



Prosper is a place where everyone matters.

AGENDA
Meeting of the Prosper Town Council
Prosper Municipal Chambers
108 W. Broadway, Prosper, Texas
Tuesday, August 26, 2014
6:00 p.m.

1. Call to Order/Roll Call.
2. Invocation, Pledge of Allegiance and Pledge to the Texas Flag.
3. Announcements of upcoming events.
4. Presentations.
 - Update on Toyota Employee Relocation **(RW)**

5. **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.)

- 5a. Consider and act upon minutes from the following Town Council meeting. **(RB)**
- Regular Meeting – August 12, 2014

- 5b. Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any site plan or preliminary site plan. **(AG)**

- 5c. Consider and act upon an ordinance rezoning 93.2± acres, located on the northwest corner of Prosper Trail and Coit Road, from Agricultural (A) and Single Family-15 (SF-15) to Planned Development-Single Family (PD-SF). (Z14-0008). **(AG)**

- 5d. Consider and act upon an ordinance amending Section 10.02.002 "Definitions" of Article 10.02 "Capital Improvements and Impact Fees" of Chapter 10 "Subdivision Regulation" of the Town's Code of Ordinances by amending the definition of "New development" to exclude temporary modular buildings from the payment of roadway impact fees. **(BE)**

- 5e. Consider and act upon a resolution authorizing the Town Manager to execute an application to the Texas Parks & Wildlife Small Community Park Grant for Cockrell Park. **(PN)**

6. **CITIZEN COMMENTS:**

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

Other Comments by the Public -

REGULAR AGENDA:

(If you wish to address the Council during the regular agenda portion of the meeting, please fill out a "Public Meeting Appearance Card" and present it to the Town Secretary prior to the meeting. Citizens wishing to address the Council for items listed as public hearings will be recognized by the Mayor. Those wishing to speak on a non-public hearing related item will be recognized on a case-by-case basis, at the discretion of the Mayor and Town Council.)

PUBLIC HEARINGS:

7. Conduct a Public Hearing to consider and discuss the FY 2014-2015 Budget, as proposed. **(KA)**
8. Conduct a Public Hearing to consider and discuss a proposal to increase total tax revenues from properties on the tax roll in the preceding year by 11.07 percent. **(KA)**
9. Conduct a Public Hearing, and consider and act upon a request to rezone 0.2± acres, located on the north side of Broadway Street, 550± feet east of Coleman Street, from Single Family-15 (SF-15) to Downtown Office (DTO). (Z14-0012). **(AG)**

DEPARTMENT ITEMS:

10. Library Services Department update. **(LS)**
11. Consider and act upon awarding Bid No. 2014-57-B to Jay Davis Company, Inc., dba JDC Construction, related to the construction services for the Southwest Corner Frontier Park Batting Cages; and authorizing the Town Manager to execute same. **(PN)**

12. **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:

12a. *Section 551.087 – To discuss and consider economic development incentives.*

12b. *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.*

- 12c.** *Section 551.074 – To discuss appointments to the Planning & Zoning Commission, Parks & Recreation Board, Prosper Economic Development Corporation Board, Board of Adjustment/Construction Board of Appeals, and Library Board.*
- 13.** Reconvene in Regular Session and take any action necessary as a result of the Closed Session.
- 14.** Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.
- Hawk Ridge Channel Improvements (**HW**)
- 15.** Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 121 W. Broadway Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted on August 22, 2014, at 6:30 p.m. and remained so posted at least 72 hours before said meeting was convened.

Robyn Battle, Town Secretary

Date Noticed Removed

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

NOTICE

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

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



Prosper is a place where everyone matters.

MINUTES
Regular Meeting of the
Prosper Town Council
Prosper Municipal Chambers
108 W. Broadway, Prosper, Texas
Tuesday, August 12, 2014

1. Call to Order/Roll Call.

The meeting was called to order at 6:00 p.m.

Council Members Present:

Mayor Ray Smith
Mayor Pro-Tem Meigs Miller
Deputy Mayor Pro-Tem Kenneth Dugger
Councilmember Michael Korbuly
Councilmember Mike Davis
Councilmember Curry Vogelsang, Jr.
Councilmember Jason Dixon

Staff Members Present:

Harlan Jefferson, Town Manager
Robyn Battle, Town Secretary
Terrence Welch, Town Attorney
Hulon T. Webb, Jr., Executive Director of Development and Community Services
Dan Heischman, Senior Engineer
Matt Richardson, Senior Engineer
Alex Glushko, Senior Planner
Pamela Clark, Planning Technician
Paul Naughton, Landscape Architect
Will Mitchell, Parks & Recreation Manager
Julie Shivers, Recreation Services Coordinator
Bill Elliott, Building Official
Kent Austin, Finance Director
Trish Featherston, Accounting Manager
Kelly Vanaman, Utility Billing Administrator
Doug Kowalski, Police Chief
Ronnie Tucker, Fire Chief

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

Jim Lugar of Life Journey Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were recited.

3. Announcements of upcoming events.

Mayor Pro-Tem Miller made the following announcements:

The Prosper Fire Department will host its third annual 9-11 Remembrance Ceremony the morning of September 11 at 8:40 a.m. at the Fire Station. The public is invited to attend.

The annual Community Picnic will take place on Saturday, September 13, at Frontier Park from 5:00 p.m. to 8:00 p.m. as part of Live & Prosper's Summer Series. The event includes free hot dogs and soft drinks until 6:00 p.m., bounce houses, games, music, and lots of fun activities for kids and families. "The Lego Movie" will begin at dusk. Contact Julie Shivers in the Parks & Recreation Department for more information.

Several asphalt road improvements have been completed around Town, and the First Street concrete paving project should be open to two-way traffic by this Monday.

The Town Council wishes to thank all of the board applicants who attended tonight's Meet & Greet. We appreciate your willingness to serve your community.

Councilmember Korbuly thanked the Police Department and the Fire Department for their help in supporting the Midnight Madness event.

4. 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.)

Councilmember Davis removed Items 4b, 4g, 4h, and 4i from the Consent Agenda.

Mayor Pro-Tem Miller removed Item 4e from the Consent Agenda.

- 4a. Consider and act upon minutes from the following Town Council meeting. (RB)**
 - Regular Meeting – July 22, 2014**
- 4c. Consider and act upon a residential street light standard for Frontier Estates (Planned Development-15). (DH)**
- 4d. Consider and act upon a residential street light standard for Tanner's Mill (Planned Development-SF-10). (DH)**
- 4f. Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any site plan or preliminary site plan. (AG)**

Deputy Mayor Pro-Tem Dugger made a motion and Councilmember Dixon seconded the motion to approve Items 4a, 4c, 4d, and 4f on the Consent Agenda. The motion was approved by a vote of 7-0.

- 4b. Consider and act upon approving the Agency Client Agreement for Fiscal Year 2014-2015 between the Town of Prosper and Zenitram and Associates, d.b.a Municipal Voice. (HJ)**

Town Manager Jefferson responded to questions about the terms of the contract, the scope of services, and the quality of the work product. Councilmember Davis made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion to approve the Agency Client Agreement for Fiscal Year 2014-2015 between the Town of Prosper and Zenitram and Associates, d.b.a Municipal Voice. The motion was approved by a vote of 7-0.

- 4e. Consider and act upon a resolution authorizing the Town Manager to execute on behalf of the Town, deeds, easements, temporary easements, and all other grants and conveyances of property interests related to construction, utilities and development activities. (HW)**

Hulon Webb, Executive Director of Development and Community Services, and Town Attorney Terry Welch answered questions related to the purpose of the resolution. The intent is to expedite the execution of deeds, easements, and other conveyances, which are typically non-monetary in nature. The Town Council requested that the resolution be amended to limit the Town Manager's authority to release land. The Town Attorney read into the record the amended language for Section 2 of the resolution limiting the Town Manager's authority to release land to no more than three acres.

Mayor Pro-Tem Miller made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion to approve Resolution No. 14-52 authorizing the Town Manager to execute on behalf of the Town, deeds, easements, temporary easements, and all other grants and conveyances of property interests related to construction, utilities and development activities, subject to the acreage limits in Section 2 read into the record by the Town Attorney. The motion was approved by a vote of 7-0.

- 4g. Consider accepting the submission of the certified collection rate of 100 percent for FY 2014-2015. (KA)**
- 4h. Consider and act upon Ordinance 14-53 establishing the 2014 certified appraisal roll. (KA)**
- 4i. Consider accepting submission of the 2014 effective tax rate of \$0.468183 per \$100 taxable value and the rollback tax rate of \$0.429220 per \$100 taxable value. (KA)**

Finance Director Kent Austin reviewed the collection rate, appraisal process, the effective tax rate and the rollback rate. Following discussion, Councilmember Davis made a motion and Councilmember Vogelsang seconded the motion to approve Items 4g, 4h, and 4i. The motion was approved by a vote of 7-0.

5. CITIZEN COMMENTS:

(The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this

agenda. Please complete a “Public Meeting Appearance Card” and present it to the Town Secretary prior to the meeting.)

Other Comments by the Public –

There were no Citizen Comments.

REGULAR AGENDA:

(If you wish to address the Council during the regular agenda portion of the meeting, please fill out a “Public Meeting Appearance Card” and present it to the Town Secretary prior to the meeting. Citizens wishing to address the Council for items listed as public hearings will be recognized by the Mayor. Those wishing to speak on a non-public hearing related item will be recognized on a case-by-case basis, at the discretion of the Mayor and Town Council.)

PUBLIC HEARINGS:

- 6. Presentation of service plan and second public hearing to consider the involuntary annexation of a 2.3± acre tract of land, located on the east side of Dallas Parkway, 500± feet south of First Street. (A14-0001). (AG)**

Senior Planner Alex Glushko presented this item before the Town Council. In 2009, the Town entered into multiple five-year agreements with the remaining unincorporated properties within Collin County and the Town’s Extraterritorial Jurisdiction (ETJ), and the Town has offered to extend these agreements to all properties that continue to maintain their Agricultural property tax exemption. The subject property no longer meets these requirements, so Town staff recommends an involuntary annexation of the property. State law requires two Public Hearings to be held as part of the annexation process. The first Public Hearing was held on July 22, 2014.

Mayor Smith opened the Public Hearing.

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

- 7. Presentation of service plan and second public hearing to consider the involuntary annexation of a 18.0± acre tract of land, located 800± feet south of Prosper Trail, 4,500± feet east of Coit Road. (A14-0002). (AG)**

Senior Planner Alex Glushko presented this item before the Town Council. In 2009, the Town entered into multiple five-year agreements with the remaining unincorporated properties within Collin County and the Town’s Extraterritorial Jurisdiction (ETJ), and the Town has offered to extend these agreements to all properties that continue to maintain their Agricultural property tax exemption. The owner of the subject property did not respond to the two offer letters from the Town to extend the agreement, so Town staff recommends an involuntary annexation of the property. State law requires two Public Hearings to be held as part of the annexation process. The first Public Hearing was held on July 22, 2014.

Mayor Smith opened the Public Hearing.

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

8. Conduct a Public Hearing, and consider and act upon a request to rezone 93.2± acres, located on the northwest corner of Prosper Trail and Coit Road, from Agricultural (A) and Single Family-15 (SF-15) to Planned Development-Single Family-15/Office (PD-SF-15/O). (Z14-0008). (AG)

Mayor Smith stated that he would abstain from voting on Item 8 due to a conflict of interest, and left the Council bench.

Alex Glushko presented this item before the Town Council. The item was tabled at the July 22 Town Council meeting to allow the applicant to revise the request from straight zoning to a Planned Development. Mr. Glushko reviewed the revised request which included changes to the proposed lot sizes and landscaping setback. Town staff recommended approval of the request subject to:

1. Revising all zoning exhibits to replace the minimum 12,500 square foot lots with minimum 15,000 square foot lots, in accordance with the FLUP.
2. Revising Exhibit C to increase the minimum depth of the minimum 25,000 square foot lots to 170 feet, in accordance with the straight SF-22 District standards.
3. Revising the provision regarding the landscaping setback along Prosper Trail and Coit Road in Exhibit C to require a 25-foot landscape setback along Coit Road, thereby requiring thoroughfare screening along Coit Road to be in accordance with the Subdivision Ordinance.

Mr. Glushko and Executive Director of Development and Community Services Hulon Webb responded to questions regarding permitted uses in the proposed zoning district, though some uses would be allowed by a Special Use Permit (SUP). The landscape setback, and right-of-way width along Coit Road were also discussed.

Mayor Pro-Tem Miller opened the Public Hearing.

Mardy Brown with Texas Development Services spoke on behalf of the applicant. The applicant is requesting a base zoning of SF-15, with a range of lot sizes from 12,500 sq. ft. to 25,000 sq. ft. which would result in an average of 1.6 dwelling units per acre. The applicant, staff, and Council discussed the staff recommendations. The applicant is agreeable to staff's third recommendation for the landscaping setback, but is not in agreement with the first two recommendations related to changes to the lot sizes. The applicant was agreeable to Council's request to include a minimum of 10% of the residences to have swing-in garages.

With no one else speaking, Mayor Pro-Tem Miller closed the Public Hearing.

After discussion, Deputy Mayor Pro-Tem Dugger made a motion and Mayor Pro-Tem Miller seconded the motion to approve a request to rezone 93.2± acres, located on the northwest corner of Prosper Trail and Coit Road, from Agricultural (A) and Single Family-15 (SF-15) to Planned Development-Single Family (PD-SF), subject to:

- Revising the provision regarding the landscaping setback along Prosper Trail and Coit Road in Exhibit C to require a 25-foot landscape setback along Coit Road,

therefore requiring thoroughfare screening along Coit road to be in accordance with the subdivision ordinance.

- There shall be a minimum of 10% of the single family residences with swing-in garages.

The motion was approved by a vote of 6-0.

Mayor Smith returned to the Council bench.

DEPARTMENT ITEMS:

9. Submission of the FY 2014-2015 Proposed Budget and Budget Message by the Town Manager. (HJ)

Town Manager Harlan Jefferson presented this item before the Town Council. The Town Council was provided with electronic copies and hard copies of the proposed budget and the Capital Improvement Plan. The proposed budget does not recommend a tax rate, water rate, sewer rate, or storm water rate increase. The Town Manager will meet individually with Town Council members to discuss the proposed budget.

No further action was required for this item.

10. Consider and act upon a proposed FY 2014-2015 property tax rate. (KA)

Finance Director Kent Austin presented this item before the Town Council. Town staff recommends the Town Council propose a rate of \$0.52 per \$100 in valuation. Mr. Austin reviewed the budget and tax rate calendar.

Deputy Mayor Pro-Tem Dugger made a motion and Mayor Pro-Tem Miller seconded the motion to place a proposal to adopt a FY 2014-2015 tax rate of fifty-two cents (\$0.52) per one hundred dollars (\$100) of valuation on the September 23, 2014, Town Council agenda. The Town Council voted as follows:

- Mayor Ray Smith - Yes
- Mayor Pro-Tem Meigs Miller - Yes
- Deputy Mayor Pro-Tem Kenneth Dugger - Yes
- Councilmember Michael Korbuly - Yes
- Councilmember Mike Davis - Yes
- Councilmember Curry Vogelsang, Jr. - Yes
- Councilmember Jason Dixon – Yes

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

11. Consider and act upon a schedule of public hearings for the FY 2014-2015 Proposed Budget. (KA)

Finance Director Kent Austin presented this item before the Town Council. The proposed dates for the two Public Hearings are August 26, 2014, and September 9, 2014.

Deputy Mayor Pro-Tem Dugger made a motion and Councilmember Korbuly seconded the motion to schedule public hearings on the FY 2014-2015 Proposed Budget for August 26, 2014, at 6:00 p.m., and September 9, 2014, at 6:00 p.m., with each meeting taking place at the Prosper Municipal Chambers at 108 W. Broadway Street, Prosper, TX. The motion was approved by a vote of 7-0.

12. Consider and act upon a schedule of public hearings for the FY 2014-2015 proposed property tax rate. (KA)

Finance Director Kent Austin presented this item before the Town Council. The proposed dates for the two Public Hearings are August 26, 2014, and September 9, 2014.

Councilmember Korbuly made a motion and Councilmember Vogelsang seconded the motion to set the public hearings on the proposal to increase total tax revenues and the proposed tax rate of \$0.52 per \$100 in valuation for August 26, 2014, at 6:00 p.m. and September 9, 2014, at 6:00 p.m., with each meeting taking place at the Prosper Municipal Chambers at 108 W. Broadway Street, Prosper, TX. The motion was approved by a vote of 7-0.

13. Consider and act upon authorizing the Town Manager to execute a contract amendment with IESI, a Progressive Waste Solutions Company, related to bulk service collection. (KA)

Finance Director Kent Austin presented this item before the Town Council. The contract amendment would add one collection date per month. Bulk collection on the east side of Town will take place on the last Saturday of the month, and collection on the west side of Town will take place on the first Saturday of the month. The dividing line is Preston Road. Sixty percent of the collection requests are from the east side of Preston Road, and forty percent occur on the west side.

Councilmember Korbuly made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion authorizing the Town Manager to execute a contract amendment with IESI, a Progressive Waste Solutions Company, relative to bulk service collection, from one time per month to two times per month, with the applicable day of bulk service collection based upon the location of the request for collection. The motion was approved by a vote of 7-0.

14. Consider and act upon an ordinance amending Article 12.08, "Truck Routes," of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances, regarding additional street segments for truck routes. (DK)

Police Chief Doug Kowalski presented this item before the Town Council. Chief Kowalski reviewed the details of the proposed ordinance. Delivery trucks, utility vehicles, passenger vehicles and motor homes would be exempt from the ordinance. Town staff originally intended to include Frontier Parkway east of Preston Road in the ordinance, but the Texas Department of Transportation (TxDOT) has denied the request at this time. The ordinance would give police officers the authority to stop vehicles they believe are in violation of the ordinance. Town staff will continue discussions with TxDOT to work toward including Frontier Parkway east of Preston Road in the truck route ordinance.

After discussion, Mayor Pro-Tem Miller made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion to approve Ordinance No. 14-54 amending Article 12.08.003, "Unlawful Acts/Exemptions," of Chapter 12, "Traffic," of the Code of Ordinances for the Town of Prosper, Texas. The motion was approved by a vote of 7-0.

15. **Consider and act upon an ordinance amending Section 12.09.004 "School Traffic Zones" of Chapter 12 "Traffic and Vehicles" of the Town's Code of Ordinances by modifying the list of streets and limits on which school zones are established, modifying the hours of operation of such zones, and modifying the maximum speed limit during hours of operation of such zones. (MR)**

Senior Engineer Matt Richardson presented this item before the Town Council. Mr. Richardson reviewed the details of the proposed school zones, and the placement of school zone markings, flashing beacons, and signs, taking into account the concerns brought forward by the Town Council at the July 22, 2014, Town Council meeting.

Mayor Smith recognized the following individual who requested to speak:

Mike McClung, 1400 Cedar Springs Drive, Prosper, thanked the Town staff and Council for taking the Lakes of La Cima neighborhood's concerns into account when revising the school zones.

After discussion, Deputy Mayor Pro-Tem Dugger made a motion and Councilmember Korbuly seconded the motion to approve Ordinance No. 14-55 amending Section 12.09.004 "School Traffic Zones" of Chapter 12 "Traffic and Vehicles" of the Town's Code of Ordinances by modifying the list of streets and limits on which school zones are established, modifying the hours of operation of such zones, and modifying the maximum speed limit during hours of operation of such zones. The motion was approved by a vote of 7-0.

16. **Consider and act upon an amendment to the Capital Improvement Plan (CIP). (MR)**

Senior Engineer Matt Richardson presented this item before the Town Council. The Town Council was provided a revised copy of the staff report and CIP amendment prior to the meeting to include batting cages at the Frontier Park - Southwest Corner Practice Fields project. Mr. Richardson reviewed the components of the CIP amendment. Mr. Webb and Mr. Jefferson responded to questions from the Town Council regarding the Teel Parkway bridge, and the future widening of the roadway.

After discussion, Councilmember Korbuly made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion to approve an amendment to the Capital Improvement Plan (CIP), in the additional amount of \$300,000 for the Teel Parkway (DCFWS #10) project and in the additional amount of \$100,000 for the Frontier Park – Southwest Corner Practice Fields project. The motion was approved by a vote of 6-1.

17. **Consider and act upon authorizing the Town Manager to execute an Interlocal Agreement between Denton County FWSD #10, and the Town of Prosper,**

Texas, related to the construction of Teel Parkway north of Fishtrap Road to serve the Artesia development. (HW)

Hulon Webb, Executive Director of Development and Community Services, presented this item before the Town Council. The agreement outlines the Town's contribution toward the design and construction costs associated with the third lane of the Teel Parkway Bridge as well as a potential bridge further north. The agreement also addresses aesthetic upgrades to the bridge, which include a decorative stained finish rather than metal.

After discussion, Councilmember Korbuly made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion to authorize the Town Manager to execute an Interlocal Agreement between Denton County FWSD #10, and the Town of Prosper, Texas, related to the construction of Teel Parkway north of Fishtrap Road to serve the Artesia development. The motion was approved by a vote of 7-0.

18. Consider and act upon authorizing the Town Manager to execute a Professional Services Agreement between Dunaway Associates, LP, and the Town of Prosper, Texas, related to the Frontier Park North Conceptual Master Plan and Sexton Park Conceptual Master Plan project. (PN)

Landscape Architect Paul Naughton presented this item before the Town Council. Dunaway Associates is currently working on the update to the Parks, Recreation & Open Space Master Plan. The proposed agreement will be used to develop Conceptual Master Plans for Frontier Park and Sexton Park that Town staff can use to plan future improvements and budgets for new infrastructure and recreational facilities. The Conceptual Plans will be reviewed by the Parks and Recreation Board and the Town Council for additional feedback. Mr. Naughton responded to questions from Council as to where Dunaway Associates received the data for the Master Plans. Information has been provided to Dunaway Associates from the Parks, Recreation and Open Space Master Plan Advisory Committee, staff, and the online survey that the Town recently made available to residents. The Town Council questioned staff on the scope of services in the proposed agreement, and requested to see a sample Conceptual Plan from Dunaway Associates prior to approving the agreement. The Town Council also requested that the sports organizations be involved in the discussions to make sure their concerns are addressed in the Master Plan.

After discussion, Councilmember Korbuly made a motion and Councilmember Dixon seconded the motion to table Item 18 until the September 23, 2014, Town Council meeting. The motion was approved by a vote of 7-0.

19. 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:

19a. *Section 551.087 – To discuss and consider economic development incentives.*

19b. *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.*

19c. *Section 551.074 – To discuss appointments to the Planning & Zoning Commission, Parks & Recreation Board, Prosper Economic Development Corporation Board, Board of Adjustment/Construction Board of Appeals, and Library Board.*

19d. *Section 551.071(2) – Consultation with Town Attorney regarding land use legal issues.*

The Town Council recessed into Executive Session at 8:28 p.m.

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

The Regular Session was reconvened at 10:22 p.m.

There was no action as a result of Executive Session.

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

- **Update to Fire Station No. 2 Design (RT)**

Fire Chief Ronnie Tucker updated the Town Council on the design of Fire Station No. 2, and provided conceptual drawings of the project. The Town Council was in favor of the current design plans.

- **Discussion on Roadway Impact Fees for Temporary Modular Buildings (BE)**

Building Official Bill Elliott reviewed the results of a 10-city survey related to roadway impact fees. Town staff was directed to bring a future agenda item to the Town Council that would waive roadway impact fees, but keep water and sewer fees in place, and to make the waiver retroactive to October 1, 2013.

- **Discussion on Freeport Tax (KA)**

Finance Director Kent Austin reviewed the Town's previous action on this ordinance, and reviewed the results of a 10-city survey related to the Freeport exemption. The Town currently does not employ the Freeport exemption that prohibits taxation on goods-in-transit. Town staff was directed to take no action, and keep the current exemption in place.

- **Discussion on field user fees (JS)**

Julie Shivers, Recreation Services Manager, reviewed the proposed changes to the field user fees. Town staff was provided with direction to increase the per player rates, and eliminate the hourly field light rates for co-sponsored teams.

- **Discussion on Library Board Bylaws**

Town Secretary Robyn Battle updated the Town Council on a suggestion to add a Prosper ISD liaison to the Library Board who would be a non-voting member. Town Council agreed to direct staff to propose the suggestion to the Library Board to have the Library Bylaws amended.

22. Adjourn.

The meeting was adjourned at 11:32 p.m.

These minutes approved on the 26th day of August, 2014.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary



PLANNING

To: Mayor and Town Council
From: Alex Glushko, AICP, Senior Planner
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Consider and act upon whether to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on any site plan or preliminary site plan.

Description of Agenda Item:

Attached are the site plans and/or preliminary site plans acted on by the Planning & Zoning Commission at their August 12, 2014 meeting. Per the Town's Zoning Ordinance, the Town Council has the ability to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department for any site plan or preliminary site plan acted on by the Planning & Zoning Commission.

Attached Documents:

1. Site plan for Preston Lakes of Prosper North Amenity Center.
2. Site plan for St. Paul's Episcopal Church.
3. Site plan for Tanners Mill Amenity Center.

