



Prosper is a place where everyone matters.

AGENDA
Meeting of the Prosper Town Council
Prosper Municipal Chambers
108 W. Broadway, Prosper, Texas
Tuesday, June 9, 2015
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.
 - Presentation of a Certificate of Appreciation to a former member of the Planning & Zoning Commission.

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)**
 - Minutes from Town Hall Tour – May 22, 2015
 - Regular Meeting – May 26, 2015
- 5b. Consider and act upon authorizing the Town Manager to execute a Real Estate Purchase and Sale Agreement between the Town of Prosper, Texas, and Prosper Falls Development, LLC, related to the real purchase of property for the Prosper Trail Elevated Storage Tank. **(HW)**
- 5c. Consider and act upon authorizing the Town Manager to execute a Right-of-Way Agreement between the Town of Prosper, Texas, and CADG Prosper Lakes North, LLC., related to providing escrow funds for the payment of the right-of-way needed for the future collector road adjacent to the Lakes of Prosper North development. **(HW)**
- 5d. Consider and act upon authorizing the Town Manager to execute a Facility Utilization Agreement between the Town of Prosper, Texas, and Prosper Youth Sports Commission (PYSC), related to use of the Town's facilities and services to accomplish the organizations objective. **(MF)**
- 5e. 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)**

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, and consider and act upon an ordinance rezoning 9.4± acres, located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway, from Agricultural (A) to Planned Development-Single Family-15 (PD-SF-15). (Z14-0016) **(JW)**

DEPARTMENT ITEMS:

8. Consider and act upon authorizing the Town Manager to execute an agreement between the Town of Prosper, Texas, and Randall Scott Architects, related to architectural and engineering design services for Town Hall/Multi-Purpose Facility; and authorizing use of the construction manager at risk contracting method for construction. **(HW)**
9. Discussion on the Frontier Park North and Sexton Park Conceptual Master Plans. **(PN)**
10. Consider and act upon authorizing the Town Manager to execute a Professional Engineering Services Agreement between Brown & Gay Engineers, Inc., and the Town of Prosper, Texas, related to the Prosper Trail Elevated Storage Tank project. **(MR)**

11. 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:

11a. *Section 551.087 – To discuss and consider economic development incentives.*

11b. *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.*

11c. *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, Library Board, and Upper Trinity Regional Water District Board of Directors.

- 11d.** Section 551.076 – To discuss the deployment, or specific occasions for implementation, of security personnel or devices.
- 12.** Reconvene in Regular Session and take any action necessary as a result of the Closed Session.
- 13.** Consider and act upon the appointment of a Town of Prosper representative to the Board of Directors of the Upper Trinity Regional Water District. **(RB)**
- 14.** Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.
- Frontier Park Parking **(HW)**
 - Review recommendations from the Council Technology Committee **(JC)**
 - CIP Projects **(HW)**
 - Fire Station #2
 - Town Hall/Multi-Purpose Facility
 - Coleman Road Reconstruction Project
 - West Prosper Road Improvements
 - SH 289 Median Lighting and Landscaping
 - Parks Master Plan **(PN)**
 - Amend Garage Sale Ordinance **(JW)**
- 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 June 5, 2015, at 5:00 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
Special Work Session of the
Prosper Town Council
Prosper Town Hall
121 W. Broadway, Prosper, Texas
Friday, May 22, 2015

1. Call to Order/Roll Call.

The meeting was called to order at 7:30 a.m.

Council Members Present:

Mayor Ray Smith
Mayor Pro-Tem Meigs Miller
Deputy Mayor Pro-Tem Kenneth Dugger (arrived at 10:30 a.m.)
Councilmember Curry Vogelsang, Jr.
Councilmember Michael Korbuly
Councilmember Mike Davis
Councilmember Jason Dixon

Staff Members Present:

Town Manager Harlan Jefferson
Town Secretary Robyn Battle
Hulon Webb, Executive Director of Development and Community Services
John Webb, Director of Development Services
Leslie Scott, Library Director

Randall Scott Architects:

Randall Scott
Greg Conaway
David Dolan-Wallace

2. The Town Council will meet at Town Hall, and then tour various Town Hall facilities in Corinth, Lewisville, and Coppell.

The Town Council, Town staff, and members of the staff of Randall Scott Architects toured the facilities of Corinth City Hall, Lewisville City Hall, and Coppell City Hall.

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

4. Adjourn.

The meeting was adjourned at 3:30 p.m.

These minutes approved on the 9th day of June, 2015.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

DRAFT



Prosper is a place where everyone matters.

MINUTES
Regular Meeting of the
Prosper Town Council
 Prosper Municipal Chambers
 108 W. Broadway, Prosper, Texas
 Tuesday, May 26, 2015

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 Curry Vogelsang, Jr.
 Councilmember Michael Korbuly
 Councilmember Mike Davis
 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
 John Webb, Director of Development Services
 Alex Glushko, Senior Planner
 January Cook, Purchasing Agent
 Gary McHone, Assistant Police Chief
 Ronnie Tucker, Fire Chief

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

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

3. Announcements of upcoming events.

The Live & Prosper Summer Series will continue on July 3 with their Pride in the Sky Independence Day Celebration at Frontier Park. Come out and enjoy this community-wide event that will include lots of family fun. Bring your blankets and lawn chairs and enjoy the fireworks.

The Parks and Recreation Department and the Library are planning lots of fun programs for the summer in a combined campaign called "Grow Wild in Prosper." The activities during the summer will promote a fun and active schedule to keep young people physically and mentally fit and active during the summer months. The Parks and Recreation Department will offer programs and classes that emphasize an active, outdoor lifestyle, while the library will focus on programming related to animals and the environment. More information about these summer programs is available on the Town's website.

Weather permitting, Broadway between Preston and Craig Road will be closed most of the day next Wednesday, May 27. TxDOT has scheduled crews to arrive at 7:00 a.m. to completely remove and replace the asphalt roadway which has fallen into disrepair. Motorists are asked to use caution in the area

The Public Works Department would like to send out a friendly safety reminder to residents asking them not to drive around or through road barricades. Road crews are diligently working to repair roads recently damaged by heavy rains. Thank you for your patience.

Councilmember Dixon gave an update on the continued success of Prosper High School's baseball team, and also gave an update on the spring football game.

4. **Presentations.**

- **Presentations to Payton and Teagan Chamblee as Junior Police Officers for the Day. (DK)**

Payton and Teagan Chamblee were present to receive their Proclamations. They were selected to be Junior Police Officers for the Day as part of the Cornerstone North Central Texas Gala. Payton and Teagan will participate in several Police Department events throughout the year as Junior Police Officers.

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 meetings. (RB)**
 - **Regular Meeting – May 12, 2015**
 - **Special Called Meeting to Canvass May 9, 2015, General Election**
- 5b. **Consider and act upon Resolution 15-31 authorizing *The Dallas Morning News* as an alternate advertising source. (RB)**
- 5d. **Consider and act upon a 380 agreement between Horizon Homes and the Town of Prosper, and authorizing the Town Manager to execute same. (HJ)**
- 5e. **Consider and act upon a 380 agreement between Sanders Custom Builder and the Town of Prosper, and authorizing the Town Manager to execute same. (HJ)**
- 5f. **Consider and act upon Resolution No. 15-32 of the Town Council of the Town of Prosper, Texas, approving a negotiated settlement between the Atmos Cities Steering Committee (“ACSC”) and Atmos Energy Corp., Mid-Tex Division regarding the company’s 2014 and 2015 rate review mechanism filings; approving a settlement agreement with attached rate tariffs and proof of revenues; declaring existing rates to be unreasonable; adopting tariffs that reflect rate adjustments consistent with the negotiated settlement; finding the rates to be set by the**

settlement tariffs to be just and reasonable and in the public interest; requiring the company to reimburse ACSC's reasonable ratemaking expenses; determining that this resolution was passed in accordance with the requirements of the Texas Open Meetings Act; adopting a savings clause; declaring an effective date; and requiring delivery of this resolution to the company and ACSC's legal counsel. (HJ)

- 5h. Consider and act upon Ordinance No. 15-33 amending subsection 13.1.3, "Exemptions" of subsection 13.1, "Conveyance of Land for Recreational Areas and Facilities" of section 13, "Parks and Other Public Uses," by adding a new subsection 13.1.3.3, relative to the exemption of Senior Living and Senior Care Facilities. (JW)
- 5i. 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)

Mayor Pro-Tem Miller removed items 5c and 5g from the Consent Agenda.

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

- 5c. Consider and act upon the appointment of a Town of Prosper representative to the Board of Directors of the Upper Trinity Regional Water District. (RB)

Mayor Pro-Tem Miller suggested tabling this item for further discussion. He made a motion and Councilmember Davis seconded the motion to table Item 5c to the June 9, 2015, Town Council meeting. The motion was approved by a vote of 7-0.

- 5g. Consider and act upon approving an Operating Lease Renewal Addendum between Modular Space Corporation and the Town of Prosper, related to the Town Hall Annex building; and authorizing the Town Manager to execute same. (JC)

Mayor Pro-Tem Miller asked Purchasing Agent January Cook to clarify the original lease date, which was October of 2013. Ms. Cook responded to questions related to leasing versus purchasing the building, and verified that there is a purchase option on the building if the Town finds that there is a need. Councilmember Davis asked whether the Town would continue to use the modular building once the new Town Hall/Multi-Purpose facility was built, and Town Manager Harlan Jefferson answered that the Town is not planning to do so. Mayor Pro-Tem Miller made a motion and Councilmember Korbuly seconded the motion to approve an Operating Lease Renewal Addendum between Modular Space Corporation and the Town of Prosper, related to the Town Annex building; and authorize the Town Manager to execute same. The motion was approved by a vote of 7-0.

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 -

Irwin “Cap” Parry, 850 Kings View Drive, Prosper asked for clarification on the monthly rent for the Town Hall Annex. Ms. Cook responded to his questions.

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, and consider and act upon a request to amend the Future Land Use Plan, located on the northwest corner of Prosper Trail and future Shawnee Trail, from Medium Density Residential to Dallas North Tollway District. The property is zoned Single Family-15 (SF-15) and Commercial Corridor (CC). (CA15-0002). [Companion Case Z14-0005] (JW)**

Mayor Smith opened Items 7 and 8 concurrently. Development Services Director John Webb presented Items 7 and 8 concurrently. The applicant is proposing to rezone 67.7± acres located on the northwest corner of Prosper Trail and Dallas Parkway from Single Family-15 and Commercial Corridor to Planned Development-Single Family/Office/Retail. The request includes a 7.5 acre tract at the northwest corner of Prosper Trail and the future Shawnee Trail that is currently zoned Single Family-15. The applicant desires to rezone the property for Office use, which does not conform to the Future Land Use Plan (FLUP). The applicant has submitted a letter detailing the basis for the request. Mr. Webb introduced Kathryn Edwards, a representative of the developer, who presented a PowerPoint presentation further explaining the details of the proposed development.

Mayor Smith opened the Public Hearing for Items 7 and 8.

With no one speaking, Mayor Smith closed the Public Hearing for Items 7 and 8.

Mr. Webb returned to the podium and responded to questions regarding Single Family-12.5 versus Single Family-15 minimum development standards. Ms. Edwards responded to questions related to architectural standards for the development. The criteria in the Planned Development would stipulate that the first tenant/business to submit a preliminary site plan would set the architectural standard for the entire tract, and would become a part of the Planned Development standards. Gas stations would be approved only by SUP or by amending the PD. Council would prefer to see a majority of the single-family residential lots be at least 15,000 square feet, but would be willing to make one or two exceptions if needed, and carports are discouraged. Council would also like to see the northern entry on Shawnee Trail to the retail development moved further north, and increase the amount of landscaping/berming along the thoroughfares. Council provided additional recommendations to the applicant, suggesting roof pitches on office, retail, gas station, etc., rather than flat roofs, and additional screening around loading docks.

Deputy Mayor Pro-Tem Dugger made a motion and Councilmember Korbuly seconded the motion to table Items 7 and 8 to the June 23, 2015, Town Council Meeting. The motion was approved by a vote of 6-1 with Councilmember Davis casting the opposing vote.

8. **Conduct a Public Hearing, and consider and act upon a request to rezone 67.7± acres, located on the northwest corner of Prosper Trail and Dallas Parkway, from Single Family-15 (SF-15) and Commercial Corridor (CC) to Planned Development-Single Family/Office/Retail (PD-SF/O/R). (Z14-0005). [Companion case CA15-0002] (JW)**
9. **Conduct a Public Hearing, and consider and act upon an ordinance rezoning 2.0± acres from Retail (R) to Planned Development-Downtown Retail (PD-DTR), located on the southeast corner of Coleman Street and Gorgeous Road. (Z15-0004). (JW)**

Development Services Director John Webb presented this item before the Town Council. The applicant is requesting to rezone 2.0± acres to Planned Development-Downtown Retail to accommodate a daycare/retail building. The first phase would include 15,000 square feet for the daycare, which would accommodate 190 children. The second phase would include 5,000 square feet for retail.

Randall Chrisman, 1501 Broken Bow Trail, Carrollton, spoke on behalf of the applicant, and offered to answer any questions Council may have. He added that the intent of the development was to add to the downtown look and feel of the area, and he thanked the Town staff for their help on the project.

Mayor Smith opened the Public Hearing.

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

Hulon Webb, Executive Director of Development and Community Services, responded to questions from Council regarding traffic flow and safety issues. Staff does not anticipate any future traffic or safety issues resulting from this development.

Deputy Mayor Pro-Tem Dugger made a motion and Mayor Pro-Tem Miller seconded the motion to approve Ordinance 15-34 rezoning 2.0± acres from Retail (R) to Planned Development-Downtown Retail (PD-DTR), located on the southeast corner of Coleman Street and Gorgeous Road. The motion was approved by a vote of 7-0.

10. **Conduct a Public Hearing, and consider and act upon an ordinance establishing a Specific Use Permit for a Helistop, on 10.5± acres, located on the northeast corner of US 380 and future Mahard Parkway. The property is zoned Planned Development-47 (PD-47). (S15-0003). (JW)**

Development Services Director John Webb presented this item before the Town Council. The applicant is requesting a Specific Use Permit (SUP) for a Helistop in conjunction with 122,500 square feet of medical office and clinic uses on the northeast corner of US 380 and future Mahard Parkway. The proposed Helistop is proposed to be located on the north side of the building and will meet all Federal Aviation Administration (FAA) regulations. Mr. Webb reviewed all of the criteria relevant for consideration of an SUP, and the request satisfies the Town's criteria for SUP approval.

Mayor Smith opened the Public Hearing.

Michael Clark, 6750 Hillcrest Plaza, #325, Dallas, spoke in favor of the item.

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

Deputy Mayor Pro-Tem Dugger made a motion and Councilmember Dixon seconded the motion to approve Ordinance No. 15-35 establishing a Specific Use Permit for a Helistop, on 10.5± acres, located on the northeast corner of US 380 and future Mahard Parkway. The motion was approved by a vote of 7-0.

DEPARTMENT ITEMS:

- 11. Consider and act upon approving a Lease Agreement between Sarah Nell Templin and the Town of Prosper, related to the property located at 108 and 110 W. Broadway; and authorizing the Town Manager to execute same. (JC)**

January Cook, Purchasing Agent, presented this item before the Town Council. The Town has been leasing the property at 108 and 110 W. Broadway to accommodate the Police Department, Municipal Court, Town Council meetings, and other Board and Commission meetings for several years; however, the lease agreement has expired. Ms. Cook reviewed the terms of the new lease agreement, which will go into effect on June 1, 2015. It includes a base rent, with an additional 5% annual increase, plus an additional monthly amount for utilities. The agreement also includes a one-time reimbursement for unpaid utilities. Cost comparisons were conducted, and Town staff has concluded that it is in the Town's best interest to enter into a new lease for the current property at 108 and 110 W. Broadway.

After discussion, Councilmember Vogelsang made a motion and Deputy Mayor Pro-Tem Dugger seconded the motion to approve a Lease Agreement between Sarah Nell Templin and the Town of Prosper, related to the property located at 108 and 110 W. Broadway; and authorize the Town Manager to execute same. The motion was approved by a vote of 7-0.

- 12. Consider and act upon authorizing the Town Manager to execute an agreement between the Town of Prosper, Texas, and Randall Scott Architects, related to architectural and engineering design services for Town Hall/Multi-Purpose Facility; and authorizing use of the construction manager at risk contracting method for construction. (HW)**

Hulon Webb, Executive Director of Development and Community Services, presented this item before the Town Council. Supplemental conditions of the agreement are still being negotiated, so Town staff is requesting that this item be tabled; however, Mr. Webb asked Council to clarify a few points that were discussed on the tour that was held on May 22, 2015.

Mr. Webb asked for clarification on the square footage of the new Town Hall/Multi-Purpose Facility. The Town Council was in consensus that the original estimate of 36,000 square feet would not be sufficient, and that the building would need to be at least 50,000 square feet. The Council had mixed opinions on whether the building should go from two to three stories to accommodate the extra space, or stay at two stories and expand to a larger footprint. Greg Conaway of Randall Scott Architects recommended that both options should be studied with cost comparisons for each.

Council's direction was that both alternatives be explored, with the option that the entire building may not be finished out at once.

Mayor Pro-Tem Miller made a motion and Councilmember Korbuly seconded the motion to table Item 12 to the June 9, 2015, Town Council meeting. The motion was approved by a vote of 7-0.

13. 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:

- 13a. *Section 551.087 – To discuss and consider economic development incentives.***
- 13b. *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.***
- 13c. *Section 551.074 – To discuss and consider election of Mayor Pro-Tem and Deputy Mayor Pro-Tem.***
- 13d. *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.***

The Town Council recessed into Executive Session at 8:39.

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

The Town Council reconvened the Regular Session at 9:29.

Mayor Pro-Tem Miller made a motion and Deputy Mayor Pro-Tem seconded the motion to appoint Brandon Daniel to fill the unexpired term of Place 7 of the Planning & Zoning Commission, due to Mike McClung's resignation. The motion was approved by a vote of 7-0.

Deputy Mayor Pro-Tem Kenneth Dugger made a motion and Councilmember Korbuly Seconded the motion to appoint Meigs Miller as Mayor Pro-Tem and Curry Vogelsang, Jr. and Deputy Mayor Pro-Tem. The motion was approved by a vote of 7-0.

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

Deputy Mayor Pro-Tem Dugger requested that Town staff research the possibility of Cornerstone NCT holding more than three garage sales in one year. Town Manager Harlan Jefferson directed Town staff and the Town Attorney to review potential options.

Councilmember Dixon directed Town staff to research the potential of acquiring property owned by Mahard Egg Ranch south of Prestonwood Church for municipal purposes.

16. Adjourn.

The meeting was adjourned at 9:32 p.m.

These minutes approved on the 9th day of June, 2015.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

DRAFT



ENGINEERING

To: Mayor and Town Council

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

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Real Estate Purchase and Sale Agreement between the Town of Prosper, Texas, and Prosper Falls Development, LLC, related to the real purchase of property for the Prosper Trail Elevated Storage Tank.

Description of Agenda Item:

Prosper Falls Development, LLC, recently zoned the property on the northwest corner of Prosper Trail and Coit Road for The Falls at Prosper residential development. As depicted in the Town of Prosper Water System Capital Improvement Plan, this property includes the location of the proposed Prosper Trail Elevated Storage Tank. During the zoning of the property, the developer depicted the proposed location of the elevated storage tank on the zoning exhibit, and staff has completed the negotiations to purchase 1.639 acres of property for the tank.

The 2011 Water System Capital Improvement Plan, recommended that a new water tower be constructed along Prosper Trail between Preston Road and Coit Road. Originally, this plan recommended that the water tower be in-service by this summer; however, further analysis of water demands and system operations has allowed the in-service date to shift back two years to summer 2017. To meet this in-service date, design must begin this summer and construction must begin in early 2016.

The Professional Engineering Services Agreement with Brown & Gay Engineers for the engineering design of the Prosper Trail Elevated Storage Tank is also on this agenda.

Budget Impact:

The Town had an appraisal performed on the property which reflected a fair market value of \$87,120 per acre. Funding for the 1.639 acres of property, in the amount of \$142,790, is provided from previously issued Certificate of Obligation Bonds and is currently available in the Capital Improvement Fund.

Legal Obligations and Review:

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

Attached Documents:

1. Town of Prosper Water System Capital Improvement Plan
2. Real Estate Purchase and Sale Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Real Estate Purchase and Sale Agreement between the Town of Prosper, Texas, and Prosper Falls Development, LLC, related to the real purchase of property for the Prosper Trail Elevated Storage Tank.

Proposed Motion:

I move to authorize the Town Manager to execute a Real Estate Purchase and Sale Agreement between the Town of Prosper, Texas, and Prosper Falls Development, LLC, related to the real purchase of property for the Prosper Trail Elevated Storage Tank.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this “Agreement”) is executed as of the ____ day of _____, 2015, by and between the Town of Prosper, Texas (“Town”), a Texas municipal corporation, and Prosper Falls Development, LLC (“Seller”), a Texas limited liability company.

