduced to a minimum of five feet.
 - iv. In the DTO District, in lieu of the required large trees, one small (ornamental) tree shall be planted 30 foot centers along the adjacent property lines."
- c. Where a non-residential development is adjacent to the property line of parcels zoned for uses other than residential or parcels not shown as residential on the future land use plan:
- i. A five foot wide landscape area is required.
 - ii. If the property line is the centerline of a fire lane or drive aisle, the five foot wide landscape area will begin at the edge of the lane/aisle. If the drive aisle or fire lane only allows access to parking spaces, the landscape area may be eliminated or moved at the discretion of the town.
 - iii. The five foot wide landscape area may be eliminated for a building where the building is attached to another building and the attached buildings are shown on an approved site plan.

- iv. One small tree and one five-gallon shrub shall be planted every 15 linear feet. These trees and shrubs may be clustered in lieu of placing them every 15 feet.
 - v. All uses containing a drive-in, drive-through, or that require stacking shall provide a ten foot wide landscape area along the perimeter of the property. If the property line is the centerline of a fire lane or drive aisle, the ten foot wide landscape area will begin at the edge of the lane/aisle. The landscape area shall contain a minimum three-inch caliper evergreen trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center.
2. Interior parking requirements. Any non-residential parking area that contains 20 or more parking spaces shall provide interior landscaping, in addition to the required landscaped edge, as follows:
- a. Fifteen square feet of landscaping for each parking space shall be provided within the paved boundaries of the parking lot area.
 - b. Where an existing parking lot area is altered or expanded to increase the number of spaces to 20 or more, interior landscaping shall be provided on the new portion of the lot in accordance with this section.
 - c. All landscaped areas shall be protected by a raised six inch concrete curb. Pavement shall not be placed closer than four feet from the trunk of a tree unless a town approved root barrier is utilized.
 - d. Landscaped islands shall be located at the terminus of all parking rows, and shall contain at least one large tree, three inch caliper minimum, with no more than 15 parking spaces permitted in a continuous row without being interrupted by a landscaped island. Where there is a minimum eight foot wide landscaped median between two rows of head-in parking, landscaped islands are required every 20 spaces.
 - e. Landscaped islands shall be a minimum of 160 square feet, not less than nine feet wide and a length equal to the abutting space.
 - f. Subject to approval by the town, islands may be grouped to form one large island.
 - g. There shall be at least one large tree, three-inch caliper minimum, within 150 feet of every parking space. This minimum distance may be expanded with town approval in the event that required islands are grouped to form larger islands.
 - h. Required parking lot trees may be consolidated into groups under the following conditions:
 - i. The number of required trees is one per ten parking spaces.
 - ii. Consolidated tree islands require 180 square feet per tree.
 - iii. The maximum run of parking spaces is increased from 15 to 30.

- iv. This consolidation does not include the tree islands at the end of a row of parking or along perimeter parking rows that face a drive aisle or street.
- v. A consolidated tree island shall not be located closer than five parking spaces from an end of row tree island.
- i. All uses containing a drive-in, drive-through, or that require stacking shall be subject to the following standards:
 - i. A minimum ten foot wide landscape island shall be constructed around the outer edge of the drive-through lane(s) along the outer edge of the escape lane, extending from the point entry to the exit.
 - ii. The landscape island shall contain minimum three inch caliper evergreen trees planted 15 feet on-center with minimum five gallon shrubs planted three feet on center. Ornamental trees may be used in place of a portion of shrubs to create a mixture of species and types of vegetation. If the landscape island is located on the perimeter of the property, perimeter landscaping requirements may be applied towards this requirement.

* * *

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 4. PARKING, CIRCULATION, AND ACCESS

* * *

4.9 Loading space requirements.

- A. A minimum of one loading space shall be required for big box uses. Loading spaces for other non-residential uses may be required as determined by the Director of Development Services, if it is determined the use or configuration of the site warrants such.
- B. All non-residential uses providing loading spaces shall provide such loading spaces in accordance with the following requirements:
 1. A loading space shall consist of an area of a minimum of 12 feet wide and 30 feet long.
 2. All drives and approaches shall provide adequate space and clearances to allow for the maneuvering of trucks. Each site shall provide a designated maneuvering area for trucks. (See Chapter 5, Section 2.3, Illustration H)

4.10 Stacking Requirements.

1. Stacking Space Definition

Stacking spaces provide the ability for vehicles to queue on site prior to receiving a service.