Town Staff Recommendation:

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

Metten Real Estate, L.P.
Vol. 4234, Pg. 1348
Zoned: SF-15
Undeveloped

LEGEND

⊙	PROPOSED PARKING COUNT	FFE 632.20	FINISHED FLOOR ELEVATION
BFR	PROPOSED BARRIER FREE RAMP		24'-0" FIRE LANE, ACCESS AND UTILITY EASEMENT
H/C	HANDICAP PARKING SPACE		EXISTING NO PARKING SIGN TO REMAIN
FH	EXISTING FIRE HYDRANT		6'-0" HT. SCREENING WALL (STONE AND BRICK FACADE) SCREENING WALL SHALL ACT AS SWIMMING POOL AND TRASH TOTE ENCLOSURE.
SSMH	EXISTING SANITARY SEWER MANHOLE		EXISTING VARIABLE HT. RETAINING WALL
	EXISTING WATER MAIN W/ VALVE		6'-0" HT. ORNAMENTAL METAL FENCE
	EXISTING SANITARY SEWER		8'-0" HT. BOARD ON BOARD WOOD FENCE
	EXISTING STORM		2 - 5'-0" WIDTH SELF LATCHING, SELF CLOSING METAL GATE
	RIGHT-OF-WAY		1 - 5'-0" WIDTH SELF LATCHING, SELF CLOSING METAL GATE
	PROPOSED DOMESTIC WATER METER		
	EXISTING CURB INLET		

LOT 1, BLOCK G SITE INFORMATION

ZONING: RESIDENTIAL
 PROPOSED USE: AMENITY CENTER
 LAND AREA: 29,272.32 S.F. OR 0.672 ACRES
 BUILDING AREA: 670 SF
 RESTROOM: 240.00 SF
 STORAGE: 170.00 SF
 ATTACHED OUTDOOR: 260.00 SF
 BUILDING HEIGHTS: 18' (1 STORY)
 FLOOR TO AREA: 0.0228:1 [670/29,272.32]
 LOT COVERAGE: 2.28%

PARKING REQUIRED: 10 PARKING STALLS PER CHAPTER 4 SECTION 4.5 OF DEVELOPMENT REQUIREMENTS. HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS.
 PARKING PROVIDED: 10 TOTAL, (w/ 1 HANDICAP)

TOTAL IMPERVIOUS SURFACE: 15,972.32 SF, 54.5%
 INTERIOR LANDSCAPE REQUIRED: (LOT AREA X 10%) 2,927.23 SF
 INTERIOR LANDSCAPE PROVIDED: 13,300 SF
 OPEN SPACE PROVIDED: 13,300 / 29,272.32 = .454 = 45.4%

OWNER/DEVELOPER:
 CENTURION AMERICAN DEV.
 1221 NORTH 35E, SUITE 200
 CARROLLTON, TEXAS 75006
 PH. (469) 446-3544
 CONTACT: STEVE LENART

ENGINEER:
 SPIARS ENGINEERING, INC.
 765 CUSTER ROAD, SUITE 100
 PLANO, TEXAS 75075
 PH. (972) 422-0077
 CONTACT: MATT DORSETT

LANDSCAPE ARCHITECT:
 STUDIO 13 DESIGN GROUP, PLLC.
 519 BENNETT LANE
 SUITE 203
 LEWISVILLE, TEXAS 75057
 PH. (469) 635-1900
 CONTACT: CODY JOHNSON, ASLA, LI

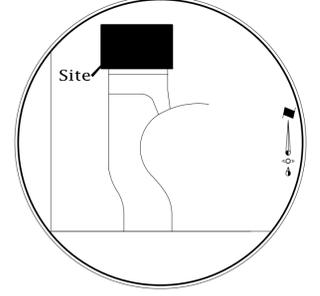
WATER METER SCHEDULE

METER ID NUMBER	WATER SERVICE SIZE	WATER METER SIZE	METER DOM.	METER IRR.	SAN. SERVICE SIZE
1	1"	1"	X		6"

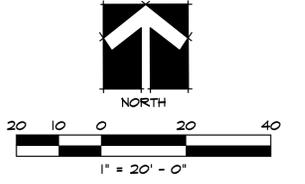
TOWN OF PROSPER SITE PLAN NOTES:

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

- DUMPSTERS AND TRASH COMPACTORS SHALL BE SCREENED IN ACCORDANCE WITH THE COMPREHENSIVE ZONING ORDINANCE.
- OPEN STORAGE, WHERE PERMITTED, SHALL BE SCREENED IN ACCORDANCE WITH THE COMPREHENSIVE ZONING ORDINANCE.
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- LANDSCAPE SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN.
- ALL ELEVATIONS SHALL COMPLY WITH THE STANDARDS CONTAINED WITHIN THE COMPREHENSIVE ZONING ORDINANCE.
- BUILDINGS OF 5,000 SQUARE FEET OR GREATER SHALL BE 100% FIRE SPRINKLED. ALTERNATIVE FIRE PROTECTION MEASURES MAY BE APPROVED BY THE FIRE DEPARTMENT.
- FIRE LANES SHALL BE DESIGNED AND CONSTRUCTED PER TOWN STANDARDS OR AS DIRECTED BY THE FIRE DEPARTMENT.
- TWO POINTS OF ACCESS SHALL BE MAINTAINED FOR THE PROPERTY AT ALL TIMES.
- SPEED BUMPS/HUMPS ARE NOT PERMITTED WITHIN A FIRE LANE.
- HANDICAPPED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM TO THE AMERICANS WITH DISABILITIES ACT (ADA) AND WITH THE REQUIREMENTS OF THE CURRENT ADOPTED BUILDING CODE.
- ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
- ALL FENCES AND RETAINING WALLS SHALL BE SHOWN ON THE SITE PLAN AND ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
- ALL EXTERIOR BUILDING MATERIALS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL AND SHALL CONFORM TO THE APPROVED FACADE PLAN.
- SIDEWALKS OF NOT LESS THAN SIX (6) FEET IN WIDTH ALONG THOROUGHFARES AND COLLECTORS AND FIVE (5) FEET IN WIDTH ALONG RESIDENTIAL STREETS, AND BARRIER FREE RAMPS AT ALL CURB CROSSINGS SHALL BE PROVIDED PER TOWN STANDARDS.
- APPROVAL OF THE SITE PLAN IS NOT FINAL UNTIL ALL ENGINEERING PLANS ARE APPROVED BY THE TOWN ENGINEER.
- SITE PLAN APPROVAL IS REQUIRED PRIOR TO GRADING RELEASE.
- ALL NEW ELECTRICAL LINES SHALL BE INSTALLED AND/OR RELOCATED UNDERGROUND.
- ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW IN ACCORDANCE WITH THE COMPREHENSIVE ZONING ORDINANCE.
- NO FLOODPLAIN EXISTS ON THE SITE



LOCATION MAP NOT TO SCALE



SITE PLAN
 LAKES OF PROSPER NORTH,
 PH. 2
 Lot 1, Block G
 ~AMENITY CENTER~

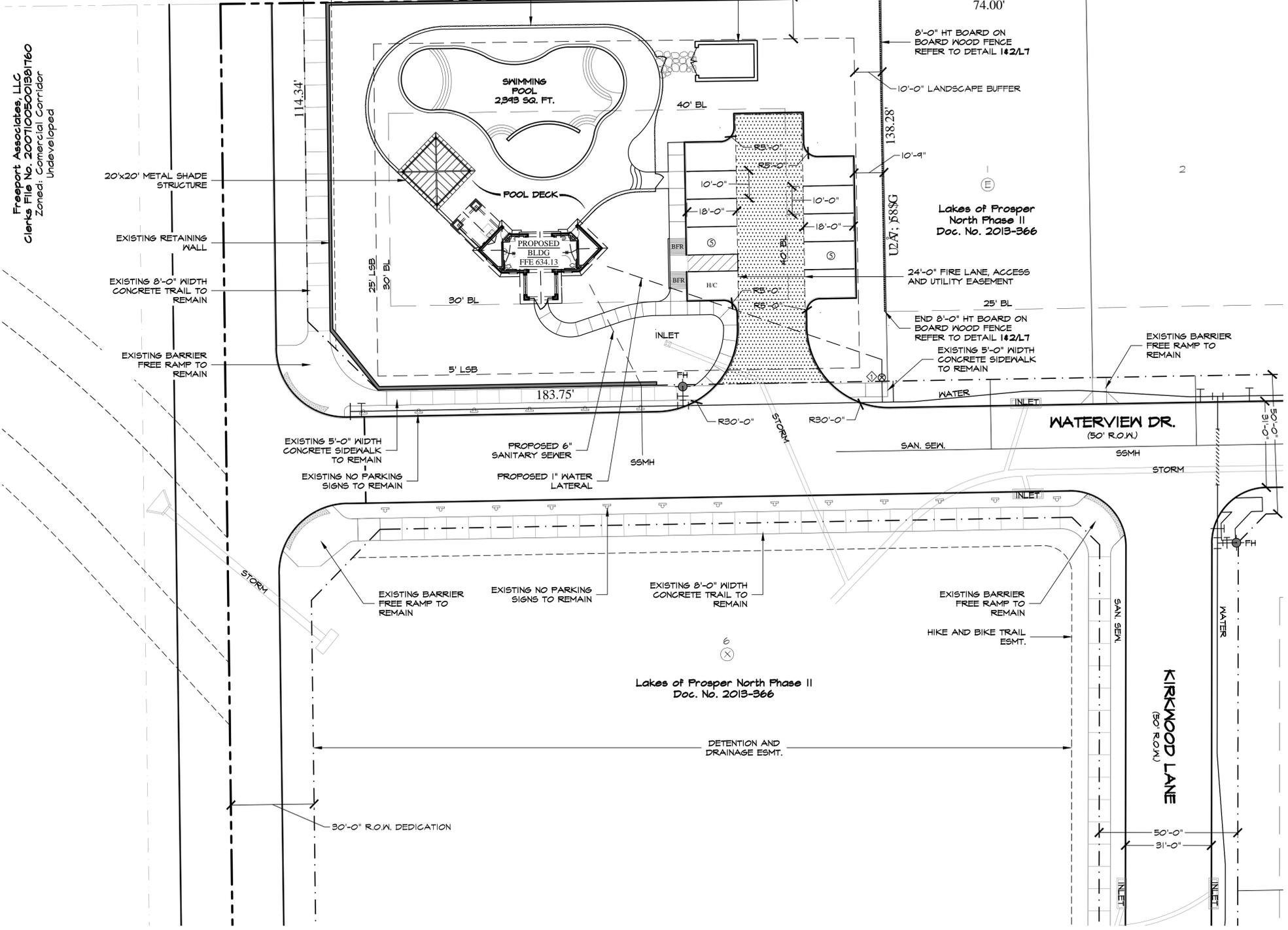
BEING 0.672 ACRES OUT OF THE
 COLLIN COUNTY SCHOOL LAND SURVEY
 NO. 12. ABSTRACT NO. 147

TOWN OF PROSPER
 COLLIN COUNTY, TEXAS



Plotted by: Cl Johnson Plot. Date: 7/17/2014 4:34 PM

Drawing: S:\Projects\CAD028\DWG\CAD028-SP.dwg Saved By: Cl Johnson Save Time: 7/17/2014 4:09 PM



USER: Aaron Rendon TAB: C3.0 Site Plan
 DATE: August 5, 2014 - 1:35:49 PM
 DRAWING: S:\0285\Jobs\2014\14-0030\C3.0-DWG\C-Plan\PlotSheets\C3.0_0_SP_Site Plan_14-0030.dwg

Site Data Summary Table

Description	PD - 6
Zoning	PD - 6
Proposed Use	Daycare/House of Worship
Lot Area	7.105 acres
Building Area	16,000 sf
Building Height	42' (1 story)
Lot Coverage	29%
Floor Area Ratio	5%
Total Parking Required	87
Total Parking Provided	87
Handicap Parking Required	4
Handicap Parking Provided	6
Interior Landscaping Required	1,365 sf
Interior Landscaping Provided	2,817 sf
Square foot of Concrete Paving	72,650 sf
Square foot of Impervious Surface	88,650 sf
Open Space Provided	7%
Open Space Required	40%

Parking Requirements

Use	# of units	Unit	Parking Ratio	# of spaces required
Church	213	seats	1:3	71
Daycare	96	children	1:10	10
Daycare	6	teacher	1:1	6
Total				87

Proposed: 87

NOTES

1) NO 100-YEAR FLOODPLAIN EXISTS ON THE SITE

STANDARD LANGUAGE

- ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE REVISIONS TO ANY CORRESPONDING PLANS TO AVOID CONFLICTS BETWEEN PLANS.
- 1) DUMPSTERS AND TRASH COMPACTORS SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
 - 2) OPEN STORAGE, WHERE PERMITTED, SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
 - 3) OUTDOOR LIGHTING SHALL COMPLY WITH THE LIGHTING AND GLARE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE AND SUBDIVISION ORDINANCE.
 - 4) LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN.
 - 5) ALL ELEVATIONS SHALL COMPLY WITH THE STANDARDS CONTAINED WITHIN THE ZONING ORDINANCE.
 - 6) BUILDINGS OF 5,000 SQUARE FEET OR GREATER SHALL BE 100% FIRE SPRINKLED. ALTERNATIVE FIRE PROTECTION MEASURES MAY BE APPROVED BY THE FIRE DEPARTMENT.
 - 7) FIRE LAKES SHALL BE DESIGNED AND CONSTRUCTED PER TOWN STANDARDS OR AS DIRECTED BY THE FIRE DEPARTMENT.
 - 8) TWO POINTS OF ACCESS SHALL BE MAINTAINED FOR THE PROPERTY AT ALL TIMES.
 - 9) SPEED BUMPS/HUMPS ARE NOT PERMITTED WITHIN A FIRE LANE.
 - 10) HANDICAPPED PARKING AREAS AND BUILDING ACCESSIBILITY SHALL CONFORM TO THE AMERICANS WITH DISABILITIES ACT (ADA) AND WITH THE REQUIREMENTS OF THE CURRENT, ADOPTED BUILDING CODE.
 - 11) ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - 12) ALL FENCES AND RETAINING WALLS SHALL BE SHOWN ON THE SITE PLAN AND ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - 13) ALL EXTERIOR BUILDING MATERIALS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL AND SHALL CONFORM TO THE APPROVED FAÇADE PLAN.
 - 14) SIDEWALKS OF NOT LESS THAN SIX (6) FEET IN WIDTH ALONG THOROUGHFARES AND COLLECTORS AND FIVE (5) IN WIDTH ALONG RESIDENTIAL STREETS, AND BARRIER FREE RAMPS AT ALL CURB CROSSINGS SHALL BE PROVIDED PER TOWN STANDARDS.
 - 15) APPROVAL OF THE SITE PLAN IS NOT FINAL UNTIL ALL ENGINEERING PLANS ARE APPROVED BY THE ENGINEERING DEPARTMENT.
 - 16) SITE PLAN APPROVAL IS REQUIRED PRIOR TO GRADING RELEASE.
 - 17) ALL NEW ELECTRICAL LINES SHALL BE INSTALLED AND/OR RELOCATED UNDERGROUND.
 - 18) ALL MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW IN ACCORDANCE WITH THE ZONING ORDINANCE.

Job Number
14-0030

Sheet Number
C3.0

DAKUS
Professional Engineer
No. 0000000000
State of Texas
972.763.6000

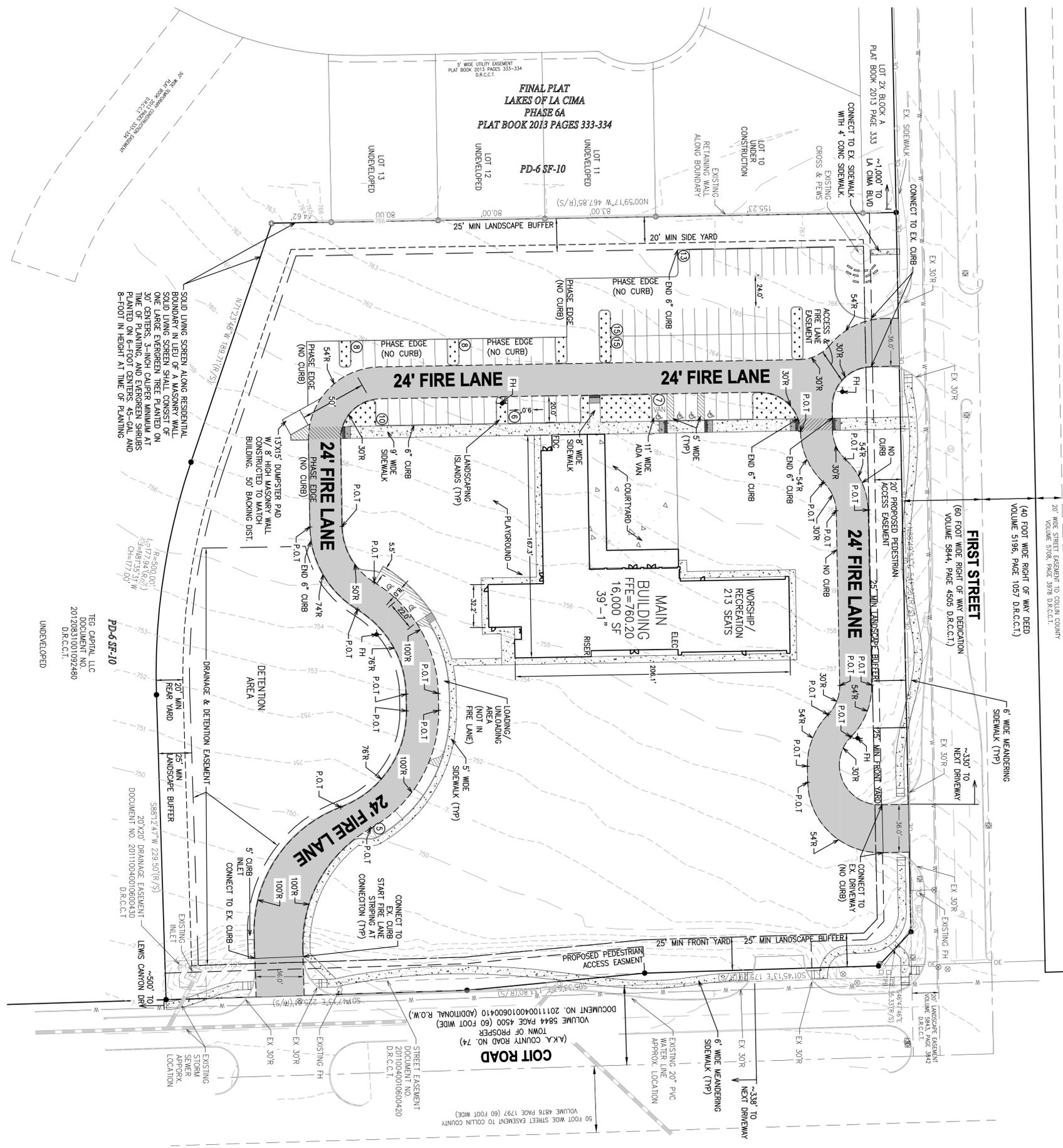
COLE
Civil Engineering / Surveying / Planning / Landscape Architecture
One Bridge Group, Inc.
10000 North Central Expressway, Suite 1000
Dallas, Texas 75243

REGISTERED
ST. PAUL'S EPISCOPAL CHURCH
8571 ROCKWELL ST
DALLAS, TX 75248
(404) 250-4082

OWNERS
EPISCOPAL DIOCESE
OF DALLAS
8301 N. GILBERT AVE
DALLAS, TX 75248

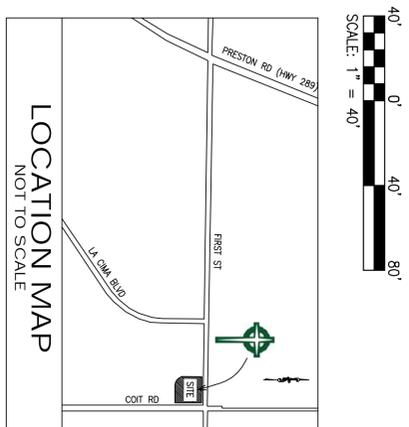
Site Plan

DATE:
8/5/14

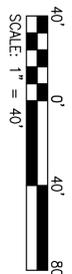


TER CAPITAL, LLC
 100 DOCUMENT NO.
 20120831001092480
 D.R.C.C.T.

PD-6 SF-10
 UNDEVELOPED

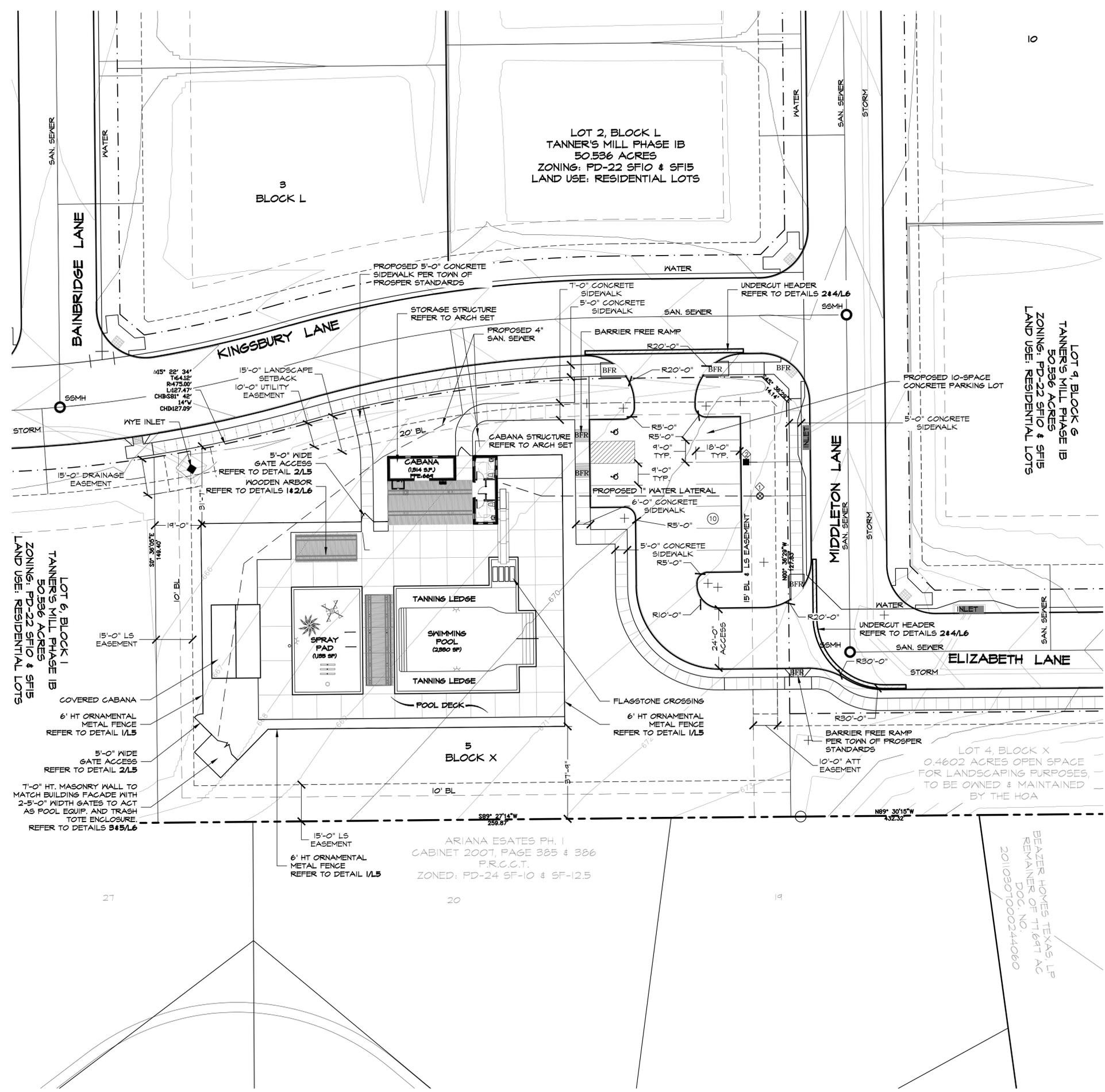


- LEGEND**
- ☐ = CONCRETE SIDEWALK
 - ▨ = LANDSCAPING
 - P.O.T = POINT OF TANGENCY



ST. PAUL'S EPISCOPAL CHURCH
 7.105 ACRE TRACT
 BEING A PORTION OF A CALLED 64.679
 ACRE TRACT OF LAND
 DESCRIBED IN DEED TO
 SHADDOCK DEVELOPERS, LTD,
 RECORDED IN
 INSTRUMENT NO. 20070330000431860
 BEING PART OF THE
 HARRISON JAMISON SURVEY,
 ABSTRACT NO. 480
 TOWN OF PROSPER, TEXAS

Drawing: S:\Projects\H0R005\DWG\H0R005-SP.dwg Saved By: Audrey Save Time: 8/5/2014 10:06 AM Plotted by: Audrey Plot Date: 8/5/2014 10:24 AM



LEGEND

- (10) PROPOSED PARKING COUNT
- BFR BARRIER FREE RAMP
- EXISTING POWER POLE
- EXISTING FIRE HYDRANT
- EXISTING SANITARY SEWER MANHOLE
- EXISTING WATER MAIN W/ VALVE
- EXISTING SANITARY SEWER
- EXISTING STORM
- RIGHT-OF-WAY
- BARRIER FREE RAMP
- (756) PROPOSED CONTOUR INTERVAL
- 725--- EXISTING CONTOUR INTERVAL
- ◇ PROPOSED DOMESTIC WATER METER
- PROPOSED IRRIGATION METER
- PROPOSED CURB INLET
- FFE FINISHED FLOOR ELEVATION
- - - VISIBILITY, ACCESS, & MAINTENANCE EASEMENT (VAM)
- ♿ HANDICAP PARKING SPACE

LOT 5, BLOCK X SITE INFORMATION

ZONING: PD-22 SF10 & SF15
 PROPOSED USE: AMENITY CENTER
 LAND AREA: 44,440 S.F. OR 1.01 ACRES
 BUILDING AREA: 1,260 SF
 RESTROOM: 280 SF
 STORAGE: 280 SF
 ATTACHED OUTDOOR: 620 SF

WATER METER SCHEDULE

METER ID NUMBER	WATER SERVICE SIZE	WATER METER SIZE	METER DOM.	METER IRR.	SAN. SERVICE SIZE
◇	1"	1"	X		4"
◇	1"	1"		X	

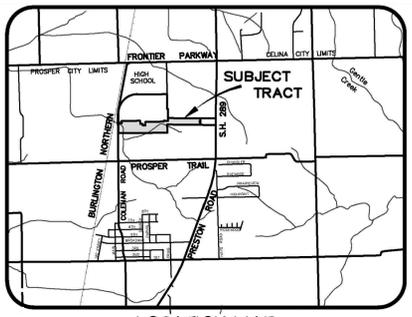
BUILDING HEIGHTS: 14'-4" (1 STORY)
 FLOOR TO AREA: 0.0283:1 [1,260/44,440]
 LOT COVERAGE: 2.83%

PARKING REQUIRED: 10 PARKING STALLS PER CHAPTER 4 SECTION 4.5 OF DEVELOPMENT REQUIREMENTS

PARKING PROVIDED: 10 TOTAL, (w/ 2 HANDICAP)
 HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS

TOTAL IMPERVIOUS SURFACE: 17,330 SF; 39%

OPEN SPACE REQUIRED: 7% OF 44,440 SF = 3,110 SF
 OPEN SPACE PROVIDED: 27,110 SF; 61%

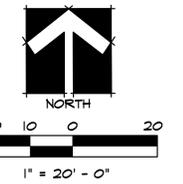


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NOTE: NO FLOODPLAIN EXIST ON THE SITE



SITE PLAN
TANNER'S MILL PH 1B
LOT 5, BLOCK X
~ AMENITY CENTER ~

SPENCER RICE SURVEY, ABSTRACT NO. 787 AND THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147
 TOWN OF PROSPER, COLLIN COUNTY, TEXAS

OWNER:
 D R HORTON, TEXAS
 4306 MILLER RD, SUITE A
 ROWLETT, TEXAS 75088
 PH. (214) 607-4244
 CONTACT: DAVID BOOTH

ENGINEER/SURVEYOR
 SPIARS ENGINEERING, INC. TBPE NO. F-2121
 765 CUSTER ROAD, SUITE 100
 PLANO, TEXAS 75075
 TELEPHONE (972) 422-0077
 CONTACT: TIM C SPIARS

LANDSCAPE ARCHITECT/APPLICANT:
 STUDIO 13 DESIGN GROUP, PLLC.
 519 BENNETT LANE
 LEWISVILLE, TEXAS 75057
 (469) 635-1900
 CONTACT: LEONARD W. REEVES, ASLA, LRA
 lreeves@studio13.biz





PLANNING

To: Mayor and Town Council
From: Alex Glushko, AICP, Senior Planner
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Consider and act upon an ordinance rezoning 93.2± acres, located on the northwest corner of Prosper Trail and Coit Road, from Agricultural (A) and Single Family-15 (SF-15) to Planned Development-Single Family (PD-SF). (Z14-0008).

Description of Agenda Item:

On August 12, 2014, the Town Council approved zoning case Z14-0008, by a vote of 7-0, subject to:

1. Revising the provision regarding the landscaping setback along Prosper Trail and Coit Road in Exhibit C to require a 25-foot landscape setback along Coit Road.
2. Revising Exhibit C to require a minimum of 10% of the homes to have swing-in garages.

Since the Town Council meeting, the applicant has revised Exhibit C to reflect the conditions of Town Council approval. Town staff has prepared an ordinance rezoning the property.

Legal Obligations and Review:

Zoning Ordinance 05-20 requires that the Town Council hold a public hearing before approving a zoning request and adopting an ordinance rezoning property. A public hearing has been held and the Town Council approved the zoning case. The attached ordinance is a standard format that was previously approved by the Town Attorney, Terrence Welch.

Attached Documents:

1. Ordinance

Town Staff Recommendation:

Town staff recommends that the Town Council adopt an ordinance rezoning 93.2± acres, located on the northwest corner of Prosper Trail and Coit Road, from Agricultural (A) and Single Family-15 (SF-15) to Planned Development-Single Family (PD-SF).

Proposed Motion:

I move to adopt an ordinance rezoning 93.2± acres, located on the northwest corner of Prosper Trail and Coit Road, from Agricultural (A) and Single Family-15 (SF-15) to Planned Development-Single Family (PD-SF).

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 14-__

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 93.20 ACRES, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SURVEY, ABSTRACT NO. 172, AND THE ELISHA CHAMBERS SURVEY, ABSTRACT NO. 179, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED AGRICULTURAL (A) AND SINGLE FAMILY-15 (SF-15) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-SINGLE FAMILY (PD-SF); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated and determined that Zoning Ordinance No. 05-20 should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request from Texas Development Services ("Applicant") to rezone 93.20 acres of land, more or less, situated in the Collin County Survey, Abstract No. 172, and the Elisha Chambers Survey, Abstract No. 179, in the Town of Prosper, Collin County, Texas; and

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

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

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

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

SECTION 1

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

SECTION 2

Amendments to Zoning Ordinance No. 05-20. Zoning Ordinance No. 05-20 is amended as follows: The zoning designation of the below-described property containing 93.20 acres of land, more or less, situated in the Collin County Survey, Abstract No. 172, and the Elisha Chambers Survey, Abstract No. 179, in the Town of Prosper, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Single Family (PD-SF). The property as a whole and the

boundaries for each zoning classification are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with 1) the statement of intent and purpose, attached hereto as Exhibit "B"; 2) the planned development standards, attached hereto as Exhibit "C"; 3) the conceptual development plan requirements, attached hereto as Exhibit "D"; and 4) the development schedule, attached hereto as Exhibit "E", which are incorporated herein for all purposes as if set forth verbatim. Except as amended by this Ordinance, the development of the Property within this Planned Development District must comply with the requirements of all ordinances, rules, and regulations of Prosper, as they currently exist or may be amended.