WITNESSETH:

1. **Purchase and Sale.** Pursuant to the terms and provisions contained herein, Seller hereby agrees to sell and convey to the Town, and the Town hereby agrees to purchase from Seller, the land situated in Collin County, consisting of 1.639 acres, more or less, described in Exhibit A, attached hereto and made a part hereof for all purposes, together with all improvements situated thereon, all fixtures and other property affixed thereto and all and singular the rights and appurtenances pertaining to the property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (all of such real property, rights and appurtenances being hereinafter called the “Property”), for the Purchase Price hereinafter provided..

2. **Purchase Price.** The Town hereby agrees to pay to Seller a purchase price for the Property of **One Hundred Forty-Two Thousand, Seven Hundred and Ninety Dollars and No/100 (\$142,790.00)** (the “Purchase Price”), payable in cash at the Closing in accordance with this Agreement. Town has deposited with the Title Company \$10.00 as independent consideration the acceptance of which is acknowledged and which shall be delivered to Seller and shall be non-refundable to Town.

3. **Title to Property.** Seller represents and warrants to the Town that on the Closing Date Seller will own good and indefeasible title to the Property, subject only to (i) general real estate taxes on the Property for the current year, (ii) zoning laws, regulations and ordinances of the Town and other governmental authorities, if any, affecting the Property, and (iii) the encumbrances disclosed by the Survey and Title Binder described below (all of the foregoing are herein called the “Permitted Encumbrances”).

4. **Survey.** Seller acknowledges that they will provide to the Town a survey (the “Survey”) of the Property prepared by a duly registered surveyor or engineer acceptable to the Seller, and said Survey shall show any and all easements, rights-of-way, encroachments, conflicts, protrusions or other encumbrances, if any, affecting the Property.

5. **Owner’s Title Policy Binder.** Seller agrees to provide to the Town, within fifteen (15) days after the Execution Date referenced above, at the Town’s expense, a Commitment for Title Insurance (the “Title Binder”) issued by Sendera Title (the “Title Company”), showing title to the Property in Seller and committing to issue the owner’s title policy to the Town required under this Agreement. The Title Binder shall specify all easements, liens, encumbrances, restrictions, conditions and covenants with respect to the Property and shall be delivered to the Town with copies of all documents referred to as exceptions in the Title Binder. If any exceptions appear in the Title Binder which are objectionable to the Town, the Town shall have until the tenth (10th) business day

after the date of delivery of the Survey and the Title Binder and title exceptions to notify Seller in writing of any objections the Town may have to such exceptions; any exceptions to which the Town shall not object during such ten (10) business day period shall be deemed waived by the Town and shall be included as “Permitted Encumbrances” hereunder. Seller shall have no obligation to bring any action or proceeding or otherwise to incur any expense to eliminate or modify such unacceptable exceptions. If Seller is unable or unwilling to so eliminate or cure the unacceptable exceptions prior to the Closing Date, the Town may (as its sole and exclusive remedy) terminate this Agreement by notice in writing to Seller within five (5) days following the delivery of notice from Seller that such exceptions cannot or will not be eliminated or cured, or may accept such title to the Property as Seller can deliver without any reduction in the Purchase Price. If Town does not terminate this Agreement within such ten (10) day period following notice from Seller that the unacceptable exceptions will not be cured, then Town shall be deemed to have waived such right to terminate this Agreement.

6. Seller’s Representations and Warranties. Seller further represents and warrants to the Town as follows:

A. Seller will convey to the Town good and indefeasible title to the Property free and clear of any and all liens, encumbrances, covenants, conditions, restrictions, easements and any and all other matters affecting title thereto, except those items expressly waived or permitted by the Town pursuant to the terms of this Agreement.

B. There are no written or oral leases on or affecting the Property and there are no parties in possession of any portion of the Property as lessees, tenants at sufferance, trespassers or otherwise.

C. There are, and as of the Closing, there will be no actions, suits or proceedings pending or, to the knowledge of Seller, threatened against Seller or the Property or arising out of the ownership of the Property, or affecting or relating to any portion of the Property.

D. Seller has complied with all applicable laws, ordinances, regulations, statutes, codes, rules, orders, decrees, determinations, covenants and restrictions relating to the Property and every part thereof (hereinafter collectively referred to as the “Applicable Laws”) including those promulgated or imposed by any agency, department, commission, board, bureau or instrumentality of any governmental authority of the United States, the State of Texas, the County of Collin, the Town of Prosper or any other local authority (hereinafter collectively referred to as the “Governmental Authority”).

E. Seller has full power to enter into this Agreement and to consummate the transactions provided for herein. Neither entering into this Agreement, nor consummating any of the transactions provided for herein, will result in the imposition of any lien on the Property or constitute a violation or breach by Seller of any lien, deed of trust, trust agreement, agreement or other instrument affecting the Property or to which Seller is a party or by which Seller is bound.

F. Seller is not a foreign person as such term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

G. To the best of Seller's knowledge, the environmental and ecological conditions of the Property are not in violation of any applicable law, and the soil, surface water and ground water of or on the Property are free from any Hazardous Materials (as hereinafter defined). Neither Seller nor, to the best knowledge of Seller, any other person has ever caused or permitted any Hazardous Materials to be treated, placed, held, located or disposed of on, under or at the Property, or any part thereof, and the Property has never been used (whether by Seller or, to the best knowledge of Seller, by any other person) as a treatment, dump, disposal or storage (whether permanent or temporary) site for any Hazardous Materials, including batteries used in motorized vehicles or golf carts. For the purposes of this Agreement, "Hazardous Material" means and includes any hazardous, toxic or dangerous waste, substance, contaminant or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Applicable Law or other requirement of any Governmental Authority regulating, relating to, or imposing liability or standards of or for conduct concerning, any hazardous, toxic or dangerous waste, substance, contaminant or material, as now or at any time hereafter in effect.

H. To the Best of Seller's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from or in connection with the construction, development, occupancy, ownership, use or operation of the Property, or the business operated thereon or in connection therewith, which could give rise to a Mechanic's or Materialman's or other statutory liens against the Property or any part thereof, or for which the Town could or will be responsible.

I. NO OTHER WARRANTIES AND DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED(S), TOWN ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS, AND TOWN IS NOT RELYING ON, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY OR ANY RELATED DOCUMENTS DISCLOSED TO TOWN, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH TOWN MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, (H) THE

STATUS OF SELLER'S TITLE TO THE PROPERTY OR THE ACCURACY OF ANY SURVEY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS MATERIALS. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT AND SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED CONVEYING THE PROPERTY TO TOWN, TOWN UNCONDITIONALLY AND IRREVOCABLY WAIVES AND RELEASES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS TOWN MIGHT HAVE (INCLUDING CONTRACTUAL AND/OR STATUTORY ACTIONS FOR CONTRIBUTION OR INDEMNITY) REGARDING THE NATURE, CONDITION OR SUITABILITY OF THE PROPERTY OR ANY FORM OF WARRANTY WITH RESPECT TO THE PROPERTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW. TOWN FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, TOWN IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER UNLESS SUCH INFORMATION IS EXPRESSLY INCORPORATED INTO THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THIS CONTRACT. UPON CLOSING, TOWN AND ITS SUCCESSORS AND ASSIGNS SHALL ASSUME ALL RISK AND LIABILITY THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS THAT MAY NOT HAVE BEEN REVEALED BY TOWN'S INSPECTIONS AND INVESTIGATIONS. EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, PREPARED OR FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, CONTRACTOR OR THIRD PARTY. TOWN FURTHER ACKNOWLEDGES AND AGREES THAT THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY TOWN SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING, SHALL NOT MERGE INTO THE INSTRUMENTS OF CLOSING, AND SHALL BE INCORPORATED IN THE DEED(S).

For purposes of this Contract and any closing document, whenever the phrase "to Seller's actual knowledge," "to Seller's knowledge," "the knowledge of Seller," or "to the best of Seller's knowledge" or similar words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of Mehrdad Moayedi and no others, at the times indicated only, without independent inquiry, without any actual or implied duty of inquiry whatsoever and without imputation to such person of the knowledge of any other person. The named individuals are acting for and on behalf of Seller and in a capacity as an officer or representative of Seller and is in no manner expressly or impliedly making any representations or warranties in an

individual capacity. Town waives any right to sue or seek any personal judgment or claim against such individuals.

7. Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, Seller will notify the Town of the pendency of such proceedings. In the event of the institution of proceedings for condemnation of all or any portion of the Property or the sale of all or any portion of the Property in lieu of condemnation, the Town shall have the option to terminate this Agreement by notice in writing to Seller, in the event of which termination the parties shall have no further right or obligation to one another under this Agreement except for any breach of this Agreement during the term hereof. If the Town does not elect to so terminate, this Agreement shall remain in full force and effect and in such event, Seller shall assign to the Town at the Closing any and all rights and claims Seller may have to the proceeds of any such condemnation or sale in lieu of condemnation and the Town shall take title to the Property with the assignment of such claim and interest and subject to such condemnation.

8. The Closing. The Closing (the "Closing") of the sale and purchase of the Property shall take place at the offices of the Title Company (i) on or after June 15, 2015, or (ii) on such other date as Seller and the Town mutually may agree (the date of Closing is herein called the "Closing Date"). At the Closing:

A. Seller shall deliver to the Town a duly executed and acknowledged special warranty deed in a form sufficient to convey good and indefeasible title to the Property to the Town free of all liens and encumbrances except for the Permitted Encumbrances.

B. The Town shall pay the Purchase Price to Seller in cash, by certified check payable to Seller or by wire transfer in immediately available funds to a bank account of Seller's choice.

C. Seller shall deliver to the Town, at the Town's expense, an owner's title policy issued by the Title Company in the amount of the Purchase Price insuring that the Town owns fee simple title to the Property, subject to no exceptions other than (i) the Permitted Encumbrances; (ii) the exception as to standby fees and taxes which shall have inserted the year of Closing and be followed by the words "Not yet due and payable"; and (iii) other exceptions to which the Town approves in writing. The exception for "any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements" may be deleted (except for shortages in area) at the Town's expense.

D. Any general real estate taxes for the then current year relating to the Property shall be prorated between Seller and the Town as of the Closing Date. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of such taxes shall be upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Property, and when the actual taxes for the year of Closing become known, Seller and the Town shall make appropriate adjustments between them. This provision shall survive the Closing.

E. The escrow fee charged by the Title Company, recording costs, and any other closing costs not otherwise identified herein shall be paid by the Town. Each party shall be

responsible for the payment of its own attorney's fees incurred in connection with this Agreement. Other reasonable closing costs will be paid by the Town.

F. Possession of the Property shall be given to the Town, subject to the Permitted Encumbrances.

G. Each party shall deliver any required evidence of such party's authority and capacity to close the transaction.

H. All other documents reasonably required by the Title Company from each party to close this transaction.

9. Maintenance of Property. Seller covenants and agrees with the Town that, between the Execution Date referenced above and the date of Closing, (i) Seller shall keep the Property reasonably clean and maintain the Property in reasonably good condition and repair, including the removal of trash and mowing of grass, and (ii) Seller shall not permit the construction of any buildings or other structures on the Property or attach or permit the attachment of any encumbrance to title to the Property other than encumbrances existing on the date hereof.

10. Special Provisions. The parties agree to the following special provision:

Seller, at no additional cost to the Town, hereby grants, transfers and conveys unto the Town, for the benefit of the Town, its successors and assigns, and its respective Permittees (defined below), a perpetual, non-exclusive easement (the "Easement") for the purpose of allowing vehicular and pedestrian ingress, egress and access over and across the Seller's adjacent property from Prosper Trail for purposes of maintenance, repairs and other activities related to the Elevated Storage Tank to be constructed and located on the Property. The term "Permittees" shall include the Town's agents, employees, contractors, and/or representatives. This Easement shall be included in the Special Warranty Deed to be provided by the Seller to the Town at Closing.

11. Remedies. If either party shall breach this Agreement, the other party may exercise any and all rights and remedies available to it at law or in equity including the right to enforce specific performance by both parties and as such, the Town agrees that it has waived its sovereign immunity solely as it relates to any breach by the Town of this Agreement. Neither party shall be entitled to enforce or collect any consequential, punitive, or speculative damages.

12. Further Agreements by Seller and the Town. In addition to the obligations required to be performed hereunder by Seller and the Town, each party agrees to perform such other acts, and to execute, acknowledge and/or deliver such other instruments, documents and materials as the other party may reasonably request in order to effectuate the consummation of the transactions contemplated herein.

13. Real Estate Commission. Seller and the Town each represents to the other that it has not authorized any broker or finder to act on its behalf in connection with this Agreement and that it has not dealt with any broker or finder purporting to act on behalf of any other party.

14. Notice. Any notice or document required or permitted to be delivered hereunder shall be given in writing, sent by (i) personal delivery, or (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, or (iv) prepaid telegram, telex or telecopy, addressed as follows:

Seller: Prosper Falls Development, LLC
1800 Valley View Lane, Suite 300
Farmers Branch, Texas 75234
Att'n: Mr. Mehrdad Moayedi

The Town: Mr. Harlan Jefferson, Town Manager
P.O. Box 307
Prosper, Texas 75078

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram, telex or telecopy, upon receipt.

15. Assignment. Seller and the Town mutually agree not to assign any of Seller's or the Town's respective rights or interest under this Agreement to any other party without the prior, written consent of the other. Any such assignment attempted without such prior, written consent shall be null and void.

16. Time. Time is of the essence of this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

18. Severance. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained.

19. Governing Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

20. Successors and Assigns. The terms and provisions of this Agreement shall, throughout the term hereof, be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

SELLER:

Prosper Falls Development, LLC
a Texas Limited Liability Company,

By: CADG Prosper Falls 85, LLC,
a Texas limited liability company
Its: Manager

By: CADG Holdings, LLC,
a Texas limited liability company
Its Sole Member

By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company
Its Manager

By: _____
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of _____
2015 by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures,
LLC, as Manager of CADG Holdings, LLC, as Sole Member of CADG Prosper Falls 85, LLC,
a Texas limited liability company, as Manager of Prosper Falls Development, LLC, a Texas
limited liability company on behalf of said company.

Notary Public, State of Texas

EXHIBIT A
(Property Description)

SHEET 1 OF 2

Being all that certain lot, parcel, or tract of land located in the ELISHA CHAMBERS SURVEY, Abstract No. 179, and the Collin County School Land, Abstract No. 172, Prosper, Collin County, Texas, and being part of a tract of land described in deed to Prosper Falls Development, LLC, recorded in Instrument No. 20150220000185180, Official Public Records, Collin County, Texas, and being more particularly described as follows:

Commencing at a point for corner in the North line of Prosper Trails, a variable width right-of-way, at the Southeast corner of a tract of land described in deed to Deion Sanders, recorded in Volume 4230, Page 140, Deed Records, Collin County, Texas;

Thence North 89°09'12" East, along said North line, a distance of 744.69 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;

Thence Northerly, Easterly, and Southwesterly, passing through said Prosper Falls Development, LLC tract, the following seven (7) courses and distances:

- 1) Thence North 85°40'16" West, a distance of 74.25 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;
- 2) Thence North 01°16'07" East, a distance of 28.32 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner at the PLACE OF BEGINNING of the tract described herein;
- 3) Thence North 01°16'07" East, a distance of 258.93 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;
- 4) Thence South 88°43'53" East, a distance of 97.67 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner at the beginning of a non-tangent curve to the left, having a central angle of 119°23'27", a radius of 60.00 feet, and a chord bearing and distance of North 65°07'50" East, 103.60 feet;
- 5) Thence Northeasterly, along said curve to the left, an arc distance of 125.03 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;
- 6) Thence South 70°54'30" East, a distance of 126.70 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;
- 7) Thence South 19°05'30" West, a distance of 270.40 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;

Thence South 89°14'50" West, along said North line, a distance of 42.97 feet to a 1/2-inch iron rod with yellow plastic cap stamped "RPLS 5310" set for corner;

Thence South 89°09'12" West, continuing along said North line, a distance of 185.72 feet to the PLACE OF BEGINNING and containing 71,402 square feet or 1.639 acres of land.


John S. Turner, R.P.L.S. #5310



A&W SURVEYORS, INC.

Professional Land Surveyors

TEXAS REGISTRATION NO. 100174-00

P.O. BOX 870029, MESQUITE, TX. 75187

PHONE: (972) 681-4975 FAX: (972) 681-4954

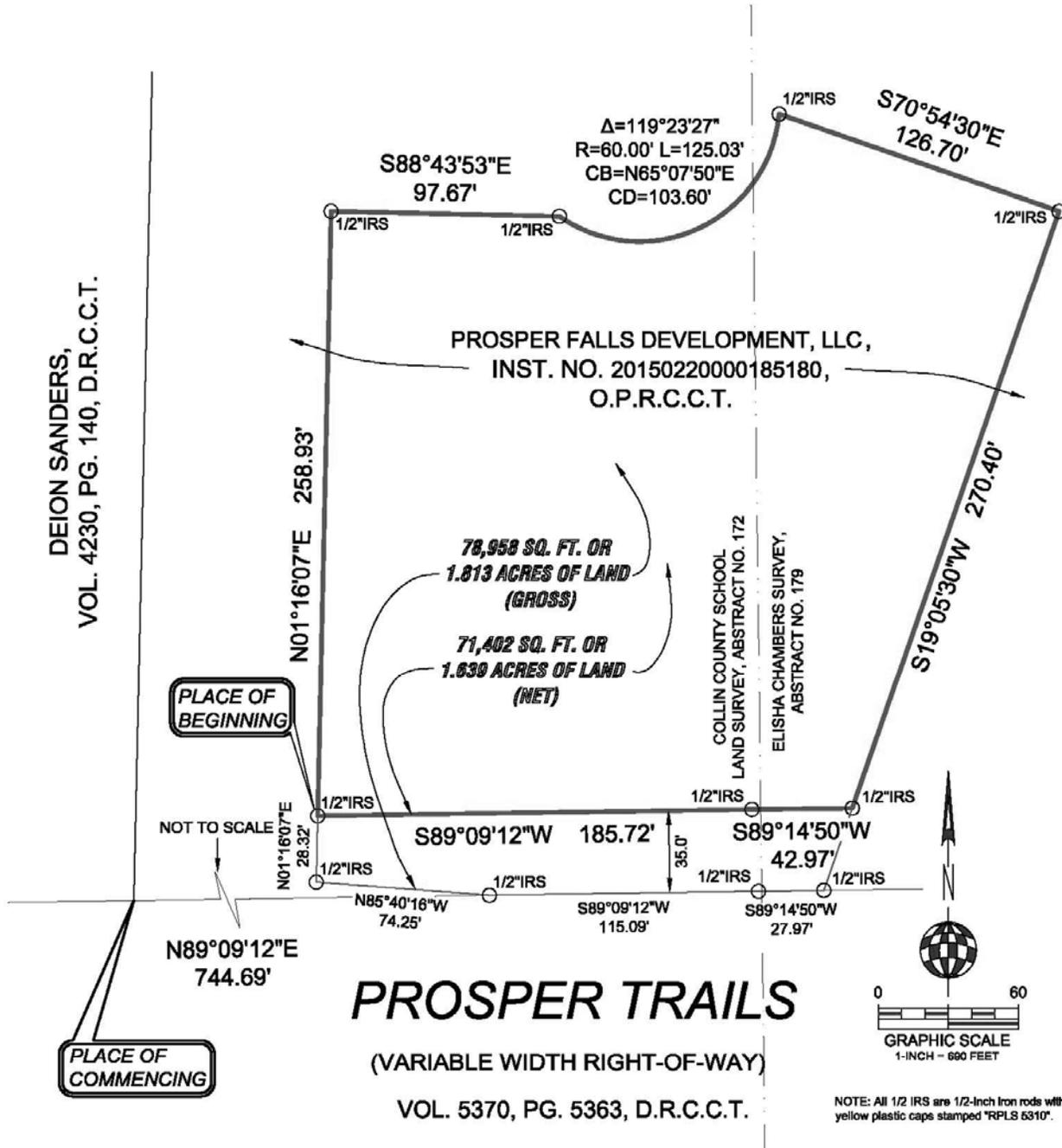
WWW.AWSURVEY.COM

Job Number: 15-0749a Date: 05/08/2015 Drafter: 024

"A professional company operating in your best interest"

SHEET 2 OF 2

DEION SANDERS,
VOL. 4230, PG. 140, D.R.C.C.T.



John S. Turner
John S. Turner, R.P.L.S. #5310



A&W SURVEYORS, INC.

Professional Land Surveyors

TEXAS REGISTRATION NO. 100174-00

P.O. BOX 870028, MESQUITE, TX 75187

PHONE: (972) 681-4975 FAX: (972) 681-4954

WWW.AWSURVEY.COM

Job Number: 15-0749a Date: 05/08/2015 Drafter: 024

"A professional company operating in your best interest"



ENGINEERING

To: Mayor and Town Council

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

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Right-of-Way Agreement between the Town of Prosper, Texas, and CADG Prosper Lakes North, LLC., related to providing escrow funds for the payment of the right-of-way needed for the future collector road adjacent to the Lakes of Prosper North development.