2. Stacking Space Size and Location

- a. A stacking space shall be a minimum of nine feet wide and 20 feet long and shall not be located within or interfere with any other circulation driveway, parking space, or maneuvering aisle.
- b. Stacking spaces shall be provided behind the vehicle bay door, middle of the service window, or middle of the service island, whichever is applicable.
- c. The stacking/drive-through lanes shall not be placed between the building and the adjacent public right-of-way.

3. Number of Required Stacking Spaces (All Districts)

In all zoning districts, at the time any building or structure is erected or altered, stacking spaces shall be provided in the number and manner set forth in the following list of property uses:

- **Automated teller machine (ATM):** Three stacking spaces.
- **Automobile oil change and similar establishments:** Three stacking spaces per bay.

- **Car wash:** Three stacking spaces for drive-through, or one stacking space per bay.
 - **Dry cleaning, pharmacy, or other retail establishments with a drive-through:** Three stacking spaces for first service window.
 - **Financial institution:** Five stacking spaces per window or service lane.
 - **Kiosk (with food service):** Five stacking spaces for first window, order board, or other stopping point.
 - **Kiosk (without food service):** Two stacking spaces for first window, order board, or other stopping point.
 - **Restaurant with drive-through:** Five stacking spaces for first window, order board, or other stopping point.
4. Single Stacking Space Required after the Final Window, Order Board, or Stopping Point

A single stacking space shall be provided after the final window, order board, or stopping point to allow vehicles to pull clear of the transaction area prior to entering an intersecting on-site driveway or maneuvering aisle.

5. Setback Requirement

Buildings and other structures shall be setback a minimum of ten feet from the back of the curb of the intersecting driveway or maneuvering aisle to provide adequate visibility and to allow vehicles to safely exit drive-through lanes and escape lanes prior to merging into intersecting driveways or maneuvering aisles.

6. Escape Lane Requirement for Drive-Through Facilities

- a. An escape lane shall be provided for any use containing a drive-through facility.
- b. An escape lane shall be provided in proximity to the first stopping point for any use containing a drive-through facility.
- c. An escape lane shall be nine (9) feet in width and shall provide access around the entirety of the drive-through facility from the point of entry, around the stacking lane, and to the exit.

7. Landscape Requirements

Landscaping shall comply with the requirements set forth in Chapter 4, Section 2.6(C).

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 5. SCREENING FENCES AND WALLS

5.1 Purpose.

Standards set forth in this section are intended to encourage the appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of various screening devices to be used when required in the various zoning districts or in this section in accordance with the following standards.

5.2 Location of required screening.

- A. When a boundary of a multifamily, institutional, or non-residential use sides or backs to a property that is zoned or designated on the future land use plan for residential (non-multifamily) uses, or when any institutional or non-residential use sides or backs to a MF District, a solid screening wall or fence of not less than six feet nor more than eight feet in height shall be erected on the property line separating these uses. The purpose of the screening wall or fence is to provide a visual barrier between the properties.

Any lot containing drive-through restaurant, drive-in restaurant, and/or automotive use, as defined in Chapter 4, Section 9.11(A), and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan, shall have a screening wall eight feet in height and shall be maintained in a manner to provide the intended screening.

The owner of such property of the lesser restrictive use shall be responsible for and shall build the required wall or fence on his property line dividing his property from the more restrictive zoning district. In cases where the Planning and Zoning Commission finds this requirement to be better met by an irrigated living screen, the same may be substituted for the screening wall after a landscape plan has been prepared to demonstrate equal visual screening.