Three (3) original, official and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. Two (2) copies shall be filed with the Town Secretary and retained as original records and shall not be changed in any matter.
- b. One (1) copy shall be filed with the Building Official and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy and enforcing the zoning ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

Written notice of any amendment to this District shall be sent to all owners of properties within the District as well as all properties within two hundred feet (200') of the District to be amended.

SECTION 3

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

SECTION 4

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

SECTION 5

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

SECTION 6

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

SECTION 7

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

SECTION 8

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 26th DAY OF AUGUST, 2014.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

Exhibit ID	Property ID	Property Address/Description	Owner Name
A	2139349	1300 Blue Forest Drive, Prosper, TX	Richard H Wylot
B	2139350	1310 Blue Forest Drive, Prosper, TX	Jerry L & Cathy A, Miller
C	2139351	1320 Blue Forest Drive, Prosper, TX	Wayne & Deborah L Widowsky
D	2139352	1340 Blue Forest Drive, Prosper, TX	Kendall M Miller
E	2139353	1360 Blue Forest Drive, Prosper, TX	Stephen & Gayle Arebalo
F	2695671	Whispering Meadows #2 (CPR), Block A, Lot 9, Prosper, TX	Williams Lanier Joint Venture
G	2695672	Whispering Meadows #2 (CPR), Block A, Lot 10, Prosper, TX	Williams Lanier Joint Venture
H	2695673	Whispering Meadows #2 (CPR), Block A, Lot 11, Prosper, TX	Williams Lanier Joint Venture
I	2695674	Whispering Meadows #2 (CPR), Block A, Lot 12, Prosper, TX	Williams Lanier Joint Venture
J	2695675	Whispering Meadows #2 (CPR), Block A, Lot 13, Prosper, TX	Williams Lanier Joint Venture
K	2695676	Whispering Meadows #2 (CPR), Block A, Lot 14, Prosper, TX	Williams Lanier Joint Venture

Exhibit ID	Property ID	Property Address/Description	Owner Name
L	2695677	Whispering Meadows #2 (CPR), Block A, Lot 15, Prosper, TX	Williams Lanier Joint Venture
M	2695685	2120 Willow Bend Court, Prosper, TX	Mark & Jamie N Barnhart
N	2695684	Whispering Meadows #2 (CPR), Block F, Lot 2, Prosper, TX	Williams Lanier Joint Venture
O	2695685	2100 Willow Bend Court, Prosper, TX	Ronald D Jones & Valli Sears-Jones
P	2695686	Whispering Meadows #2 (CPR), Block F, Lot 4, Prosper, TX	Williams Lanier Joint Venture
Q	2695687	Whispering Meadows #2 (CPR), Block F, Lot 5, Prosper, TX	Dave R Williams Homes LP
R	2695688	2240 Willow Bend Court, Prosper, TX	Dave R Williams Homes LP
S	2695689	Whispering Meadows #2 (CPR), Block F, Lot 7, Prosper, TX	Williams Lanier Joint Venture
T	2695693	Whispering Meadows #2 (CPR), Block G, Lot 5, Prosper, TX	Williams Lanier Joint Venture
U	2695692	Whispering Meadows #2 (CPR), Block G, Lot 4, Prosper, TX	Williams Lanier Joint Venture
V	2609176	1031 Crystal Falls Drive, Prosper, TX	Christopher Rogers

Exhibit ID	Property ID	Property Address/Description	Owner Name
W	2609177	1021 Crystal Falls Drive, Prosper, TX	Osie L Jr & Naylan H Wyatt
X	2609178	1011 Crystal Falls Drive, Prosper, TX	John Dodgson
Y	2609179	1001 Crystal Falls Drive, Prosper, TX	Bloomfield Homes LP
Z	2600040	991 Crystal Falls Drive, Prosper, TX	Bloomfield Homes LP
AA	2600044	981 Crystal Falls Drive, Prosper, TX	Bloomfield Homes LP
BB	2600071	961 Crystal Falls Drive, Prosper, TX	Bloomfield Homes LP
CC	2600070	951 Crystal Falls Drive, Prosper, TX	Bloomfield Homes LP
DD	2600069	941 Crystal Falls Drive, Prosper, TX	Lorenzo & Michelle Williamson
EE	2600068	931 Crystal Falls Drive, Prosper, TX	Justin Shrode
FF	2600067	921 Crystal Falls Drive, Prosper, TX	Bloomfield Homes LP
GG	2600066	911 Crystal Falls Drive, Prosper, TX	Jeffrey & Kristin Chism
HH	2600065	900 Crystal Falls Drive, Prosper, TX	Tracy and Mark Adelmann
II	2600076	Abs A0258 Abiah Dyer Survey, Prosper, TX	East Prosper Retail Partners LP

Exhibit ID	Property ID	Property Address/Description	Owner Name
JJ	2647973	Whispering Farms Commercial Center (CPR), Blk A, Lot 48-C, Prosper, TX	Dermatology Assets Of Prosper LLC
KK	2648797	2350 Prosper Trail, Prosper, TX	Roya Ammi PA 401k Plan
LL	2648800	2300 Prosper Trail, Prosper, TX	Zaan LLC
MM	2648799	2250 Prosper Trail, Prosper, TX	Zaan LLC
NN	2648796	2200 Prosper Trail, Prosper, TX	2zc Whispering Farms Commercial Center LLC
OO	2628530	2121 Coyote Run, Prosper, TX	Robert John & Carole D Martin
PP	2628531	2111 Coyote Run, Prosper, TX	Prudence Ferdinand
QQ	2628532	2101 Coyote Run, Prosper, TX	William S Mears
RR	2628533	2031 Coyote Run, Prosper, TX	Paul Taylor Homes Limited
SS	2628534	2021 Coyote Run, Prosper, TX	Paul Taylor Homes Limited
TT	2628491	2011 Coyote Run, Prosper, TX	Paul Taylor Homes Limited

Exhibit ID	Property ID	Property Address/Description	Owner Name
UU	2628498	2001 Coyote Run, Prosper, TX	Paul Taylor Homes Limited
VV	2628499	1951 Coyote Run, Prosper, TX	Troy E Allam
WW	2628500	1941 Coyote Run, Prosper, TX	Paul Taylor Homes Limited
XX	2628501	1931 Coyote Run, Prosper, TX	Paul A Key
YY	2628502	1921 Coyote Run, Prosper, TX	Paul Taylor Homes Limited
ZZ	2628503	1911 Coyote Run Prosper, Prosper, TX	Paul Taylor Homes Limited
AAA	2628489	Deer Run (CPR), Blk B, Lot 1X, Prosper, TX	Deer Run/Quail Lake Residential Association Inc.
BBB	2137305	1225 Chandler Circle, Prosper, TX	James R Jolly
CCC	2137305	1223 Chandler Circle, Prosper, TX	Sam O & Melody C Robinson
DDD	2008329	1221 Chandler Circle, Prosper, TX	Joseph G Oleska
EEE	2008328	1219 Chandler Circle, Prosper, TX	Larry John Tracey
FFF	2008327	1217 Chandler Circle, Prosper, TX	Raymond A Lawrence
GGG	2138565	1280 N. Preston Road, Prosper, TX	Deion Sanders

Exhibit "A"
Legal Description
(for zoning purposes only)

RESIDENTIAL SF-15 TRACT

Being all that certain lot, parcel, or tract of land located in the COLLIN COUNTY SURVEY, Abstract No. 172, Prosper, Collin County, Texas, and the ELISHA CHAMBERS SURVEY, Abstract No. 179, and being a part of a tract of land described in deed to NW Coit/CR 81' L.P., as recorded in Volume 5895, Page 829, Deed Records Collin County, Texas, and being part of the adjoining right-of-way's of Prosper Trail and Coit Road, and being more particularly described as follows:

Beginning at a point for corner in the centerline of said Prosper Trails, at the Southwest corner of said NW Coit/CR 81' L.P. tract;

Thence North 01 deg. 10 min. 35 sec. East, a distance of 909.30 feet to a point for corner;

Thence North 88 deg. 51 min. 46 sec. East, a distance of 832.00 feet to a point for corner;

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Thence North 00 deg. 43 min. 38 sec. West, a distance of 473.84 feet to a point for corner;

Thence East, a distance of 713.83 feet to a point for corner;

Thence South 18 deg. 56 min. 58 sec. West, a distance of 534.56 feet to a point for corner;

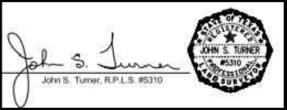
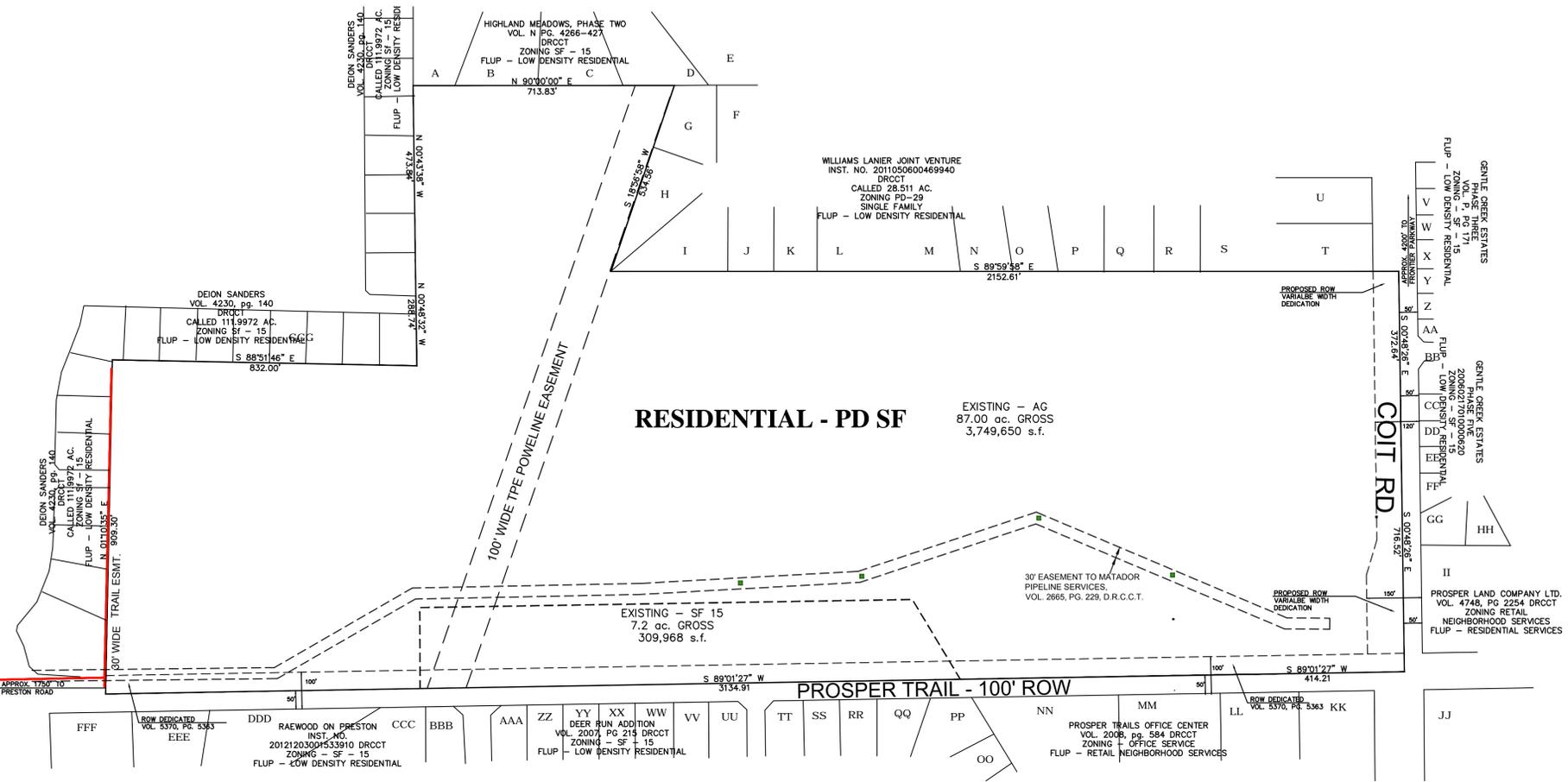
Thence South 89 deg. 59 min. 58 sec. East, passing at a distance of 2126.43 feet to the West line of said Coit Road, continuing a total distance of 2152.61 feet to a point for corner in the said centerline of Coit Road;

Thence South 00 deg. 48 min. 26 sec. East, along said centerline, passing at a distance of 372.64 feet to a point for corner;

Thence South 00 deg. 48 min. 26 sec. East, along said centerline, a distance of 716.52 feet to a point for corner

Thence South 89 deg. 01 min. 27 sec. West, along said centerline of Prosper Trails, a distance of 414.21 feet to a point for corner;

Thence South 89 deg. 01 min. 27 sec. West, along said centerline, a distance of 3134.91 feet to the PLACE OF BEGINNING and containing 4,059,618 square feet or 93.196 acres of land.



surveyor:
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P.O. BOX 870029, MESQUITE, TX.
75187 PHONE: (972) 681-4975 FAX:
(972) 681-4954
WWW.AWSURVEY.COM

ZONING EXHIBIT A
93.196 ACRES
ELISHA CHAMBERS SURVEY ABSTRACT 179
TOWN OF PROSPER
COLLIN COUNTY, TEXAS

KENDRICK
NW CORNER PROSPER TRAIL
AND COIT ROAD
Case No. - Z2014-0008

REVISIONS:



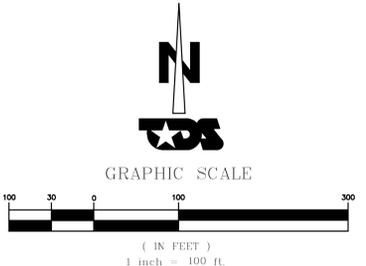
August 05, 2014



TEXAS DEVELOPMENT SERVICES
906 W. McDERMOTT DRIVE
SUITE 196-296
ALLEN, TX 75013
469-853-6538
TX FRM NO. 12790
TDS PROJECT NO. 13041

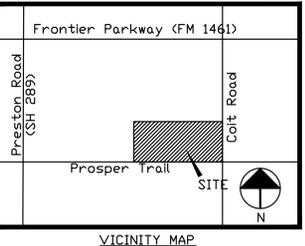
C-01

MAXIMUM DENSITY
PER THE COMPREHENSIVE PLAN
FOR LOW DENSITY IS 1.6 UPA



ZONING DATA
1. -93.2 AC. = GROSS ZONING ACREAGE
2. -5.9 AC. = EXISTING AND PROPOSED ROW DEDICATION (4.1 AC. - PROSPER TRAIL & 1.8 AC. - COIT)
3. - 87.3 A.C. = NET ZONING ACREAGE

NOTES:
THE THOROUGHFARE ALIGNMENT(S) SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DOES NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAT.



NOTE: THERE NO FEMA 100 YR FLOODPLAIN LOCATED ON THE SITE.

Exhibit "B"

Statement of Intent and Purpose

The purpose of the submittal is to request Planned Development zoning in a manner that meets the current market demand for residential development.

The proposed zoning includes development standards for the single family residential uses are described herein. The density shall not exceed a maximum 1.6 dwelling units per acre.

EXHIBIT C FOR Z14-0008
93.196 ACRES (GROSS)
PLANNED DEVELOPMENT STANDARDS

1.0 Planned Development District - Single Family Residential

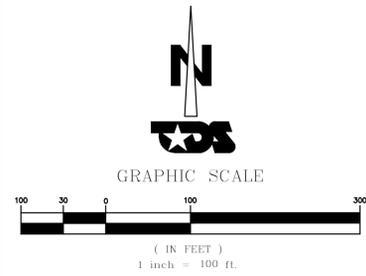
- 1.1 The property shall be developed in accordance with the Single Family-15 District as outlined in the Town of Prosper Zoning Ordinance 05-20, as it exists or may be amended, unless identified below.
- 1.2 Development Pattern: The property shall generally develop in accordance with Exhibit D, Zoning Exhibit.
- 1.3 Density: The maximum density shall be 1.6 dwelling units per acre, based on the gross acreage.
- 1.4 Setbacks
 - a. Lots identified as minimum 25,000 square foot on Exhibit D shall comply with the following setbacks:
 1. Minimum Front Yard: Thirty five (35) Feet
 2. Minimum Side Yard: Twelve (12) feet; fifteen (15) feet on corner adjacent to side street.
 3. Minimum Rear Yard: Twenty five (25) feet
 - b. Lots identified as minimum 15,000 square foot on Exhibit D shall comply with the following setbacks:
 1. Minimum Front Yard: Thirty five (35) Feet
 2. Minimum Side Yard: Ten (10) feet; fifteen (15) feet on corner adjacent to side street.
 3. Minimum Rear Yard: Twenty five (25) feet
 - c. Lots identified as minimum 12,500 square foot on Exhibit D shall comply with the following setbacks:
 1. Minimum Front Yard: Thirty (30) Feet
 2. Minimum Side Yard: Eight (8) feet; fifteen (15) feet on corner adjacent to side street.
 3. Minimum Rear Yard: Twenty five (25) feet
- 1.5 Lot Area
 - a. Lots identified as minimum 25,000 square foot on Exhibit D shall be a minimum of twenty five thousand (25,000) square feet.
 - b. Lots identified as minimum 15,000 square foot on Exhibit D shall be a minimum of fifteen thousand (15,000) square feet.
 - c. A maximum of 30% of the lots identified as minimum 12,500 square foot on Exhibit D shall be a minimum of twelve thousand five hundred (12,500) square feet, and the remaining lots shall be a minimum of thirteen thousand (13,000) square feet.

- 1.6 Minimum Lot Width at Front Building Line:
 - a. Lots identified as minimum 25,000 square foot on Exhibit D shall have a minimum lot width at front building line of one hundred and thirty (130) feet.
 - b. Lots identified as minimum 15,000 square foot on Exhibit D shall have a minimum lot width at front building line of one hundred (100) feet.
 - c. A maximum of 30% of the lots identified as minimum 12,500 square foot on Exhibit D shall have a minimum lot width at front building line of eighty (80) feet, and the remaining lots shall have a minimum lot width at front building line of one hundred (100) feet.
- 1.7 Minimum Lot Depth:
 - a. Minimum lot depth for all lots is 135 feet.
- 1.8 Minimum Dwelling Area: 3,000 square feet.
- 1.9 The maximum impervious surface shall be 50% of the area between the street and the main building.
- 1.10 Plan elevations shall alternate at a minimum of every four (4) homes on the same side of a street and every three (3) homes on opposite sides of the street.
- 1.11 Required Parking: Carports shall be prohibited. Boats, motor homes and trailers shall be behind the front setback line and screened from public right-of-way view.
- 1.12 Privacy fences on single family residential lots shall be located ten (10) feet behind the front elevation of the main building and shall not exceed eight (8) feet in height above grade. All fencing located on single family residential lots adjacent to open space shall consist of ornamental metal (wrought iron or decorative tubular steel). All wood fencing shall consist of cedar, board on board with a top rail, and comply with the Town's fencing standards as they exist or may be amended. A common wood fence stain color shall be established for the development.
 - a. Ornamental metal fencing shall be required on all lots adjacent to Highland Meadows and Whispering Meadows.
- 1.13 All required detention areas shall be provided for in a wet detention pond (constant water level) with a fountain.
- 1.14 All homes shall provide an exterior lighting package to illuminate front entrances, landscaping and trees located in the front yard and garages.
- 1.15 A minimum 20-foot wide landscape buffer shall be provided adjacent to Prosper Trail. The landscape buffer shall be located in a private "non-buildable" lot that is owned and maintained by the HOA. All planting, screening walls, and design elements shall comply with the Town's Subdivision Ordinance as existing or amended.

1.16 A minimum of 10% of the homes shall have swing in garages.

2.0 General Conditions

2.1 Homeowners Association. Each lot shall be a member of the Falls at Prosper Homeowner's Association.



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3. - 87.3 A.C. = NET ZONING ACREAGE

NOTES:

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Exhibit "A"
Legal Description
(for zoning purposes only)
RESIDENTIAL SF-15 TRACT

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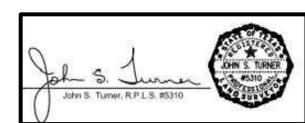
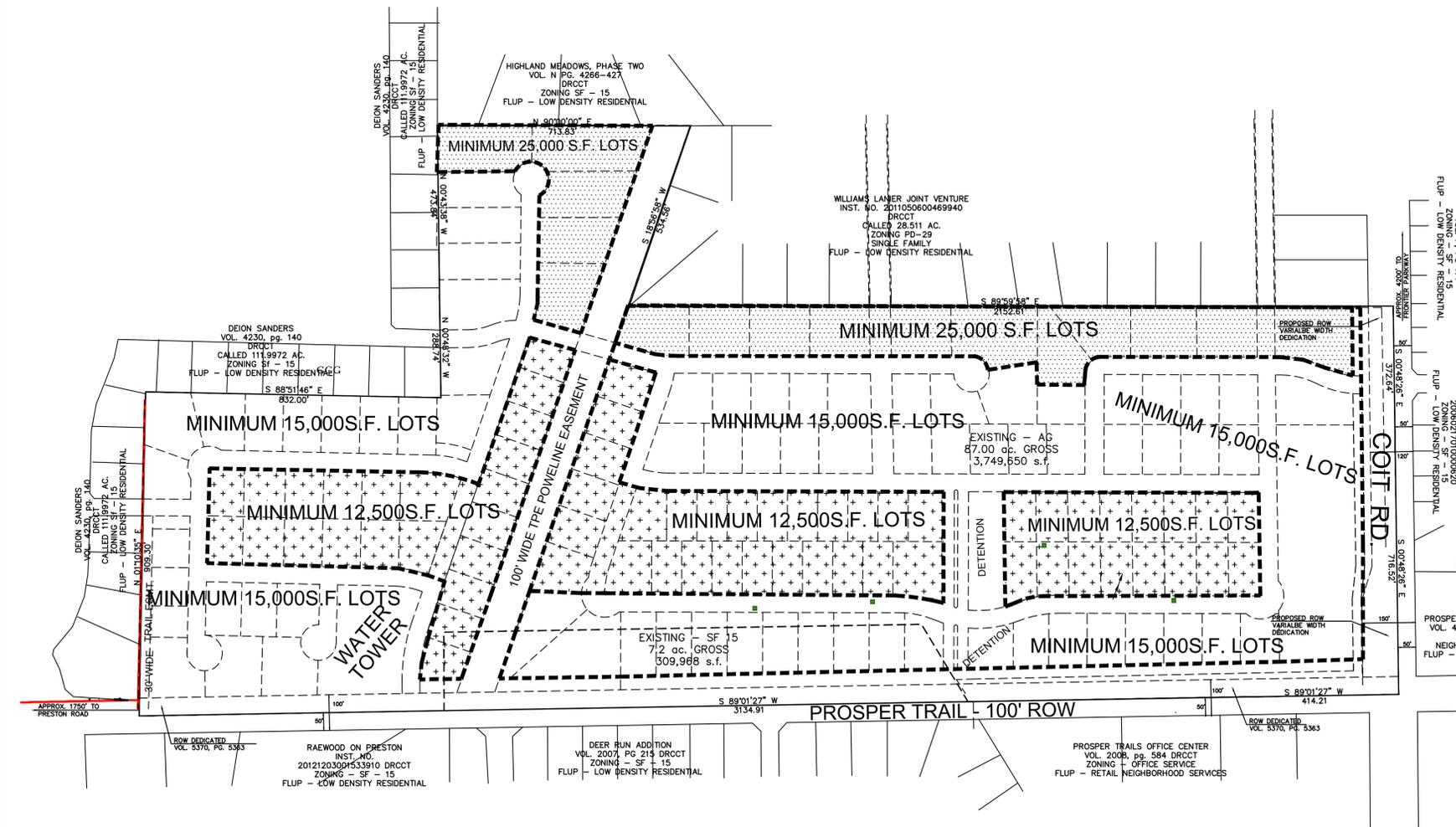
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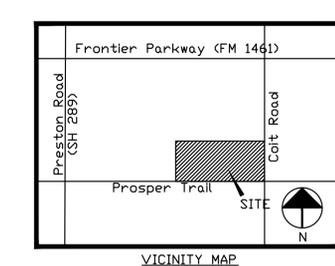
ZONING EXHIBIT D
93.196 ACRES
ELISHA CHAMBERS SURVEY ABSTRACT 179
TOWN of PROSPER
COLLIN COUNTY, TEXAS

THE FALLS of PROSPER
NW CORNER PROSPER TRAIL
AND COIT ROAD
Case No. - Z2014-0008

REVISIONS:



August 05, 2014



NOTE: THERE NO FEMA 100 YR FLOODPLAIN LOCATED ON THE SITE.

Z14-0008
ZONING EXHIBIT D
93.136 ACRES
TOWN of PROSPER
COLLIN COUNTY, TEXAS

TDS
TEXAS DEVELOPMENT SERVICES
906 W. McDERMOTT DRIVE
SUITE 196-296
ALLEN, TX 75013
469-853-6538
TX FRIM NO. 12790
TDS PROJECT NO. 13041

C-00

Exhibit "E"

Development Schedule

The project intends to begin construction in fiscal year 2015 in two phases with the final phase planned construction completed in fiscal year 2018.



BUILDING INSPECTIONS

To: Mayor and Town Council
From: Bill Elliott, CBO, MCP, LEED AP
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Consider and act upon an ordinance amending Section 10.02.002 "Definitions" of Article 10.02 "Capital Improvements and Impact Fees" of Chapter 10 "Subdivision Regulation" of the Town's Code of Ordinances by amending the definition of "New development" to exclude temporary modular buildings from the payment of roadway impact fees.

Description of Agenda Item:

At the August 12, 2014, Town Council meeting, Town staff discussed the results of a recently conducted survey of ten Texas cities to inquire whether or not their cities charged a roadway impact fee for temporary modular buildings. The results of the survey showed that none of the ten cities surveyed charged a roadway impact fee for temporary modular buildings. As discussed, staff is proposing to amend the current impact fee ordinance to exclude temporary modular buildings from the payment of roadway impact fees. If adopted, the effective date of the proposed ordinance will be October 1, 2013.

Legal Obligations and Review:

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

Attached Documents:

1. Ordinance
2. Survey Results of the ten Texas cities

Town Staff Recommendation:

Town staff recommends that the Town Council approve an ordinance amending Section 10.02.002 "Definitions" of Article 10.02 "Capital Improvements and Impact Fees" of Chapter 10 "Subdivision Regulation" of the Town's Code of Ordinances by amending the definition of new development to exclude temporary modular buildings from the payment of roadway impact fees.

Proposed Motion:

I move to approve an ordinance amending Section 10.02.002 "Definitions" of Article 10.02 "Capital Improvements and Impact Fees" of Chapter 10 "Subdivision Regulation" of the Town's Code of Ordinances by amending the definition of new development to exclude temporary modular buildings from the payment of roadway impact fees.