Description of Agenda Item:

CADG Prosper Lakes North, LLC, is developing the Lakes of Prosper North which is adjacent to the future north-south collector road that connects Prosper Trail to Frontier Parkway. As part of the platting of the subdivision, one-half of the necessary 60' of right-of-way needed for the future collector road was to be dedicated with the development. As part of the improvements to the property, the large retention pond that serves the Lakes of Prosper North and Lakes of Prosper developments was required to be modified so that no portion of the pond would be located in the dedicated right-of-way. While engineering plans were approved to show the improvements necessary to reclaim the property for the required right-of-way, field construction was unable to achieve the modifications.

In order to facilitate the future collector road adjacent to the Lakes of Prosper North development, nearly all of the right-of-way required will need to be acquired from the adjacent property owner. Since the Lakes of Prosper North development was unable to dedicate their respective portion of right-of-way, due to the physical constraints of the large retention pond, CADG Prosper Lakes North, LLC, has agreed to pay the Town the costs associated with the future right-of-way acquisition costs for the additional acreage in excess of what the adjacent property owner will be required to dedicate in the future.

Budget Impact:

The Town had an appraisal performed on the additional acreage which reflected a fair market value of approximately \$140,300 per acre. The amount of additional acreage is 0.798 acres which equates to a fair market value of \$112,000. Since the right-of-way will be acquired in the future, CADG Prosper Lakes North, LLC, has agreed to pay 150% of the fair market value to account for inflation. Upon execution of this agreement, CADG Prosper Lakes North, LLC, will provide the Town with a certified check in the amount of \$168,000 for the purpose of acquiring the additional right-of-way needed in the future for the collector road.

Legal Obligations and Review:

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

Attached Documents:

1. Right-of-Way Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Right-of-Way Agreement between the Town of Prosper, Texas, and CADG Prosper Lakes North, LLC., related to providing escrow funds for the payment of the right-of-way needed for the future collector road adjacent to the Lakes of Prosper North development.

Proposed Motion:

I move to authorize the Town Manager to execute a Right-of-Way Agreement between the Town of Prosper, Texas, and CADG Prosper Lakes North, LLC., related to providing escrow funds for the payment of the right-of-way needed for the future collector road adjacent to the Lakes of Prosper North development.

TOWN OF PROSPER AND CADG PROSPER LAKES NORTH, LLC,
RIGHT-OF-WAY AGREEMENT

THIS TOWN OF PROSPER AND CADG PROSPER LAKES NORTH, LLC RIGHT-OF-WAY AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2015, by and between the Town of Prosper, Texas (hereinafter referred to as the “Town”), and CADG Prosper Lakes North, LLC (hereinafter referred to as “Owner”).

WITNESSETH:

WHEREAS, Owner is developing a residential subdivision known as Lakes of Prosper North, generally located east of Dallas Parkway and north of Prosper Trail, and containing 29.6736 gross acres, more or less, as more particularly described in Exhibit A, attached hereto and incorporated by reference; and

WHEREAS, Owner has agreed to pay to the Town the costs associated with future right-of-way acquisition, said right-of-way to be acquired for a future collector road, as reflected in the Town’s thoroughfare plan; and

WHEREAS, a legal description of the right-of-way (“Right-of-Way”) to be acquired, consisting of 0.798 acres, more or less, is attached hereto as Exhibit B, incorporated herein by reference; and

WHEREAS, Owner at the present time does not own the Right-of-Way; however, the Town and Owner agree and acknowledge that at some time in the future, as yet undetermined, it will be necessary for the Town to acquire such Right-of-Way for the future collector; and

WHEREAS, Owner wishes to provide the Town with the funds reasonably necessary for the Town to acquire such Right-of-Way at a future date, and it is the purpose of this Agreement to delineate the obligations of the Town and Owner relative to the Right-of-Way acquisition costs; and

WHEREAS, the Town has been provided an appraisal by Jackson Claborn, Inc., dated December 10, 2014, the provisions of which appraisal are adopted by reference, which reflect the fair market value of the Right-of-Way as \$112,000.00; and

WHEREAS, Owner has agreed to pay the Town One Hundred and Fifty Percent (150%) of the fair market value of the Right-of-Way for the Town to acquire said Right-of-Way at a future date, and by making said payment to the Town, Owner shall be deemed to have complied with the donation or provision of any right-of-way otherwise necessary from Owner relative to the future collector road; and

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Owner covenant and agree as follows:

1. Future Collector Road Right-of-Way Acquisition Costs; Notification Obligation of Owner; Default.

A. Upon execution of this Agreement by the Town and Owner, and immediately following the transfer of ownership of any lot in Phase 2 of the Lakes of Prosper North subdivision from Owner to a builder, Owner shall provide the Town with a certified check in the amount of \$168,000.00 ("Acquisition Fee"), said Acquisition Fee reflecting One Hundred and Fifty Percent (150%) of the fair market value of the Right-of-Way referenced herein. The Town shall utilize said Acquisition Fee for the purpose of acquiring Right-of-Way for the future collector road, as reflected in the Town's Thoroughfare Plan. Owner shall not be responsible for any additional costs related to the acquisition of the Right-of-Way which exceed the Acquisition Fee.

B. Owner agrees and acknowledges that it shall be obligated, and hereby affirms its obligation, to report to the Town any transfer of ownership of any lot in Phase 2 of the Lakes of Prosper North subdivision, as referenced herein, within ten (10) business days of same. The failure to report said transfer of ownership shall be deemed a default of this Agreement, and the Town shall have no obligation to issue any building permit or any other Town-required permit until compliance with the notification of transfer of ownership as referenced in this Paragraph.

C. In the event the Town's Thoroughfare Plan is amended, updated or it is otherwise determined that the Right-of-Way is no longer necessary for the future collector road, the Town shall notify the Owner within ninety (90) days, along with a refund of the Acquisition Fee, upon which this Agreement shall terminate. A memorandum or notice of such termination shall be recorded in the deed records of Collin County.

2. Compliance with Town Right-of-Way Dedication Requirements; Effect of Payment by Owner. Once paid to the Town, Owner shall be deemed by the Town with having fully complied with any right-of-way dedication or acquisition related to said future collector road, regardless whether actual acquisition costs incurred by the Town are higher or lower than the Acquisition Fee. In no event shall Owner be entitled to a refund or any reimbursement of any portion of the Acquisition Fee, except in the event that the Right-of-Way is no longer necessary for the future collector road, as referenced in Paragraph 1(C) hereof.

3. Other Obligations of Owner. Nothing herein shall relieve the Owner from responsibilities for the construction of other public improvements under applicable development ordinances of the Town.

4. Applicable Laws and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in Collin County, Texas.

5. **Notices.** Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: Town of Prosper, Texas
 P.O. Box 307
 Prosper, Texas 75078
 Att'n: Town Manager's Office

If to the Owner: CADG Prosper Lakes North, LLC
 1800 Valley View Lane, Suite 300
 Farmers Branch, Texas 75234
 Att'n: Mr. Mehrdad Moayed

6. **Prevailing Party.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement, and this Agreement is not subject to Section 271.152 of the Texas Local Government Code, as amended.

7. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

8. **Facsimiles.** A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

9. **Town Manager Authorized to Execute Agreement.** The Town Council hereby authorizes the Town Manager of the Town of Prosper to execute this Agreement on behalf of the Town.

10. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

11. **Filing in Deed Records.** This Agreement shall be filed in the deed records of Collin County, Texas. Upon any sale or other transfer of any ownership rights in the Property, Owner shall notify the Town in writing of such sale or transfer within ten (10) business days of such sale or transfer. This is a material term of this Agreement.

12. **Signatory Authority.** The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Owner to same.

13. **Binding Obligation.** This Agreement is and shall be binding upon Owner, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

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

15. **Attorney's Fees.** Owner agrees to pay, or cause to be paid, to Prosper any attorney's fees charged to Prosper by Prosper's legal counsel for, among other things, preparation of, legal review of and any revisions to this Agreement and all further agreements, ordinances or resolutions contemplated by this Agreement, and the provision of advice to applicable Prosper Town Staff and the Prosper Town Council, in an amount not to exceed \$5,000.00 within ten (10) days upon receipt of an invoice of same from Prosper.

16. **Covenant Running with Land.** This Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of Developer, and its successors and assigns. In addition, the parties shall cause this Agreement to be filed in the Deed Records of Denton County, Texas.

17. **Sovereign Immunity.** The parties agree that the Town has not waived its sovereign or governmental immunity by entering into and performing its obligations under this Agreement; however, for purposes of enforcement of this Agreement, Town agrees that it has waived its sovereign immunity, and to that extent only.

18. **Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the effective date; (b) form the basis upon which the parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the parties reflected by the recitals, would not have entered into this Agreement.

19. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

20. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

21. **Application of Town Ordinances.** The signatories hereto shall be subject to all applicable ordinances of the Town, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property unless specifically enumerated herein.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

[Remainder of Page Intentionally Left Blank]

THE TOWN OF PROSPER, TEXAS

By: _____

Name: Harlan Jefferson

Title: Town Manager, Town of Prosper

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2015, by Harlan Jefferson, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

My Commission Expires:

OWNER:

CADG Prosper Lakes North, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company
Its Sole Member

By: MMM Ventures, LLC,
a Texas limited liability company
Its Manager

By: 2M Ventures, LLC,
a Delaware limited liability company
Its Manager

By: *Mehrdad Moayedi*
Name: Mehrdad Moayedi
Its: Manager

STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on the 9 day of March, 2015, by Mehrdad Moayedi, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of CADG Holdings, LLC, as Sole Member of CADG Prosper Lakes North, LLC, a Texas limited liability company on behalf of said company.



Laura L Wayland
Notary Public, State of Texas

EXHIBIT A**Lakes of Prosper North Property Description****METES AND BOUNDS DESCRIPTION**

BEING A 44.338 ACRE TRACT OF LAND SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY NO. 12, ABSTRACT NO. 147, COLLIN COUNTY, TEXAS, BEING ALL OF A TRACT OF LAND CONVEYED TO CADG PROSPER LAKES NORTH, LLC ACCORDING TO THE DEED RECORDED IN DOCUMENT NO. 20120627000772030 OF THE DEED RECORDS, COLLIN COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND AT THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN DEED TO FREEPORT ASSOCIATES, LLC AS RECORDED IN COUNTY CLERK'S FILE NO. 20071005001381760, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS AND ALSO BEING IN THE NORTH LINE OF A TRACT OF LAND DESCRIBED IN DEED TO PROSPER-TOLLROAD JOINT VENTURE, LTD AS RECORDED IN COUNTY CLERK'S FILE NO. 96-0090247, DEED RECORDS, COLLIN COUNTY, TEXAS;

THENCE NORTH 00°45'01" WEST ALONG THE COMMON LINE OF SAID CADG PROSPER LAKES NORTH TRACT AND FREEPORT ASSOCIATES TRACT, FOR A DISTANCE OF 1314.88 FEET TO THE COMMON CORNER OF SAID TRACTS AND BEING IN THE SOUTH LINE OF A TRACT OF LAND DESCRIBED IN DEED TO METTON REAL ESTATE, L.P. AS RECORDED IN VOLUME 4234, PAGE 1348, DEED RECORDS, COLLIN COUNTY, TEXAS;

THENCE NORTH 89°17'57" EAST ALONG THE COMMON LINE OF SAID CADG PROSPER LAKES NORTH TRACT AND SAID METTON REAL ESTATE TRACT AND PASSING AT A DISTANCE OF 170.61 FEET A 1/2 INCH CAPPED IRON ROD FOUND, FOR A TOTAL DISTANCE OF 1479.95 TO A 1/2 INCH IRON ROD FOUND AT THE COMMON CORNER OF SAID TRACTS AND ALSO BEING IN THE WEST LINE OF A TRACT OF LAND DESCRIBED IN DEED TO TOWN OF PROSPER AS RECORDED IN COUNTY CLERK'S FILE NO. 20070312000330490, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS;

THENCE SOUTH 00°05'49" EAST ALONG THE COMMON LINE OF SAID CADG PROSPER LAKES NORTH TRACT AND SAID TOWN OF PROSPER TRACT, FOR A DISTANCE OF 811.92 FEET TO A 1/2 INCH CAPPED IRON ROD FOUND AT THE SOUTHWEST CORNER OF SAID TOWN OF PROSPER TRACT AND ALSO BEING THE NORTHWEST CORNER OF THE REMAINDER OF A TRACT OF LAND DESCRIBED IN DEED TO BON TERRE-B, LTD. AS RECORDED IN VOLUME 6004, PAGE 2595, DEED RECORDS, COLLIN COUNTY, TEXAS;

THENCE SOUTH 00°41'17" EAST ALONG THE COMMON LINE OF SAID CADG PROSPER LAKES NORTH TRACT AND SAID BON TERRE-B TRACT, FOR A DISTANCE OF 495.12 FEET;

THENCE SOUTH 89°00'24" WEST AND PASSING AT A DISTANCE OF 84.36 FEET THE MOST WESTERLY NORTHWEST CORNER OF SAID BON TERRE-B TRACT AND ALSO BEING THE MOST NORTHERLY NORTHEAST CORNER OF LAKES OF PROSPER PHASE TWO A ADDITION, AN ADDITION TO THE CITY OF PROSPER ACCORDING TO THE FILE PLAT RECORDED UNDER COUNTY CLERK'S FILE NUMBER 2010-146, DEED RECORDS OF COLLIN COUNTY, TEXAS, FOR A TOTAL DISTANCE OF 1318.01 FEET TO A 1/2 INCH CAPPED IRON ROD FOUND FOR CORNER AT THE NORTHWEST CORNER OF SAID LAKES OF PROSPER PHASE TWO A ADDITION AND ALSO BEING THE NORTHEAST CORNER OF SAID PROSPER-TOLLROAD JOINT VENTURE TRACT;

THENCE SOUTH 88°51'49" WEST ALONG THE NORTH LINE OF SAID PROSPER-TOLLROAD JOINT VENTURE TRACT, FOR A DISTANCE OF 152.13 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,931,361 SQUARE FEET OR 44.338 ACRES OF LAND.

EXHIBIT B

Right-of-Way Property Description

BEING a tract of land situated in the Collin County School Land Survey No. 12, Abstract No. 147, Town of Prosper, Collin County, Texas, the subject tract being a portion of a tract conveyed to Trejax, LP according to the deed recorded in Document No. 20121206001558000 of the Official Public Records, Collin County, Texas (OPRCCT), the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod with plastic cap found for the northwest corner of a tract conveyed to CADG Prosper Lakes North, LLC, recorded in Document No. 20120627000772030 OPRCCT, and being on the south line of a tract conveyed to Metten Real Estates, L.P., recorded in Volume 4234, Page 1348 of the Deed Records, Collin County, Texas (DRCCT);

THENCE S 00°45'01" E, along the common line thereof, passing at 644.50 feet a 1/2" iron rod with plastic cap found for the southwest corner of said CADG Prosper Lakes North tract and being the northwest corner of Lakes of Prosper North Phase 1, an addition recorded in Cabinet 2013, Page 366 of the Plat Records, Collin County, Texas (PRCCT), and continuing along the common line thereof a total distance of 1314.88 feet to a point for corner;

THENCE departing the west line of Lakes of Prosper North Phase 1, the following:

THENCE S 88°49'04" W 5.34 feet to a point for corner;

Around a non-tangent curve to the right having a central angle of 18°26'46", a radius of 480.00 feet, a chord of N 09°58'24" W - 153.87 feet, an arc length of 154.53 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

N 00°45'01" W, 933.22 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

Around a tangent curve to the right having a central angle of 14°50'07", a radius of 450.00 feet a chord of N 06°40'02" E - 116.19 feet an arc length of 116.52 feet to a 1/2" iron rod with plastic cap stamped "SPIARSENG" set;

And around a reverse curve having a central angle of 14°45'27", a radius of 450.00 feet a chord of N 06°42'22" E - 115.58 feet an arc length of 115.90 feet to the POINT OF BEGINNING with the subject tract containing 34,774 square feet or 0.798 acres of land.



PARKS & RECREATION

To: Mayor and Town Council

From: Matt Furr, Park Superintendent

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Facility Utilization Agreement between the Town of Prosper, Texas, and Prosper Youth Sports Commission (PYSC), related to use of the Town's facilities and services to accomplish the organization's objective.

Description of Agenda Item:

At the October 22, 2013, Town Council meeting, an ordinance was adopted establishing the Prosper Youth Sports Commission (PYSC). Bylaws for the PYSC were approved at the November 11, 2014, Town Council meeting.

The attached agreement gives PYSC leagues priority use of the Town's fields and incorporates applicable components of the agreement into its previously approved bylaws.

Legal Obligations and Review:

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

Attached Documents:

1. Facility Utilization Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute a Facility Utilization Agreement between the Town of Prosper, Texas, and Prosper Youth Sports Commission (PYSC), related to use of the Town's facilities and services to accomplish the organization's objective.

Proposed Motion:

I move to authorize the Town Manager to execute a Facility Utilization Agreement between the Town of Prosper, Texas, and Prosper Youth Sports Commission (PYSC), related to use of the Town's facilities and services to accomplish the organization's objective.

STATE OF TEXAS §
 § FACILITY UTILIZATION AGREEMENT
 COUNTY OF COLLIN §

This Facility Utilization Agreement (“Agreement”) is made by and between the Town of Prosper, Texas (the “Town”), and Prosper Youth Sports Commission (PYSC), (the “Co-Sponsored Organization”) (collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the Co-Sponsored Organization conducts its affairs within the framework of the Town’s policies; and

WHEREAS, the Town allows the Co-Sponsored Organization use of the Town’s facilities and services required to accomplish the Co-Sponsored Organization’s objectives;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I
 Definitions**

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Town” shall mean the Town of Prosper, Texas.

“Co-Sponsored Organization” shall mean Prosper Youth Sports Commission.

“Effective Date” shall mean the last date of execution hereof.

“Game facility” and “facility” shall mean a facility where sports league play is being held and use is being managed in order to maintain the playing conditions at a high level. Game facilities are designated by the Town’s Parks and Recreation Department. These facilities are subject to usage fees.

“Leagues” shall mean competitive and recreational sports associations subject to oversight by the Co-Sponsored Organization, for the purpose of playing various sports at the Town’s game facilities and outdoor athletic facilities, including, but not limited to, soccer, football, baseball, softball, lacrosse, cricket and rugby.

“Nonresident” shall mean a person who lives outside the Town of Prosper.

“Outdoor athletic facilities” shall mean outdoor athletic facilities including, but not limited to, lighted and unlighted playing fields and courts programmed for the purpose of conducting practices, League play, tournaments, meets, camps and clinics for competitive and recreational sports that include, but are not limited to, soccer, football, baseball, softball, lacrosse, cricket and rugby or any such use as deemed appropriate by the Town.

“Participants” shall mean residents and non-residents who take part in the Co-Sponsored Organization’s activities, including players and coaches.

“Resident” shall mean a person who lives within the Town of Prosper.

“Season” shall mean a recurrent period of time characterized by League practices and games associated with registration fees for a particular sport as agreed upon by the designated representative from both Parties.

Article II Term; Termination

2.1 **Term.** The term of this Agreement shall begin on May 6, 2015. This Agreement shall continue in force through December 31, 2015 and shall be automatically renewed for successive one (1) year terms; provided, that either Party may terminate this Agreement by giving not less than thirty (30) days written notice of its intent not to renew prior to the anniversary of the Effective Date of the then-current term.

2.2 **Termination.** Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. Upon termination, all improvements shall remain the property of the Town, and all personal property shall remain the property of the Party paying for the same. Removal of personal property shall be subject to the terms contained herein; however, all personal property remaining on the subject real property ninety (90) days after the date of termination shall become the personal property of the Town.

Article III Duties of the Co-Sponsored Organization

3.1 **Composition.** The Co-Sponsored Organization certifies that eighty percent (80%) or more of its current participants are Residents or PISD students. The Co-Sponsored Organization agrees that during the term of this Agreement, eighty percent (80%) or more of its participants will be Residents or PISD students.

3.2 **Administrative Functions.** The Co-Sponsored Organization agrees that it will work with Leagues in performing administrative functions and the following is not the Town’s responsibility:

- a. Organizational meetings;
- b. League registrations;
- c. Collecting and maintaining funds derived from registration fees or fundraising projects;

- d. Drafting and communicating League schedules;
- e. Contacting and scheduling officials for all League games.

Co-sponsored Organization agrees to:

- a. Assure that all participants and officials conduct themselves in accordance with all Town Parks and Recreation Department's policies, Town Ordinances, and state laws;
- b. Maintain proper communications with the Town Parks and Recreation Department pertaining to facility needs;
- c. Schedule facilities according to the Town's policy;
- d. Conduct organizational meetings.

3.3 **League Representative.** The Co-Sponsored Organization agrees to provide a League representative on-site at each organized League game/event scheduled to be held at the Town's facilities.

3.4 **Signs.** The Co-Sponsored Organization agrees not to construct or erect any temporary or permanent structures, signs, equipment, or other related items without the Town Parks and Recreation Department's prior written approval. The Parties agree that all approved improvements shall become the property of the Town. The Parties agree that the Co-Sponsored Organization may erect no more than two (2) signs per facility, not to exceed four feet (4') by eight feet (8') each, for the sole purpose of listing sponsors for the current and previous year. The Co-Sponsored Organization agrees to remove the signs from public view at the end of each day.