A screening wall or fence required under the provisions of this section, under a specific use permit, a Planned Development District, or other requirement shall be constructed of clay-fired brick masonry units or other suitable permanent materials which do not contain openings constituting more than 40 square inches in each one square foot of wall or fence surface, and the surface of such wall or fence shall constitute a visual barrier. All wall or fence openings shall be equipped with gates equal in height and screening characteristics to the wall or fence. Concrete masonry units, poured in place concrete, tilt-up concrete, or concrete panels may be used upon approval by the Planning and Zoning Commission.

Properties zoned for the DTC, DTR, or DTO District are only required to provide screening along property lines that are adjacent to properties shown as residential on the future land use plan. The screening shall consist of an eight foot cedar board-on-board wooden fence constructed in accordance with the fence ordinance as it exists or may be amended. In the DTO District, the height of the fence may be reduced to six feet.

* * *

CHAPTER 4 DEVELOPMENT REQUIREMENTS

SECTION 9. ADDITIONAL AND SUPPLEMENTAL

* * *

9.11 Adjacency of certain uses to residential zoning.

- A. All buildings, gasoline pump islands, vacuums, outdoor speakers, gasoline or fuel storage tanks, air and water dispensers, and other structures in conjunction with any automotive use shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan. No service bay shall face a residential zoning district or areas shown as residential on the future land use plan. An automotive use shall be defined as the sales, leasing, renting, servicing, repair, or washing of automobiles, boats, motorcycles, trucks, or any other motor vehicle.
- B. All buildings, structures, and outdoor speakers used in conjunction with any drive-through restaurant or drive-in restaurant shall be located a minimum of 200 feet from any residential zoning district or areas shown as residential on the future land use plan.
- C. Any lot containing a drive-through restaurant, drive-in restaurant, and/or an automotive use as defined in Chapter 4, Section 9.11(A) and that is adjacent to a residentially zoned property or areas shown as residential on the future land use plan shall comply with the landscape requirements set forth in Chapter 4, Section 2.6(C) and screening wall requirements set forth in Chapter 4, Section 5.2.
- D. The requirements listed in Chapter 4, Section 9.11(A) and 9.11(B) shall not apply to a drive-through restaurant, drive-in restaurant, and/or an automotive use within 200 feet of a residential zoning district that is separated from the residential area by an existing or future major thoroughfare identified on the town's thoroughfare plan.



TOWN SECRETARY

To: Mayor and Town Council

From: Michelle Lewis Sirianni, Town Secretary

**Through: Mario Canizares, Town Manager
Robyn Battle, Executive Director**

Re: 2024 Meeting Schedule

Town Council Meeting – December 12, 2023

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon the 2024 Prosper Town Council Regular meeting schedule.

Description of Agenda Item:

Each year, the Town Council has an opportunity to review the regular meeting schedule and advise staff if there are any meetings they wish to cancel. Historically, the Town Council has cancelled the second meeting in December. Therefore, for 2024, it would fall on Tuesday, December 24, 2024, which is also a Town holiday. This schedule does not include any special meetings that may be called throughout the year.

Unless otherwise posted, all Prosper Town Council meetings take place in the Council Chambers of Prosper Town Hall and begin at 6:15 p.m. and if needed, a Work Session at 5:00 p.m.

It is important to note that the meeting dates in April will be the third and fifth Tuesday in order to accommodate future planned events. The Planning and Zoning Commission will be adjusting their second meeting in April to April 23 due to the change.

The 2024 Town Council meetings are as follows:

- January 9 and 23
- February 13 and 27
- March 12 and 26
- April 16 and 30
- May 14 and 28 (Memorial Day is May 27)
- June 11 and 25
- July 9 and 23
- August 13 and 27
- September 10 and 24
- October 8 and 22
- November 12 and 26 (Thanksgiving Holiday is November 28 & 29)
- December 10 and 24 (Cancelled)

Budget Impact:

There is no budgetary impact affiliated with this item.

Town Staff Recommendation:

Town Staff recommends the Town Council approve the 2024 Prosper Town Council Regular meeting schedule as presented.

Proposed Motion:

I move to approve the 2024 Prosper Town Council Regular meeting schedule as presented.