TOWN OF PROSPER, TEXAS**ORDINANCE NO. 14-__**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SECTION 10.02.002, "DEFINITIONS," OF ARTICLE 10.02, "CAPITAL IMPROVEMENTS AND IMPACT FEES," OF CHAPTER 10, "SUBDIVISION REGULATION," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY AMENDING THE DEFINITION OF "NEW DEVELOPMENT" TO EXCLUDE TEMPORARY MODULAR BUILDINGS FROM THE PAYMENT OF ROADWAY IMPACT FEES; MAKING FINDINGS RELATED THERETO; PROVIDING REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, it is the desire of the Town Council to ensure that water, wastewater and roadway impact fees are collected for all "new development" in the Town, as said term is defined in the Town's impact fee ordinance, contained in Article 10.02, "Capital Improvements and Impact Fees," of Chapter 10, "Subdivision Regulation," of the Code of Ordinances of the Town of Prosper, Texas, as amended; and

WHEREAS, Chapter 395 of the Texas Local Government Code, which chapter governs impact fees in Texas, specifically provides in Section 395.001(1) that capital improvements "that have a life expectancy of three or more years may be subject to the charge or assessment of impact fees; and

WHEREAS, the Town Council has determined that temporary modular buildings, which usually have a life expectancy of three years or less, should be excluded from the collection of roadway impact fees since, by definition, the buildings are temporary, are not designed for long-term occupancy, and further, upon the construction of a permanent building, roadway impact fees will be collected by the Town, pursuant to Article 10.02, "Capital Improvements and Impact Fees," of Chapter 10, "Subdivision Regulation," of the Code of Ordinances of the Town of Prosper, Texas, as amended; and

WHEREAS, the Town Council has determined that an ordinance exempting temporary modular buildings from the payment of roadway impact fees will promote the public health, safety and welfare of the citizens 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 hereby found to be true and correct and 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, the definition of "new development," contained in Section 10.02.002, "Definitions," of Article 10.02, "Capital Improvements and Impact Fees," of Chapter 10, "Subdivision Regulation," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended by adding a new provision thereto, said definition of "new development" to read as follows:

“New development means a project involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of the use of land, which has the effect of increasing the requirements for capital improvements or facility expansions, measured by the number of service units to be generated by such activity, and which requires either the approval of a plat pursuant to the Town’s subdivision regulations, the issuance of a building permit, or connection to the Town’s water or wastewater system, and which has not been exempted from these regulations by provisions herein or attached hereto. Installation of a larger water meter will constitute new development. Notwithstanding, roadway impact fees shall not be collected for any temporary modular building which is scheduled to be replaced with a permanent building.”

SECTION 3

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

SECTION 4

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

SECTION 5

Any roadway impact fees paid by any person, firm, corporation, or business entity after October 1, 2013, for a temporary modular building, as referenced in this Ordinance, shall be reimbursed in full for the roadway impact fees paid to the Town.

SECTION 6

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 26TH DAY OF AUGUST, 2014.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

Town of Prosper Roadway Impact Fee Survey

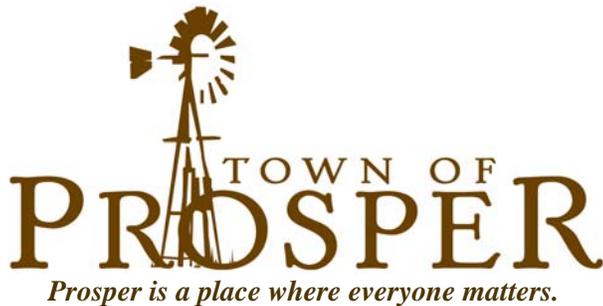
Ten North Texas Cities Survey

Question 1: Does your city charge roadway impact fees for temporary modular buildings for the following uses?

	Schools (Private or Public)	Churches (and Class Rooms)	Government	Other (Commercial)
1. Allen	No	No	No	No
2. Colleyville	No	No	No	No
3. Coppell	*No	No	No	No
4. Fairview	No	No	No	No
5. Flower Mound	*No	*No	*No	*No
6. Frisco	*No	*No	*No	*N/A
7. Highland Park	**No	**No	**No	**No
8. McKinney	*No	No	No	No
9. Plano	**No	**No	**No	**No
10. Southlake	No	No	No	No

Notes:

- *Coppell does not permit temporary-modular buildings.
- *Flower Mound new policy will not permit temporary building, see all buildings as permanent.
- *McKinney only allows temporary modular buildings for a maximum of 30-days.
- *The City of Frisco only permits temporary buildings for schools, churches and/or gov.-entities.
- **Highland Park and Plano no longer charges impact fees on any buildings.



PARKS & RECREATION

To: Mayor and Town Council

From: Paul Naughton, RLA, Landscape Architect

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – August 26, 2014

Agenda Item:

Consider and act upon a resolution authorizing the Town Manager to execute an application to the Texas Parks & Wildlife Small Community Park Grant for Cockrell Park.

Description of Agenda Item:

The Texas Parks & Wildlife Local Park Grant Program consists of five individual programs that assist local government with the acquisition and/or development of public recreation areas and facilities throughout the State of Texas. One of the five programs is the Small Community Park Grant which can award eligible communities up to \$75,000. To be eligible, a community must have a population less than 20,000. The Small Community Park Grant provides a 50% matching grant on a reimbursement basis to eligible applicants, and are awarded based on a Project Priority Scoring System. Based on the information Texas Parks & Wildlife has provided, the most eligible projects are the proposed future improvements to Cockrell Park, specifically the pavilion, plaza improvements, drinking fountain and site furnishings around the existing playground shared with Cockrell Elementary. The construction drawings for these improvements have already been completed with the overall Cockrell Park Improvements project. If approved, the Town would receive notice in March 2015 and have until September 2017 to construct the awarded improvements.

Legal Obligations and Review:

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

Budget Impact:

The requested amount from the Texas Parks & Wildlife Small Community Park Grant is \$75,000. Park Dedication Funds could be utilized to match the Texas Parks & Wildlife funds.

Attached Documents:

1. Resolution
2. Concept Plan

Parks & Recreation Board Recommendation:

At their August 15, 2014 meeting, the Parks & Recreation Board recommended the Town Council consider and act upon a resolution authorizing the Town Manager to execute an application to the Texas Parks & Wildlife Small Community Park Grant for Cockrell Park, by a vote of 5-0.

Town Staff Recommendation:

Town staff recommends that the Town Council approve a resolution authorizing the Town Manager to execute an application to the Texas Parks & Wildlife Small Community Park Grant for Cockrell Park.

Proposed Motion:

I move to approve a resolution authorizing the Town Manager to execute an application to the Texas Parks & Wildlife Small Community Park Grant Program for Cockrell Park.

TOWN OF PROSPER, TEXAS**RESOLUTION NO. 14-__**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AUTHORIZING THE TOWN MANAGER TO ACT ON BEHALF OF THE TOWN OF PROSPER RELATIVE TO ANY APPLICATIONS FOR GRANTS OR OTHER ASSISTANCE FROM THE TEXAS PARKS & WILDLIFE DEPARTMENT; MAKING FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper, Texas (“Applicant”), is fully eligible to receive assistance from the Texas Parks & Wildlife Department (“Department”) for the purpose of participating in the Local Park Grant Program (“Program”) administered by the Department; and

WHEREAS, the Town, as Applicant, is desirous of authorizing an official to represent and act for the Town in dealing with the Department concerning the Program; and

WHEREAS, the Town Council hereby finds and determines that it will be advantageous, beneficial and in the best interests of the citizens of Prosper to authorize the Town Manager to act on behalf of the Town, as Applicant, in dealing with the Department concerning the Program.

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

SECTION 1

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

SECTION 2

The Town, as Applicant, hereby certifies that (i) it is eligible to receive assistance under the Program, and that notice of the application has been posted according to the Town’s public hearing requirements; and (ii) the matching share for this application is readily available at this time.

SECTION 3

The Town, as Applicant, hereby authorizes and directs the Town Manager to act for the Town in dealing with the Department for the purposes of the Program, and the Town Manager is hereby officially designated as the Town representative in this regard.

SECTION 4

The Town, as Applicant, hereby specifically authorizes the Town Manager to make application to the Department concerning the site known as Cockrell Park in the Town of Prosper for use as a park site and said site is dedicated for public park and recreation purposes in perpetuity; and further, the Town acknowledges that projects funded with federal monies may have differing requirements.

SECTION 5

This Resolution shall take effect and be in full force from and after its passage, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Prosper, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 26TH DAY OF AUGUST, 2014.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

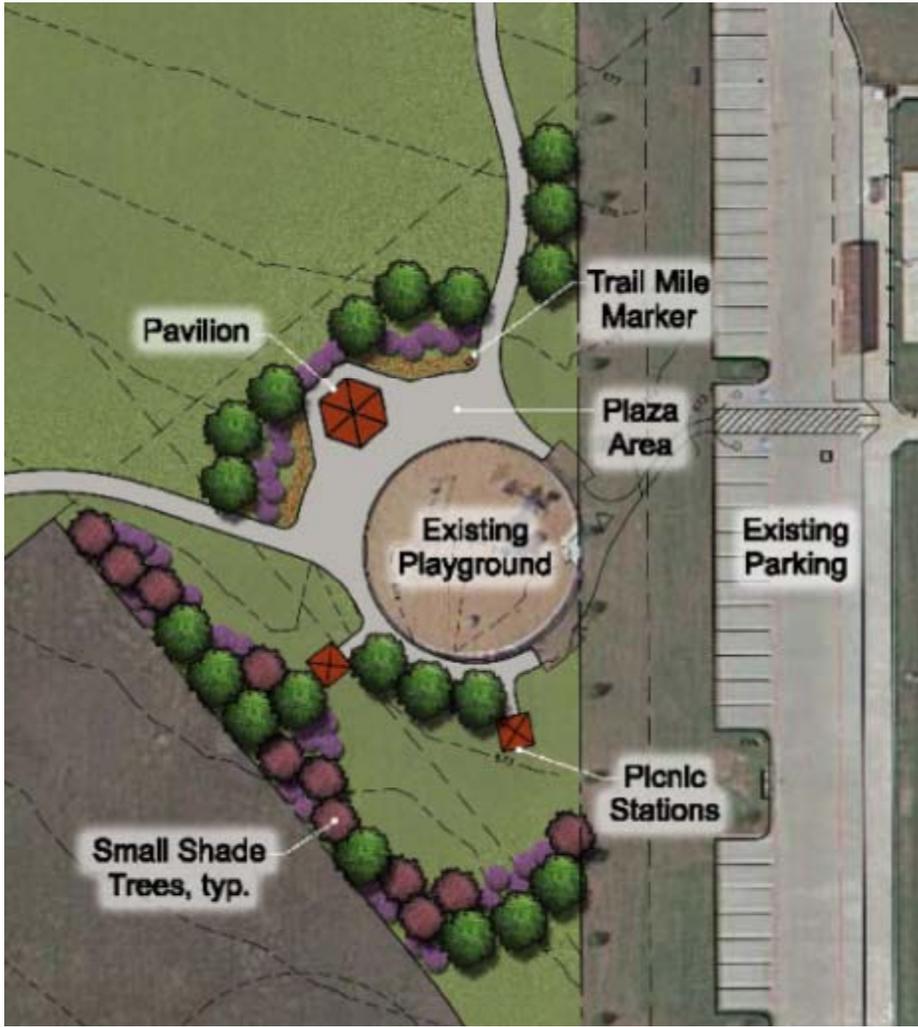
APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney



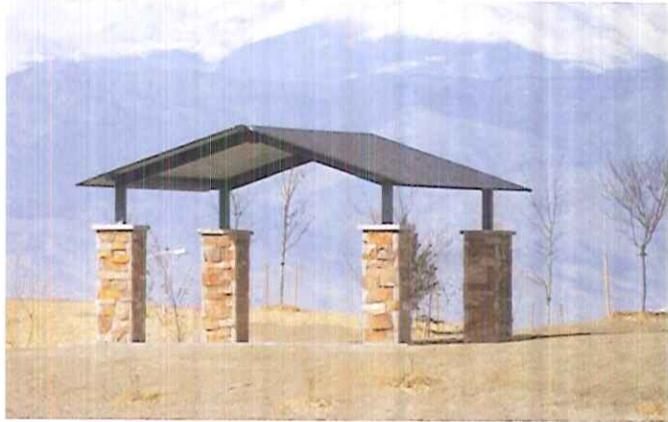
Town of Prosper
Cockrell Park
Preliminary Design Concept Plan

0 20' 40' 80'
SCALE IN FEET
24.08.18
NORTH
FRESE NICHOLS



Eligible Grant Improvements

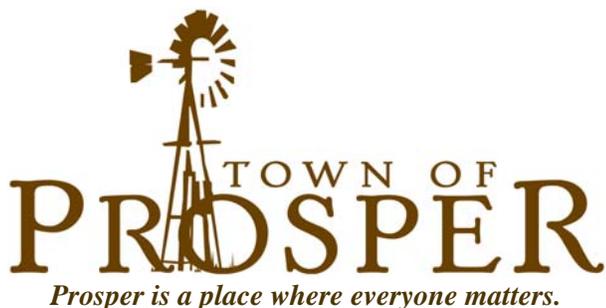
- Pavilion
 - Plaza Area improvements (pavement)
 - Picnic Stations
 - Picnic Tables
 - Benches
 - Drinking Fountain
-
- No landscaping or hike and bike trail until future development



***Stone Columns not included**



Site Furnishing Examples



FINANCE

To: Mayor and Town Council
From: Kent Austin, Finance Director
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Conduct a Public Hearing to consider and discuss the FY 2014-2015 Budget, as proposed.

Description of Agenda Item:

According to Local Government Code Chapter 102 and the Town Charter, the Town must hold a Public Hearing on the proposed budget.

Attached Documents:

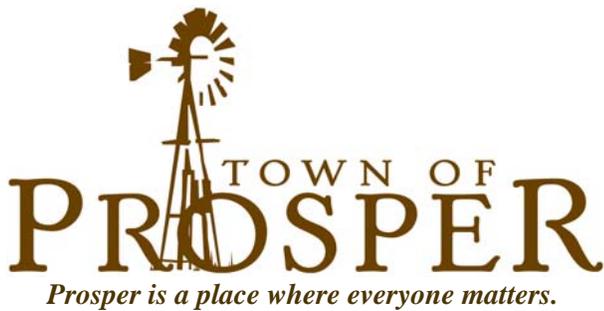
N/A – The FY 2014-2015 Proposed Budget was submitted as part of the August 12, 2014, Town Council agenda.

It is also available online at the Town's website www.prospertx.gov.

Town Staff Recommendation:

Town staff recommends that the Town Council conduct a public hearing to receive feedback from the community and provide Town staff with direction on any changes to the proposed budget.

Other than the Public Hearing, the Town Council does not need to take action on this item.



FINANCE

To: Mayor and Town Council
From: Kent Austin, Finance Director
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Conduct a Public Hearing to consider and discuss a proposal to increase total tax revenues from properties on the tax roll in the preceding tax year by 11.07 percent.

Description of Agenda Item:

According to the Property Tax Code Section 26.05(d), the Town is required to hold two public hearings and publish newspaper ads before adopting a tax rate that exceeds the effective rate or rollback rate, whichever is lower. The second Public Hearing is scheduled for September 9th at the next regular Town Council meeting to comply with Truth in Taxation parameters.

Attached Documents:

1. Statement for Opening the Public Hearing

Town Staff Recommendation:

Town staff recommends that the Town Council conduct a Public Hearing to receive feedback from the community and provide Town staff with any resulting direction. Other than the Public Hearing, the Town Council does not need to take action on this item.

Please open the Public Hearing with the attached statement.

Please read the statements below prior to opening the Public Hearing:

This is the first of two public hearings to discuss the FY 2014-2015 proposed tax rate. The second Public Hearing will be held on

September 9, 2014, at 6:00 p.m.,

at the Prosper Municipal Chambers

located at 108 W. Broadway, Prosper, Texas.

The Town Council will vote on both the FY 2014-2015 Proposed Budget and the proposed tax rate at a meeting scheduled on September 23, 2014, at 6:00 p.m., located at the Town of Prosper Municipal Chambers at 108 W. Broadway, Prosper TX.

Once the Public Hearing is opened, the public is encouraged to express their views.



PLANNING

To: Mayor and Town Council
From: Alex Glushko, AICP, Senior Planner
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Conduct a Public Hearing, and consider and act upon a request to rezone 0.2± acre, located on the north side of Broadway Street, 550± feet east of Coleman Street, from Single Family-15 (SF-15) to Downtown Office (DTO). (Z14-0012).

Description of Agenda Item:

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

	Zoning	Current Land Use	Future Land Use Plan
Subject Property	Single Family-15	Single Family Residential	Old Town Core District – Office
North	Single Family-15	Single Family Residential	Old Town Core District – Single Family
East	Single Family-15	Single Family Residential	Old Town Core District – Office
South	Single Family-15	Single Family Residential	Old Town Core District – Office
West	Single Family-15	Single Family Residential	Old Town Core District – Office

Requested Zoning – Z14-0012 is a request to rezone 0.2± acre, located on the north side of Broadway Street, 550± feet east of Coleman Street, from Single Family-15 (SF-15) to Downtown Office (DTO).

Future Land Use Plan – The Future Land Use Plan (FLUP) recommends Old Town Core District - Office for the property. The zoning request conforms to the FLUP.

Thoroughfare Plan – The property is adjacent to Broadway Street. The zoning exhibit complies with the Thoroughfare Plan.

Water and Sanitary Sewer Services – Water and sanitary sewer service have been extended to the property.

Access – Access to the property will be provided from Broadway Street.

Schools – This property is located within the Prosper Independent School District (PISD). It is not anticipated that a school site will be needed on this property.

Parks – It is not anticipated that this property will be needed for the development of a park.

Environmental Considerations – There is no 100-year floodplain located on the property.

Legal Obligations and Review:

Zoning is discretionary. Therefore, the Town Council is not obligated to approve the request. Notification was provided to neighboring property owners as required by state law. Town staff has received two public hearing notice reply forms; not in opposition to the request.

Attached Documents:

1. Zoning Exhibit A
2. Zoning map of the surrounding area
3. Future Land Use Plan - Old Town Core District Inset
4. Public Hearing notice reply form

Planning & Zoning Commission Recommendation:

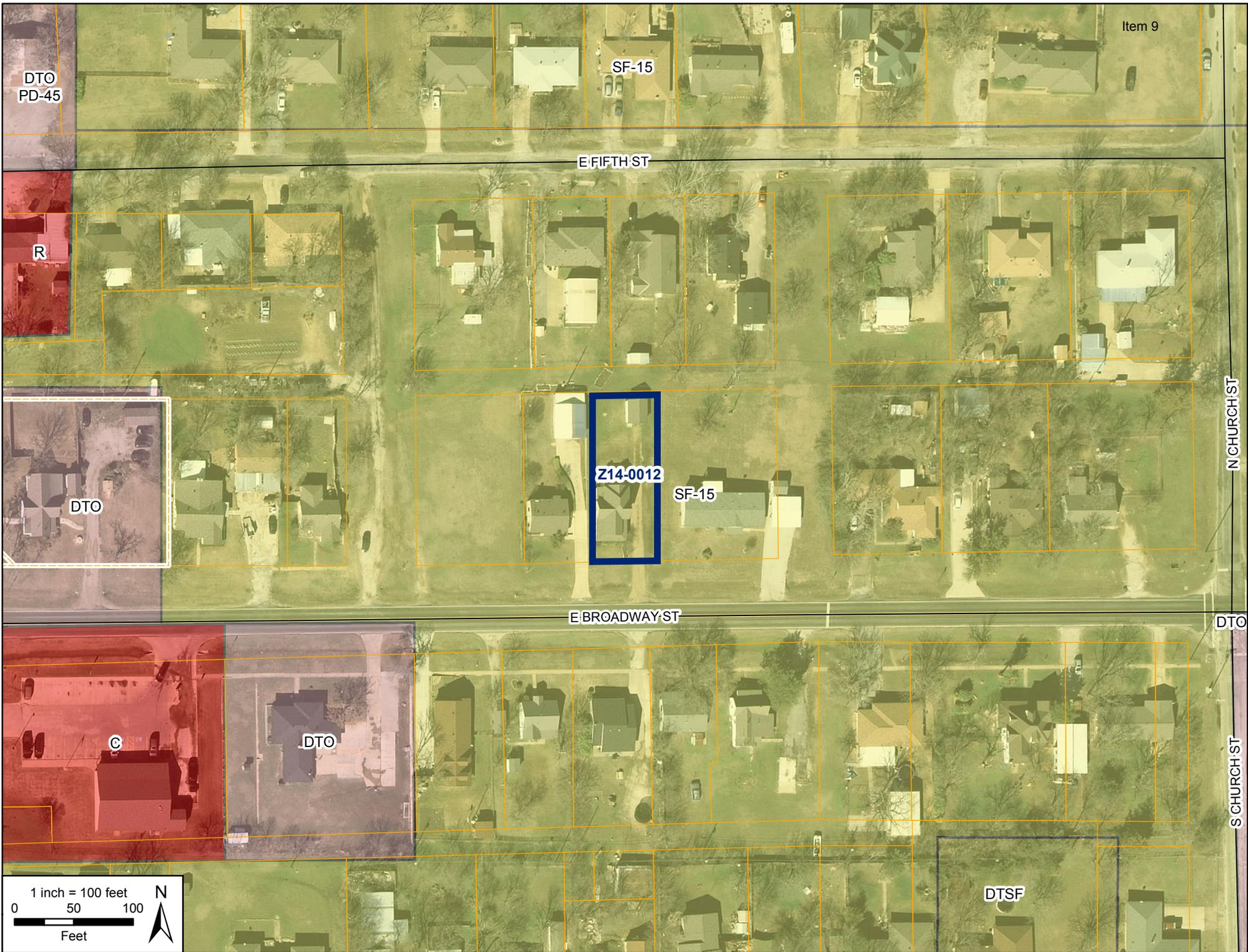
At their August 5, 2014, meeting, the Planning & Zoning Commission recommended the Town Council approve a request to rezone 0.2± acre, located on the north side of Broadway Street, 550± feet east of Coleman Street, from Single Family-15 (SF-15) to Downtown Office (DTO), by a vote of 4-0.

Town Staff Recommendation:

Town staff recommends that the Town Council approve a request to rezone 0.2± acre, located on the north side of Broadway Street, 550± feet east of Coleman Street, from Single Family-15 (SF-15) to Downtown Office (DTO).

Proposed Motion:

I move to approve the request to rezone 0.2± acre, located on the north side of Broadway Street, 550± feet east of Coleman Street, from Single Family-15 (SF-15) to Downtown Office (DTO).



DTO
PD-45

SF-15

Item 9

E FIFTH ST

R

DTO

Z14-0012

SF-15

N CHURCH ST

E BROADWAY ST

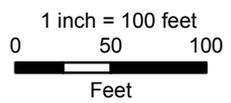
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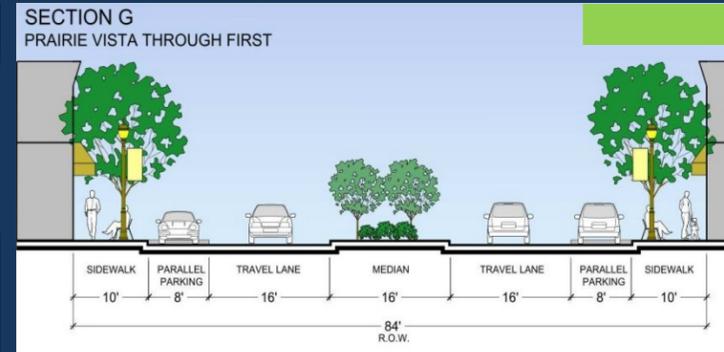
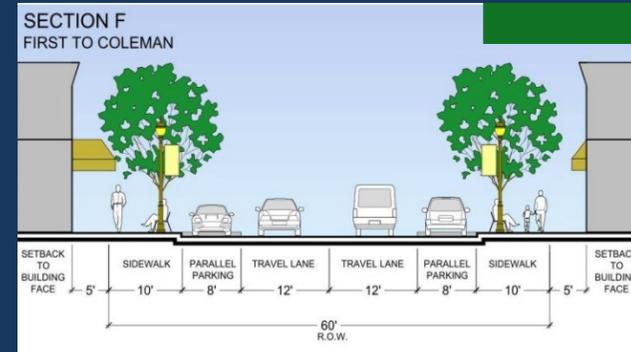
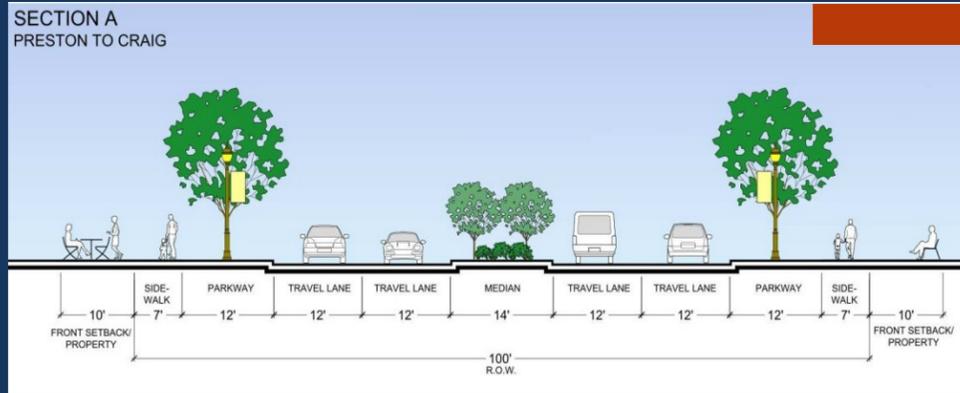
DTO

S CHURCH ST

DTSF



Old Town Transportation Plan



Section A: Four lane divided roadway with a landscaped median and a landscaped parkway separating pedestrians from traffic. This section serves as a major entrance into Old Town from the east. No on-street parking.

Section B: Two lane divided boulevard with a large center median containing landscaping. Wide travel lanes allow for bicycle accommodation and a landscaped parkway separates pedestrians from traffic. No on-street parking.