3.5 **Public Access; Admission Fees.** The Co-Sponsored Organization agrees to allow public access to game facilities and agrees not to charge any fees for admission to games or facilities without the Town Parks and Recreation Department's prior written approval.

3.6 **Facilities.** The Co-Sponsored Organization agrees to stop play by 9:45 p.m. and turn facility lights off by 10:00 p.m., unless the Co-Sponsored Organization has obtained prior written approval of the Director of Parks and Recreation or designee at least twenty-four (24) hours prior to the scheduled game start time. The Co-Sponsored Organization agrees to utilize Folsom Park for organized team practice only and shall require the Leagues to follow the following obligations:

- a. At no time shall the Leagues use on-street parking facilities during scheduled practices.
- b. The sports field lighting may be operated Monday through Friday for team practice during the sports season. At no point in time shall the sports field lighting remain in use following 9:00 p.m. at any point during the week. No lights shall be operated on Saturday or Sunday.
- c. Leagues shall not schedule league games or competitive play among two opposing teams.

3.7 **Coach Certifications.** The Co-Sponsored Organization agrees to ensure that all head coaches are certified for coaching youth by a Town-approved accredited coaching

certification program. The Co-Sponsored Organization agrees to maintain updated records of certified coaches and submit copies of these records to the Town upon request.

3.8 **Code of Conduct.** The Co-Sponsored Organization agrees to develop and submit a League Code of Conduct, which shall include an enforcement plan. The Co-Sponsored Organization agrees to communicate the League Code of Conduct to coaches, parents, participants, and spectators. The Co-Sponsored Organization agrees to implement a grievance system whereby complaints and concerns will be properly heard and addressed.

3.9 **Non-Discrimination Policy.** The Co-Sponsored Organization agrees to adopt a non-discrimination policy that ensures participation for all youth regardless of race, creed, sex, economic status, disability, other legally protected status or athletic ability. The Co-Sponsored Organization agrees to comply with the Americans with Disabilities Act, to the extent applicable.

3.10 **Team Balance.** The Co-Sponsored Organization agrees to develop recreational Leagues encouraging team balance and equal playing time for participants.

3.11 **Schedule.** The Co-Sponsored Organization further agrees to provide a proposed Facility use schedule (which specifically identifies game facilities and outdoor athletic facilities needed for League activities, and dates and times of such use) to the Town at least sixty (60) days before the commencement of each season. The Parties recognize that weather days, rain days, or suspension of League play may require rescheduling of League activities; notice of rescheduling of such activities shall be given to the Town's Parks and Recreation Department at least forty-eight (48) hours prior to such use.

3.12 **Facility Use; Termination.** The Parties agree that the Town may use game facilities when Co-Sponsored Organization activities are not scheduled. The Parties agree that the Co-Sponsored Organization's failure to use the game facilities for at least seventy-five percent (75%) of its scheduled activities will constitute a termination of this Agreement.

Article IV Duties of the Town

4.1 **Facility Priority.** The Town agrees to give priority to the Co-Sponsored Organization's League games at Town game facilities, unless the Town has previously scheduled a facility for its own use. The Town agrees to prohibit individual teams and members of any Non Co-Sponsored Organization from using designated game facilities without entering into a facility rental agreement with the Town. The Town has the authority to close game facilities at its discretion, for reasons including, but not limited to, inclement weather, drought, overuse, maintenance, and conflicting park activities.

4.2 **Sports Seasons.** The Co-Sponsored Organization agrees to cooperate in establishing specific sports seasons and acknowledges that the Town may disallow usage as needed. Parties agree that the first practice and/or scrimmage game scheduled will constitute the start of the season.

4.3 **Concessions.** The Parties agree that the Town Parks and Recreation Department shall control all concession rights for all facilities. The Co-Sponsored Organization agrees not to sell any concessions at any facility without the prior written approval of the Director of Parks and Recreation or his/her designee. The Town may allocate specific vending facilities for use by the Co-Sponsored Organization. Such allocations of facilities are at the sole discretion of the Town. The Co-Sponsored Organization shall ensure that all food and/or drink prepared, served, sold and/or stored complies with all Town, state, county and federal laws.

Article V Miscellaneous

5.1 **Binding Agreement; Assignment.** The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. The Co-Sponsored Organization agrees not to assign this Agreement or rent or sublease any Town property without the Town's prior written consent.

5.2 **INDEMNIFICATION.** THE TOWN SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY OCCURRENCE AT ANY TOWN FACILITIES OR OUTDOOR ATHLETIC FACILITIES OR FROM THE USE OF SAID PREMISES BY THE CO-SPONSORED ORGANIZATION, ITS OFFICERS, EMPLOYEES, AGENTS, PARTICIPANTS, MEMBERS, AND INVITEES (HEREINAFTER, "INDEMNITORS") DURING THE TERM OF THIS AGREEMENT AND THEREAFTER. THE INDEMNITORS HEREBY WAIVES ALL CLAIMS AGAINST THE TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE TOWN") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON IN, UPON, AT OR ABOUT ABOVE-REFERENCED PREMISES ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF TOWN. THE INDEMNITORS EXPRESSLY ASSUME ALL RISKS OF INJURY OR DAMAGE TO PROPERTY AND PERSONS RESULTING FROM THE CONDITION OF THE TOWN'S FACILITIES, OUTDOOR ATHLETIC FACILITIES, AND THE CO-SPONSORED ORGANIZATION'S USE OF SAID FACILITIES, AND AGREE TO INDEMNIFY AND SAVE HARMLESS THE TOWN FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM THE CONDITION OF THE TOWN'S FACILITIES, OUTDOOR ATHLETIC FACILITIES, AND THE CO-SPONSORED ORGANIZATION'S USE OF SAID FACILITIES UNDER THIS AGREEMENT OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF THE CO-SPONSORED ORGANIZATION, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, THE CO-SPONSORED ORGANIZATIONS, MEMBERS, PARTICIPANTS, AND INVITEES (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF THE TOWN). IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST THE TOWN IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, THE CO-

SPONSORED ORGANIZATION, ON NOTICE FROM THE TOWN, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT THE CO-SPONSORED ORGANIZATION'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE TOWN. THE CO-SPONSORED ORGANIZATION'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY THE CO-SPONSORED ORGANIZATION UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

5.3 **Authorization.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.4 **Insurance.**

- a. Each league in the Co-Sponsored Organization shall, during the term hereof, maintain in full force and effect the following insurance: (1) a policy of comprehensive general liability insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the use of the Premises by the Co-Sponsored Organization pursuant to this Agreement with a minimum combined single limit of not less than \$1 Million Dollars (\$1,000,000.00) per occurrence for injury to persons (including death), and for property damage with an aggregate of not less than \$2 Million Dollars (\$2,000,000.00) including coverage for advertising products coverage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by the Co-Sponsored Organization, its officers, agents, and employees with a minimum of \$1 Million Dollars (\$1,000,000.00) combined single limit; and (3) statutory Worker's Compensation Insurance covering all the Co-Sponsored Organization's employees.
- b. All insurance shall be endorsed to contain the following provisions: (1) name the Town, its officers, agents and employees as additional insured as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days' prior written notice to the Town for cancellation, non-renewal, or material change of the insurance; and (3) provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- c. All insurance companies providing the required insurance shall be lawfully authorized to issue insurance of the types and amounts required by this Agreement, transact business in Texas, shall be rated at least "A" by AM Best or other equivalent rating service, and shall be satisfactory to the Town.
- d. The Co-Sponsored Organization shall deliver certificates of insurance and policy endorsements for each insurance policy required herein to the Town, in a form reasonably satisfactory to the Town, prior to the commencement of the Term of this Agreement, and prior to the commencement of any renewal Term.

5.5 **Documentation.** The Co-Sponsored Organization agrees to submit to the Town Parks and Recreation Department a copy of the organization’s rules and regulations, financial reports, charters, constitution, and bylaws upon signing this Agreement and annually thereafter with names, addresses, email, and phone numbers of all officers and board members of the Co-Sponsored Organization. The Co-Sponsored Organization agrees to submit copies of the said records and the following presented to the Town upon request:

- a. Number of Prosper children served in the programs;
- b. Fees charged for participation and a breakdown of how those fees are spent;
- c. Number of coaches receiving certification training versus the total number of coaches in program;
- d. The number of scholarships offered to underprivileged youth;
- e. Copy of financial records, if deemed necessary by the Town to ensure compliance with this Agreement.

5.6 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received as set by courier or otherwise hand delivered.

If intended for the Town, to:

Hulon Webb
Executive Director of Development and Community Services
407 E. First Street
Prosper, Texas 75078

If intended for Co-Sponsored Organization:

Attn: _____

5.7 **Entire Agreement.** This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

5.8 **Governing Law.** The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.9 **Amendment.** This Agreement may be amended by the mutual written agreement of the Parties.

5.10 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.11 **Recitals.** The recitals to this Agreement are incorporated herein.

5.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.13 **Exhibits.** Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

5.14 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

(Signature page to follow)

EXECUTED on this _____ day of _____, 2014.

TOWN OF PROSPER, TEXAS

By: _____
Harlan Jefferson, Town Manager

ATTEST:

By: _____
Robyn Battle, Town Secretary

APPROVED AS TO FORM:

By: _____
Terrence S. Welch, Town Attorney

EXECUTED on this _____ day of _____, 2014.

CO-SPONSORED ORGANIZATION

By: Todd Fahrenthold
Name: Todd Fahrenthold
Title: Treas.

PP - P450
CW - PH

BK - P45A

MPF - TOWN



PLANNING

To: Mayor and Town Council

From: Alex Glushko, AICP, Senior Planner

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

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:

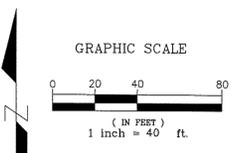
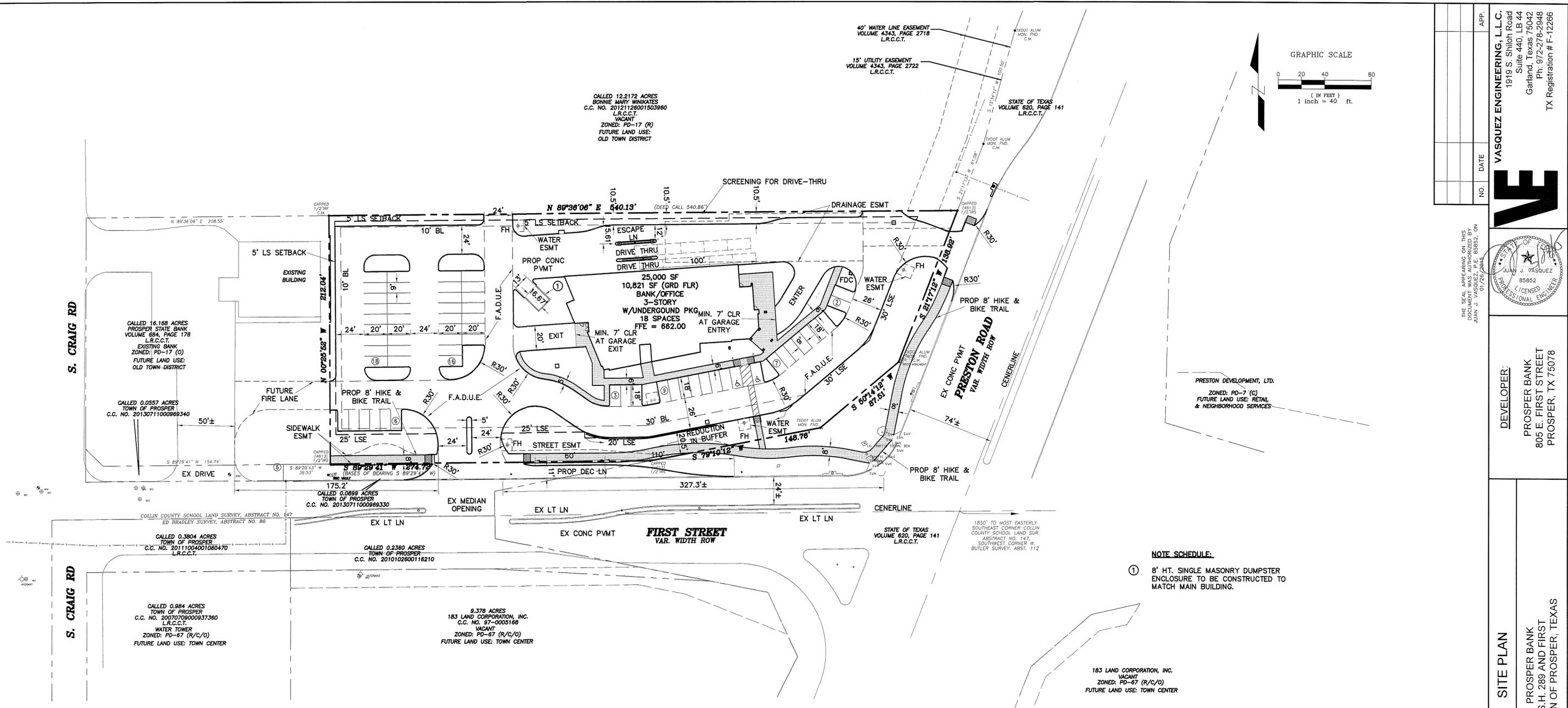
Attached are the Preliminary Site Plans and Site Plans acted on by the Planning & Zoning Commission at their June 2, 2015, meeting. Per the Town's Zoning Ordinance, the Town Council has the ability to direct staff to submit a written notice of appeal on behalf of the Town Council to the Development Services Department for any Preliminary Site Plan or Site Plan acted on by the Planning & Zoning Commission.

Attached Documents:

1. Preliminary Site Plan for Prosper Bank
2. Preliminary Site Plan for Texas Health Resources
3. Site Plan for Texas Health Resources

Town Staff Recommendation:

Town staff recommends that the Town Council take no action on these items.



VASQUEZ ENGINEERING, L.L.C.
1919 S. Shiloh Road
Suite 440, LB 44
Garland, Texas 75042
Ph: 972-278-2948
TX Registration # F-12266

THE SEAL APPEARING ON THIS DOCUMENT IS THE PROPERTY OF JUAN J. VASQUEZ, P.E. 85852, ON 01/25/2015.

NO. DATE APP.

DEVELOPER:
PROSPER BANK
805 E. FIRST STREET
PROSPER, TX 75078

SITE PLAN
PROSPER BANK
S.H. 289 AND FIRST
TOWN OF PROSPER, TEXAS

- CITY SITE PLAN NOTES:**
- ANY REVISION TO THIS PLAN WILL REQUIRE TOWN APPROVAL AND WILL REQUIRE REVISIONS TO THE CORRESPONDING PLANS TO AVOID CONFLICT BETWEEN PLANS.
- DUMPSTERS AND TRASH COMPACTORS SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
 - OPEN STORAGE, WHERE PERMITTED, SHALL BE SCREENED IN ACCORDANCE WITH THE ZONING ORDINANCE.
 - OUTDOOR LIGHTING SHALL COMPLY WITH THE LIGHTING AND GLARE STANDARDS CONTAINED WITH THE ZONING ORDINANCE AND DIVISION ORDINANCE.
 - LANDSCAPING SHALL CONFORM TO LANDSCAPE PLANS APPROVED BY THE TOWN.
 - ALL ELEVATIONS SHALL COMPLY WITH THE STANDARDS CONTAINED WITH THE ZONING ORDINANCE.
 - BUILDINGS OF 5,000 SQUARE FEET OR GREATER SHALL BE 100% FIRE SPRINKLED.
 - 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 AMERICAN WITH DISABILITIES ACT (ADA) AND WITH THE REQUIREMENTS OF THE CURRENT, ADOPTED BUILDING CODE.
 - ALL SIGNAGE IS SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - ALL FENCES AND RETAINING WALLS SHALL BE SHOWN ON THE SITE PLAN AND ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - ALL EXTERIOR BUILDING MATERIALS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL AND SHALL CONFORM TO THE APPROVED FACADE PLAN.
 - SIDEWALKS OF NOT LESS THAN SIX (6') FEET IN WIDTH ALONG THOROUGHFARES AND COLLECTORS AND FIVE (5') IN WIDTH ALONG RESIDENTIAL STREETS, AND BARRIER FREE RAMPS AT ALL CURB CROSSINGS SHALL BE PROVIDED PER TOWN STANDARDS.
 - APPROVAL OF THE SITE PLAN IS NOT FINAL UNTIL ALL ENGINEERING PLANS ARE APPROVED BY THE ENGINEERING DEPARTMENT.
 - SITE PLAN APPROVAL IS REQUIRED PRIOR TO GRADING RELEASE.
 - ALL NEW ELECTRICAL LINES SHALL BE INSTALLED AND/OR RELOCATED UNDERGROUND.
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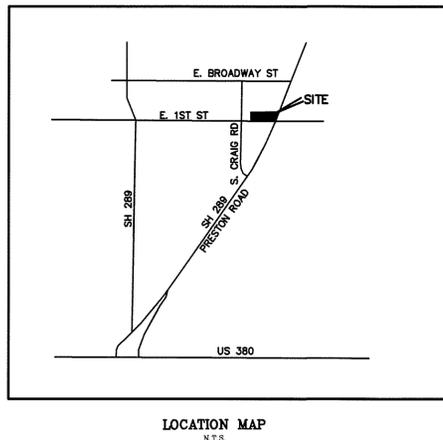
LEGEND

EXISTING	PROPERTY LINE	PROPOSED
---	---	---
---	PAVEMENT	---
---	LANDSCAPE EASEMENT (FIRST ST & PRESTON RD)	LSE
---	FIRE LANE ACCESS, DRAINAGE & UTILITY EASEMENT	F.A.D.U.E.
---	BUILDING LINE	BL
---	WALK	---

- NOTES:**
- BOUNDARY/TOPOGRAPHIC SURVEY PREPARED BY SURDUKAN SURVEYING, INC.
 - THERE IS NO 100-YEAR FLOOD PLAIN ON THE SITE.
 - ALL DRIVES, TURN LANES, AND MEDIAN OPENING SHALL MEET THE TOWN OF PROSPER'S THOROUGHFARE DESIGN STANDARDS AND TXDOT'S STANDARDS.
 - ALL FIRE LANES TO MEET TOWN OF PROSPER FIRE LANE STANDARDS, INCLUDING WIDTH AND PAVEMENT SECTIONS.
 - NO FLOOD PLAIN EXISTS ON THE SITE.
 - ALL DIMENSIONS ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
 - HIKE AND BIKE TRAIL ALIGNMENT TO TOWN APPROVAL.

SITE SUMMARY TABLE

Site Address	NWC S.H. 289 & 1ST STREET	
County	COLLIN	
Project Name	PROSPER BANK	
Zoning District	PD-17	
Proposed use	BANK/GENERAL OFFICE	
Site Area: (R.O.W. DED.)	2.321 Acres	101,094 S.F.
Building Area	25,000 S.F.	
Building Height:	3 Story - 48' TO TOP PLATE	
Lot Coverage:	10,821 / 101,094 = 10.7%	
Floor Area Ratio:	10,821 S.F. / 101,094 = 1:10.7	
Parking Required:	BANK/GENERAL OFFICE	
	1 SPC/350 S.F. = 25,000/350 = 72 SPACES	
Parking Provided:	Regular Underground	= 18 SPACES
	Regular above ground	= 57 SPACES
	Handicap	= 4 SPACES
	Total	= 79 SPACES
Interior Landscape Required: (15 SF/PKG SPC)	1,185 S.F.	
Interior Landscape Provided:	3,194 S.F.	
Open Space Required: (7% Of Site)	7,077 S.F.	
Open Space Provided:	11,275 S.F.	
Impervious Area:	74,846 S.F.	
Impervious Area Ratio:	74,846 S.F. / 101,094 = 74.0%	
Pervious Area Ratio:	26,248 S.F. / 101,094 = 26.0%	



NOTE SCHEDULE:
① 8' HT. SINGLE MASONRY DUMPSTER ENCLOSURE TO BE CONSTRUCTED TO MATCH MAIN BUILDING.

OWNER/APPLICANT
PROSPER BANK
805 E. FIRST STREET
PROSPER, TEXAS 75078
469-952-5500 TELE
469-952-5501 FAX

SURVEYOR
SURDUKAN SURVEYING, INC.
DAVID J. SURDUKAN, RPLS
P.O. BOX 126
ANNA, TEXAS 75409
972-924-8200 TELE
972-924-8275 FAX

ENGINEER
VASQUEZ ENGINEERING, L.L.C.
JUAN J. VASQUEZ, P.E.
1919 S. SHILOH ROAD
SUITE 440
GARLAND, TEXAS 75042
972-278-2948 TELE
972-271-1383 FAX

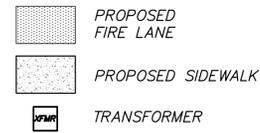
SITE PLAN
PROSPER BANK
BLOCK A, LOT 1
2.321 ACRES
COLLIN COUNTY SCHOOL LAND SURVEY,
ABSTRACT NO. 147
TOWN OF PROSPER, COLLIN COUNTY
MAY 27, 2015

Scale: 1" = 20'
Designed by: JUV
Drawn by: TC
Checked by: JUV
660-1569/EXHIBIT Dwg
Date: 05/27/2015

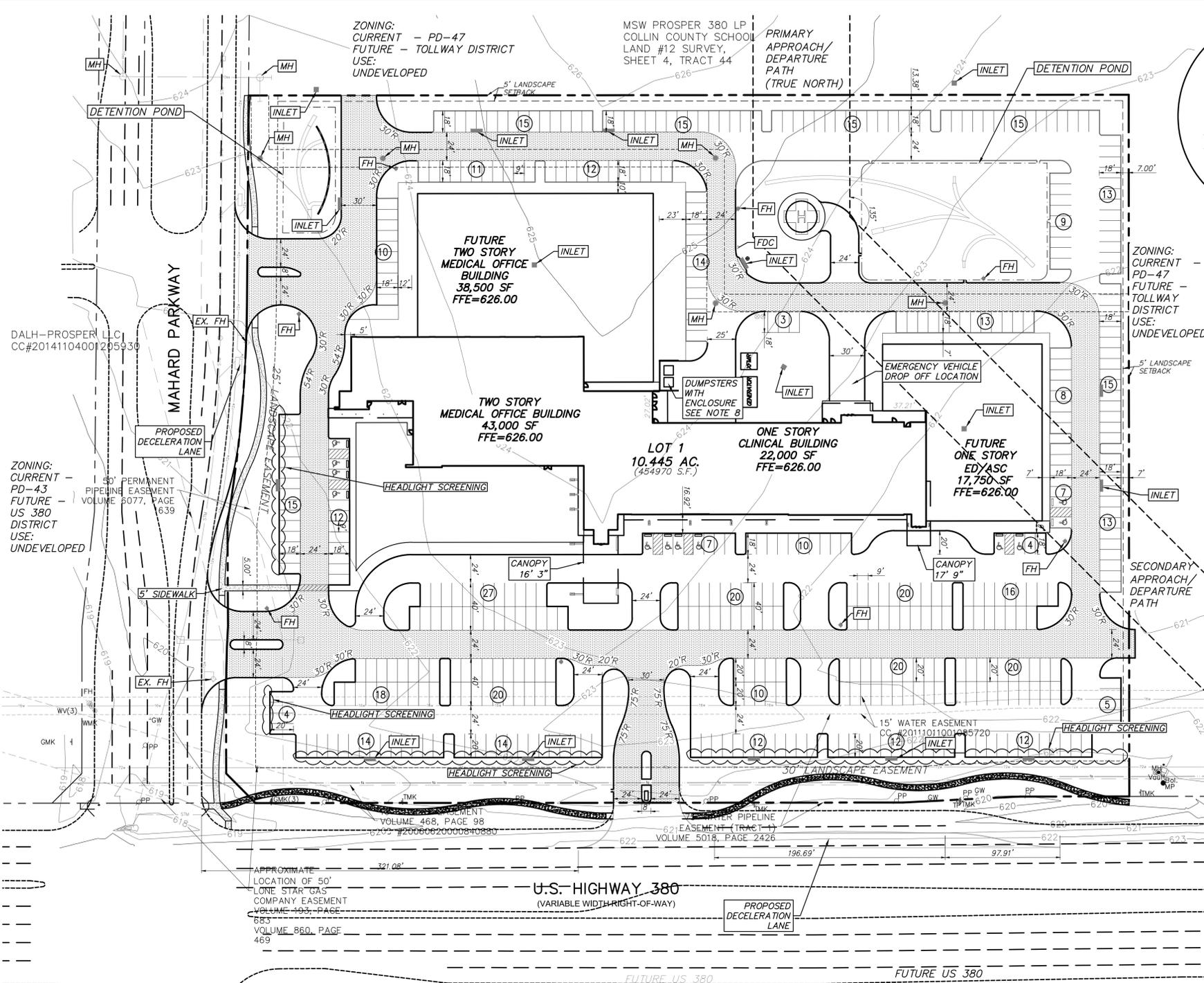
SHEET
SP1

CITY SITE PLAN NOTES

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- NO 100-YEAR FLOODPLAIN EXISTS ON SITE.
- NO EXISTING TREES ON SITE.
- ALL DETENTION PONDS TO BE AMENITIZED.



NOTES:
 1. ALL DIMENSIONS ARE TO FACE OF CURB.
 2. ALL TEXT AND STRIPING PER FAA AC 150/5390-2C.
 3. HELICOPTER TYPE IS BELL 222 WITH 42' ROTOR DIAMETER.
 4. NO EASEMENT IS REQUIRED FROM NORTHERN PROPERTY.
 5. NO TREES ON SITE.
 6. THE THOROUGHFARE ALIGNMENTS SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DOES NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAT.



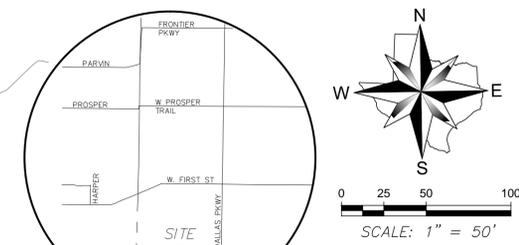
ZONING: CITY OF FRISCO - AG
 WRC FRISCO 380 PARTNERS LP COLLIN COUNTY SCHOOL LAND #12 SURVEY, SHEET 6, TRACT 32

ERNEST A MAHARD JR COLLIN COUNTY SCHOOL LAND #12 SURVEY, SHEET 6, TRACT 34

ZONING: CITY OF FRISCO MIXED PD-216

ERNEST A MAHARD JR COLLIN COUNTY SCHOOL LAND #12 SURVEY, SHEET 6, TRACT 31

NOTES (CONTINUED):
 7. EMERGENCY VEHICLES (AMBULANCE) HAVE A DEDICATED ENTRANCE ON THE NORTH SIDE OF THE BUILDING. PATIENTS WILL BE DROPPED OFF HERE BY EMERGENCY VEHICLES. CRITICALLY SICK/INJURED PATIENTS WILL BE PICKED UP AT THE EMERGENCY VEHICLE ENTRANCE AND TRANSPORTED AN AN ACUTE CARE HOSPITAL.
 8. THE DUMPSTER ENCLOSURE WILL BE 8' HIGH SPLIT-FACE CMU ENCLOSURE WITH METAL GATES, APPROXIMATELY 26' WIDE BY 17' DEEP. COLOR TO MATCH CAEN STONE COLOR OF TILT WALL.
 9. FUNDS FOR SIDEWALK ALONG US 380 WILL BE ESCROWED.



VICINITY MAP NOT TO SCALE
 BENCH MARKS:
 BM #1 - "X" cut at the centerline of a concrete headwall located on the south side of U.S. Hwy. 380, ±134.90 feet south of the southwest property corner.
 ELEVATION = 618.66 feet
 BM #2 - "X" cut at the centerline of a concrete headwall located on the north side of U.S. Hwy. 380, ±21.25 feet southeast of the southeast property corner.
 ELEVATION = 623.81 feet
 BM #3 - "X" cut on water mh concrete collar north of denton county line sign.
 N=7130673.2630 E=2476518.0780
 ELEVATION = 615.41
 BM #4 - "X" cut on south end of headwall approx. 150 feet north of the intersection of U.S. Hwy. 380 and the southbound drive of Dallas Pkwy. on the west side of Dallas Pkwy.
 N=7130743.0850 E=2481993.6100
 ELEVATION = 629.04

LEGEND

PP	Power Pole	IRF	Iron Rod Found
GW	Guy Wire	IRS	Iron Rod Set
MH	Manhole	CIRS	Iron Rod Set w/ cap "WAI"
WV	Water Valve	CIRF	Iron Rod Found w/ cap
TP	Telephone Pedestal	XCS	"X" Cut in Concrete Set
WM	Water Meter	XCF	"X" Cut in Concrete Found
FH	Fire Hydrant	PKS	PK Nail Set
LP	Light Pole	PKF	PK Nail Found
IV	Irrigation Valve	SS	Sanitary Sewer
CO	Clean Out	SW	Storm Sewer
AC	Air Conditioner	IF	Transformer pad
TV	Cable Box	GM	Gas Meter
SB	Signal Box	GMK	Gas Marker
SN	Signal Pole	TSN	Traffic Sign
SP	Sign	UGC	Underground Cable Marker
CM	Control Monument	EB	Electric Box
WMK	Water Marker	EM	Electric Meter
MP	Mail Post	TMK	Traffic Marker
		BOL	Bollard

PRELIMINARY SITE DATA TABLE

LOT NUMBER	1
ZONING	PD-47
PROPOSED USE	MEDICAL OFFICE
LOT AREA (AC)	10.445
BUILDING AREA (SF)	122,500
BUILDING HEIGHT (FT)	33'-9"
LOT COVERAGE	21.37%
FLOOR AREA RATIO	1.5
TOTAL PARKING REQUIRED	330
TOTAL PARKING PROVIDED	480
HC PARKING REQUIRED	11
HC PARKING PROVIDED	12
OPEN SPACE REQUIRED (SF)	31,849
OPEN SPACE PROVIDED (SF)	60,184
OPEN SPACE RATIO REQUIRED	7%
OPEN SPACE RATIO PROVIDED	13.23%
INTERIOR LANDSCAPING REQUIRED (SF) (15 SF/PKG SPOT)	7,200
INTERIOR LANDSCAPING PROVIDED (SF)	11,292
SQUARE FOOTAGE OF IMPERVIOUS SURFACE (SF)	325,714

*TOTAL PARKING INCLUDES HC SPACES

HOSPITAL PARKING ANALYSIS:
 A. NUMBER OF EXAM ROOMS @ 1.5/ROOM = 137
 B. FITNESS CENTER 6600 SF @ 1:200 = 33
 C. NUMBER OF EMPLOYEES 200 @ 1 EACH = 160
 TOTAL = 330

Winkelman & Associates, Inc.
 CONSULTING CIVIL ENGINEERS SURVEYORS
 100 HILGREET PLAZA DRIVE, SUITE 305
 FORT WORTH, TEXAS 76104
 (817) 490-7099
 (817) 490-7098 FAX
 State of Texas Professional Engineer Registration No. 107866-00
 State of Texas Professional Surveyor Registration No. 107866-00
 Winkelman & Associates, Inc.

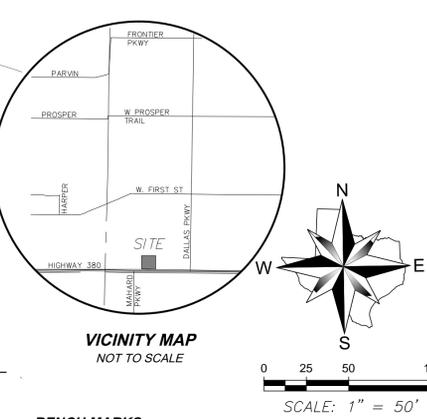
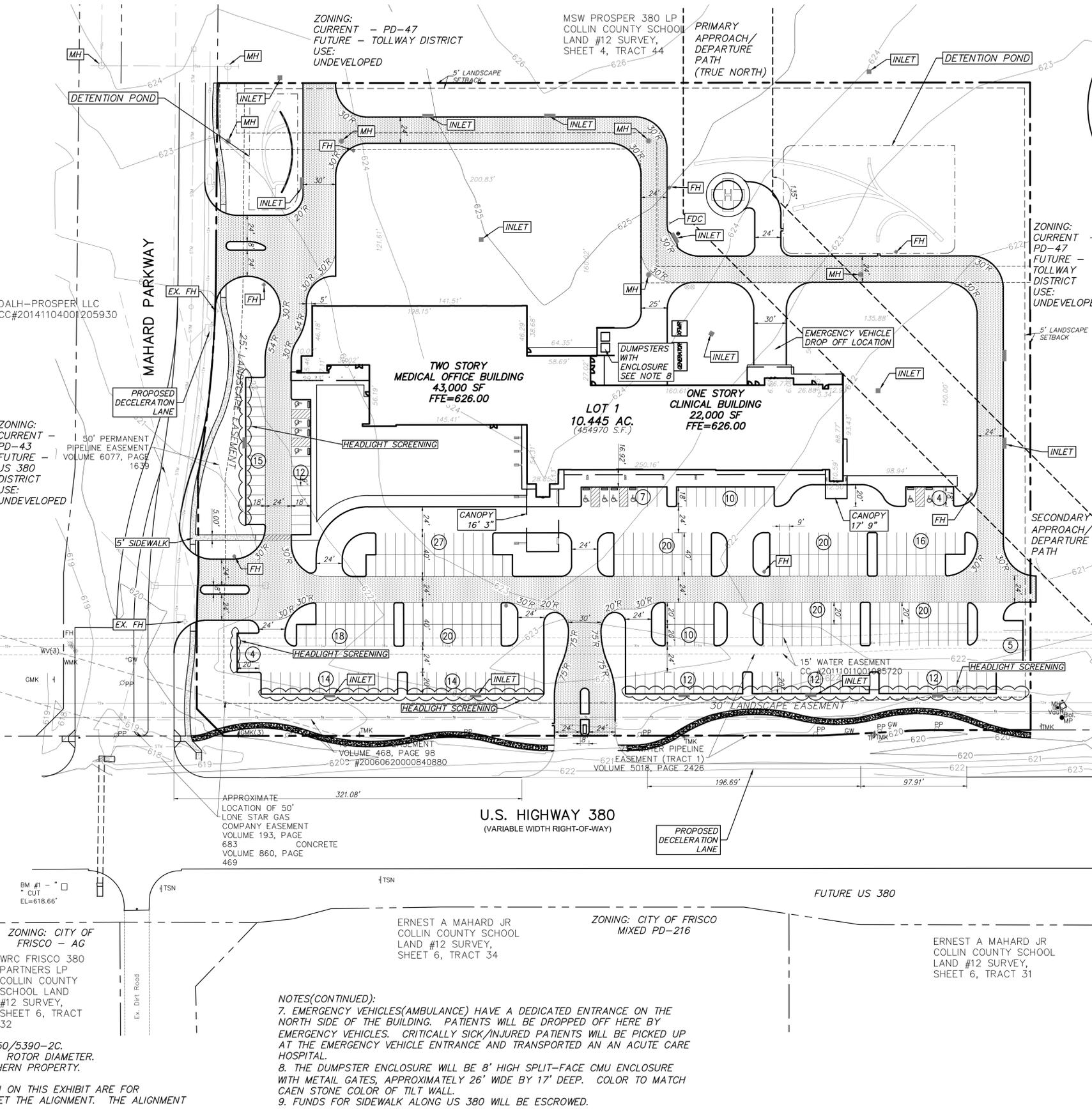
PRELIMINARY SITE PLAN
 TEXAS HEALTH - INTEGRATED HEALTH CAMPUS
 PROSPER, TEXAS

PSP-1.0

03-23-2015

68001.DA
 G:\68001.DA\ENGINEERING\Construction Plans\68001.DA - SITE.dwg
 LAST SAVED BY: LOKEN May 27, 2015

- CITY SITE PLAN NOTES**
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 - NO EXISTING TREES ON SITE.
 - ALL DETENTION PONDS TO BE AMENITIZED.



- ZONING:**
CURRENT - PD-47
FUTURE - TOLLWAY DISTRICT
USE: UNDEVELOPED
- BENCH MARKS:**
- BM #1 - "X" cut at the centerline of a concrete headwall located on the south side of U.S. Hwy. 380, ±134.90 feet south of the southwest property corner.
ELEVATION - 618.66 feet
 - BM #2 - "X" cut at the centerline of a concrete headwall located on the north side of U.S. Hwy. 380, ±21.25 feet southeast of the southeast property corner.
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N=7130743.0850 E=2481993.6100
ELEVATION - 629.04

LEGEND

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MH	Manhole	CIRS	Iron Rod Set w/ cap "WAI"
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IV	Irrigation Valve	SS	Sanitary Sewer
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SP	Signal Pole	TSN	Traffic Sign
SN	Sign	UGC	Underground Cable Marker
CM	Control Monument	EB	Electric Box
WMK	Water Marker	EM	Electric Meter
MP	Metal Post	TMK	Traffic Marker
		BCL	Ballard

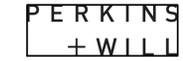
SITE DATA TABLE

LOT NUMBER	1
ZONING	PD-47
PROPOSED USE	MEDICAL OFFICE
LOT AREA (AC)	10.445
BUILDING AREA (SF)	65,000
BUILDING HEIGHT (FT)	33'-9"
LOT COVERAGE	9.51%
FLOOR AREA RATIO	1.5
TOTAL PARKING REQUIRED	206
TOTAL PARKING PROVIDED	292
HC PARKING REQUIRED	7
HC PARKING PROVIDED	10
OPEN SPACE REQUIRED (SF)	31,849
OPEN SPACE PROVIDED (SF)	157,389
OPEN SPACE RATIO PROVIDED	7%
OPEN SPACE RATIO REQUIRED	34.59%
INTERIOR LANDSCAPING REQUIRED (SF) (15 SF/PKG SPOT)	4,380
INTERIOR LANDSCAPING PROVIDED (SF)	7,948
SQUARE FOOTAGE OF IMPERVIOUS SURFACE (SF)	211,586

*TOTAL PARKING INCLUDES HC SPACES

HOSPITAL PARKING ANALYSIS:

A. NUMBER OF EXAM ROOMS @1.5/ROOM = 137
 B. FITNESS CENTER 6600 SF @ 1:200 = 33
 C. NUMBER OF EMPLOYEES 200 @ 1 EACH= 160
 TOTAL = 330



10100 North Central Expressway
 Suite 300
 Dallas, Texas 75231
 (214) 261-8700
 (214) 261-8701
 www.perkinswill.com

CONSULTANTS

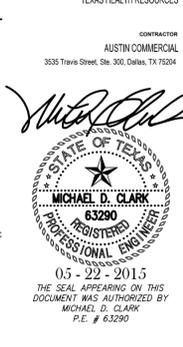
WYNELMANN & ASSOCIATES
 6750 Hillcrest Plaza Dr., Ste. 325, Dallas, TX 75230

BURY, INC.
 5310 Harvest Hill Road, Ste. 100, Dallas, TX 75230

KENDALL + Landscape Architecture
 8150 North Central, Suite 701, Dallas, TX 75206

TEXAS HEALTH RESOURCES
 612 E. Lamar Blvd., Ste. 200, Arlington, TX 76011

TEXAS HEALTH RESOURCES
 3535 Travis Street, Ste. 300, Dallas, TX 75204

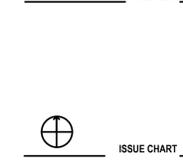


PROJECT

INTEGRATED HEALTH CAMPUS - PROSPER

TEXAS HEALTH RESOURCES
 PROSPER, TEXAS

KEYPLAN



ISSUE CHART

Drawn	Author
Checked	Checked
Approved	Approved

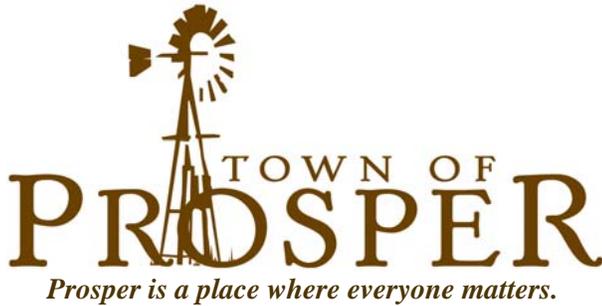
TITLE

SITE PLAN

SHEET NUMBER

C-01.00

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PLANNING

To: Mayor and Town Council

From: John Webb, AICP, Director of Development Services

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

Agenda Item:

Conduct a Public Hearing, and consider and act upon an ordinance rezoning 9.4± acres, located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway, from Agricultural (A) to Planned Development-Single Family-15 (PD-SF-15). (Z14-0016).

History:

At the May 12, 2015, Town Council meeting, the associated Future Land Use Plan amendment (case CA15-0003) was denied. This item was tabled in order to give the applicant an opportunity to meet the recommendations of the Low Density Residential District of the Future Land Use Plan and provide minimum lot sizes of 15,000 square feet. The applicant has revised the request to provide minimum lot sizes of 15,000 square feet.