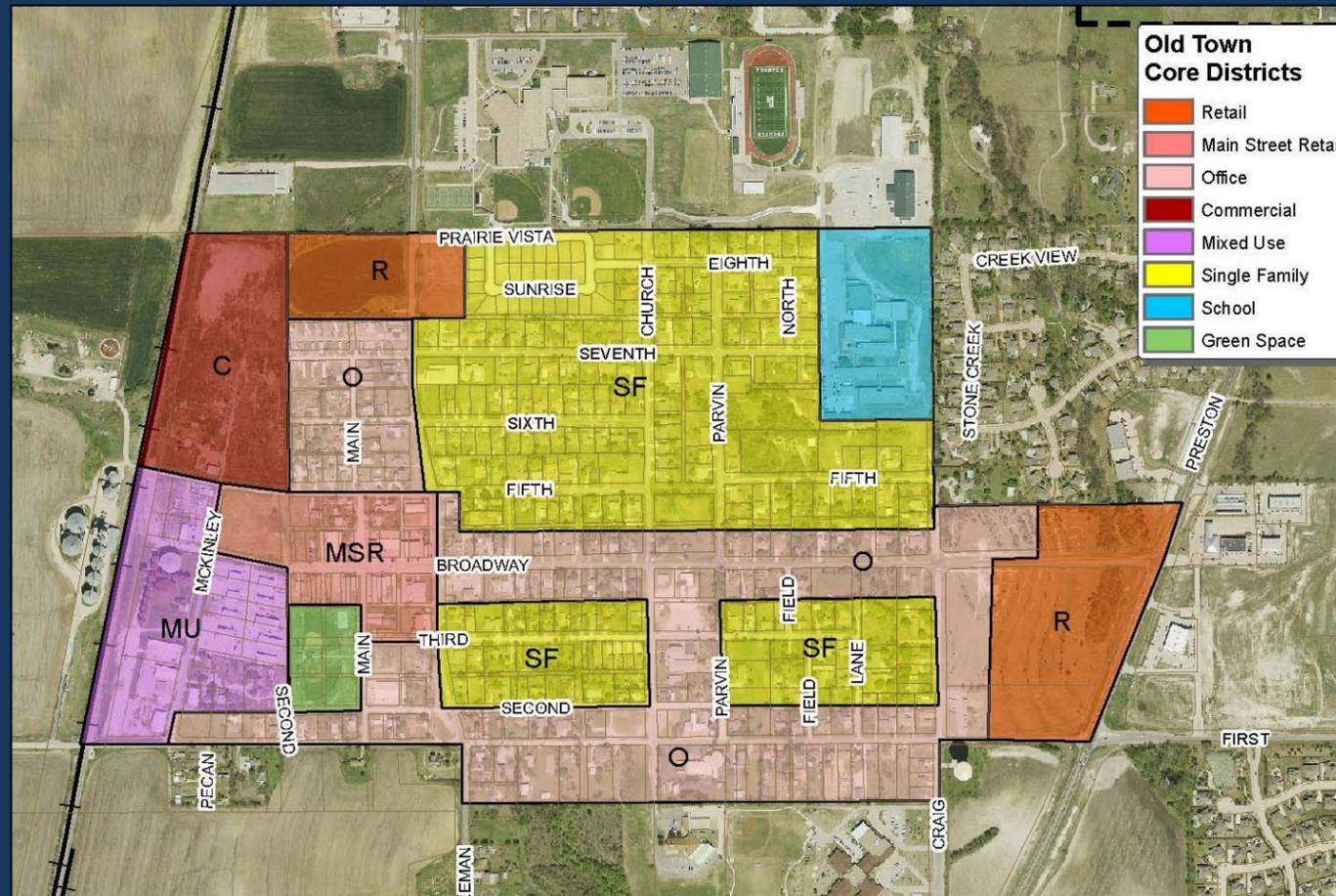
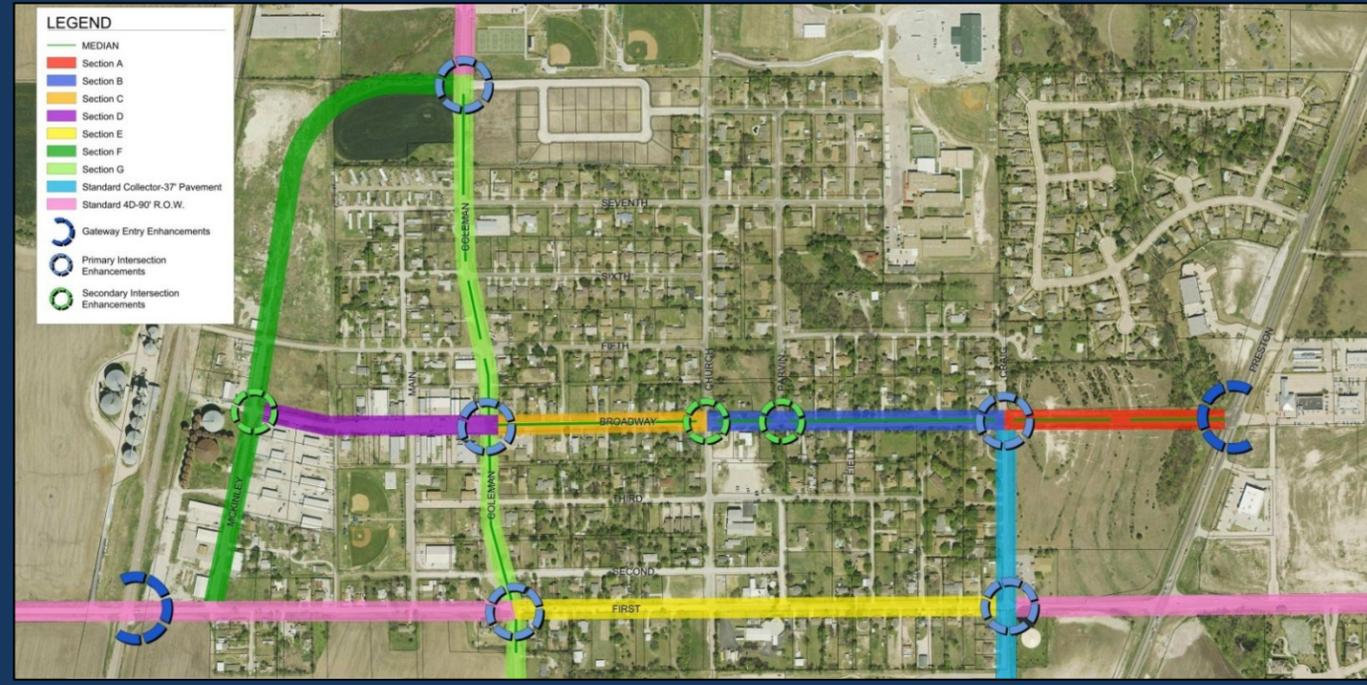
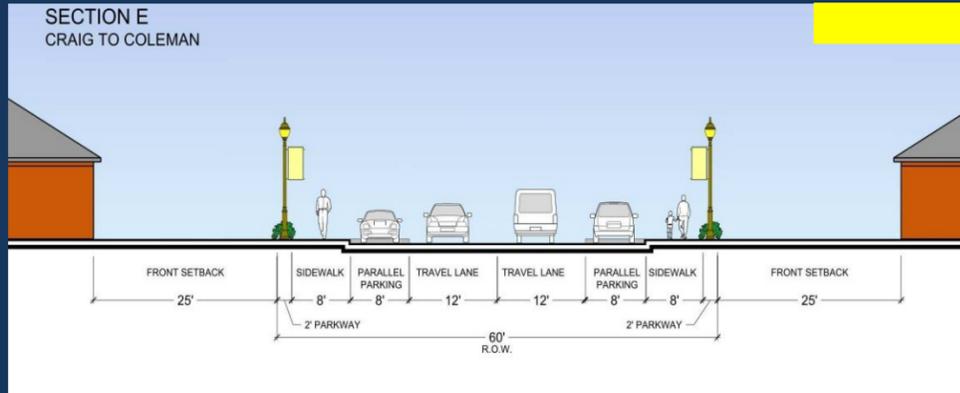
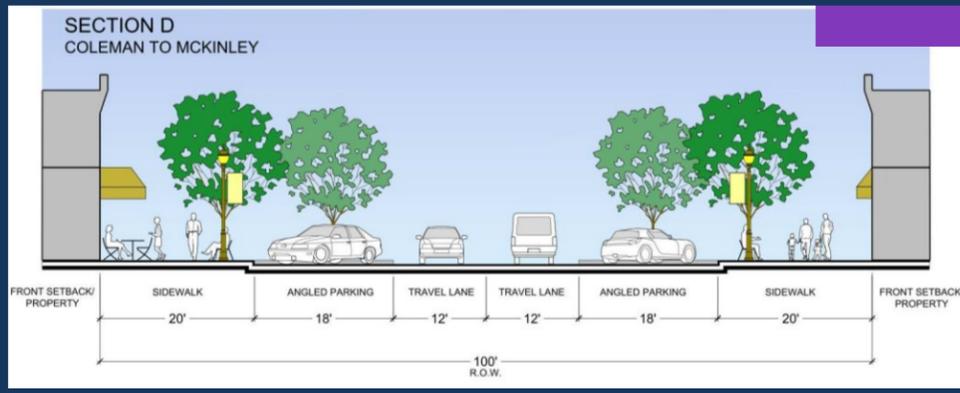
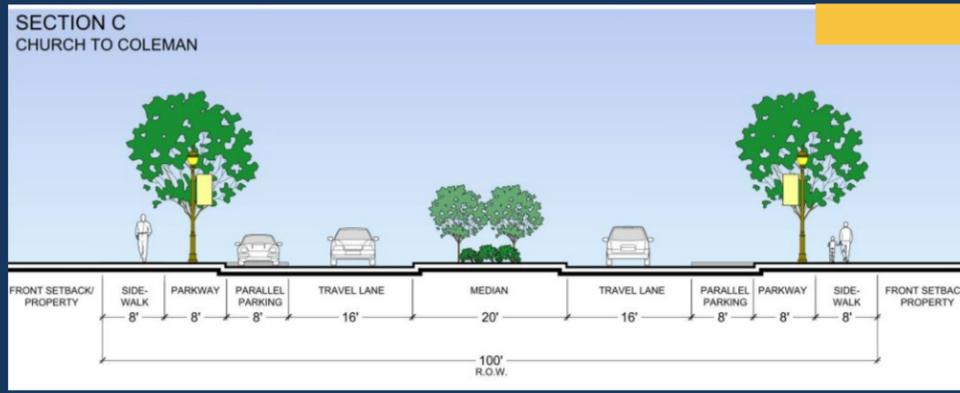
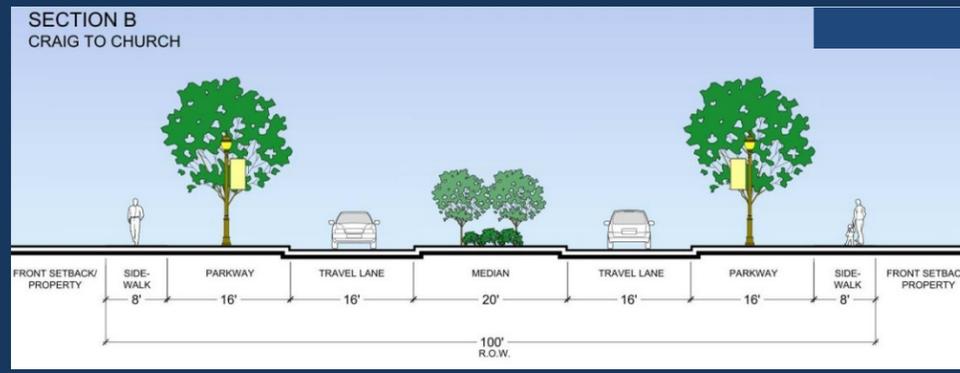
Section C: Two lane divided boulevard with a large center median containing landscaping. On-street parallel parking is permitted and a landscaped parkway separates pedestrians from traffic.

Section D: Two lane undivided urban roadway. Wide 20' sidewalks accommodate patio seating, pedestrian traffic and street trees. On-street angled parking is permitted and bulb-outs are located at intersections to enhance pedestrian visibility at crosswalks.

Section E: Two lane undivided roadway with on-street parallel parking and an immediately adjacent 8' sidewalk. A large private setback of 25' is included.

Section F: Two lane undivided roadway with on-street parallel parking and a 15' sidewalk. 10' of the sidewalk will be located within the right-of-way and the additional 5 feet will be a 5' setback to building face.

Section G: Two lane divided roadway with a center median containing landscaping. On-street parallel parking and a 10' sidewalk are included.



Land Use
The predominant land use within Old Town will be **single-family** residential. All infill development within such areas should conform to the architectural guidelines established for the Old Town district. Such guidelines are created to protect the continuity of look and feel within Old Town.

Along Broadway and First Street, single-family uses will gradually transition to boutique, cottage-style **office** and/or specialty retail uses. Broadway west of Coleman, will be the retail core of the downtown.

Shops, restaurants, and small office uses may be located within the **main street retail** area. This area is intended to be the heart and main activity center of the Old Town Area. As redevelopment occurs, building frontages should be brought to the property line to be consistent with ultimate streetscape improvements.

Adjacent to the retail core, a **mixed-use** district incorporating mixed use lofts/apartments will serve as a buffer between the Business Park and the core of Old Town. This area will also provide rooftops that service adjacent retail establishments.

The **Green space** area will serve as a community park and its location adjacent to the retail core of Old Town and the mixed-use district will make it an opportunistic and useable open space area.

Niche **retail** is recommended along Preston Road and at the northern end of Coleman. Retail development within these areas should fit within the architectural framework of the Old Town area. Setbacks should be reduced, when possible, along Coleman and Broadway to frame the roadways.



DEVELOPMENT SERVICES

DEPARTMENT
 P.O. Box 307
 Prosper, TX 75078
 Phone: 972-346-3502
 Fax: 972-347-2842

REPLY FORM

SUBJECT:

Zoning Case Z14-0012: The Town of Prosper has received a request to rezone 0.2± acre from Single Family-15 (SF-15) to Downtown Office (DTO).

LOCATION OF SUBJECT PROPERTY:

The property is located on the north side of Broadway Street, 550± feet east of Coleman Street.

DESCRIPTION OF THE REQUEST:

The Downtown Office District is established to maintain existing and encourage additional office development in the original downtown portion of the Town. Standards for vehicle parking, building set-backs, and building height are similar to those existing on developed properties in this section of the Town. Therefore, these standards are only applicable to this section of the Town. This district will accommodate a variety of office developments providing for professional, financial, medical, and similar services for local residents and service uses necessary to support such office uses.

- I **OPPOSE** the request as described in the notice of public hearing.
- I **DO NOT OPPOSE** the request as described in the notice of public hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY): _____

 Name: Elmer Templin
 P.O. Box 34
 Prosper, TX 75078

Elmer Templin

 Signature

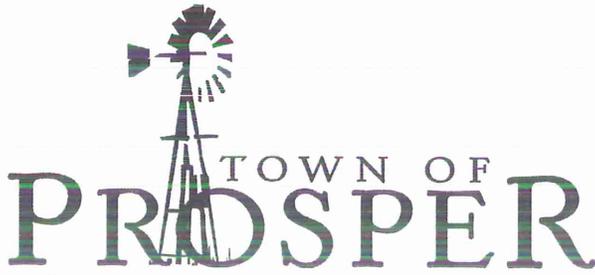
Address

8-1-14

Date

City, State, and Zip Code

E-mail Address



Prosper is a place where everyone matters.

DEVELOPMENT SERVICES

DEPARTMENT

P.O. Box 307

Prosper, TX 75078

Phone: 972-346-3502

Fax: 972-347-2842

REPLY FORM

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- I OPPOSE the request as described in the notice of public hearing.
- I DO NOT OPPOSE the request as described in the notice of public hearing.

COMMENTS (ATTACH ADDITIONAL SHEETS IF NECESSARY):

I fully support this zoning change

Doug TRUMBULL
Name (please print)

Doug Trumbull
Signature

910 Willow Ridge Dr
Address

8/2/14
Date

Prosper TX 75071
City, State, and Zip Code

doug@dugsmightyclean.com
E-mail Address



LIBRARY

To: Mayor and Town Council

From: Leslie Scott, Library Director

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – August 26, 2014

Agenda Item:

Library Services Department update.

Description of Agenda Item:

In the past three months, the Prosper Community Library has been involved in the following:

- Increased Awareness:
 - Centennial Celebration – distributed hours on book marks and had Guest Story Time readers at library tent
 - Movies in the Park – distributed summer program information
 - Website updated often with links created
 - Prosper Community Library Facebook with 300 likes in under 3 months
 - Promotional Articles in Prosper Press
 - Promotional Articles in Live and Prosper Magazine
 - Publish weekly column “Off the Shelf” for Prosper Press promoting library, events, information and literacy
 - Communication and relationship built with Mr. Bradley regarding shared space
 - Communication and relationship built with Chief McHone regarding library security
 - Represented Prosper Community Library at Collin County Commissioners grant budget meeting in McKinney
- Implementing Plans and Policies:
 - Long-Range Plan completed – typically takes a committee a year to formulate; took us one month
 - Long-Range Plan approved by Library Board to maintain accreditation
 - Library Board By-Laws edited and approved
 - Library Card application updated
 - Library information pamphlet updated
 - Created volunteer protocol
 - Enacted Photo Release protocol
 - Additional policies being created and edited to address issues

- Increased Programs:
 - ABC Mouse – children’s interactive learning database added
 - Ancestry.com – subscription database added
 - TexShare database – 76 databases added
 - Created Summer Program:
 - Story Time each week
 - Summer Reading Challenge 253 logs picked up
 - Prizes – yard sign, trophy, certificate, FC Dallas, Whataburger, Papa Murphys, and Cherry Berry
 - Thursday Programs: Water Safety and bubbles, Garden day, Yoga day, PJs movie and night light, Fire Department and Police Department
 - Grand Finale – 88 kids/55 adults – crafts, face paint, and Police Department completed 54 kid prints
- Total participation this summer: Story Time 232 children/170 adults
Programs 229 children/150 adults
- Combined totals: 461 children/320 adults all in 8 weeks time
- Training and Resources:
 - Attended the ALA conference for 4 days – immense amount of information and ideas brought back
 - Integrated Library System quotes, comparing, and considering to migrate away from utilizing Prosper ISD’s ILS
 - Large amount of purchases – program supplies, story time supplies, shelving supplies, display supplies, office equipment, children’s tables, program prizes, furniture
 - Five summer volunteers and one summer Library Science Masters student practicum – community is looking for opportunities to volunteer
 - Created relationships and learned software of new vendors such as Ingram, Overdrive, Demco, Abdo, Smart Apple
 - Library monthly staff meetings began
 - Continue to accommodate tutoring and meetings

Upcoming events and duties:

- Story Time new location at Lighthouse Fellowship Church
 - Outreach to community – Fire Station, Whispering Farms, Cotton Gin, Dental Day, etc.
- Additional evening Story Time
- Creating monthly library event calendar
- Monthly one weekend family/children’s program
- Monthly family game night
- Create monthly young adult program with Money Smart program in the winter
- Create monthly adult program
- Implement interlibrary loan when new ILS is proven
- Participate in Community Picnic
- Participate in Prosper Homecoming Parade
- Participate in Corey Aussenbaugh Run
- Participate in Christmas Festival
- Continue to work with Parks to promote each other’s events
- Correcting all cataloging and spine labels

Town Staff Recommendation:

Town staff is requesting the Town Council provide feedback on the Library Services Department updates provided.



PARKS & RECREATION

To: Mayor and Town Council
From: Paul Naughton, RLA, Landscape Architect
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – August 26, 2014

Agenda Item:

Consider and act upon awarding Bid No. 2014-57-B to Jay Davis Company, Inc., dba JDC Construction, related to the construction services for the Southwest Corner Frontier Park Batting Cages; and authorizing the Town Manager to execute same.

Description of Agenda Item:

On July 31, 2014, at 2:00 p.m., three bids were opened for the Southwest Corner Frontier Park Batting Cages project. After evaluating the bids, Town staff recommends removing Item 4 from the base bid. Item 4 is to provide power and electrical outlets to the south end of each batting cage. Town staff has determined it would be more cost effective to obtain competitive quotes for this work separately.

The verified totals from the bidders, excluding Item 4, ranged between \$83,000 and \$131,049. It was determined that JDC Construction was the lowest bidder at \$83,000.

Budget Impact:

Base Bid	<u>\$ 83,000</u>
Total Contract Amount	\$ 83,000
Contingency	<u>\$ 17,000</u>
TOTAL Proposed Budget	\$100,000

The total cost of the construction contract is \$83,000. The proposed budget for the batting cage project is \$100,000 which includes a \$17,000 contingency. The \$100,000 proposed budget will be funded from the Park Dedication Fee Fund. At the August 12, 2014, Town Council meeting, a CIP amendment was approved to increase in the budget from \$440,000 to \$540,000 from the Park Dedication Fee Fund for this project.

Legal Obligations and Review:

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

Attached Documents:

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

Town Staff Recommendation:

Town staff recommends that the Town Council approve the award of Bid No. 2014-57-B to Jay Davis Company, Inc., dba JDC Construction, related to the construction services for the Southwest Corner Frontier Park Batting Cages, in the amount of \$83,000; and authorize the Town Manager to execute same.

Proposed Motion:

I move to approve the award of Bid No. 2014-57-B to Jay Davis Company, Inc., dba JDC Construction, related to the construction services for the Southwest Corner Frontier Park Batting Cages, in the amount of \$83,000; and authorize the Town Manager to execute same.



Town of Prosper
 Bid Tabulation - Revised

Bid No: 2014-57-B Southwest Corner Frontier Park Batting Cages Bid Opening: 7/31/14 at 2:00 PM	
	Base Bid
JDC Construction	\$ 83,000.00
SFCC, Inc.	\$ 92,657.00
Wall Enterprises	\$ 131,049.00
<p>**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.</p>	
Certified By: January M. Cook, CPPO, CPPB Purchasing Agent Town of Prosper, Texas	Date: August 5, 2014

CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR

**SOUTHWEST CORNER
FRONTIER PARK
BATTING CAGES**

BID NO. 2014-57-B



TOWN OF PROSPER
COLLIN COUNTY, TEXAS

TOWN OFFICIALS

Ray Smith, Mayor
Meigs Miller, Mayor Pro-Tem
Kenneth Duggar, Deputy Mayor Pro-Tem
Michael Korbuly, Place 1
Curry Vogelsang Jr., Place 3
Danny Wilson, Place 5
Jason Dixon, Place 6
Harlan Jefferson, Town Manager

CONSULTANT

Williams Design Group
Todd Williams, President



101 West Louisiana Street Suite 203
McKinney, Texas 75069
P: (469) 406-9431
E: twilliams@wdgroupinc.com

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LEGAL NOTICE

The Town of Prosper is accepting sealed bids for **Southwest Corner Frontier Park Batting Cages, Bid No. 2014-57-B**. Bids will be accepted until **2:00 p.m. on Thursday, July 31, 2014** at the Town Hall Annex, 151 S. Main St., Prosper, Texas 75078. Any bids received after this time will not be accepted, and will be returned unopened. Bids will be publicly opened and read aloud at the Town Hall Annex, 151 S. Main St., Prosper, Texas 75078 immediately following this time.

The Project consists of furnishing all labor, equipment and materials (except as otherwise specified), and performing all work necessary for the construction of the practice field area and associated appurtenances detailed in the construction plans and specifications. The practice fields project area is located in the southwest corner of the existing Frontier Park, Prosper.

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

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

Copies of Plans, Specifications, and Contract Documents may be examined at **Minuteman Press, 1502 West University Dr. #105, McKinney, TX 75069, (972) 547-6000** without charge. These documents may be acquired from that office for the non-refundable purchase price of \$50.00 per set, payable to Minuteman Press. Copies of Plans, Specifications, and Contract Documents may also be downloaded free of charge from Current Bidding Opportunities, at the following link: <http://www.prospertx.gov/Purchasing.aspx>.

Questions and requests for clarifications in regards to this bid should be emailed directly to January Cook, CPPO, CPPB, Purchasing Agent, at janeary_cook@prospertx.gov. July 24, 2014, at 12:00 p.m. will be the deadline for receipt of questions and requests for clarifications. After that day and time, no further questions or requests for clarifications will be accepted or answered by the Engineer or Town.

INSTRUCTIONS TO BIDDERS

1. **Submittal Deadline:** Bids will be accepted until . **2:00 p.m. on Thursday, July 31, 2014**
2. **Submittal Location:** Bids will be accepted at the Town Hall Annex, 151 S. Main St., Prosper, Texas 75078.
3. **Submittal Requirements:** Each Bidder shall submit three (3) copies of their bid, along with their bid security and Out of State Contractor Compliance (if necessary), in a sealed envelope clearly marked with their name and **Bid No. 2014-57-B, Southwest Corner Frontier Park Batting Cages.**
4. **Bid Opening:** Bids will be publicly opened and read aloud at the Town Hall Annex, 151 S. Main St., Prosper, Texas 75078 immediately following the bid deadline.
5. **Bidding Documents:** Copies of Plans, Specifications, and Contract Documents may be purchased at the following location:

Minuteman Press
Contact: Lynn Lo
1502 West University Dr. #105
McKinney, TX 75069
(972) 547-6000

or

Download free of charge from Current Bidding Opportunities, at the following link:
<http://www.prospertx.gov/Purchasing.aspx>

6. **Requests for Clarification:** All formal inquiries and requests for clarification should be made to the Town of Prosper Purchasing Agent no later than July 24, 2014, at 12:00 p.m.
Town of Prosper Purchasing Department
Attn: January Cook, CPPO, CPPB, Purchasing Agent
Town Hall Annex
151 S. Main St.
Prosper, Texas 75078
Phone: 972.569.1018
janeary_cook@prospertx.gov
7. **Addenda:** If it becomes necessary to provide additional information to potential Bidders, the Town of Prosper will issue an addendum containing the necessary information. It is the intent of the Town that any addenda will be issued no later than three (3) business days prior to the bid deadline.
8. **Pre-Bid Meeting:** N/A

BID PROPOSAL FORM

Southwest Corner Frontier Park Batting Cages

Bid No. 2014-57-B

JDC CONSTRUCTION

BIDDER: _____

ADDRESS: **PO BOX 1201** _____

WYLIE TEXAS 75098 _____

PHONE: **972 442 1904** _____

PRIMARY CONTACT: **JAY DAVIS** _____

PLEASE SUBMIT THREE (3) COPIES OF YOUR BID. ANY BID RECEIVED WITHOUT THE THREE (3) COPIES WILL BE CONSIDERED NONRESPONSIVE.

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those terms and conditions dealing with the disposition of Bid guaranty. This Bid will remain subject to acceptance for 90 calendar days after the day of opening Bids. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Contract Documents within ten (10) calendar days after the date of Owner's Notice of Award.
3. The right is reserved, as the interest of the Owner may require, to reject any and all Bids and to waive any informality in the Bids received.
4. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
5. Bidder has examined copies of all the Contract Documents and of the following Addenda (receipt of which is hereby acknowledged):

Number	Dated	Received
No. 1	_____	_____
No. 2	_____	_____
No. 3	_____	_____
No. 4	_____	_____

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

7. Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies that pertain to the subsurface or physical conditions at the site or which otherwise may affect the cost, progress, performance or furnishing of the Work as Bidder considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.
8. Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by the Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
9. Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
10. Bidder has given Engineer written notice of all conflicts, errors or discrepancies that it has discovered, if any, in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder.
11. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from submitting a Bid; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
12. Bidder will complete the Work for the price(s) shown in the following schedule of bid items and within 30 calendar days.

NOTE: Bidder may substitute a computer printout for this bid schedule provided the computer printout contains identical item numbers, quantities, and descriptions to those provided in this bid schedule. In case of ambiguity or lack of clearness in stating prices in this Bid, the Owner reserves the right to accept the most advantageous construction thereof to the Owner or to reject the bid.

Base Bid					
Item No.	Description	Quantity	Unit	Unit Cost	Total Amount
1	Furnish and installation of Batting Cages, including poles, rails, fencing, gates, and netting per plans. Complete and in place	1	LS	49,092.50	49,092.50
2	Finish grading and concrete pad (include providing 2" conduit under slab) for batting cages per plans. Complete and in place	5,524	SF	5.50	30,382.00
3	Concrete walkway to batting cages Complete and in place	641	SF	5.50	3,525.50
4	Provide power and electrical outlet to south end of each batting cage Complete and in place	1	LS	15,000.00	15,000.00

13. Bidder hereby agrees to commence work within ten (10) days after the date written notice to proceed shall have been given to him, and to substantially complete the work on which he has bid within 30 calendar days as part of this Proposal. Within 30 additional calendar days after Substantial Completion, all outstanding issues shall be addressed and ready for final payment. All such time restrictions are subject to such extensions of time as are provided by the General Provisions and Special Conditions.
14. Bidder agrees that the implementation of the Owner's right to delete any portion of the improvements shall not be considered as waiving or invalidating any conditions or provisions of the contract or bonds. Bidder shall perform the Work as altered and no allowances shall be made for anticipated profits.
15. Since the Work on this Project is being performed for a governmental body and function, the Owner will issue to the Contractor a certificate of exemption for payment for the State Sales TAX on materials incorporated into this Project if requested.
16. Each bidder shall include the following information in this Bid:

	<u>Cost of Materials</u>	<u>Cost of Labor, Profit, etc.</u>	<u>Total Amount Of Bid</u>
Base Bid	\$ <u>58,000.00</u>	\$ <u>40,000.00</u>	\$ <u>98,000.00</u>

17. Each Bidder shall include a list of proposed subcontractors, the type of work to be completed by each such subcontractor and the approximate percentage of contract labor to be completed by each subcontractor. If additional space is necessary to provide a complete listing, please attach such additional pages as may be required. Owner reserves the right to accept or reject any subcontracts and/or amount subcontracted pursuant to Item "XI. SUBCONTRACTORS, ETC." contained in the Instructions to Bidders.

	<u>Subcontractor's Name</u>	<u>Type of Work</u>	<u>% of Work</u>
1.	NONE		
2.			
3.			
4.			
5.			
6.			

Total % of Work Subcontracted: _____

18. Each Bidder shall include a list of proposed suppliers of major materials and equipment to be furnished and installed in connection with this Bid. If additional space is necessary to provide a complete listing, please attach such additional pages as may be required.

	<u>Supplier's Name</u>	<u>Type of Material / Equipment</u>
1.		
2.		
3.		
4.		
5.		
6.		

19. In the event of the award of a contract to the undersigned, the undersigned will furnish Performance and Payment Bonds for the full amount of the contract, to secure proper compliance with the terms and provisions of the contract with sureties offered by INSCO GROUP to insure and guarantee the work until final completion and acceptance, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract. In addition, the undersigned will furnish a Maintenance Bond in the amount of 100% of the contract sum covering defects of material and workmanship for two calendar years following the Owner's approval and acceptance of the construction.

20. The work, proposed to be done, shall be accepted when fully completed in accordance with the plans and specifications, to the satisfaction of the Engineer and the Owner.

21. The undersigned certifies that the bid prices contained in this Bid have been carefully checked and are submitted as correct and final.

This is a Bid of JDC CONSTRUCTION, a corporation organized and existing under the laws of the State of _____, or a limited partnership organized and existing under the laws of the State of _____, or a partnership, consisting of _____ or an individual doing business as JDC CONSTRUCTION.