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	Agricultural	Undeveloped	Low Density Residential
North	Planned Development-36-Single Family-10 and Single Family-15	Undeveloped	Low Density Residential
East	Planned Development-60-Single Family-10	Undeveloped	Medium Density Residential
South	Planned Development-66-Single Family	Undeveloped	Low Density Residential
West	Agricultural	Undeveloped	Low Density Residential

Requested Zoning – Z14-0016 is a request to approve an ordinance rezoning 9.4± acres, located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway, from Agricultural (A) to Planned Development-Single Family-15 (PD-SF-15). The PD-SF-15 regulations are attached. The proposed PD-SF-15 District would allow for the development of lots a minimum of 15,000 square feet in size. The following is a comparison of the proposed PD-SF-15 District standards to the straight SF-15 District standards:

	Proposed PD-SF-15 District	Standard SF-15 District
Min. Lot Area	15,000 square feet	15,000 square feet
Min. Lot Width	90 feet	100 feet
Min. Lot Depth	130 feet	135 feet
Min. Dwelling Area	2,500 square feet	1,800 square feet
Front Yard Setback	25 feet	35 feet
Side Yard Setback	8 feet, 15 feet on corner lots adjacent to a side street	10 feet, 15 feet on corner lots adjacent to a side street
Rear Yard Setback	25 feet	25 feet
Maximum Height	40 feet	40 feet

The Planned Development (PD) District standards that exceed the straight zoning include:

- *Building and Architectural Standards*
 - a. an exterior lighting package to illuminate front entrances, garages, landscaping and trees located in the front yard;
 - b. minimize the repetition of home elevations;
 - c. require a mix of swing-in garages and front facing garage doors;
 - d. provide for enhanced driveway paving treatments and garage doors; and
 - e. prohibit carports and the parking of certain vehicles
- *Fencing*
 - a. fencing adjacent to open space, parks or floodplain to be ornamental metal
 - b. wooden fencing to be cedar, board-on-board with a top rail and a common stain color
 - c. privacy fences on single family residential lots to be located ten (10) feet behind the front elevation of the main building and not exceed eight (8) feet in height above grade

The following standard does not meet the Town's standards:

- *Cul-de-sac Length* – The PD provides for a maximum cul-de-sac length of 700 feet; however, the Town’s Subdivision Ordinance limits the maximum length of cul-de-sacs to 600 feet.

Future Land Use Plan – The Future Land Use Plan recommends Low Density Residential for the property. The Low Density Residential District recommends single family lot sizes between 15,000 square feet and 1+ acre in size. The proposed rezoning request includes 9.4± acres of Single Family-15 (SF-15), as shown on Exhibit A. The proposed Planned Development-SF-15 District would allow for the development of single family residential lots, with a minimum lot area of 15,000 square feet. The proposed rezoning request is in conformance with the Future Land Use Plan.

Thoroughfare Plan – The property is not adjacent to any future thoroughfares.

Water and Sanitary Sewer Services – Water and sanitary sewer service will have to be extended to the property either before or with development.

Access – Access to the property will be provided from the northern adjacent development.

Schools – This property is located within the Prosper Independent School District (PISD).

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

Environmental Considerations – The 100-year floodplain located on the property is shown on Exhibit A.

Legal Obligations and Review:

Notification was provided to neighboring property owners as required by state law. Town staff has received one Public Hearing Notice Reply Form; not in opposition to the request.

Attached Documents:

1. Zoning map of the surrounding area
2. Public Hearing Notice Reply Form
3. Ordinance

Planning & Zoning Commission Recommendation:

At their December 16, 2014, meeting, the Planning & Zoning Commission recommended the Town Council approve the request to rezone 9.4± acres, located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway, from Agricultural (A) to Planned Development-Single Family-12.5 (PD-SF-12.5), by a vote of 4-1 (Snyder opposed; Barnes and Hema absent).

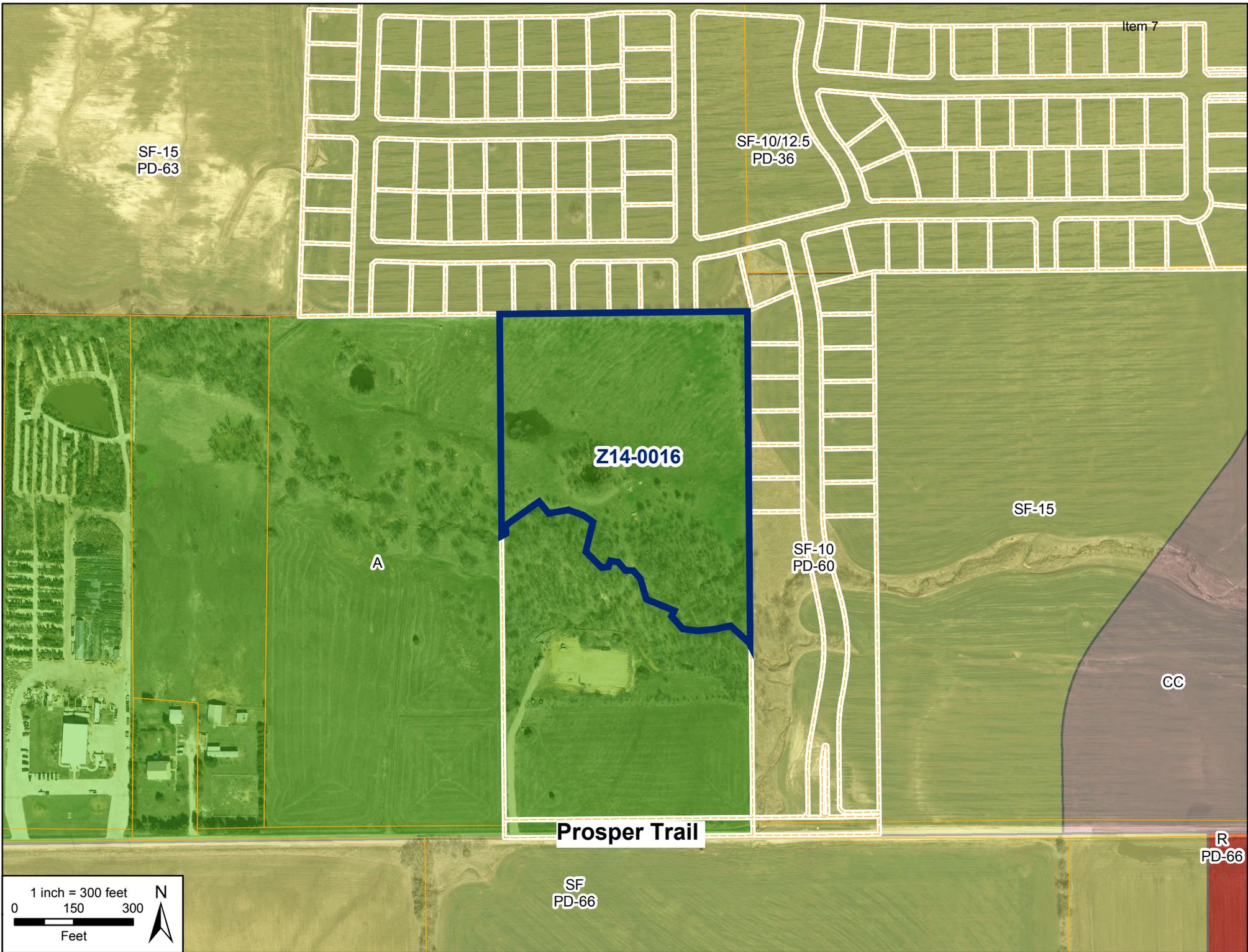
The members indicated that even though the entirety of the development did not meet the minimum requirement for 15,000 square foot lots, improvements had been made to the exhibit in terms of lot size in addition to the enhanced development standards. Several members indicated the request was appropriate. Commissioner Snyder indicated the request did not warrant a deviation from the Future Land Use Plan.

Town Staff Recommendation:

Town staff recommends that the Town Council approve an ordinance rezoning 9.4± acres, located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway, from Agricultural (A) to Planned Development-Single Family-15 (PD-SF-15).

Proposed Motion:

I move to approve an ordinance rezoning 9.4± acres, located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway, from Agricultural (A) to Planned Development-Single Family-15 (PD-SF-15).



SF-15
PD-63

SF-10/12.5
PD-36

Item 7

Z14-0016

A

SF-10
PD-60

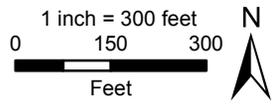
SF-15

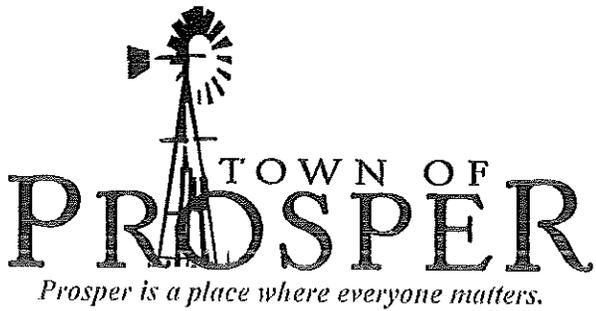
CC

Prosper Trail

R
PD-66

SF
PD-66





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

REPLY FORM

SUBJECT:

Zoning Case Z14-0016: The Town of Prosper has received a request to rezone 9.4± acres from Agricultural (A) to Planned Development-Single Family-12.5 (PD-SF-12.5).

LOCATION OF SUBJECT PROPERTY:

The property is located 500± feet north of Prosper Trail, 3,000± feet west of Dallas Parkway.

DESCRIPTION OF THE REQUEST:

The Planned Development-Single Family-12.5 District will provide for development of single family detached dwelling units on a minimum lot size of 12,500 square feet.

- 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): Zoning
goes along with adjacent & sister development

Robert E. Myers
 Name (please print)

Robert E. Myers
 Signature

6310 Lemmon # 200
 Address

10/14/14
 Date

Dallas, TX 75019
 City, State, and Zip Code

rmyers@myersfinancialcorp.com
 E-mail Address

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 15-__

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20; REZONING A TRACT OF LAND CONSISTING OF 9.440 ACRES, MORE OR LESS, SITUATED IN THE COLLIN COUNTY SCHOOL LAND SURVEY, ABSTRACT NO. 147, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED AGRICULTURAL (A) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-SINGLE FAMILY-15 (PD-SF-15); 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 Baldwin Associates, LLC ("Applicant") to rezone 9.440 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, 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 and Ordinance No. 04-99. Zoning Ordinance No. 05-20 is amended as follows: The zoning designation of the below-described property containing 9.440 acres of land, more or less, situated in the Collin County School Land Survey, Abstract No. 147, in the Town of Prosper, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Single Family-15 (PD-SF-15). The property as a whole and the boundaries for

each zoning classification are more particularly described in Exhibits "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 plans, 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 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.

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 9th DAY OF JUNE, 2015.

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

Exhibit B
Statement of Intent and Purpose

The purpose of this planned development is to contribute to the positive environment created by the PD regulations established for Legacy Crossing (PD-36 and PD-60). The proposed development standards exceed those previously adopted by the Legacy Crossing Planned Development in order to conform to the 2012 Comprehensive Plan. This property will further the design for the entrance, common areas, and buffer treatments established for Legacy Crossing.

This planned development will also allow the opportunity to include some landlocked property into Legacy Crossing which will further the positive atmosphere created by that community.

Exhibit C

Planned Development Standards 9.440 Acres (Gross)

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. Unless otherwise noted, all development shall be in accordance with all Town Codes.
- 1.2 Development Pattern: The property shall generally develop in accordance with Exhibit D, Zoning Exhibit.
- 1.3 Open Space: The open spaces shown on the Zoning Exhibit, Exhibit D, shall be landscaped and maintained by the Homeowners Association.
- 1.4 Setbacks:
 - a. Minimum Front Yard: 25 feet.
 - b. Minimum Side Yard: 8 feet.
 - c. Minimum Rear Yard: 25 feet.
- 1.5 Minimum Lot Area: 15,000 square feet.
- 1.6 Minimum Lot Width at Front Building Line: 90 feet.
- 1.7 Minimum Lot Depth: 130 feet.
- 1.8 Minimum Dwelling Area: 2,500 square feet.
- 1.9 Building Standards:
 - a. All homes shall provide an exterior lighting package to illuminate the front of homes. The package shall include a minimum of 2 up or down lights to accent building architectural and/or landscape features. Security lighting may not be substituted for accent lighting.
 - b. Home elevations shall alternate at a minimum of every 4 homes on the same side of a street and every 3 homes on the opposite sides of a street.
 - c. Garage doors shall be cedar clad and stained.
 - d. Homes on a minimum of 2/3 of the single family lots within the community shall utilize swing in garages. For the purposes of this item, when garages for 3 cars are provided and the 2-car garage is a swing in garage, the home shall be considered as to have provided a swing in garage.
 - e. Except for garage doors provided on swing in garages, garage doors shall not be located closer to the street than the primary front facade of the home.

f. Carports are prohibited.

1.10 Required Parking:

- a. A minimum of 4 off-street, concrete parking spaces shall be provided for each residential unit. As part of the parking requirement, at least 2 of the off-street parking spaces shall be in an enclosed garage.
- b. The parking of motor homes, boats, and/or trailers on a lot facing a street or on a street, is prohibited.

1.11 a. All fencing located on single-family lots adjacent to open spaces shall consist of ornamental metal/tubular steel.

b. All wooden fencing shall be 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.

c. Privacy fences on single family residential lots shall be located no closer to the front property line than 10 feet behind the front elevation of the house and shall not exceed 8 feet in height above grade.

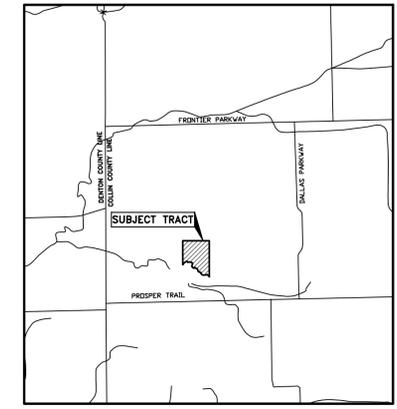
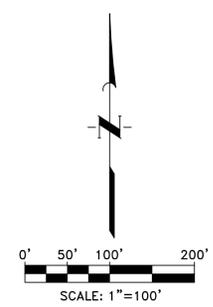
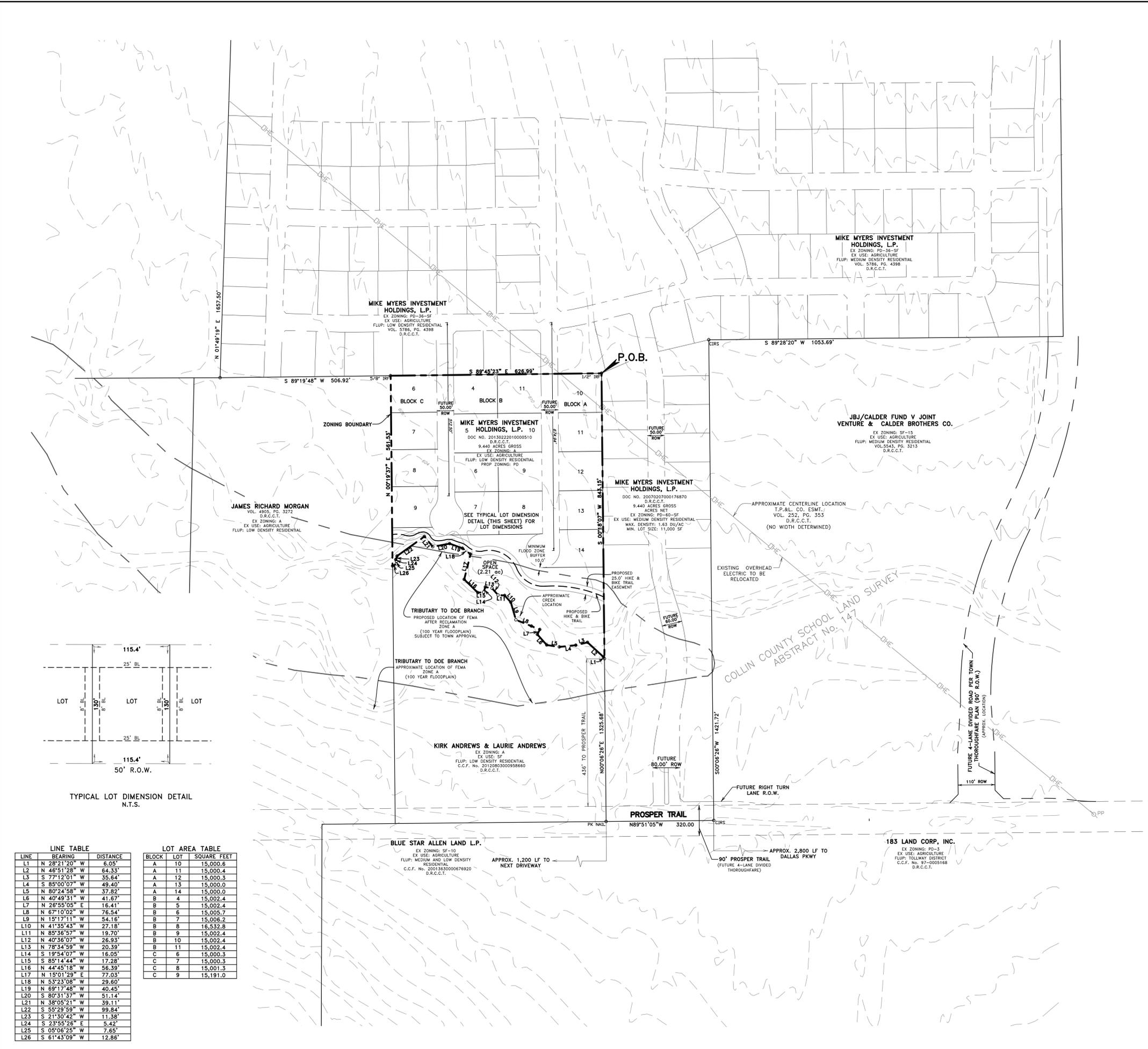
1.12 Driveways: Enhanced paving treatments shall be provided for all driveways and shall consist of one of the following, or other treatment as approved by the Director of Development Services.

- a. Stamp and stain/patterned concrete (must be dust-on color application to wet concrete).
- b. Acid-etched color concrete for the field with scored smooth colored borders (must use dust-on color application to wet concrete).
- c. Colored concrete with scored smooth border (must use dust-on color application to wet concrete).

1.13 Cul-de-sacs: Cul-de-sacs shall not exceed 700 feet in length.

2.0 General Conditions

2.01 Homeowners Association. Each lot shall be a member of the Legacy Crossing (PD-60) Homeowner's Association.



LEGEND

C.C.F.# COUNTY CLERK'S FILE NUMBER
 VOL. VOLUME
 PG. PAGE
 CAB. CABINET
 D.R.C.C.T. DEED RECORDS, COLLIN COUNTY, TEXAS

VICINITY MAP
 N.T.S.

METES AND BOUNDS DESCRIPTION
 Mike Myers Investment Holdings, L.P.
 9.440 AC Tract

BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Collin County, Texas and also being part of a 19.001 acre tract as conveyed to Kirk and Laurie Andrews as recorded in County Clerks No. 20120803000958660 of the Land Records of Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found for corner at the northeast corner of said 19.001 acre tract; THENCE S 0°18'07" W a distance of 843.15' to a point in a creek; THENCE up said creek

- N 28°21'20" W a distance of 6.05';
- N 46°51'28" W a distance of 64.33';
- S 77°12'01" W a distance of 35.64';
- S 85°00'07" W a distance of 49.40';
- N 80°24'58" W a distance of 37.82';
- N 40°49'31" W a distance of 41.67';
- N 26°55'05" E a distance of 16.41';
- N 67°10'02" W a distance of 76.54';
- N 15°17'11" W a distance of 54.16';
- N 41°35'43" W a distance of 27.18';
- N 85°36'57" W a distance of 19.70';
- N 40°36'07" W a distance of 26.93';
- N 78°34'59" W a distance of 20.39';
- S 19°54'07" W a distance of 16.05';
- S 85°14'44" W a distance of 17.28';
- N 44°45'18" W a distance of 56.39';
- N 15°01'29" E a distance of 77.03';
- N 53°23'08" W a distance of 29.60';
- N 69°17'48" W a distance of 40.45';
- S 80°31'37" W a distance of 51.14';
- N 38°05'21" W a distance of 39.11';
- S 55°29'59" W a distance of 99.84';
- S 21°30'42" W a distance of 11.38';
- S 23°55'26" E a distance of 5.42';
- S 05°06'25" W a distance of 7.65';
- S 61°43'09" W a distance of 12.86';

THENCE N 00°19'37" E a distance of 561.53' to a capped 1/2" iron rod set for corner; THENCE S 89°45'23" E a distance of 626.99' to the POINT OF BEGINNING and containing 411,185 square feet or 9.440 acres of land.

NOTE: THE THOROUGHFARE AND TRAIL ALIGNMENTS SHOWN ON THIS EXHIBIT ARE FOR ILLUSTRATION PURPOSES AND DOES NOT SET THE ALIGNMENT. THE ALIGNMENT IS DETERMINED AT TIME OF FINAL PLAT.

**Z14-0016
 EXHIBIT D
 COLLIN COUNTY SCHOOL LANDS, SURVEY 12
 ABSTRACT NO. 147**

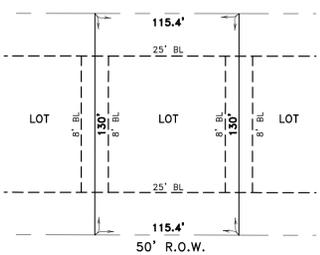
**COLLIN COUNTY, TEXAS
 MAY 2015**

OWNER:
 MIKE A. MYERS INVESTMENT HOLDINGS, LP
 6310 LEMMON AVENUE
 DALLAS, TX 75209
 PHONE: (214) 350-6500

ENGINEER:
 J.C. JONES & CARTER, INC.
 6509 WINDCREST DRIVE, SUITE 600
 PLANO, TEXAS 75024
 PHONE: (972) 488-0440
 FAX: (972) 488-3882

SURVEYOR:
 SURDUKAN SURVEYING, INC.
 P.O. BOX 126
 ANNA, TEXAS 75409
 PHONE: (972) 924-8200

LINE TABLE			LOT AREA TABLE		
LINE	BEARING	DISTANCE	BLOCK	LOT	SQUARE FEET
L1	N 28°21'20" W	6.05'	A	10	15,000.6
L2	N 46°51'28" W	64.33'	A	11	15,000.4
L3	S 77°12'01" W	35.64'	A	12	15,000.3
L4	S 85°00'07" W	49.40'	A	13	15,000.0
L5	N 80°24'58" W	37.82'	A	14	15,000.0
L6	N 40°49'31" W	41.67'	B	4	15,002.4
L7	N 26°55'05" E	16.41'	B	5	15,002.4
L8	N 67°10'02" W	76.54'	B	6	15,005.7
L9	N 15°17'11" W	54.16'	B	7	15,006.2
L10	N 41°35'43" W	27.18'	B	8	16,532.8
L11	N 85°36'57" W	19.70'	B	9	15,002.4
L12	N 40°36'07" W	26.93'	B	10	15,002.4
L13	N 78°34'59" W	20.39'	B	11	15,002.4
L14	S 19°54'07" W	16.05'	C	6	15,000.3
L15	S 85°14'44" W	17.28'	C	7	15,000.3
L16	N 44°45'18" W	56.39'	C	8	15,001.3
L17	N 15°01'29" E	77.03'	C	9	15,191.0
L18	N 53°23'08" W	29.60'	C	9	15,191.0
L19	N 69°17'48" W	40.45'	C	9	15,191.0
L20	S 80°31'37" W	51.14'	C	9	15,191.0
L21	N 38°05'21" W	39.11'	C	9	15,191.0
L22	S 55°29'59" W	99.84'	C	9	15,191.0
L23	S 21°30'42" W	11.38'	C	9	15,191.0
L24	S 23°55'26" E	5.42'	C	9	15,191.0
L25	S 05°06'25" W	7.65'	C	9	15,191.0
L26	S 61°43'09" W	12.86'	C	9	15,191.0



TYPICAL LOT DIMENSION DETAIL
 N.T.S.

Exhibit E

Development Schedule

9/16/14– Development Application Submitted

12/2/14 – Preliminary plat goes to P&Z

2/21/15 – Phase 1 construction plans approved

3/15/15 – Construction begins

8/12/15 – Construction Complete/Town accepts infrastructure

9/14/15 – Final plat file



DEVELOPMENT AND COMMUNITY SERVICES

To: Mayor and Town Council

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

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

Agenda Item:

Consider and act upon authorizing the Town Manager to execute an agreement between the Town of Prosper, Texas, and Randall Scott Architects, related to architectural and engineering design services for a Town Hall/Multi-Purpose Facility; and authorizing use of the construction manager at risk contracting method for construction.

Description of Agenda Item:

The Town requested Statements of Qualifications (SOQ) from qualified firms, to provide professional Architectural and Engineering Design Services, relating to the conceptual design and planning of a new Town Hall/Multi-Purpose Facility. The project was anticipated to be split into a needs assessment phase and a design services phase. The Town received eight responses by the due date and time (January 3, 2014, at 2:00 p.m.). Firms were required to submit information in order to facilitate evaluation based on the following criteria:

1. firm's overall ability to meet the Town's objectives;
2. experience;
3. professional qualifications of individuals assigned to the project; and
4. references.

The evaluation committee was comprised of eight staff members representing Town Secretary's Office, Finance, Human Resources, and Development and Community Services. The evaluation committee scored each submittal in accordance with the evaluation criteria as stated above, to determine the total points for each firm.

Based on the initial scores, the evaluation committee further reviewed the three top-ranked firms. After additional discussions with references, researching change order histories, and conducting interviews, the committee re-ranked the three top-ranked firms.

The first agreement for the needs assessment phase was approved at the April 8, 2014, Town Council meeting. Brinkley Sargent Architects was selected from the three top-ranked firms and has completed the needs assessment. The results of the needs assessment showed that a two-story, 35,701SF Town Hall/Multi-Purpose Facility could be constructed to meet the space needs for Town Administration, Court, Development Services (Building Inspections, Code Compliance, Planning), Engineering Services and Library to 2020, or Town population of 28,000, for approximately \$17,000,000, which is detailed in the Budget Impact section of the staff report.

The needs assessment also included a conceptual site plan showing the footprint for the ultimate two-story, 61,999SF facility with adequate parking on and adjacent to the property.

After the completion of the needs assessment, the Town decided to negotiate a separate agreement for the design services phase of the project with a different architect which was also selected from the three top-ranked firms. The proposed design services agreement with Randall Scott Architects includes the architectural, structural and MEP (mechanical, electrical, and plumbing) design of the building, engineering services for the on-site improvements, interior design, and necessary consultants to assist with acoustical, technology, and library design.

At the May 26, 2015, Town Council meeting, the agreement with Randall Scott Architects was tabled to allow staff, the Town Attorney, and Randall Scott Architects additional time to complete the Supplemental Conditions section of the agreement. During the meeting, Town Council provided additional feedback on the May 22, 2015, tour of other local city halls, regarding square footage and number of stories for the facility. Staff was given direction to increase the initial square footage of the building from 35,701SF to approximately 50,000SF, which would be near the size of the facility planned for 2024 in the needs assessment, and to evaluate the cost differences between a two-story and three-story building. The architect was also asked for a cost reduction of the proposed \$15,000 of additional services for structural design of a two-story versus a three-story building, and inclusion of 3D Visualization Artist in the base services instead of \$125/hour additional cost.

Exhibit "A" of the attached agreement with Randall Scott Architects has been revised to include services for the design of an approximate 50,000SF facility and allows the decision to go with a two-story or a three-story later in the design process, once space programming is better planned and cost comparisons can be prepared. The additional service of \$15,000 for vertical structural expansion design services to build an initial two-story building that can be expanded to three-stories in the future is still included in the scope but will not be needed if the Town decides to build a two-story ultimate footprint or three-story initial footprint. The design fee already includes this cost. Also, the basic services include the renderings so any renderings requested beyond what is in the agreement would require the Town to pay the \$125/hour rate..

In addition, staff recommends using the construction manager at risk contracting method for construction of the Town Hall/Multi-Purpose Facility, in order to obtain a qualified Construction Manager, and the proposal that offers the best value to the Town.

The following tentative schedule for the project has been provided by Randall Scott Architects and is considered aggressive. To achieve it, quick decisions will have to be made by the Town during the design process:

June 10, 2015	Town issues Notice to Proceed to RSA
August 31, 2015	Completion of Pre-Design & Schematic Design Phases (2.75 months)
December 11, 2015	Completion of Design Development Phase & GMP Pricing Package issued to CM at Risk (3.25 months, includes 1 holiday week for Thanksgiving Holiday)
January 22, 2016	CM at Risk Guaranteed Maximum Price due (1 1/2 months, includes the 2 holiday weeks for Christmas and New Year's)
January 29, 2016	Town issues CM at Risk Notice to Proceed (1 week)
February 24, 2016	Completion of 100% Construction Documents (2 1/2 months, includes 2 holiday weeks for Christmas and New Year's)
March 24, 2016	CM at Risk Final Buyout (1 month)
March 31, 2016	Substantial Completion & Furniture Move-in Occurs (14 months)
April 15, 2017	Approximate Move-in Date for Staff (2 weeks)
April 29, 2017	Contractor Achieves Punch Out/Final Completion

Budget Impact:

At the March 31, 2015, Town Council Work Session, an overall budget of approximately \$17,000,000 for the Town Hall/Multi-Purpose Facility was discussed and presented as follows:

- Construction of Facility, On-Site and Off-Site Improvements: \$ 14,536,570
 - Facility: \$ 9,236,780
 - On-Site Parking: \$ 1,005,000
 - Off-Site Improvements: \$ 450,000
 - Contingency (10%): \$ 1,069,200
 - Escalation (23.6%): \$ 2,775,590
- Furniture, Fixtures & Equipment: \$ 975,900
- Professional Services: \$ 1,485,170

Based on comments received from the Town Council at the May 26, 2015, meeting regarding increase in square footage, Town staff and Randall Scott Architects discussed setting an initial budget for the construction of the facility, on-site parking, contingency and escalation at \$14,000,000. It is important to note that this is almost the same as the estimated costs for the same improvements based on Brinkley Sargent Architects' estimate above of \$13,924,750 for 35,700SF, when the off-site improvements (\$450,000) along with the associated 10% contingency (\$45,000) and 23.6% escalation (\$116,820) are deducted from the \$14,536,570 estimate. If the costs for the Facility, On-Site Parking, associated Contingency and Escalation exceed the \$14,000,000, the agreement with Randall Scott Architects does include language stating that if the construction cost of the project exceeds the initial budget, then the design services fees will be increased at a percentage of 8.9% times the increased amount of the construction cost exceeding \$14,000,000.

It is important to note that there will be additional agreements with other consultants necessary for the surveying, geotechnical services, and engineering design of the off-site improvements required for the project. Once the agreements are complete, they will be provided to the Town Council for their consideration. Town staff estimates the cost for the additional professional services is \$300,000 and the associated cost for the construction of these improvements is approximately \$1,000,000. For comparison, Brinkley Sargent Architects estimated the off-site improvements at \$611,820 with contingency and escalation. The cost increase is attributed to some additional drainage work upstream and downstream needed to facilitate the project.

The negotiated fee for the attached design services agreement with Randall Scott Architects is \$1,389,146. The agreement also includes \$15,000 for reimbursable expenses as outlined in Article 11.8.1 of the agreement. Additional services, if elected by the Town, will be compensated in accordance with Article 11 of the agreement. The fees for the design and reimbursable expenses, in an amount not to exceed \$1,404,146, will be funded from Professional Services Account # 75-6610-10-00-1402-FC.

At the April 8, 2014, Town Council meeting, the Town Council approved a Reimbursement Resolution in the amount of \$1,250,000 for Town Hall design and construction. The negotiated fee for the needs assessment with Brinkley Sargent Architects was \$45,500, which included \$2,500 for reimbursable expenses and \$15,000 for renderings. Final cost for the needs assessment was \$28,735. There was costs savings in reimbursable expenses and the renderings are now included in the design services agreement with Randall Scott Architects. Since the costs for the needs assessment, design services, and upcoming additional agreement with other consultants necessary for the surveying, geotechnical services, and engineering design of the off-site improvements required for the project are estimated at approximately \$1,750,000, bond counsel has stated that even though the anticipated costs are somewhat higher, that the Town could rely on the original Reimbursement Resolution.

Legal Obligations and Review:

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

Attached Documents:

1. Agreement

Town Staff Recommendation:

Town staff recommends the Town Council approve an agreement between the Town of Prosper, Texas, and Randall Scott Architects, related to architectural and engineering design services for a Town Hall/Multi-Purpose Facility; and authorizing use of the construction manager at risk contracting method for construction.

Proposed Motion:

I move to approve an agreement between the Town of Prosper, Texas, and Randall Scott Architects, related to architectural and engineering design services for a Town Hall/Multi-Purpose Facility; and authorizing use of the construction manager at risk contracting method for construction.

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the ninth day of June in the year 2015
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

The Town of Prosper
121 W. Broadway St
Prosper, TX 75078

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

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

Randall Scott Architects, Inc.
14755 Preston Road, Suite 730
Dallas, TX 75254

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

Town of Prosper Town Hall/Multi-Purpose Facility

A 50,000 GSF Town Hall, Library and Multi-Purpose Facility to include Administration, Courts, Development Services (Building Inspections, Code Compliance and Planning), Engineering Services, Library and Town Hall with associated on-site work located on the northwest corner of Main St. and 2nd St. in Prosper, TX

The Owner and Architect agree as follows.

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(1834308149)

TABLE OF ARTICLES

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Refer to Architect's Fee Proposal Rev. 5 dated May 29, 2015 attached hereto

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

TBD

.2 Substantial Completion date:

TBD

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 The Owner and the Architect acknowledge that the Architect's standard of care is one of reasonable professional diligence and that certain increased costs and changes may be required because of possible ambiguities and inconsistencies in the drawings and specifications prepared by the Architect or its consultants. In recognition of the foregoing, the Owner shall set aside in the Project Budget a contingency equal to 2% of the Construction Cost of the Work as a contingency to be used, as required, to pay for the increased or additional costs related to any ambiguities or inconsistencies in the drawings and specifications (the "Contingency"). The Contingency is in addition to any construction contingency or other separate Owner contingencies and may not be used to fund costs that are typically funded by such other contingencies (such as, changed site conditions, subcontractor default or acceleration costs). The Owner shall make no claim against the Architect or its consultants for any costs, expenses or damages to the extent that such costs, expenses or damages are equal to or less than 2% of the Cost of the Work. It is well recognized that an Architect is not liable to an Owner for costs incurred to install an omitted item. In no event shall the Architect or the Architect's consultants be responsible for any cost or expense that provides a betterment, upgrade or enhancement of the Project, as these costs or expenses would have been part of the Project construction costs in the first place.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

Refer to Architect's Certificate of Insurance Exhibit B attached hereto

.2 Automobile Liability

Refer to Architect's Certificate of Insurance Exhibit B attached hereto

.3 Workers' Compensation

Refer to Architect's Certificate of Insurance Exhibit B attached hereto

.4 Professional Liability

Refer to Architect's Certificate of Insurance Exhibit B attached hereto

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

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§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.5.1 The Owner acknowledges that all projects in Texas such as the one being contemplated are required by Texas law to be submitted to the Texas Department of Licensing and Regulation (TDLR) for handicap accessibility review. The Architect will submit plans for the Project to TDLR for review. The Owner acknowledges that the Construction Documents are not complete until TDLR has approved them and any comments they require are incorporated in them even though construction may have begun and even be completed before comments are received. The Architect and his consultants shall not be held financially responsible for changes to the project required by TDLR.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall ~~submit to the Owner and~~ provide Schematic Design documents to the Owner's Construction Manager (CM) at Risk and coordinate with the CM at Risk (CMR) in the preparation of its SD Phase estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.2.8 The Architect shall collaborate with the Owner and CM at Risk to assimilate the scope of work (Project requirements) and construction budget for the Cost of the Work prior to moving to the next phase of work.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall ~~update the~~ coordinate with the CM at Risk in updating its estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, ~~advise the Owner of any adjustments to the~~ collaborate with the Owner and CM at Risk on any adjustments to the CMR's estimate of the Cost of the Work, and request the Owner's approval.

§ 3.3.4 The Architect shall collaborate with the Owner and CM at Risk to make adjustments to the scope of work (Project requirements) and construction budget for the Cost of the Work prior to moving to the next phase of work.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall ~~update the~~ coordinate with the CM at Risk in updating its estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, ~~advise the Owner of~~ coordinate with the CM at Risk and the Owner on any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 ~~COMPETITIVE BIDDING~~ COMPETITIVE CM AT RISK PROPOSALS

§ 3.5.2.1 ~~Bidding~~ Competitive Proposal Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in ~~bidding~~ issuing CM at Risk Proposal Requests for the Project by

- ~~.1 procuring the reproduction~~ issuing electronic PDF files of Bidding Documents for distribution to prospective bidders; Construction Manager's at Risk;
- ~~.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;~~
- ~~.3 organizing and conducting a pre-bid conference for prospective bidders; Construction Managers at Risk;~~
- ~~.4 preparing responses to questions from prospective bidders-CMR's and providing clarifications and interpretations of the Bidding Documents to all prospective bidders-CMR's in the form of addenda; and~~
- ~~.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner. coordinating with the Owner in the review of CM at Risk proposals as requested.~~

§ 3.5.2.3 The Architect shall consider requests for ~~substitutions, if the Bidding Documents permit substitutions,~~ substitutions up until 7 days prior to the CM at Risk Proposal due date, and shall prepare and distribute addenda identifying approved substitutions to all prospective ~~bidders-CM at Risks.~~

§ 3.5.3 ~~NEGOTIATED PROPOSALS~~

§ 3.5.3.1 ~~Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- ~~.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

§ 3.5.3.3 The Architect shall consider requests for ~~substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and

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Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents

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upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. *(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Owner with amendments from the Architect	Architect's attached fee proposal
§ 4.1.2 Multiple preliminary designs	Architect	Architect's attached fee proposal
§ 4.1.3 Measured drawings	N/A	
§ 4.1.4 Existing facilities surveys	N/A	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	N/A	
§ 4.1.6 Building Information Modeling (E202™-2008)	Architect	Architect of Record's standard
§ 4.1.7 Civil engineering	Architect	Architect's attached fee proposal
§ 4.1.8 Landscape design	Architect	Architect's attached fee proposal
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	Architect's attached fee proposal
§ 4.1.10 Value Analysis (B204™-2007)	CM at Risk	
§ 4.1.11 Detailed cost estimating	CM at Risk	
§ 4.1.12 On-site Project Representation (B207™-2008)	Not Provided	
§ 4.1.13 Conformed construction documents	Not Provided	
§ 4.1.14 As-Designed Record drawings	Architect	Architect's standard
§ 4.1.15 As-Constructed Record drawings	Not Provided	
§ 4.1.16 Post occupancy evaluation	Not Provided	
§ 4.1.17 Facility Support Services (B210™-2007)	Not Provided	

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§ 4.1.18	Tenant-related services	N/A	
§ 4.1.19	Coordination of Owner's consultants	Owner	AIA B101 Agreement
§ 4.1.20	Telecommunications/data design	Architect	Architect's attached fee proposal
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22	Commissioning (B211™-2007)	Not Provided	
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™-2012)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™-2007)	N/A	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Architect	Architect's attached fee proposal

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's ~~consultants~~ consultants, CM at Risk, and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Design services in regards to existing physical conditions that could not reasonably be known or discovered prior to construction.
- .13 Changes to the project construction budget that result in additional work effort by the Architect or his consultants caused by forces outside the control of the Owner or the Architect. Should the cost of any material escalate beyond that which would normally be predicted or budgeted, resulting in the project being over the construction budget, and because of this overage, the project is required to be reduced in cost thereby modifying program, scope, material and/or details that result in additional work effort by the Architect to document the change

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner

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subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor. The Architect's Basic Services for review of Contractor's submittals shall be limited to an initial submittal and one resubmittal. Services by the Architect for review of additional resubmittals shall be an Additional Service. It shall be the responsibility of the Contractor to provide complete thorough submittals. The Architect will not be held responsible for construction delays resulting from submittals that must be returned to the Contractor as rejected because of significantly incomplete or inaccurate information.
- .2 Thirty (30) visits to the site by the Architect over the duration of the Project during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty One (21) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and

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contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and ~~trees, trees (caliper at 3' above grade and species)~~; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to ~~a Project benchmark, two Project benchmarks.~~

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.6.1 The Owner shall pay for and coordinate the services of all off-site utilities and paving civil engineering and surveying services. The Owner shall pay for and ascertain the services required to provide an on-site topographic and boundary survey.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, vacuum chamber water testing around windows, air barrier testing at the building envelope, concrete testing of cylinders, slump, temperature, air entrainment and other concrete testing required by the Architect, mortar testing, steel bolt and weld inspections/tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' (also referred to in this document as CM at Risk) general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is ~~provided in Initial Information, stated in the Architect's fee proposal attached to this Agreement under Project Criteria,~~ and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the ~~Work, Work~~ and the preliminary estimate of the Cost of the Work ~~and updated estimates of the Cost of the Work prepared by the Architect,~~ represent

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the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

~~§ 6.3~~ In preparing ~~estimates~~ the preliminary estimate of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's preliminary estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. ~~If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.~~ Detailed cost estimating services shall be provided by the Owner's CM at Risk.

§ 6.3.1 Evaluations of the Owner's budget for the Project and preliminary estimate of the Cost of the prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiation conditions. The Architect's evaluation of the Owner's budget and preliminary estimate of the Cost of the Work are made on the basis of the Architect's experience, qualifications, and best judgment of the current and future market conditions in the construction industry. Accordingly, the Architect cannot and does not warrant or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the Owner's budget for the Project or from any preliminary estimate of the Cost of the work or evaluation prepared or agreed to by the Architect.

The Architect shall compile the preliminary estimate of the Cost of the Work based on all or a portion of the following: the design progress, utilizing historical data, material quotations, discussions with trade professionals, and experience with similar projects. Bids will not be solicited for estimating purposes; therefore, competitive bidding or lack thereof may affect the actual costs. The Owner shall acknowledge the following assumptions and cautions relative to the Architect's evaluation of the Owner's budget and preliminary estimate of the Cost of the Work:

- .1 The Opinions of the Cost of the Work will assume a competitive bidding process for the entire scope of work, as defined by the plans and specifications. Competitive bidding process is defined as receiving responsive bids from a minimum of (3) CM at Risks and (3) subcontractors for each trade.
2. If the number of bids indicated in 6.3.1.1 above are not received by the CM at Risk or Owner, the bids may deviate from the Architect's evaluation of the Owner's budget and/or the preliminary estimate of the Cost of the Work.
3. Due to unpredictable conditions in the construction and other industries causing unusual fluctuations, such as the influence of commodity trading markets, regional supply and demand, regional inflation, or natural disasters; costs and availability of products and labor may fluctuate causing the Architect's evaluation of the Owner's budget and preliminary estimate of the Cost of the Work to differ from actual bids.