Seal and Authorization
(If a Corporation)



(Signed)
OWNER

(Title)
PO BOX 1201

(Street Address)
WYLIE TEXAS 75098

(City and State)
972 442 1904

(Telephone Number)
7/31/14

(Date)



INSCO INSURANCE SERVICES, INC.
Underwriting Manager for:
Developers Surety and Indemnity Company
Indemnity Company of California
17780 Fitch, Suite 200 • Irvine, California 92614 • (800) 782-1546
www.InscoDico.com

Bond No. Bid Bond

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS,

That we, JDC Construction,

as Principal, and Developers Surety and Indemnity Company, a corporation

authorized to transact a general surety business in the State of Texas, as Surety, are held and firmly bound unto _____

Town of Prosper

151 S Main Street, Prosper, TX 75078 (hereinafter called the Obligee)

in the full and just sum of Five Percent of the Amount Bid

Dollars, (\$ 5%) for the payment whereof in lawful money of the United States,

we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said PRINCIPAL has submitted the accompanying bid for

**Southwest Corner Frontier Park Batting Cages
Prosper, Texas**

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, or in the event of the failure of the Principal to enter such Contract, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

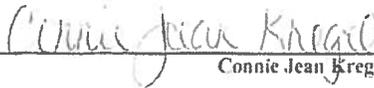
Signed and Sealed this 31st day of July, 2014 Year

JDC Construction

 Principal

Developers Surety and Indemnity Company

Surety

By: 
Connie Jean Kregel Attorney-in-Fact

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby make, constitute and appoint:

Jeffrey Todd McIntosh, Connie Jean Kregel, jointly or severally

as its true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporation, as surety, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporation could do, but reserving to each of said corporation full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolution adopted by the Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, any Executive Vice-President, Senior Vice-President or Vice-President of the corporation be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporation be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY has caused these presents to be signed by its officers and attested by its Secretary or Assistant Secretary this May 23, 2013

By: *Daniel Young*
Daniel Young, Senior Vice-President

By: *Gregg N. Okura*
Gregg N. Okura, Vice-President



State of California
County of Orange

On May 23, 2013 before me, Gina L. Garner, Notary Public
Date Here Insert Name and Title of the Officer

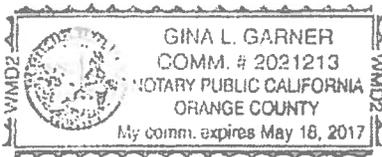
personally appeared Daniel Young and Gregg N. Okura
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature *Gina L. Garner*
Gina L. Garner, Notary Public



Place Notary Seal Above

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolution of the Board of Directors of said corporation set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 31st day of July, 2014.

By: *Mark J. Lansdon*
Mark J. Lansdon, Assistant Secretary

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Surety's toll free telephone number for information or to make a complaint at:

1-800-782-1546

You may also write to the Surety at:

P.O. Box 19725
Irvine, CA 92623-9725

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

1-800-252-3439

You may write the Texas Department of Insurance at:

P.O. Box 149104
Austin, TX 78714-9104
Fax# 512-475-1771
web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANCE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de para informacion o para someter una queja al:

1-800-782-1546

Usted tambien puede escribir a Surety at:

P.O. Box 19725
Irvine, CA 92623-9725

Puede comunicarse con el Departamento de Seguros de Texas para obtener information acerca de compa-nias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas

P.O. Box 149104
Austin, TX 78714-9104
Fax# 512-475-1771

web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Surety primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

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



Insko Insurance Services, Inc.

Underwriting Manager for:

Developers Surety and Indemnity Company • Indemnity Company of California
17780 Fitch, Suite 200
Irvine, CA 92614
1-800-782-1546
www.InscoDico.com

TEXAS

TEXAS

OUT-OF-STATE CONTRACTOR COMPLIANCE TO STATE LAW

Texas Government Code §2252.002 provides that, in order to be awarded a contract as low bidder, a non-resident bidder (out-of-state contractor whose corporate office or principal place of business is outside the State of Texas) bid projects in Texas at an amount lower than the lowest Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder in order to obtain a comparable contract in the state in which the non-resident's principal place of business is located. The appropriate blanks in the following statement must be filled out by all out-of-state or non-resident bidders in order for those bids to meet specifications. (This information may be obtained from the Texas Register.) The failure of out-of-state or non-resident contractors to do so will automatically disqualify that bidder.

Non-resident contractor in _____ (give state), our principal place of business, is required to be _____ percent lower than resident bidders by State Law. The exact language of the statute is set out below.

Non-resident contractor in _____ (give state), our principal place of business, is not required to underbid resident bidders.

BIDDER

JDC CONSTRUCTION

Company

PO BOX 1201

Address

WYLIE TEXAS 75098

City

State

Zip

JAY DAVIS

By _____
(Please Print)

Jay Davis

Signature

OWNER

_____ Title (Please Print)

"Tex. Gov't Code Sec. 2252.002. AWARD OF CONTRACT TO NONRESIDENT BIDDER. A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located."

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 **Jay Davis Company, Inc., dba JDC Construction** (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:

SOUTHWEST CORNER FRONTIER PARK BATTING CAGES BID NO. 2014-57-B

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 Bid Proposal;
10. any listed and numbered addenda;
11. the Performance, Payment, and Maintenance Bonds; and,
12. any other bid materials distributed by the Owner that relate to the Project.

These Contract Documents are incorporated by reference into this Construction Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project.

B. Total of Payments Due Contractor

For performance of the Work in accordance with the Contract Documents, the Owner shall pay the Contractor in current funds an amount not to exceed **Eighty-Three Thousand Dollars and Zero Cents (\$83,000.00)**. 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 **30** calendar days after the date of the Notice to Proceed for the base bid. Within 30 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

1. Before commencing work, the Contractor shall, at its own expense, procure, pay for and maintain the following insurance coverage written by companies approved by the State of Texas and acceptable to the Town of Prosper. The Contractor shall furnish to the Town of Prosper Purchasing Agent certificates of insurance executed by the insurer or its authorized agent stating the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

Southwest Corner Frontier Park Batting Cages
 Bid No. 2014-57-B
 Town of Prosper
 Attn: Purchasing Agent
 121 W. Broadway
 Prosper, Texas 75078

- (a) Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$2,000,000 general aggregate. If high risk or dangerous activities are included in the Work, explosion, collapse and underground (XCU) coverage is also required. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
- (b) Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
- (c) Umbrella or Excess Liability insurance with minimum limits of \$2,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage in subparagraphs a and b. The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The Contractor may maintain reasonable deductibles, subject to approval by the Owner.

2. With reference to the foregoing required insurance, the Contractor shall endorse applicable insurance policies as follows:
 - (a) A waiver of subrogation in favor of Town of Prosper, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
 - (b) The Town of Prosper, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader. (Please note that this "additional insured" coverage requirement 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.)
 - (c) All insurance policies shall be endorsed to the effect that Town of Prosper will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies.
3. All insurance shall be purchased from an insurance company that meets a financial rating of "A" or better as assigned by the A.M. BEST Company or equivalent.
4. With respect to Workers' Compensation insurance, the Contractor agrees to comply with all applicable provisions of 28 Tex. Admin Code § 110.110, "Reporting Requirements for Building or Construction Projects for Governmental Entities," as such provision may be amended, and as set forth in Paragraph F following.

F. Workers' Compensation Insurance Coverage

1. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling,

or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
3. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
5. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (b) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
7. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
8. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
9. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the

statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

- (b) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (c) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (d) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (1) a certificate of coverage, prior to the other person beginning work on the project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (g) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
10. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
11. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the

contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

G. Performance, Payment and Maintenance Bonds

The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of ten percent (10%) of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in this Construction Agreement. The performance, payment and maintenance bonds shall be issued in the form attached to this Construction Agreement as Exhibits B, C and D. Other performance, payment and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

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

H. 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 ten percent (10%). Retainage shall be withheld and may be paid to:

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

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

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. Other Items

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

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

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

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

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

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

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

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

**JAY DAVIS COMPANY, INC.,
DBA JDC CONSTRUCTION**

TOWN OF PROSPER, TEXAS

By: _____
Title: _____
Date: _____
Address: _____

Phone: _____
Fax: _____

By: HARLAN JEFFERSON
Title: Town Manager
Date: _____
Address: 121 W. Broadway
Prosper, Texas 75078
Phone: (972) 346 - 2640
Fax: (972) 569 - 9335

ATTEST:

ROBYN BATTLE

Town Secretary

PERFORMANCE BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

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

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the Town of Prosper, the Beneficiary, dated on or about the _____ day of _____, A.D. 20____, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

**SOUTHWEST CORNER FRONTIER PARK BATTING CAGES
BID NO. 2014-57-B**

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

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of said Contract in accordance with the Plans, Specifications and Contract Documents during the original term thereof and any extension thereof which may be granted by the Beneficiary, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall repair and/or replace all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final completion and final acceptance of the Work by Owner; and, if the Principal shall fully indemnify and save harmless the Beneficiary from and against all costs and

damages which Beneficiary may suffer by reason of failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

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

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

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

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

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

ATTEST:

PRINCIPAL:

By: _____
Signature

Typed/Printed Name

Title

Address

City State Zip

Phone Fax

Company Name

By: _____
Signature

Typed/Printed Name

Title

Address

City State Zip

Phone Fax

[Signatures continued on following page.]

ATTEST:

SURETY:

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

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

NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

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

PAYMENT BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

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

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the Town of Prosper, the Owner, dated on or about the _____ day of _____, A.D. 20____, a copy of which is attached hereto and made a part hereof, to furnish all materials, equipment, labor, supervision, and other accessories necessary for the construction of:

**SOUTHWEST CORNER FRONTIER PARK BATTING CAGES
BID NO. 2014-57-B**

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

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

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

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

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

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

ATTEST:

PRINCIPAL:

By: _____
Signature

By: _____
Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

[Signatures continued on following page.]

ATTEST:

SURETY:

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

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

NAME: _____

STREET ADDRESS: _____

CITY, STATE, ZIP: _____

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

MAINTENANCE BOND

STATE OF TEXAS)
)
COUNTY OF COLLIN)

KNOW ALL MEN BY THESE PRESENTS: That _____ whose address is _____, hereinafter referred to as "Principal," and _____, a corporate surety/sureties organized under the laws of the State of _____ and fully licensed to transact business in the State of Texas, as Surety, hereinafter referred to as "Surety" (whether one or more), are held and firmly bound unto the **TOWN OF PROSPER**, a Texas municipal corporation, hereinafter referred to as "Owner," in the penal sum of _____ DOLLARS (\$_____) (ten percent (10%) of the total bid price), in lawful money of the United States to be paid to Owner, its successors and assigns, for the payment of which sum well and truly to be made, we bind ourselves, our successors, heirs, executors, administrators and successors and assigns, jointly and severally; and firmly by these presents, the condition of this obligation is such that:

WHEREAS, Principal entered into a certain written Contract with the Town of Prosper, dated on or about the _____ day of _____, 20____, to furnish all permits, licenses, bonds, insurance, products, materials, equipment, labor, supervision, and other accessories necessary for the construction of:

**SOUTHWEST CORNER FRONTIER PARK BATTING CAGES
BID NO. 2014-57-B**

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

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

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

and its Surety damages in the premises as provided in the Plans and Specifications and Contract.

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

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

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

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

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

ATTEST:

PRINCIPAL:

By: _____
Signature

By: _____
Signature

Typed/Printed Name

Typed/Printed Name

Title

Title

Address

Address

City State Zip

City State Zip

Phone Fax

Phone Fax

[Signatures continued on following page.]

ATTEST:

By: _____
Signature

Printed Name

Title

Address

City State Zip

Phone Fax

SURETY:

By: _____
Signature

Printed Name

Title

Address

City State Zip

Phone Fax

SPECIAL CONDITIONS

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

SOUTHWEST CORNER FRONTIER PARK BATTING CAGES BID NO. 2014-57-B

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

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

ENGINEER: The Landscape Architect of Record as shown on the Construction Drawings: Todd Williams, RLA, Williams Design Group, 101 West Louisiana St., Suite 203, McKinney, Texas 75070

GENERAL CONDITIONS

- GC.01 **PURPOSE:** The General Conditions contained herein set forth conditions or requirements common to this Contract and all other construction contracts issued by the Town of Prosper.
- GC.02 **DEFINITIONS:** The following words and expressions, or pronouns used in their place, shall wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context:

CALENDAR DAY: Any days of the week or month, no days being excepted.

CONTRACT DOCUMENTS: All of the written, printed, typed, and drawn instruments that comprise and govern the performance of the contract as defined by the Construction Agreement.

ENGINEER: The ENGINEER of the OWNER or his designee.

EXTRA WORK: Work required by the OWNER other than that which is expressly or impliedly required by the Contract Documents at the time of execution of the Contract.

HOLIDAYS: The ten official holidays observed are New Year's Day, Martin Luther King Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving Day, Christmas Eve, and Christmas Day. If a holiday falls on a Saturday, it shall be observed on the preceding Friday. If a holiday falls on a Sunday, it shall be observed on the following Monday.

OWNER: The Town of Prosper, Texas, acting through the Town Manager under authority granted by the Town Council.

OWNER'S REPRESENTATIVE: The Executive Director of Development and Community Services of the Town of Prosper or his designee.

SUB-CONTRACTOR: Any persons, firm or corporation, other than employees of the CONTRACTOR, who or which contracts with the CONTRACTOR to furnish, or who actually furnishes, labor and/or materials and equipment at or about the site.

SUBSTANTIALLY COMPLETE: The condition upon which the Work has been made suitable for use and may serve its intended purpose but may still require minor miscellaneous work and adjustment.

WORK: All work to be performed by the CONTRACTOR under the terms of the Contract, including the furnishing of all materials, supplies, machinery, equipment, tools, superintendence, labor, submittals, services, insurance, permits, certificates, licenses, and all water, light, power, fuel, transportation, facilities, and other incidentals.

WRITTEN NOTICE: Notice required by the Contract shall be served concurrently to the OWNER'S REPRESENTATIVE, ENGINEER, and/or CONTRACTOR. Notice delivered by mail shall be effective on the postmark date, notice delivered by hand shall be effective the date of delivery, and notice delivered by facsimile or e-mail shall be effective the date of transmission, provided that any notice served after 5 PM or on a weekend or holiday shall be effective the following business day.

GC.03 GENERAL RESPONSIBILITIES AND UNDERSTANDINGS:

- (a) Intent of Contract Documents: The intent of the Contract Documents is to prescribe a complete work or improvement, which the CONTRACTOR undertakes to do in full compliance with the plans, specifications, special provisions, proposal and contract. The CONTRACTOR shall do all work as provided in the plans, specifications, special provisions, proposal and contract, and shall do such additional extra work as may be considered necessary to complete the work in satisfactory and acceptable manner. The CONTRACTOR shall furnish all labor, tools, materials, machinery, equipment and incidentals necessary to the satisfactory prosecution and completion of the work.
- (b) No Waiver of Legal Right: Inspection by the OWNER or ENGINEER, any order, measurement, or certificate by OWNER or ENGINEER, any order by the OWNER for payment of money, any payment for or acceptance of any work, or any extension of time, or any possession taken by the OWNER, shall not operate as a waiver of any provisions of the Contract Documents or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other subsequent breach. The OWNER deserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract and specifications. The OWNER reserves the right to claim and recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion, upon the conclusive proof of collusion or dishonesty by the CONTRACTOR or his agents and the ENGINEER or his assistants, discovered in the work after the final payment has been made.
- (c) Changes and Alterations: The CONTRACTOR further agrees that the OWNER or ENGINEER may make such changes and alterations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompany Performance and Payment Bonds.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages for anticipated profits on the work that may be dispensed with. If the amount of work is increased, such additional work shall be paid for as provided under Extra Work. In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall recompense the CONTRACTOR for any material or labor so used,

and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

- (d) Discrepancies and Omissions: It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate contract documents, the priority of interpretation defined by the Construction Agreement shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the contract, specifications or drawings, the ENGINEER shall define which is intended to apply to the work.
- (e) Plans and Specifications: The OWNER shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications without expense to him, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.
- (f) Ownership of Drawings: All drawings, specifications and copies thereof furnished by the OWNER shall not be reused on other work, and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.
- (g) Adequacy of Design: It is understood that the OWNER believes it has employed competent engineers and designers. It is, therefore, agreed that, as to the CONTRACTOR only, the OWNER shall be responsible for the adequacy of the design, sufficiency of the Contract Documents, and the practicability of the operations of the completed project; provided the CONTRACTOR has complied with the requirements of the said Contract Documents, all approved modifications thereof, and additions and alterations thereto approved in writing by the OWNER. The burden of proof of such compliance shall be upon the CONTRACTOR to show that he has complied with the said requirements of the Contract Documents, approved modifications thereof and all approved additions and alterations thereto.
- (h) Line and Grade: The ENGINEER will furnish control benchmarks for the construction of the Work. The CONTRACTOR shall use the control benchmarks and data shown on the drawings. No construction staking will be provided by the ENGINEER or owner for this project. Any restaking, and all construction staking, required shall be at the sole cost of the CONTRACTOR.
- (i) Right of Way and Easements: The OWNER will obtain all necessary right of ways and easements required for the completion of the Work. No work shall be undertaken on nor shall men, tools, equipment, or other supplies occupy any ground outside right of ways and easements. If Contractor wants to work outside right of ways and easements and is able to make an agreement with the Property Owner, then the agreement should be documented and signed by the Property Owner and CONTRACTOR with a copy submitted to the OWNER before work off the easement commences.

The OWNER will obtain permits and/or license agreements necessary for work to be performed on right of ways or easements owned by other agencies including,

but not limited to, the Texas Departments of Transportation, North Texas Tollway Authority, BNSF Railway, and utility companies. The CONTRACTOR shall comply with the conditions of these permits and/or license agreements as if they were a part of the Contract Documents.

- (j) Existing Utilities and Structures: The location of existing utilities shown on the plans are based on the interpretation of the best available information and are not warranted by the OWNER or ENGINEER. It shall be the responsibility of the CONTRACTOR to verify and/or locate the various locations of pertinent utilities prior to or during construction. If any utility or irrigation system is broken by the Contractor, it shall be the responsibility of the CONTRACTOR to repair, at his own expense, the damaged line and restore it to its functional use.
- (k) Right of Entry: The OWNER reserves the right to enter the property or location on which the works herein contracted for are to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire. The CONTRACTOR shall conduct his work so as not to impede unnecessarily any work being done by others on or adjacent to the site.
- (l) Collateral Contracts: The OWNER agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.
- (m) Objections and Determinations: The ENGINEER shall determine all claims disputes and other matters in question between the CONTRACTOR and the OWNER relating to the execution or progress of the work or the interpretation of the Contract Documents. The ENGINEER'S decision shall be rendered in writing within a reasonable time and shall be binding.
- (n) Owner-Engineer Relationship: The duties, responsibilities and limitations of authority of the ENGINEER during construction are as set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER and ENGINEER. The ENGINEER will advise and consult with the OWNER, and OWNER'S instructions to the CONTRACTOR may be issued through the ENGINEER as if they were issued by the OWNER directly.

GC.04 CONTRACTOR RESPONSIBILITIES:

- (a) Contractor Independence: The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the OWNER and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the Contract Documents.
- (b) Assignment and Subletting: The CONTRACTOR agrees that he will retain personal control and will give his personal attention to the fulfillment of this

contract and that he will not assign by Power of Attorney, or otherwise, or sublet said contract without the written consent of the OWNER or ENGINEER, and that no part or feature of the work will be sublet to anyone objectionable to the ENGINEER or the OWNER. The CONTRACTOR further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the CONTRACTOR from his full obligations to the OWNER, as provided by this Agreement.

- (c) Contractor's Understanding: It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER or ENGINEER, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.
- (d) Duty of Contractor: The CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations hereunder. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction
- (e) Supervision by Contractor: The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR in his absence and all directions given to him shall be as binding as if given to the CONTRACTOR.
- (f) Character of Workmen: The CONTRACTOR agrees to employ only orderly and competent men, skillful in the performance of the type of work required under this contract, to do the work; and agrees that whenever the OWNER or ENGINEER shall inform him in writing that any man or men on the work are, in his opinion, incompetent, unfaithful or disorderly, such man or men shall be discharged from the work and shall not again be employed on the work without the OWNER'S or ENGINEER'S written consent.
- (g) Contractor's Buildings: The building of structures or the erection of tents or other forms of protection will be permitted only for use as temporary office space or for storage of materials, equipment, and supplies and only at such places as the OWNER or ENGINEER shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory

to the OWNER or ENGINEER. At no time shall employees or agents of the CONTRACTOR occupy such facilities except in conjunction with performance of the Work.

- (h) Protection of Site: The Contractor shall protect all structures, walks, pipe lines, trees, shrubbery, lawns and other improvements during the progress of his work and shall remove from the site all debris and unused materials.
- (i) Sanitation: Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the OWNER or ENGINEER, and their use shall be strictly enforced.
- (j) Equipment, Materials, and Construction Plant: The CONTRACTOR shall be responsible for the care, preservation, conservation, protection and replacement of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, or whether OWNER has taken possession of completed portions of such work, until the entire work is completed and accepted.
- (k) Laws and Ordinances: The CONTRACTOR shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations, which in any manner affect the Contract or the Work. If the CONTRACTOR observes that the Contract Documents are at variance therewith, he shall promptly notify the OWNER and ENGINEER in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the CONTRACTOR performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the OWNER and ENGINEER, he shall bear all costs arising therefrom.
- (l) Losses from Natural Causes: Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the CONTRACTOR at his own cost and expense.

GC.05 PROTECTION OF PERSONS AND PROPERTY:

- (a) Protection Against Claims: If any person files a claim against the OWNER, OWNER's Agent or CONTRACTOR for personal injury or property damage resulting from, arising out of, or caused by, the operations of the CONTRACTOR, or any Work within the limits of the Project, the CONTRACTOR must either submit to the OWNER a duly executed full release within thirty (30) calendar days from the date of written claim, or immediately report the claim to his liability insurance carrier for their action in adjusting the claim. If the CONTRACTOR fails to comply with this provision within the stipulated time limit, it will be automatically deemed that the CONTRACTOR has appointed the OWNER as its irrevocable Attorney In Fact authorizing the OWNER to report the claim directly with the CONTRACTOR's liability insurance carrier. This provision is in and of itself a

Power of Attorney from the CONTRACTOR to the OWNER, which authorizes the OWNER to take said action on behalf of the CONTRACTOR without the necessity of the execution of any other document. If the CONTRACTOR fails to comply with the provisions of this item, the OWNER, at its own discretion, may terminate this contract or take any other actions it deems appropriate. Any payment or portion thereof due the CONTRACTOR, whether it is a final payment, progress payment, payment out of retainage or refund payment may be withheld by the OWNER. Bankruptcy, insolvency or denial of liability by the CONTRACTOR's insurance carrier shall not exonerate the CONTRACTOR from liability.

As a result of the additional work created to OWNER due to non-response of claims for damages by CONTRACTOR to third parties, CONTRACTOR shall incur penalties for failure to abide by this Special Condition.

The CONTRACTOR shall respond to the claimant in writing regarding the status of the claim, including whether CONTRACTOR disputes the claim, wishes to settle, or will notify its liability insurance carrier regarding the claim. CONTRACTOR will be assessed a penalty by OWNER of \$75.00 per claim, for its failure to respond to the claimant as described above within thirty (30) calendar days of its written notice of claim by the City.

To ensure CONTRACTOR compliance, the OWNER shall be notified, by copied correspondence of responses or settlement by CONTRACTOR.

- (b) Protection Against Accidents to Employees and the Public: The CONTRACTOR shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General contractors of America except where incompatible with Federal, State, or Municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, ladders, bridges, gangplanks, and other safety devices. The safety precautions actually taken and their adequacy shall be the sole responsibility of the CONTRACTOR, acting at his discretion as an independent contractor.
- (c) Protection of Adjoining Property: The CONTRACTOR shall take proper means to communicate with the adjacent or adjoining property owners and protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property.
- (d) Protection Against Royalties or Patented Invention: The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or owner.

- (e) Threats to Persons or Property: The CONTRACTOR shall respond promptly to any imminent threat to persons or property arising from or in relation to performance of the Work. Failure to promptly correct any threat to persons or property may result in a temporary suspension of work until such time as the threat is resolved.

GC.06 PROSECUTION AND PROGRESS:

- (a) Time and Order of Completion: It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work in such manner as shall be most conducive to economy of construction; provided however, that the order and the time of prosecution shall be such that the work shall be Substantially Completed as a whole and in part in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by his own force, the ENGINEER may direct the time and manner of constructing the work done under this contract, so that conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit prior to beginning work, with each pay estimate, and at other such times as may reasonably be requested by the OWNER or ENGINEER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

- (b) Working Hours: Permissible working hours are 7:00 AM to 7:00 PM Monday through Saturday, excluding holidays. Working hours are enforced by the Town of Prosper Police Department. Any variance to these working hours must be requested by the CONTRACTOR in writing at least two weeks in advance and will require approval from the OWNER upon positive recommendation of the ENGINEER.
- (c) Extension of Time: Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER or ENGINEER, or of any employee of either, or by other contractors employed by the OWNER, or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or uncontrollable cause or causes beyond the CONTRACTOR'S control, and the OWNER and ENGINEER decides such cause justifies the delay, then an extension of time sufficient to compensate for the delay as determined by the OWNER or ENGINEER shall be allowed for completing the work; provided, however, that the CONTRACTOR shall give the OWNER or ENGINEER prompt notice in writing of the cause of such delay.
- (d) Hindrances and Delays: No claims shall be made by the CONTRACTOR for damages resulting from hindrances or delays from any cause (except where the work is stopped by order of the OWNER) during the progress of any portion of the work embraced in this contract. In case said work shall be stopped by the act of the OWNER, then such expense as in the judgment of the ENGINEER is

caused by such stoppage of said work shall be paid by the OWNER to the CONTRACTOR.

- (e) Liquidated Damages: The time of completion is of the essence for this Contract. For each day that any work shall remain uncompleted after the time specified in the Contract or in an executed Change Order, including milestone completion dates, substantial completion, and final completion, the OWNER may deduct the following sum from monies due to the CONTRACTOR for each day the work remains uncompleted:

GC.07

Amount of Contract	Amount of Liquidated Damages
Less than \$50,000	\$100 per day
\$50,000 to \$100,000	\$150 per day
\$100,000 to \$500,000	\$200 per day
\$500,000 to \$1,000,000	\$250 per day
\$1,000,000 to \$5,000,000	\$500 per day
Greater than \$5,000,000	\$750 per day

GC.08 CONTROL OF WORK AND MATERIAL:

- (a) Shop Drawings and Submittals: The CONTRACTOR shall submit to the OWNER or ENGINEER, with such promptness as to cause no delay in his own work or in that of any other contractor, four (4) checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the OWNER or ENGINEER shall pass upon them with reasonable promptness, noting desired corrections. The CONTRACTOR shall make any corrections required by the OWNER or ENGINEER, file with him two corrected copies and furnish such other copies as may be needed. The OWNER'S or ENGINEER'S approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has in writing called the OWNER'S or ENGINEER'S attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR'S responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the plans and specifications and within the contract time.

Such review by the OWNER or ENGINEER shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of his duty as an independent contractor as previously set forth, it being expressly understood and agreed that the OWNER or ENGINEER does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR'S performance hereunder.

- (b) Temporary Traffic Control: Where the Work is carried on, in or adjacent to any road, alley, sidewalk, trail, or other public space, the CONTRACTOR shall at his

own cost and expense furnish, erect and maintain temporary traffic control devices and shall take such other precautionary measures for the protection of persons or property and of the Work as are necessary. A sufficient number and arrangement of temporary traffic control devices shall be erected to keep vehicles and persons from entering on or into any work under construction. The CONTRACTOR's responsibility for the maintenance of barricades, signs and lights, and for providing watchmen, shall not cease until the project has been accepted by the Owner.

All temporary traffic control devices shall be clearly visible at all times of day and night. Signs and barricades shall be constructed of retro-reflective sheeting, and cones and other channelizing devices shall have retro-reflective banding. All temporary traffic control devices shall comply with and have the meanings prescribed by the Texas Manual of Uniform Traffic Control Devices.

The Contractor shall at all times coordinate the closing of any section of road, alley, sidewalk, trail, or other public space with the OWNER or ENGINEER. When such a closing is anticipated to have a duration longer than one (1) hour, the CONTRACTOR shall submit a traffic control plan at least 72 hours in advance to the OWNER or ENGINEER for review and approval.

The CONTRACTOR shall be held responsible for all damage to the Work due to failure of barricades, signs, to protect it, and whenever evidence is found of such damage, the OWNER or ENGINEER may order the damaged portion immediately removed and replaced by the CONTRACTOR at his cost and expense.

- (c) Public Convenience: Materials stored about the Work shall be so placed, and the Work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the OWNER. The CONTRACTOR shall make provisions at all roads, alleys, sidewalks, trails, and private driveways for the free passage of pedestrians and vehicles provided that where free passage is impractical or unnecessary in the opinion of the OWNER, the CONTRACTOR may make arrangements satisfactory to the OWNER for the diversion of traffic and shall, at his own expense, provide all material and perform all work necessary for the construction and maintenance of such diversions. The materials excavated, and the construction materials or plant used in the construction of the Work, shall be placed so as not to endanger the Work or prevent free access to all public and private utilities and related appurtenances.

The OWNER reserves the right to remedy any neglect on the part of the CONTRACTOR as regards to the public convenience and safety which may come to its attention after twenty-four (24) hours notice in writing the CONTRACTOR, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the OWNER shall be deducted from monies due or to become due to the Contractor.

- (d) Testing of Materials: Testing and inspection of materials required by the specifications shall be performed by a commercial testing laboratory selected by the CONTRACTOR and approved by the OWNER. Except as otherwise noted,

the costs of laboratory tests will be paid by the CONTRACTOR, including any materials or specimens for testing. Any testing of material or workmanship required due to failure will be paid for by the CONTRACTOR. This payment will be made direct to the testing laboratory by the CONTRACTOR.

The CONTRACTOR shall furnish at his own expense, suitable evidence that the materials he proposes to incorporate into the work are in accordance with the specifications. Mill tests for reinforcing steel and cement will be acceptable if it is definite that the test sheets apply to the material being furnished. Manufacturer's or supplier's test results will be acceptable for such items as pipe, valves, hydrants when it is definite that the material being furnished is in accordance with the manufacturer's or supplier's specifications to which the test results apply. Supplier's evidence of quality and gradation of asphaltic material will be acceptable as long as the material is secured from the sources to which the evidence applies.

Should the CONTRACTOR fail to provide the above information, or should the validity of the above information be called into question, the OWNER shall have the right to require tests to be made by the OWNER's laboratory to obtain this information and the cost therefore shall be borne by the CONTRACTOR or deducted from monies owed by the OWNER to the CONTRACTOR.

- (e) Trench Excavation Protection: It is the sole duty, responsibility, and prerogative of the CONTRACTOR, not the OWNER or ENGINEER, to determine the specific applicability of a trench safety system to each field condition encountered on the project as required by Part 1926, Sub-part P-Excavations, Trenching, and Shoring of the Occupational Safety and Health Administration's Standards and Interpretations. It will be the Contractor's responsibility to identify the soil type and to accurately adjust his trench safety methods according to the OSHA requirements.
- (f) Explosives: The use of explosives shall not be permitted.

GC.09 INSPECTION AND ACCEPTANCE:

- (a) Inspection of Work: Inspection will be performed by representatives of the OWNER, ENGINEER, other reviewing agencies, and their designees. It is the intent of the OWNER to inspect all work on this project. The CONTRACTOR is responsible for verifying with the OWNER, ENGINEER, or other reviewing agencies when an inspector is and is not required. The CONTRACTOR shall furnish the OWNER, ENGINEER, other reviewing agencies, and their designees reasonable access and facilities for inspecting the Work and determining whether or not the Work is in accordance with the Contract Documents

The CONTRACTOR shall be responsible for all costs associated with verifying the acceptability of work completed without proper inspection, as directed by the OWNER, ENGINEER, or other reviewing agency. If deemed to be unacceptable, the work may be ordered removed at the CONTRACTOR's expense.

- (b) Inspection Overtime: The OWNER and ENGINEER will provide inspection staff on weekdays between 8:00 AM and 5:00 PM. Inspection performed outside

these hours or on weekends or holidays may be subject to an inspection overtime fee determined by the OWNER and ENGINEER. The CONTRACTOR is responsible for determining inspection overtime rules of other reviewing agencies.

- (c) Use of Completed Portions: The OWNER shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired. Such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents, nor shall the risk of loss change from CONTRACTOR to OWNER. If such prior use increases the cost of or delays the work, the CONTRACTOR shall be entitled to such extra compensation, or extension of time, or both, as the OWNER or ENGINEER may determine.
- (d) Defects and their Remedies: If the Work or any portion thereof, or any material brought on the site of the Work for use in the Work or selected for the same, shall be deemed by the OWNER or ENGINEER as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the OWNER or ENGINEER, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this contract.
- (e) Preliminary Final Inspection: Upon substantial completion of the Work, the CONTRACTOR shall request a preliminary final inspection of the Work by representatives of the OWNER, ENGINEER, and other reviewing agencies. The OWNER or ENGINEER will provide written notice of any defects to the CONTRACTOR and the CONTRACTOR shall promptly remedy such defects in accordance with the Contract Documents.
- (f) Final Inspection: Upon completion of all items identified on the punch list, the CONTRACTOR shall request a final inspection of the Work by representatives of the OWNER, ENGINEER, and other reviewing agencies. If additional defects are noted, the CONTRACTOR shall promptly remedy such defects and repeat this process. If the Work is found to be acceptable, the OWNER or ENGINEER will provide written notice of Final Completion of the Work to the CONTRACTOR. Final Completion shall
- (g) Final Acceptance: Upon Final Completion, the CONTRACTOR shall submit to the OWNER or ENGINEER such documentation as is necessary to insure that the work has been completed, subcontractors and suppliers have been paid, any claims received have been settled, and other documentation as required by the OWNER or ENGINEER. If the documentation is found to be acceptable, the OWNER or ENGINEER will issue a written notice of Final Acceptance.

GC.10 MEASUREMENT AND PAYMENT:

- (a) Estimated Quantities: The quantities of each item on the bid proposal blank represent the approximate amount of work to be done. Final quantities actually built will be determined and paid for by actual measurements on the ground of the final work completed. Bidders are especially notified that no incidental items

of work will be paid for unless there appears an item in the proposal blank for such work. It must be strictly understood that the prices bid are for complete and acceptable work.

- (b) Measurement: Quantities of individual items of work shall be based on the final, in-place quantity of the item of work, measured or computed using the units specified in the Proposal. Where a discrepancy in measured or computed quantities occurs among the OWNER, ENGINEER, and CONTRACTOR, the parties attempt to reconcile the discrepancy. If no reconciliation is possible, the determination of the ENGINEER shall be used.
- (c) Partial Payments: On or before the 25th day of each month, the CONTRACTOR shall prepare and submit to the OWNER an application for payment showing as completely as practicable the total value of the work done by the CONTRACTOR up to and including the last day immediately preceding the date of such application and the value of all sound materials delivered on the site of the work that are to be fabricated into the work. In addition an updated construction schedule shall be submitted in an electronic format acceptable to the OWNER.

The Contractor shall submit to the OWNER, copies of the material invoices with the application for payment. The CONTRACTOR may submit copies of material invoices of "Materials on Hand". These "Materials on Hand" remain the responsibility of the CONTRACTOR to maintain and protect until such time as they are accepted by the OWNER. No payment will be made to the CONTRACTOR until the quantities of work submitted have been checked and verified by the OWNER or ENGINEER.

The OWNER or ENGINEER shall verify CONTRACTOR'S application, shall either approve or modify the total value of the work done by CONTRACTOR and the value of materials delivered on the site, and shall submit to OWNER such application for payment as approved or modified with OWNER'S and/or ENGINEER'S recommendation affixed thereto on or before the 5th day of the month following the receipt of the application from CONTRACTOR.

The OWNER shall pay the CONTRACTOR on or before the 20th day of the month in which the OWNER receives the approved application from the OWNER or ENGINEER the total amount of the approved and verified application, less any amount held for retainage or outstanding claims or defective work.

- (d) Retainage: As security for faithful completion of the Work by the CONTRACTOR, the OWNER shall retain ten percent (10%) of the total dollar amount of work completed. Retainage shall be released upon Final Acceptance of the Work, less any amount necessary to cover claims, defective work, liquidated damages, or other sums due from the CONTRACTOR to the OWNER.
- (e) Payment Withheld: The OWNER may withhold any payment otherwise due to the CONTRACTOR. The amount of any withheld payment shall be as necessary to protect the OWNER's interest in the following circumstances:
- (i) unsatisfactory progress of the Work within the CONTRACTOR's control;
 - (ii) reasonable doubt that the Work can be completed for the unpaid balance;

- (iii) failure of the CONTRACTOR to carry out orders of the OWNER;
- (iv) defective work not remedied;
- (v) the filing of a claim against the CONTRACTOR or reasonable evidence that a claim will be filed against the CONTRACTOR;
- (vi) failure of the CONTRACTOR to make payment to subcontractors or suppliers for material and labor used in performance of the Work;
- (vii) unsafe working conditions or threats to persons or property allowed to persist by the CONTRACTOR;
- (viii) failure of the CONTRACTOR to provide work schedules, invoices, or other records requested by the OWNER;
- (ix) use of subcontractors without the consent of the ENGINEER or OWNER;
- (x) or, failure of the CONTRACTOR to keep current redline as-built drawings at the job site or to turn redline as-built drawings over to the OWNER.

GC.11 EXTRA WORK AND CLAIMS:

- (a) Change Orders: Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions or revisions to the work; such changes will be authorized by written Change Order prepared by the OWNER for execution by the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the OWNER, the OWNER may in writing instruct the CONTRACTOR to proceed with the work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

- (b) Minor Changes: The OWNER or ENGINEER may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the CONTRACTOR believes that any minor change or alteration authorized by the OWNER or ENGINEER involves Extra Work and entitles him to an increase in the Contract Price, the CONTRACTOR shall make written request to the OWNER or ENGINEER for a written Field Order.

Any request by the CONTRACTOR for a change in Contract Price shall be made in writing in accordance with the provisions of this section prior to beginning the work covered by the proposed change.

- (c) Extra Work: It is agreed that the basis of compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A) - By agreed unit prices; or

Method (B) - By agreed lump sum; or

Method (C) - If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the CONTRACTOR of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security Old Age Benefits and other payroll taxes, and, a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to. The OWNER or ENGINEER may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the OWNER or ENGINEER. The OWNER or ENGINEER may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 percent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the written Change Order. The fifteen percent (15%) of the "actual field cost" to be paid the CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined; save that where the CONTRACTOR'S Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered in writing by the OWNER or ENGINEER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the OWNER or ENGINEER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefore, and the OWNER or ENGINEER insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). The CONTRACTOR will thereby preserve the right to submit the matter of payment to a court of general jurisdiction to decide the matter, otherwise the CONTRACTOR shall waive all claims for payment for Extra Work.

GC.12 CONTRACT TERMINATION

- (a) Abandonment by CONTRACTOR: In case the CONTRACTOR should abandon and fail or refuse to resume work within ten (10) days after written notification from the OWNER or ENGINEER, or if the CONTRACTOR fails to comply with the orders of the OWNER or ENGINEER, when such orders are consistent with

the Contract Documents, then, and in that case, where performance and payment bonds exist, the Sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of abandonment, the CONTRACTOR shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the OWNER or the Surety on the performance bond, or another contractor in completion of the work; and the CONTRACTOR shall not receive any rental or credit therefore (except when used in connection with Extra Work, where credit shall be allowed as provided for under Section 6, Extra Work and Claims), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

In case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners:

The OWNER may employ such force of men and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such moneys as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and/or his Surety shall pay the amount of such excess to the OWNER; or

The OWNER under sealed bids, after five (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In the case of any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the Surety shall be and remain bound therefore. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/his Surety shall be credited therewith.

When the work shall have been substantially completed the CONTRACTOR and his Surety shall be so notified and Certificates of Completion and Acceptance shall be issued. A complete itemized statement of the contract accounts, certified to by the OWNER or ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and his Surety, whereupon the

CONTRACTOR and/or his Surety, or the OWNER as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificate of Completion.

After final completion of the work and in the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the OWNER had the work been completed by the CONTRACTOR under the terms of this contract; or when the CONTRACTOR and/or his Surety shall pay the balance shown to be due by them to the OWNER, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over the CONTRACTOR and/or his Surety. Should the cost to complete the work exceed the contract price, and the CONTRACTOR and/or his Surety fail to pay the amount due the OWNER within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the CONTRACTOR and his Surety at the respective addresses designated in this contract; provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and his Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and his Surety. Such sale may be made at either public or private sale, with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the CONTRACTOR or his Surety, to their proper owners.

- (b) Abandonment by OWNER: In case the OWNER shall fail to comply with the terms of this contract within ten (10) days after written notification by the CONTRACTOR, then the CONTRACTOR may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of work that have not been included in payments to the CONTRACTOR and have not been wrought into the work. Thereupon the ENGINEER shall make an estimate of the total amount earned by the CONTRACTOR, which estimate shall include the value of all work actually completed by said CONTRACTOR, the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the items of this contract, and a reasonable sum to cover the cost of any provisions made by the CONTRACTOR to carry the whole work to completion and which cannot be utilized. The ENGINEER shall then make a final statement of the balance due the CONTRACTOR by deducting from the above estimate all previous payments by the OWNER and all other sums that may be retained by the OWNER under the terms of this Agreement and shall certify same to the OWNER who shall pay to the CONTRACTOR on or before thirty (30) days after the date of delivery to OWNER of such certified final statement.
- (c) Termination of Contract in Case of National Emergency: Whenever, because of a national emergency, so declared by the President of the United States or other

lawful authority, it becomes impossible for the Contractor to obtain all of the necessary labor, material and equipment for the prosecution of the work with reasonable continuity for a period of two (2) months, the Contractor shall within seven (7) days notify the Owner in writing, giving a detailed statement of the efforts which have been made and listing all necessary items of labor, material and equipment not obtainable. If, after investigation, the Owner finds that such conditions exist and that the inability of the Contractor to proceed is not attributable in whole or in part to the fault or neglect of the Contract, then if the Owner cannot after reasonable effort assist the Contractor in procuring and making available the necessary labor, materials, and equipment within thirty (30) days, the Contractor may request the Owner to terminate the contract and the Owner shall within thirty (30) days comply with the request, and the termination shall be based on a final settlement, which shall include, but not be limited to, the payment for all work executed.

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SUMMARY OF WORK

DIVISION NO. 1

SECTION 01010

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and General Provisions of Contract, including General and Special Conditions and all applicable specification sections, apply to this section.

1.2 DESCRIPTION

- A. General: The Scope of Work for this Project shall consist of providing all supplies, support services, data, labor, tools, materials, equipment, supervision, construction, and all else required to complete the installation of the First and Coit Landscape Improvements for the Town of Prosper
- B. Project Scope: The Work shall include, but not be limited to, the following major items, to the extent specified and indicated:
 1. Provide administration and construction support services to complete the work.
 2. Coordinate with utility owners and governing agencies. Portions of this project may be within utility easements.
 3. Coordinate work with other contractors performing work within the project site.
 4. Apply for and procure all applicable permits from the applicable governing agencies. This project falls within the Town of Prosper.
 5. Procure necessary permits for personnel, equipment and construction operations.
 6. Provide and install complete in place turn-key systems per construction drawings and specifications.
 7. Field verify all dimensions that are required for complete installation of all items defined in the plans and specifications.
 8. Provide and install all remaining items as defined on the drawings and in the technical specifications for a complete installation.

1.3 DRAWINGS

- A. Refer to Index of Drawings on Cover Sheet of the drawings.

1.4 PROJECT MANUAL

- A. Bidding and Contract Requirements; General Conditions - Division 1 and Technical Specifications, Divisions 2 through 16 as listed in Table of Contents.

1.5 ITEMS OF RELATED WORK FURNISHED AND/OR INSTALLED BY OTHERS

- A. Refer to Construction Plans (may not require work furnished by others). Contractors to coordinate installation with Town of Prosper including application, scheduling, field coordination, etc.
- B. Relocating existing utilities. Contractor to provide relocation of any existing utilities if in conflict with the proposed project elements to be installed.

- C. Masonry, Tile, Sheetrock, and painting. Contractor to provide the necessary repairs to existing infrastructure if damaged during installation of any project related item. All repairs shall match existing.

1.6 UNIT PRICES

- A. Refer to Proposal Form for Unit Prices.

1.7 QUALITY ASSURANCE

- A. The work shall comply with the requirements of the Contract Documents including cited national specifications and standards; state and local government authority codes and standards.
- B. In case of conflicts between cited national and local standards, local requirements shall govern unless otherwise directed in writing. All conflicts shall be brought to the attention of Owner's Representative in writing.

1.8 OTHER REQUIREMENTS

- A. Any affected utility owners shall be notified not less than 7 days prior to starting work in an area in which a utility may be located. Notices shall be in writing. Any affected utility owner and Owner's Representative shall be notified 72 hours prior to commencing construction operations.
- B. The Contractor shall prosecute the Work as indicated, in accordance with the Contract Documents, and in a timely manner so as to ensure coordination of all parts of the work with work of other parties under adjoining and interfacing contracts, including governmental bodies and utility companies.
- C. Proposals for scheduling work at times other than the normal work period of a calendar day shall be submitted to Owner's Representative not less than 48 hours in advance of those times. Such proposals shall outline all special precautions to be taken to control the hazards presented by prosecuting the work at times other than the normal work period of a calendar day. The proposal shall include supplementary lighting of work areas, availability of medical facilities, security precautions and all other precautions necessary.
- D. Construction equipment and vehicles which exceed the weight, size and noise limitation of the authorities having jurisdiction shall not be operated outside the construction limits of the site.
- E. Note: An on-site job trailer is not required as part of this contract.

1.9 INTERPRETATION

- A. **Overlapping and Conflicting Requirements:** Where compliance with two or more industry standards or sets of requirements is specified or indicated, and overlapping of those different standards or requirements establishes different or conflicting minimums or levels of quality, the most stringent requirement is intended and will be enforced by Owner's Representative and Owner, unless specific language in the Contract Documents clearly indicates that a less stringent requirement is to be fulfilled. Refer apparently-equal-but-different requirements, and uncertainties as to which level of quality is more stringent, to Owner's Representative and Owner for a written decision before proceeding with the work in question.
- B. **Minimum Quality/Quantity:** In every instance, the quality level or quantity indicated or specified is intended to be the minimum for the work to be performed or provided. Except as otherwise indicated, the actual work may either comply exactly with that minimum (within specified tolerances), or may exceed that minimum within reasonable limits. In complying with these requirements, indicated numeric values are either minimums or maximums as noted, or as appropriate for context of the requirements. Refer instances of uncertainty to Owner's Representative and Owner for a written decision before proceeding with the work in question.

END OF SECTION

CONSTRUCTION SCHEDULES

DIVISION NO. 1

SECTION 01310

PART 1 - GENERAL

1.1 SECTION INCLUDES

- A. Progress and Schedule Bar Chart consisting of time scaled figures to monitor progress of the work.

1.2 SUBMITTALS

- A. Submit two copies to A/E and to Owner within first week of receiving the Notice to Proceed. Owner and A/E will request revisions, if necessary, and return to Contractor with suggested revisions.
- B. Upon final approval by A/E and Owner, copies of the Project Schedule shall be distributed as follows:
 - 1. 2 copies of each to Owner.
 - 2. 2 copies of each to A/E.
 - 3. 1 copy to principal subcontractors and vendors.
 - 4. 1 copy to others affected by schedule.
 - 5. Copies posted in Temporary Field Office (if applicable).
- C. As revisions are made during construction, distribute up-to-date issues to the same entities and make postings accordingly.
- D. Under no circumstances will construction operations begin other than initial mobilization until the progress schedule, in its entirety, is approved.

1.3 PROJECT SCHEDULE

- A. Activities shown on the schedule shall be as follows:
 - 1. Each individual construction activity.
 - 2. Submittal of shop drawings product data, and samples for approval.
 - 3. Approval of submittals.
 - 4. Delivery time for materials and equipment requiring long lead time.
 - 5. Times anticipated for shutdown and tying-in of existing services. This does not serve as official request to Owner as specified in Section 01040, and each individual request for outage shall be submitted in writing two weeks prior to anticipated outage, as specified.
- B. Schedule Format:
 - 1. Single sheet of paper not exceeding 11 inches by 17 inches.
 - 2. Time scale at top and bottom of page with time units shown in calendar weeks.
- C. Each activity shall be represented by a bold horizontal line, as follows:
 - 1. Each line clearly and briefly described.
 - 2. Estimated duration.
 - 3. Line or arrow shall be drawn to the length as dictated by the time scale to indicate the activity's duration.

4. Each activity shall be placed at its proper calendar location as determined by the time scale.
 5. Float time shall be shown in its proper time scale for each non-critical activity.
 6. Critical activities shall be illustrated or accented, thereby easily distinguished from non-critical activities.
 7. Milestones or intermediate completion dates shall be clearly shown.
 8. Final completion date on initial schedule shall coincide with time of completion agreed upon and indicated in the Contract Documents.
- D. The duration of each activity shall be shown in calendar days and shall include Saturdays, Sundays, holidays and anticipated days lost due to inclement weather.

1.4 MONTHLY UPDATED SUBMITTALS

- A. Submit two copies of Project Schedule, each to Owner and A/E, with monthly payment application, illustrating the following:
1. Markings to show actual completed work above or below estimated work.
 2. Critical path activities marked to distinguish from non-critical activities.

1.5 SCHEDULE REVISIONS

- A. Revise and resubmit schedule for approval in event any of following occur:
1. The previously approved schedule changes.
 2. The approved schedule is extended in excess of 14 calendar days.
 3. Issued change orders cause changes in the actual work which affect the duration or actual start or finish date of activities to the extent that the approved schedule is changed or extended in excess of 14 calendar days.
- B. Provide written description of each change to the schedule, including reason for the change and how it affects the schedule.
- C. Revisions to the schedule, including those generated by change orders, shall be made at no cost to Owner.

1.6 FLOAT

- A. Contract Time shall be the Time of Completion as indicated in the Contract, plus any time extensions granted after award of contract.
- B. Float shall be the Contract Time less the Duration of the Schedule for critical activities, or the amount of time non-critical activities can be delayed without causing the Contract Time to be exceeded.
- C. Owner will receive benefit of float. Contract Time Extensions will not be granted unless a change order or delay causes either of the following:
1. An increase in the duration of the critical activities.
 2. The available float of a non-critical activity is consumed causing the activity to become critical and thereby altering the project schedule.
- D. Time extensions shall be limited to the duration of the critical activities less the Contract Time.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

Not used.

END OF SECTION

SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**DIVISION NO. 1****SECTION 01340****PART 1 - GENERAL****1.1 REQUIREMENTS INCLUDED**

- A. Submit Shop Drawings, Product Data and Samples required by Contract Documents.

1.2 RELATED REQUIREMENTS

- A. Conditions of the Contract: Definitions, and additional responsibilities of parties.
- B. Designate in the construction schedule, or in a separate coordinated schedule, the dates for submission and the dates that reviewed Shop Drawings, Product Data and Samples will be needed.

1.3 SHOP DRAWINGS

- A. Present drawings in a clear and thorough manner.
 - 1. Identify details by reference to sheet and detail, schedule or room numbers shown on Contract Drawings.

1.4 PRODUCT DATA

- A. Preparation:
 - 1. Clearly mark each copy to identify pertinent products or models.
 - 2. Show performance characteristics and capacities.
 - 3. Show dimensions and clearances required.
 - 4. Show wiring diagrams and controls.
- B. Manufacturer's Standard Schematic Drawings and Diagrams:
 - 1. Modify drawings and diagrams to delete information which is not applicable to the work.
 - 2. Supplement standard information to provide information specifically applicable to the work.

1.5 SAMPLES

- A. Provide office samples of sufficient size and quantity to clearly illustrate:
 - 1. Functional characteristics of the product, with integrally related parts and attachment devices.

2. Full range of color, texture and pattern.
- B. Field Samples and Mock-ups:
1. Erect, at the Project site, at a location acceptable to the Architect.
 2. Size or Area: That specified in the respective specification section.
 3. Fabricate each sample and mock-up complete and finished.
 4. Remove mock-ups at conclusion of work or when acceptable to the Architect.

1.6 **SUBMISSION REQUIREMENTS**

- A. Make submittals promptly in accordance with approved schedule, and in such sequence as to cause no delay in the work or in the work of any other contractor.
- B. Submit Shop Drawings, Product Data and Samples for structural, mechanical and electrical items directly to the Landscape Architect.
- C. Number of Submittals Required:
1. Shop Drawings: Submit two prints and one sepia of each drawing.
 2. Product Data: Submit four copies of product data.
 3. Samples: Submit the number stated in each specification section, minimum of two samples for each item.
- D. Submittals Shall Contain:
1. The date of submission and the dates of any previous submissions.
 2. The Project title and number.
 3. Contract identification.
 4. The Names of:
 - a. Contractor
 - b. Supplier
 - c. Manufacturer
 5. Identification of the product, with the specification section number.
 6. Field dimensions, clearly identified as such.
 7. Relation to adjacent or critical features of the work or materials.
 8. Applicable standards, such as ASTM or Federal Specification numbers.
 9. Identification of deviations from Contract Documents.
 10. Identification of revisions on resubmittals.
 11. A 3" x 3" blank space for Landscape Architect's stamp and signature.

12. Contractor's stamp, initialed or signed, certifying to review of submittal, verification of products, field measurements and field construction criteria, and coordination of the information within the submittal with requirements of the work and of Contract Documents.

1.7 RESUBMISSION REQUIREMENTS

- A. Make any corrections or changes in the submittals required by the Landscape Architect and resubmit until approved.
- B. Shop Drawings and Product Data:
 1. Revise initial drawings or data, and resubmit as specified for the initial submittal.
 2. Indicate any changes which have been made other than those requested by the Landscape Architect.
- C. Samples: Submit new samples as required for initial submittal.

1.8 DISTRIBUTION

- A. Distribute reproductions of Shop Drawings and copies of Product Data which have been reviewed by the Landscape Architect and do not require revisions.
 1. Job site file.
 2. Record Documents file.
 3. Other affected contractors.
 4. Subcontractors.
 5. Supplier or fabricator.
- B. Distribute samples which have been approved by the Landscape Architect as directed by the Landscape Architect.

1.9 LANDSCAPE ARCHITECT DUTIES

- A. Review submittals with reasonable promptness and in accordance with schedule.
- B. Affix stamp and initials or signature, and indicate requirements for revisions and resubmittal, if any.
- C. Return submittals to the Contractor for distribution, or for resubmission.

END OF SECTION

CONTRACT CLOSEOUT**DIVISION NO. 1****SECTION 01700****PART 1 - GENERAL****1.1 SECTION INCLUDES**

Closeout shall include general requirements near end of Contract Time, in preparation for final acceptance, final payment, normal termination of contract, occupancy by Owner, and similar actions evidencing completion of the work. Specific requirements for individual units of work are specified in sections of Division 2 through 16. Time of closeout is directly related to "Substantial Completion", and therefore may be either a single time period for entire work or a series of time periods for individual parts of the work which have been certified as substantially complete at different dates. That time variation shall be applicable to other provisions of this Section.

1.2 SUBSTANTIAL COMPLETION

- A. Refer to Article 1 and Paragraph 14.8 of the General Conditions.
- B. Upon receipt of Contractor's request, Owner will proceed with inspection. Following initial inspection, Owner will either prepare Certificate of Substantial Completion, or advise Contractor of work which shall be performed prior to issuance of certification; and repeat inspection when requested to assure that work has been substantially completed.

1.3 FINAL ACCEPTANCE

- A. On or before the date of final inspection Contractor shall turn over to Owner following Contract Close-Out Materials, which he will have accumulated and retained during course of project:
 1. All approved submittal data, two complete sets.
 2. Written project warranty, and all other equipment and materials warranties/guarantees as signed by all appropriate suppliers or manufacturer's, one set.
 3. Operating and maintenance instructions for all installed equipment and systems, to include a maintenance and spare parts list, two sets.
 4. One set of "Record" drawings and specification showing conditions and dimensions of all construction indicated by original construction documents. Drawings shall show routing of underground outside utilities or conduits, with burial depth related to finish grade. Drawings shall also show the final grades.
 5. Materials will be reviewed by Owner for completion. Final Acceptance will not be approved until Contract Close-out materials are completed.
- B. Refer to individual Divisions 2 through 16 for specific work requirements. The requirements include, but are not limited to the following:
 1. Submit Final Pay Voucher, and Lien Waivers for all subcontractors.
 2. Complete work items on Substantial Completion punch lists, if any.
 3. Deliver tools, spare parts, keys, extra stocks of materials and similar physical items to Owner.
 4. Complete start-up testing of systems. Train and instruct Owner's designated personnel in operation and general maintenance requirements of all mechanical and electrical components. Discontinue and remove from project site temporary facilities and services, along with construction tools and facilities, and similar items.
 5. Complete final clean up requirement, including site dress up, touch-up painting, etc.

- C. Upon receipt of Contractor's written notice that work has been completed, Owner will schedule inspection with Contractor and inspect work. After inspection, Owner will either approve Final Payment or prepare punch list for Contractor listing work items not completed and incorrect or obligations not fulfilled as required for final acceptance. If necessary, procedure will be repeated.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

3.1 CLOSE-OUT PROCEDURES

Arrange to meet with Owner's personnel, at project site, to provide basic instructions needed for proper operation and maintenance of entire work.

3.2 CLEANING

- A. Special cleaning for specific units of work is specified in sections of Divisions 2 through 16. General cleaning during progress of work is specified in General Conditions and as temporary service in "Temporary Facilities" Section of this Division. Provide final cleaning of work, at time indicated, consisting of cleaning surface or unit of work to normal "clean" condition expected for first-class building cleaning and maintenance program. Comply with manufacturer's instruction for cleaning operations. The following are examples, but not by way of limitation, of cleaning levels required;
1. Remove labels which are not required as permanent labels.
 2. Clean transparent materials, including mirrors and window/door glass, to a polished condition, removing substances which are noticeable as vision-obscuring materials. Replace broken glass and damaged transparent materials.
 3. Clean exposed exterior and interior hard-surface finishes, to a dirt-free condition, free of dust, stains, films and similar noticeable transparent materials.
 4. Wipe surfaces of mechanical and electrical equipment clean, remove excess lubrication and other substances.
 5. Remove debris and surface dust from limited access spaces including roofs, plenums, shafts, trenches, equipment vaults, manholes, attics and similar spaces.
 6. Clean concrete floors in non-occupied spaces broom clean.
 7. Vacuum clean carpeted surface and similar soft surfaces.
 8. Clean plumbing fixtures to a sanitary condition, free of stains including those resulting from water exposure.
 9. Clean light fixtures and lamps so as to function with full efficiency.
 10. Clean project site, including landscape development areas, of litter and foreign substances. Sweep paved areas to a broom-clean condition; remove stains, petrochemical spill and other foreign deposits. Rake grounds which are neither planted nor paved, to a smooth even-textured surface.

END OF SECTION

CLEANING**DIVISION NO. 1****SECTION 01710****PART 1 - GENERAL**

Drawings, Standard General Conditions of Contract, Supplementary Conditions and Division-1 Specification Sections, apply to work of this section.

1.1 DESCRIPTION

Cleaning during period of construction and at completion of the work.

1.2 DISPOSAL REQUIREMENTS

Conduct cleaning and disposal operation to comply with codes, ordinances, regulations, and anti-pollution laws.

PART 2 - PRODUCTS**2.1 MATERIALS**

- A. Use only those cleaning materials which will not create hazards to health or property and which will not damage surfaces.
- B. Comply with manufacturer's recommendations.

PART 3 - EXECUTION**3.1 DURING CONSTRUCTION**

- A. The site and adjacent properties shall be kept free from accumulations of waste materials, rubbish, and wind blown debris, resulting from construction operations.
- B. Provide on-site containers for the collection of waste materials, debris and rubbish.
- C. Remove waste materials, debris and rubbish from the site daily and dispose at a legal disposal area away from the site.

3.2 DUST CONTROL

Schedule operations so that dust and other contaminants resulting from cleaning process will not fall on wet or newly coated surfaces.

3.3 FINAL CLEANING

- A. Employ skilled workmen for final cleaning
- B. See Section 01700 - Contract Closeout.

END OF SECTION

CLEANING (01710)

1 of 1

GENERAL PROVISIONS**DIVISION NO. 2****SECTION 02000****PART 1 - GENERAL****1.1 GENERAL**

- A. The Conditions of the Contract, and applicable requirements of Division 1 - General Requirements apply to the work of this section. Applicable sections of the North Central Texas Council of Governments (NCTCOG) Standard Specifications for Public Works Construction as modified herein, also apply.

1.2 SECTION INCLUDES

- A. Regulatory Requirements.
- B. Reference Specifications.

1.3 RELATED SECTIONS

- A. Applicable Sections of Division 0 - Bidding Requirements; Contract Forms; Contract Conditions.
- B. Applicable Sections of Division 1 - General Requirements.
- C. Applicable Sections of Division 2 - Site Work.
- D. Applicable Sections of the Reference Specification.
- E. Special Provisions.

1.4 REGULATORY REQUIREMENTS

- A. NCTCOG Standard Specifications for Public Works Construction, latest edition, as modified in the Contract Documents.
- B. Obtain required permits and three-way contracts from authorities, if required.
- C. Coordinate traffic maintenance and safety at project entries with the Town of Prosper. Contractor shall be solely responsible for worker and public safety in the construction area under this contract.
- D. Notify all utility companies before starting work and comply with their requirements.
- E. NOTIFY OWNER IF HAZARDOUS OR CONTAMINATED MATERIALS ARE DISCOVERED.
- F. U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES).

1.5 REFERENCE SPECIFICATIONS

- A. All work covered in DIVISION 2 - SITE WORK shall be governed by the latest edition of the North Central Texas Council of Governments (NCTCOG) Standard Specifications for Public Works Construction as amended and/or supplemented by these specifications and the Town of Prosper. These Specifications and Special Provisions govern the reference specification. Any item not modified or amended by these specifications shall be deemed correct in the reference specifications.
- B. Work not described herein or in the NCTCOG Standard Specifications shall be governed by the Texas Department of Transportation, 1993 Standard Specifications for Construction of Highways, Streets and Bridges.
- C. The Contractor shall maintain a copy of the Plans, Project Manual and the Reference Specifications at the job site at all times during construction.

PART 2 - PRODUCTS

2.1 GENERAL

- A. All products used shall conform to the requirements and standards specified in the Plans and in the Reference Specifications unless modified elsewhere in these specifications, or as directed in writing by the Owner.

PART 3 - EXECUTION

3.1 GENERAL

- A. Execution of the work shall conform to the requirements and standards specified in the Plans and in the Reference Specifications unless modified elsewhere in these specifications, or as directed in writing by the Owner.
- B. The work performed in all sections of DIVISION 2 -SITE WORK shall conform in every respect to the Contract Documents, applicable City and State requirements, applicable local ordinances, and regulations of the Occupational Safety and Health Administration (OSHA). In the event that the Contract Documents do not adequately specify materials, methods of construction, or workmanship of any portion of the proposed work, the NCTCOG Standard Specifications for Public Works Construction, as amended in the Contract Documents, shall apply.
- C. Subgrade preparation shall conform to the requirements of these specifications.
- D. Owner shall employ and pay for all material testing and quality control described in these specifications.

END OF SECTION

CAST-IN-PLACE CONCRETE**DIVISION NO. 3****SECTION 03310****PART 1 - GENERAL****1.1 SECTION INCLUDES**

- A. Furnish and Placing Cast-in-place concrete including finishing and curing.
- B. Furnishing concrete for drilled piers.
- C. Control, expansion and contraction joint devices associated with concrete work, including preformed joint filler.
- D. Grouting anchor bolts and under base plates.

1.2 PRODUCTS FURNISHED BUT NOT INSTALLED UNDER THIS SECTION

Section 03100- Concrete Formwork: Placement of joint device in formwork.

1.3 REFERENCES

- A. AASHTO M 33 - Performed Expansion Joint Filler for Concrete (Bituminous Type) (ASTM D 994).
- B. ACI 214 - Evaluation of Strength Test Results of Concrete.
- C. ACI 301 - Structural Concrete for Buildings.
- D. ACI 305 - Hot Weather Concreting.
- E. ACI 306 - Cold Weather Concreting.
- F. ACI 308 - Standard Practice for Curing Concrete.
- G. ACI 311 - Guide for Concrete Inspection.
- H. ACI 318 - Building Code Requirements for Reinforced Concrete.
- I. ASTM C 33 - Concrete Aggregates.
- J. ASTM C 94 - Ready-Mixed Concrete.
- K. ASTM C 150 - Portland Cement.
- L. ASTM C 260 - Air Entraining Admixtures for Concrete.
- M. ASTM C 494 - Chemicals Admixtures for Concrete.

- N. ASTM D 1752 - Preformed Sponge Rubber and Cork Expansion Joint Fillers for Concrete Paving and Structural Construction.

1.4 **SUBMITTALS**

- A. Product Data: Submit data on joint devices, attachment accessories, admixtures, and floor hardener/sealer, waterstop, curing compounds, grout.
- B. Samples: Submit two, 4-inch long samples of expansion/contraction joint and construction joint material (joint filler).
- C. Manufacturers Installation Instructions: Indicate installation procedures and interface required with adjacent Work.
- D. Concrete Mix Design:
1. Submit two copies of laboratory trial mix design proposed in accordance with ACI 301, Method 1, or one copy of each of 30 consecutive test results and mix designs used from record of past performance in accordance with ACI 301, Method 2 to the engineer and the testing laboratory.
 - a. Determine or certify proportions of ingredients for mix by independent testing laboratory in accordance with Chapter 4, ACI 318 to provide characteristics listed on Drawings for each class of concrete.
 - b. Determine required average strength for above specified strength in accordance with ACI 318; evaluate compressive strength results of field concrete in accordance with ACI 214.
 - c. Include following information in concrete mix design:
 - (1) Proportions of cement, fine and coarse aggregates, and water.
 - (2) Water-cement ratio, design strength, slump and air content.
 - (3) Type of cement and sieve analysis of coarse and fine aggregates.
 - (4) Type and dosage of admixtures.
 - (5) Special requirements for pumping
 - (6) Range of ambient temperature and humidity for which design is valid.
 - (7) Special characteristics of mix which require precautions in mixing, placing, or finishing techniques to achieve finished product, specified.
 2. Batch Delivery Tickets: Submit sample tickets indicating information to be supplied.

1.5 **PROJECT RECORD DOCUMENTS**

Accurately record actual locations of embedded utilities and components which are concealed from view.

1.6 **QUALITY ASSURANCE**

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- A. Perform Work in accordance with ACI 301.
- B. Maintain one copy of each document on site.
- C. Acquire cement and aggregate from same source for all work.
- D. Conform to ACI 305 when concreting during hot weather.
- E. Conform to ACI 306 when concreting during cold weather.

1.7 **COORDINATION**

Coordinate the placement of joint devices with erection of concrete formwork and placement of form accessories.

PART 2 - PRODUCTS

2.1 **CONCRETE MATERIALS**

- A. Portland Cement: ASTM C 150, Type I - Normal or Type III - High Early Strength from single source.
- B. Fine and Coarse Aggregates: ASTM C 33, maximum size as indicated in the Concrete Notes shown on the drawings.

2.2 **ADMIXTURES**

- A. Air Entrainment: ASTM C 260.
- B. Water Reducing: ASTM C 494 Type A.
- C. Use set-controlling admixtures only when accepted by the A/E. Set controlling admixture, Type C - accelerating, Type D - water reducing and retarding, Type E - water reducing and accelerating admixture as reviewed by the independent testing laboratory and the A/E.
- D. Super plasticizing: Use PSI Super super plasticizer (high-range water-reducer), conforming to the requirements of ASTM C 494, Type F/G in accordance with manufacturers recommendations.
- E. The manufacturer is acceptable contingent upon the products' compliance with the specification.
- F. Calcium chloride is prohibited. Do not use admixturer containing more than 0.1 percent chloride ions. Submit written certification of maximum chloride ion content with mix design.
- G. Water: Use City water.
- H. Fly Ash, Slag, and Pozzolans: Prohibited. Obtain Architect/Engineer Representatives approval to use other admixtures.

2.3 **RELATED MATERIALS**

- A. Bonding Agent: Two component modified epoxy resin.
- B. Vapor Barrier:
 - 1. Six mils thick polyethylene sheeting, clear color, resistant to decay in accordance with ASTM E154.
 - 2. Vapor barrier joint tape: 3M, No. 890 glass filament acetate tape.

2.4 NON-SHRINK GROUT

- A. Non-shrink grout for grouting under base plates.
 - 1. Premixed compound consisting of non-metallic aggregate, cement, water reducing and plasticizing agents; capable of developing minimum compressive strength of 7000 psi.

2.5 EPOXY GROUT

- A. Epoxy grout for grouting anchor bolts.
 - 1. 3 components consisting of 100 percent solids epoxy resins, special hardeners and specially graded aggregates.
 - 2. Product: Sure-grip Epoxy Grout (J-54), Dayton Superior Corp, Oregon, IL, (800)745-3700.

2.6 JOINT DEVICES AND FILLER MATERIALS

- A. Joint (Sealant) Filler; Re: Joints and sealants in division 7.
- B. Preformed Joint Filler: 1/2-inch, performed joint filler, ASTM D1751, asphalt impregnated fiberboard nonextruding type or 1/2-inch thick, performed neoprene, ASTM D1752, Type I. Ensure compatibility with joint filler/sealant.

2.7 ACCESSORIES

- A. Form coating: For all exposed concrete, use non staining form coating.
- B. Curing materials:
 - 1. Use resin base liquid concrete curing compound complying with ASTM C 309, Type I, with fugitive dye to provide uniformity of color, application and providing 95 percent or more retention of the mixing water for seven days or more. Compound shall be compatible with any materials (paint, resilient flooring, etc.) which will be applied to the concrete surfaces. Do not cure with this compound any surfaces intended to receive clear hardener or penetrating sealer.
 - 2. Dissipating curing compound shall be liquid membrane-forming compound, complying with ASTM C 309, which provides an initial cure for concrete, then begins to chemically break down and wear off the surface within two to four weeks. Use Kurez DR, as manufactured by the Euclid Chemical Company, or approved equal. Use of this product shall be limited to floors receiving penetrating sealer or cementitious topping.

3. Curing and sealing compound shall be an acrylic sealer equal to Sealtight CS-309" as manufactured by W. R. Meadows, Incorporated. Use of this product shall be limited exclusively to permanently exposed concrete surfaces not specified to receive a penetrating sealer or liquid hardener. Comply with ASTM C 309.

C. Finishing Materials:

1. Floor hardener shall be a penetrating liquid, for subsequent (not integral) application and shall be Lapidolith, as manufactured by Sonneborn Building Products, or Ashford Formula or approved equal. See schedule for location of floor hardener. No combination curing and hardener material will be considered in lieu of hardener material specified.
2. Cement floor leveling compound for interior applications shall be SikaSet Underlayment, by Sika Corporation, or approved equal. Cement floor leveling compound for exterior applications shall be SikaTop 122, by Sika Corporation, or approved equal.
3. Retarder shall be E.A.C. Super Tuf-coat 66, as manufactured by Preco Chemical Corporation. Color shall be as recommended by the manufacturer.

2.8 CONCRETE MIX

- A. Mix and deliver concrete in accordance with ASTM C 94.
- B. Use accelerating admixtures in cold weather only when approved by Architect. Use of admixtures will not relax cold weather placement requirements.
- C. Use set retarding admixtures during hot weather only when approved by Architect.
- D. Add 5 percent, plus or minus 1 percent, air entraining agent to normal weight concrete mix for work exposed to exterior.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Verify requirements for concrete cover over reinforcement.
- B. Verify that anchors, seats, plates, reinforcement and other items to be cast into concrete are accurately placed, positioned securely, and will not cause hardship in placing concrete.

3.2 PREPARATION

Prepare previously placed concrete by cleaning with steel brush and applying bonding agent in accordance with manufacturer's instructions.

3.3 PLACING CONCRETE

- B. Conform with ACI 304 and the following.

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- C. Convey concrete from the mixer to the forms as rapidly as practical and by methods which will prevent segregation or loss of ingredients.
- D. Deposit as nearly as practical in its final position.
- E. Provide chutes so that the concrete slides in the chute and does not flow.
- F. Where a vertical drop greater than 5 feet is necessary, place concrete through tremies or similar devices to prevent segregation.
- G. Place concrete before the initial set has occurred, and in no event after it has contained its water content for more than 1-1/2 hours.
- H. Unless otherwise specified, place all concrete upon clean, damp surfaces, free from water, or upon properly consolidated fills, but never upon soft mud, dry porous earth, or frozen ground.
- I. Compact the concrete and work it in an approved manner into all corners and angles of the forms and around reinforcement in a manner to prevent segregation of the coarse aggregate.
- J. Construct forms for the lifts of vertical walls to make all parts of the walls easily accessible for the placement, spading and consolidation of the concrete as specified.
- K. Deposit concrete in the forms as nearly as practical in its final position to avoid re-handling and to maintain, until the completion of the unit, a plastic surface approximately horizontal. Under no circumstances shall concrete that is partially hardened be deposited in the work. Deposit concrete continuously and as rapidly a practical until the unit of operation is completed.
- L. Consolidate all concrete by vibration so that the concrete is thoroughly worked around the reinforcement, around embedded items, and into corners of forms, eliminating all air or stone pockets which may cause honeycombing, pitting, or planes of weakness. Conform with ACI 309 and the following.
- M. Mechanical vibrators shall have a minimum frequency of 7,000 vibrations per minute and shall be operated by competent workmen. Over-vibrating and use of vibrators to transport concrete within forms shall not be allowed. Insert vibrators and withdraw at many points, from 18 inches to 30 inches apart for a 5 to 15 second duration. Permit the vibrators to sink as deep while running as their own weight will readily take them.
- N. Keep three spare emergency vibrators on the job site during all concrete placing operations.
- O. Furnish vibrators of the internal type; apply directly to the concrete and not through the forms, except in sections too thin to permit the insertion of the internal type, in which case form vibrators may be employed, with the approval of the A/E.
- P. Carry all top surfaces slightly above the forms and strike off by board finish when settlement has taken place, forcing out all excess water.

- Q. After the concrete has taken its initial set, prevent impact or loads on forms or on the ends of projecting reinforcement.
- R. Add concrete to compensate for the settlement produced by vibration, and to bring the surface to the elevation required.
- S. Bonding: In placing fresh concrete to set concrete, remove all loose and foreign materials from work already in place. Slush set concrete surface with bonding agent and scrub with wire brooms and leave moist when the new concrete is placed in accordance with manufacturer recommendations. Ensure complete bonding of the new concrete to the set concrete.
- T. Place and consolidate all concrete in vertical members in place not less than 4 hours before concrete in the horizontal or the vertical members resting thereon is placed.
- U. Make the operation of placing concrete continuous between vertical construction joints. Make the vertical construction joints at approximately the center of a panel or beam with vertical bulkheads to the full depth. Place the scheduled or detailed reinforcement continuously through the joints.

3.4 **CONCRETE FINISHING**

- A. General:
 - 1. Finish concrete floor surfaces in accordance with ACI 302 AND ACI 304.
 - 2. Uniformly spread, screed, and float concrete. Do not use grate tampers or mesh rollers. Do not spread concrete by vibration.
 - 3. In areas with floor drains, maintain floor level at walls and pitch surfaces uniformly to drains as indicated on drawings.
 - 4. Ensure floor surfaces are depressed sufficiently to accommodate finish materials.
- B. As-cast finished:
 - 1. Rough form finish:
 - a. Provide surfaces true to line and plane with no specific requirements for selected facing materials.
 - b. Patch tie holes and defects and rub down fins exceeding 1/4 inch (6 mm) in height with wooden blocks.
 - c. Otherwise, leave surfaces with the texture imparted by the forms.
 - 2. Smooth form finish:
 - a. Produce smooth, hard, uniform finish in the same manner as rough form finish.
 - b. Remove all fins and patch all tie holes and defects.
 - 3. Smooth Rubbed Finish:

- a. Complete all patching immediately after forms have been removed. Complete rubbing within one day after form removal.
- b. Wet surfaces and rub grout with Carborundum brick, cement from the rubbing process or similar abrasive until a uniform texture and color is achieved.

C. Slab Finishes

1. Scratched Finish:

- a. After the concrete has been placed, struck off, consolidated and leveled, roughen the surface with stiff brushes or rakes before final set.
- b. Ensure that finish is true to plane within 1/4 inch in 3 feet as determined by a 3 foot straightedge placed anywhere on the slab in any direction.

2. Floated Finish:

- a. After the concrete has been placed, struck off, consolidated, and leveled, do not work the concrete further until ready for floating.
- b. Floating is to begin when the water sheen has disappeared, and when the mix has stiffened sufficiently to permit the proper operation of a power-driven float.
- c. Then consolidate the surface with power-driven floats.
- d. Hand float with wood or cork faced floats used in locations inaccessible to the power-driven machine.
- e. Recheck trueness of surface at this stage with a 10 foot straightedge applied at not less than two different angles.
- f. Cut down all high spots and fill all low spots during the initial floating operation.
- g. Refloat the slab immediately to a uniform, smooth, granular texture.
- h. Ensure that finish is true to plane within 1/4 inch in 10 feet as determined by a 10 foot straightedge placed anywhere on the slab in any direction.

3. Troweled Finish:

- a. After the concrete has received a power float finish as specified above, finish the surface initially with power trowels, and finally with hand trowels.
- b. After power floating, provide a power trowel finish to produce a smooth surface free of defects other than minor trowel marks.

- c. Perform additional trowelings by hand after the surface has hardened sufficiently.
 - d. Perform the final troweling when a ringing sound is produced as the trowel is moved over the surface.
 - e. Consolidate the surface thoroughly by hand troweling operations.
 - f. Make certain that the finished surface is free of any trowel marks and uniform in texture and appearance.
 - g. On surfaces intended to receive floor coverings, remove by grinding any defects on sufficient magnitude to show through the floor covering.
 - h. Finish slabs maintaining surface flatness and levelness tolerance, overall value FF 30/FL 20, and minimum local value FF 25/FL 15.
4. Broom Finish:
- a. Perform floating as specified above.
 - b. After excess water has been removed, provide a transverse scored texture produced by drawing a broom across the surface.
- D. Schedule of Finishes for Formed Surfaces
- 1. As Cast Rough Form Finish: All concrete surfaces not exposed to view.
 - 2. As Cast Smooth Form Finish: All concrete surfaces not exposed to view after application of finish material.
 - 3. Smooth Rubbed Finish: All interior and exterior concrete surfaces exposed to view.
- E. Schedule of Finishes for Slab Surfaces
- 1. Scratched Finish: Slabs and surfaces to receive bonded concrete toppings.
 - 2. Floated Finish: Surface scheduled to receive roofing or waterproofing membranes and bonded cementitious setting beds.
 - 3. Troweled Finish: Floor surfaces scheduled as exposed, or to receive floor covering.
 - 4. Broom Finish: Exterior horizontal surfaces.
 - 5. Steel Trowel and Fine Broom Finish: Floors to receive thin-set (dry-set) floor tile.
 - 6. Liquid Hardener: Permanently exposed concrete floors.

3.5 CURING AND PROTECTION

- A. Immediately after placement, protect concrete from moisture loss, premature drying, excessively hot or cold temperatures, and mechanical injury for at least 7 days.

- B. Conform to ACI 308.
- C. Prevent rapid drying at the end of the curing period.
- D. Accomplish curing by one of the following methods.
 - 1. Ponding or continuous sprinkling.
 - 2. Absorptive mats or fabrics (burlap) kept continuously wet.
 - 3. Use curing compounds as specified. Do not use compounds on any surface which will receive additional concrete or where concrete hardeners or terrazzo floors are scheduled to be installed. Remove the compound film from all exposed surfaces at the end of the curing period.
 - 4. Use non-staining waterproof paper or polyethylene sheeting as specified. Lap joints 12 inches and weight in place.

3.6 PLACING GROUT

Place grout in accordance with manufacturers recommendations.

3.7 PATCHING

- D. Allow Owners Representative to inspect concrete surfaces immediately upon removal of forms.
- E. Excessive honeycomb or embedded debris in concrete is not acceptable. Notify Owners Representative upon discovery.
- F. Patch imperfections as directed and in accordance with ACI 301.

3.8 DEFECTIVE CONCRETE

- A. Defective Concrete: Concrete not conforming to required lines, details, dimensions, tolerances or specified requirements.
- B. Repair or replacement of defective concrete will be determined by Owners Representative.
- C. Do not patch, fill, touch-up, repair or replace exposed concrete except upon express direction of Owners Representative for each individual area.

3.9 TESTING LABORATORY SERVICES

- A. Perform the following inspections and tests:
 - 1. Perform field inspection and testing in accordance with ACI 301.
 - 2. Review proposed mix design of each class of concrete to verify conformance with the contract documents.
 - 3. Tests of cement and aggregates may be performed to ensure conformance with specified requirements.

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4. Sampling and Testing Concrete: Concrete used shall be sampled and tested by testing laboratory using techniques certified by ACI to determine acceptability as required by ACI 318 and to demonstrate conformance with specified properties as follows:
 - a. Sampling Fresh Concrete: ASTM C 172.
 - b. Slump: ASTM C 143; one test for each set of compressive strength test specimens.
 - c. Air Content: ASTM C 231 pressure method for normal weight concrete; one for each set of compressive strength specimens.
 - d. Concrete Temperature: ASTM C 1064; test concrete hourly when air temperature is 40 degrees F and below, and when 80 degrees F and above; and when each set of compression test specimens is made.
 - e. Compressive Strength Specimens: ASTM C 31; one set of three standard cylinders for each 75 cubic yards or fraction thereof, of each concrete type placed on any one day, unless otherwise directed. Mold and store cylinders for laboratory cured test specimens.
 - f. Compressive Strength Test: ASTM C 39; one specimen tested at 7 days, two at 28 days, and one retained in reserve for later testing if required. When frequency of testing will provide less than five strength tests for given class of concrete, testing shall be conducted from at least five randomly selected batches or from each batch if fewer than five are used.
5. Evaluation and Acceptance
 - a. If the measured slump, or air content of air entrained concrete falls outside the specified limits, a check test shall be made immediately on another portion of the same sample. In the event of a second failure, the concrete shall be considered to have failed to meet the requirements of the specifications, and shall not be used in concrete operations in the structure.
 - b. The strength level of the concrete will be considered satisfactory if all sets of three (3) consecutive strength test results are equal to, or exceed specified strength.
 - c. Completed concrete work will be accepted when the requirements of the Specifications for Structural Concrete for Buildings ACI 301, Chapter 18, have been met.
 - d. In any case where the average strength of the laboratory control cylinders, as shown by the tests for any portion of the structure, falls below the minimum ultimate compressive strength herein before specified, the Contractor shall provide improved curing conditions of temperature and moisture and/or purpose adjustments to the mix design to secure the required strength. Also, if the average strength of the laboratory control cylinders should follow the core test procedure set forth in ACI 301, Chapter 17 in locations approved by the Architect. At least

three cores shall be taken for each strength test more than 500 psi below indicate, in the opinion of the Architects, that the strength of the structure is inadequate, such replacement, load testing, or strengthening, as may be ordered by the Architect, shall be provided by the Contractor without cost to the Owner.

6. Concrete Test Reports:
 - a. Quality Assurance: ACI 311.
 - b. Complete and distribute report immediately after inspections and tests are complete.
 - c. If the report indicates non-conformance with the contract documents, then a probable cause and a recommendation for corrective action shall be included.
 - d. Comply with ACI 311, Guide for Concrete Inspection.
 - e. If the testing laboratory observes a trend of decreasing quality of the concrete due to weather conditions or other cause, then the testing laboratory shall notify the A/E and provide a proactive corrective action recommendation before concrete falls below specified requirement.
 - f. The testing laboratory shall control the addition of water to the concrete at the jobsite and the length of time the concrete is allowed to remain in the truck before placement. The inspector shall compare the mixture with the significant deviation to the A/E, Contractor and concrete supplier. Corresponding adjustments shall be made before the concrete is discharged, or the load shall be rejected and not placed.
 - g. The testing laboratory shall certify each delivery ticket indicating class of concrete delivered (or poured), amount of water added and the time at which the cement and aggregate was discharged into the truck, and the time at which the concrete was discharged from the truck.

END OF SECTION