~~§ 6.4~~ If the Bidding or Negotiation Phase has not commenced within ~~90~~ 30 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

~~§ 6.5~~ If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall ~~make appropriate recommendations to the~~ collaborate with the CM at Risk and Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect and CM at Risk in making such adjustments.

~~§ 6.6~~ If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the ~~lowest bona fide bid or negotiated proposal,~~ CM at Risk's Guaranteed Maximum Price Proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;

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- .4 in consultation with the ~~Architect, Architect and CM at Risk~~, collaborate to revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, ~~without additional compensation, as an additional service~~, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights

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as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.4 Risk Allocation. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE OWNER AND THE ARCHITECT, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE OWNER AGREES, TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, TO LIMIT THE LIABILITY OF THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS TO THE OWNER FOR ANY AND ALL CLAIMS, LOSSES, COSTS, AWARDS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS OR EXPENSES FROM ANY CAUSE OR CAUSES, INCLUDING ATTORNEY'S FEES AND COSTS AND EXPERT-WITNESS FEES AND COSTS, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS TO ALL THOSE ENTITIES NAMED ABOVE SHALL NOT EXCEED THE AMOUNT OF INSURANCE COVERAGE INDICATED UNDER PROFESSIONAL LIABILITY ON THE ATTACHED ARCHITECT'S CERTIFICATE OF INSURANCE AND IN ARTICLE 12.1. SUCH CLAIMS AND CAUSES OF ACTION INCLUDE, BUT ARE NOT LIMITED TO, GROSS NEGLIGENCE, PROFESSIONAL ERRORS AND OMISSIONS, STRICT LIABILITY, OR BREACH OF CONTRACT OR WARRANTY. ADDITIONAL LIMITS OF LIABILITY MAY BE MADE A PART OF THIS AGREEMENT AS A REIMBURSABLE EXPENSE TO THE OWNER IF REQUIRED.

§ 8.1.5 Owner agrees with Architect to defend, indemnify and hold harmless Architect from any and all costs related to Architect's employees having to prepare for or participate in any subpoena, deposition, mediation, arbitration or trial between Owner's Contractor and any of that Contractor's subcontractors or other person or entity related to the project (collectively "subcontractor") or any aspect of the project (collectively "dispute"). Owner shall reimburse Architect for employee's time spent in preparation for, travel to and attendance at such deposition, mediation, arbitration, trial and/or in responding to a subpoena at that employee's standard hourly rate and within 30 days of submission of Architect's invoice for same. Owner shall prepay Architect a flat fee of \$750 for making its files available to the Contractor or Contractor's subcontractor(s). Owner shall reimburse Architect for its legal fees (if any) involved in connection with any such dispute within 30 days of submission of Architect's invoice for same. The Owner shall cause the Contractor, through the Owner-Contractor agreement to have similar provisions.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

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§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

(Intentionally deleted)

~~§ 8.3 ARBITRATION~~

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional~~

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

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus ~~an amount (ten percent of the remaining fees of the project)~~ for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, ~~except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3 located~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, ~~except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. other.~~

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Refer to Architect's Fee Proposal Rev. 5 dated May 29, 2015 and attached to this Agreement.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Refer to Architect's Fee Proposal Rev. 5 dated May 29, 2015 and attached to this Agreement.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Refer to Architect's Fee Proposal Rev. 5 dated May 29, 2015 and attached to this Agreement.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	<u>Twenty Five</u>	percent (<u>25</u>)	%)
Design Development Phase	<u>Twenty Five</u>	percent (<u>25</u>)	%)
Construction Documents	<u>Twenty Five</u>	percent (<u>25</u>)	%)

Phase				
Bidding or Negotiation Phase	<u>Five</u>	percent (<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (<u>20</u>	%)
<hr/>				
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the ~~lowest bona fide bid or negotiated~~ CM at Risk's Guaranteed Maximum Price (GMP) proposal, or (2) if no such ~~bid or~~ proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Refer to Architect's Fee Proposal Rev. 5 dated May 29, 2015 and attached to this Agreement.

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's ~~Consultant's~~ or his Consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent (15 %) of the expenses incurred. Refer to Architect's fee proposal Rev. 5 dated May 29, 2015 attached to this Agreement for the not to exceed amount for Reimbursable Expenses.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Ten (10) percent of the remaining consulting fees listed in this Agreement.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

Init.

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User Notes:

(1834308149)

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

One and one half % 1.5%

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

12.1 PROFESSIONAL LIABILITY FOR THE ARCHITECT AND HIS CONSULTANTS ON THIS PROJECT AND ANY EXTENSIONS THERETO SHALL NOT EXCEED ONE MILLION DOLLARS (\$1,000,000) ON A CLAIMS MADE BASIS AND TWO MILLION DOLLARS \$2,000,000 IN THE AGGREGATE.

12.2 The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, TX 78701-3942, phone 512.305.9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
 - .3 Architect's Fee Proposal Rev. 5 dated May 29, 2015 - Exhibit A
 - .4 Architect's Certificate of Insurance - Exhibit B
 - .5 Town of Prosper, Texas- Supplementary Conditions to AIA Document B101-2007 dated June 1, 2015 - Exhibit C

Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

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

OWNER – TOWN OF PROSPER

ARCHITECT – RANDALL SCOTT ARCHITECTS, INC.

Randall B. Scott, AIA

(Signature)

Harlan Jefferson Town Manager

(Printed name and title)

(Signature)

Randall B. Scott, AIA President & CEO

(Printed name and title)

Init.

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

I, Randall B. Scott, AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 12:56:25 on 06/01/2015 under Order No. 1417627279_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

Randall B. Scott, AIA
(Signed)

Pres./CEO
(Title)

June 1, 2015
(Dated)



ARCHITECTURE | INTERIORS | PLANNING

EXHIBIT 'A'**Revision 5 dated May 29, 2015**

Mr. Harlan Jefferson
 Town Manager
 Town of Prosper
 P.O. Box 307
 Prosper, Texas 75078

RE: FEE PROPOSAL TO PROVIDE A/E SERVICES FOR A NEW TOWN HALL/MULTI-PURPOSE FACILITY FOR THE TOWN OF PROSPER, TEXAS

I. PROJECT SCOPE

This proposal is submitted by Randall Scott Architects, Inc. (hereinafter referred to as RSA or Architect) to the Town of Prosper (hereinafter referred to as Town, Owner or Client) to provide Architectural and Engineering Services for a new Town Hall/Multi-purpose Facility in Prosper, Texas.

A. PROJECT CRITERIA

The following scope of work regarding the Project was conveyed to RSA by Harlan Jefferson and Hulon Webb during a meeting on April 21, 2015:

1. The scope of work for this project consists of the design of a new joint-use Town Hall/Multi-Purpose Facility to include Administration, Courts, Development Services (Building Inspections, Code Compliance and Planning), Engineering Services, Library and Town Hall with associated on-site work.
2. The Preliminary Needs Assessment prepared by the Town's consultant for the new Town Hall/Multi-Purpose Facility indicates a projected population of 28,000 citizens by year 2020 resulting in the following square footage needs:

a. Town Hall	23,139 SF
b. Municipal Court	2,416 SF
c. Library	<u>10,146 SF</u>
Total SF	35,701 SF
3. The Town Hall/Multi-purpose Facility design should incorporate expansion capabilities to accommodate a full build out population of 70,000 – 80,000. The Needs Assessment data provided to RSA by Staff indicates that 4 years after the 2020 projections above, the square footage needs for this building will swell by another 44% to nearly 52,000 SF. In a phone conversation with Hulon Webb on May 29, 2015 at 10:30 am, he requested RSA's fee proposal be revised to be based on a 50,000 SF 2 or 3 story Town Hall/Multi-purpose Facility.
4. The proposed site for the new Town Hall/Multi-purpose Facility is approximately 3.8 acres and is located at the northwest corner of Main St. and 2nd St. in Prosper, TX. It is currently the site of municipal sports fields.
5. The site has an existing storm water detention pond on it that the Town believes can be removed due to the construction of a new off-site regional detention pond the Town is working on.
6. According to the Needs Assessment Consultant's full study dated April 2015, parking for the Town Hall/Multi-purpose Facility is indicated to be 201 spaces for the 2020 population of 28,500, 269 spaces for the 2034 population of 69,563 and 276 spaces for full build-out of a population of 80,000.

Proposal to Provide A/E Services for a New
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7. The Town of Prosper is interested in expediting the completion and occupancy of the new Town Hall/Multi-purpose Facility.
8. The construction delivery method for the new Town Hall/Multi-purpose Facility will be CM at Risk. The CM shall provide estimating services and constructability reviews for the project working with RSA and the Town of Prosper. The CM at Risk will be brought on board during the SD phase to assist with cost estimating, constructability reviews and value management. RSA would recommend we be involved in the CM at Risk selection process.
9. LEED certification is not required by the Town for this project.
10. The Needs Assessment calls for a 2 story building on the site. Based on the initial site plans provided by the Needs Assessment consultant, a 2 story 35,700 SF building appears to fit on the proposed site (consultant's recommendation for year 2020 with a projected population of 28,500). In a phone conversation with Hulon Webb on May 29, 2015 at 10:30 am, he requested RSA's fee proposal be revised to be based on a 50,000 SF 2 or 3 story Town Hall/Multi-purpose Facility.
11. This site may be an interim location for the Town Hall. A permanent Town Hall may be a separate building constructed at some point in the future with the current project being repurposed.
12. The Town of Prosper will procure civil engineering design services outside of those included in this proposal for all off-site paving, sidewalks and utilities which could include domestic water lines, sanitary sewer lines and electrical service to the site. The Town of Prosper will procure civil engineering services for all off-site storm water management outside of the Town Hall/Multi-purpose Facility site proper (shown in the gold rectangle on the diagram at the end of this proposal).
13. The Town of Prosper has provided RSA with a preferred initial construction budget of \$14M. During the Pre-Design and Schematic Design Phases of this project, RSA will work with the Town of Prosper and selected CM at Risk to develop a more refined scope, square footage and Project Budget. The square footages and scope listed above and in the Needs Assessment, may need to be adjusted in order to stay within the \$14M budget and/or the budget may need to be adjusted to provide a 50,000 SF two or three story facility.

II. BASIC SERVICES

A. PRE-DESIGN PHASE SERVICES – PROGRAM VERIFICATION, SITE ASSESSMENT & DESIGN CONCEPTS

The Pre-Design Phase shall consist of the following services provided by the Design Team :

1. **Benchmarking Tours of local City Hall/Municipal Court and Library Facilities:** RSA will attend tours with the Town of Prosper Staff and Council Members of local City Hall/Municipal Court and Libraries facilities in order to help identify criteria for Prosper's new Town Hall/Multi-purpose Facility.
2. **Workshop # 1: Focus Group Meetings & Verification of the Program of Requirements (POR):** RSA will conduct Workshop # 1 consisting of Focus Group Meetings with the Town Staff, Department Heads, Council Members and other Stakeholders to verify the existing Program of Requirements (POR) data provided by the previous consultant and make minor modifications as deemed necessary by the Design Team.

Deliverables: Upon completion of the Focus Group Meetings, RSA will prepare a written amendment to the previous consultant's Program of Requirements (POR) for review and approval of the Stakeholders. The amendment will take the form of spreadsheets indicating RSA's recommended square footages for each space within the project and an overall square footage for the building.
3. **Preliminary Construction Cost Estimate:** RSA will prepare a Preliminary Construction Cost Estimate for the construction cost of the project on the Town Hall/Multi-purpose Facility site proper. This estimate will not differentiate between a 2 or 3 story design solution.

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Deliverables: A Preliminary Construction Cost Estimate intended to be used as a budgetary instrument by the Town and Design Team for the design process. This Preliminary Construction Cost Estimate will be developed by RSA based on historical costs of similar municipal projects previously designed by RSA and escalated to today's construction market costs.

B. SCHEMATIC DESIGN PHASE

Schematic Design Phase services provided by RSA and our Consultants for this project shall consist of the following:

1. Perform a detailed code and zoning review for the proposed project and consult with the Owner on any changes that impact the design.
2. Conduct on-site **Design Workshop # 2** with Staff and other Stakeholders to develop block floor plans for each department within the building utilizing the agreed upon space requirements verified in the Pre-Design Phase amended POR spreadsheets. The block floor plans will be developed for 2 story and 3 story solutions.
3. Prepare refined floor plans for review with the Stakeholders incorporating the block floor plan elements from Workshop # 2. The refined floor plans will be developed for 2 story and 3 story solutions.
4. Prepare proposed site plan design options for review with the Stakeholders. The site plans will be developed for 2 story and 3 story solutions.
5. Prepare preliminary exterior design concept options for review with the Stakeholders. Exterior design concepts will be developed for 2 story and 3 story solutions.
6. Assist the CM at Risk in the preparation of their comparative cost estimates for the 2 and 3 story schemes.
7. Hold a **Stakeholder Review Meeting** to review the preliminary Site Plans, Floor Plans, Exterior Design Concept and Cost Estimate options and receive comments.
8. Prepare final Schematic Design site plan, floor plans and renderings of the Design Team's proposed design for the building incorporating the Stakeholder Review Meeting comments for either a 2 story or a 3 story design solution (but not both) as selected by the Town during the Stakeholder Review Meeting.
9. Prepare a Proposed Project Schedule for the design and construction phases of the project.
10. Coordinate the MEP, structural, civil, survey, IT/AV, security, acoustical and landscape architecture consultants' Schematic Design services.
11. Assist the CM at Risk in preparing its Schematic Design Cost estimates and collaborate with the Owner and CM at Risk in reconciling the project scope and cost.
12. Attend **Workshop # 3/Design Review Meeting** with Town Staff and Council to review the Final Schematic Design documents, CM at Risk's SD Cost Estimate and the Proposed Project Schedule. Attend a Town Hall meeting with Citizens, Staff and Council to present RSA's preliminary SD concepts and receive comment.
13. Prepare and distribute meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.
14. Prepare a PowerPoint presentation of the Final Schematic Design Drawings, Proposed Project Schedule and CM at Risk's SD Cost Estimate to be presented at a Town Council Meeting for final approval.

C. DESIGN DEVELOPMENT PHASE

Based on the approved Schematic Design documents and reconciled SD Cost Estimate prepared by the CM at Risk, the Design Team shall continue developing the following Design Development documents:

1. General Notes
2. Architectural site plan illustrating the proposed site and building improvements

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3. Architectural floor plans with dimensions
4. Roof Plan
5. Partition types
6. Proposed room finish & door schedules
7. Exterior building elevations
8. Wall sections
9. Preliminary section details
10. Reflected ceiling plans
11. Millwork elevations
12. Interior elevations
13. Preliminary interior finish recommendations
14. Preliminary mechanical, electrical and plumbing drawings and details
15. Preliminary structural plans and details
16. Preliminary civil plans and details
17. Preliminary AV, IT, Security and Access Control (low voltage systems) plans and details
18. Preliminary landscape architecture plans and site details
19. Assist the CM at Risk in preparing his updated DD Cost Estimate and collaborate with the Owner and CM at Risk to make adjustments to the Design Development scope of work in order to reconcile it with the Town's budget.
20. Prepare and distribute meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.

Services during this phase include attendance by RSA staff at meetings with the Town to review the Design Development documents, CM at Risk's cost estimate and status of the Project Schedule.

D. CONSTRUCTION DOCUMENTS PHASE (INCLUDING THE GMP PRICING SET)

Based on the approved Design Development documents and reconciled DD Cost Estimate prepared by the CM at Risk, the Design Team will prepare final drawings, details and specifications required to construct the Project.

During this phase, the Design Team will issue the GMP (Guaranteed Maximum Price) Pricing Documents at approximately the 50% - 75% completion stage of the Construction Documents. The GMP Pricing Documents will generally include a base bid scope of work and add alternates which the Design Team will agree upon with the Town and CM at Risk to assist in managing the project cost. Upon receipt of the CM at Risk's GMP Pricing, the Design Team will work with the Owner and CM at Risk to make final adjustments to the project scope and construction documents to reconcile the project scope and GMP pricing. Once the scope and GMP pricing are reconciled, the Design Team will complete the 100% Construction Documents and issue them to the CM at Risk for final buyout pricing.

The Construction Documents Phase includes attendance by the Design Team at meetings with the Owner, CM at Risk and other entities to coordinate the Construction Documents, GMP pricing and final buyout pricing. Services during this phase include the preparation and distribution of project meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.

E. BIDDING & NEGOTIATION PHASE

Once the final Construction Documents and GMP pricing are approved by the Owner, the Design Team will provide the following services during the Bidding and Negotiation Phase:

1. Distribute electronic PDF files of plans and specifications to the CM at Risk. The printing of these documents for bidding and construction shall be at the CM at Risk's expense.

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2. Attend a Pre-Bid Conference at the project site or a location designated by the Owner.
3. Answer Contractor and subcontractor questions about the construction documents and intended design.
4. Review substitution requests from the CM at Risk prior to the date of his GMP proposal.
5. Prepare and issue addenda to the Construction Documents.
6. Prepare and distribute project meeting notes documenting the basic issues, resolutions and action items agreed to in meetings attended by the Architect during this phase.

F. CONTRACT ADMINISTRATION PHASE

During the Construction Administration Phase, the Design Team will provide the following Services:

1. Conduct a Pre-Construction Meeting to discuss the issues of coordination, points of contact for each entity and protocol to be followed during the Construction Phase of the project.
2. Attend site visits as deemed necessary by the Design Team to review the Work in an effort to determine in general whether or not, when the Project is completed, it will be constructed in substantial accordance with the Contract Documents.
3. Attend OAC (Owner/Architect/Contractor) meetings with the Town's representative and CM at Risk to review the project status, previous set of construction meeting notes, submittal logs, ASI logs, RFI logs, LEED credit status (if applicable), and construction schedule status along with any coordination issues that need resolution by this group.
4. Review substitution requests from the CM at Risk for materials and products which become unavailable during the Construction Phase due to circumstances beyond the Construction Manager's control.
5. Review submittals and shop drawings required by the Contract Documents.
6. Review the CM at Risk's Requests for Information (RFI's) and respond as deemed appropriate by the Architect.
7. Prepare Architect's' Supplemental Instructions (ASI's) when deemed necessary by the Architect and issue them to the CM at Risk.
8. Review the CM at Risk's Proposal Requests (PR's), make recommendations to the Owner and process change orders.
9. Review CM at Risk's Applications for Payment and transmit to the Town for payment with any recommended adjustments.
10. Prepare a punch list for the Project and perform a final walk-through for verification that punch list items have been completed.
11. Establish dates of Substantial and Final Completion and prepare certificates for same.
12. Coordinate project close out and receipt of warranty & maintenance binders from the CM at Risk.

III. ADDITIONAL SERVICES

- A. Additional Services are all services not explicitly listed under Section II – *Basic Services* of this Proposal. Additional Services shall be provided when requested by the Owner on an hourly or negotiated fee basis in addition to the fees charged for *Basic Services*. Additional Services include, but are not limited to, the following:
 1. Revisions requested by the Owner to the Design Team's Work resulting in changes to the design, scope and/or quality of the Project. Revisions to the Design Team's Work or documents due to changes in the information provided to the Design Team by the Owner.
 2. LEED consulting services.
 3. Preparation of early site/foundation or other separate bid packages to expedite the project construction.
 4. Rezoning services.
 5. Preparing redesign services for the project required due to Review Agency interpretations.

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6. Preparation of field measured drawings or verification of as-built conditions at the site.
7. Geotechnical engineering services (shall be provided to RSA by the Owner).
8. Preparing in excess of two Construction Documents add alternates for the Project.
9. Research and design of off-site utilities, sidewalks and paving outside the physical site for the Town Hall/Multi-purpose facility proper shown in the gold rectangle on the diagram at the end of this proposal.
10. Design services for a structurally supported slab with a crawl space or carton forms.
11. Reviewing and resolving claims submitted by the CM at Risk regarding the Project which are not the fault of RSA.
12. Commissioning services.
13. Preparation of additional renderings or animations requested by the Owner beyond those listed under the SD Phase section II.B.
14. Construction Administration services required for more than a 14 month construction period.
15. Interior wayfinding signage and exterior monument signage design.
16. Coordination and engineering services in connection with Texas Dept. of Transportation requirements.
17. Cost estimating services other than the one listed under Section II.A.6 *Basic Services, Pre-Design*.
18. Surveying services.

IV. PROFESSIONAL FEES**A. BASIC SERVICES**

1. Pre-Design Services	\$18,500
2. The Basic Services including Architectural, Structural and MEP engineering services outlined in Section II above	\$1,050,000
3. Civil Engineering Services for On-Site Design	\$41,000
4. AV/Acoustical Consultant	\$47,275
5. Technology Consultant (IT, Security & Access Control Services)	\$44,371
6. Landscape Architecture and Irrigation Design	\$38,000
7. Library Consultant	\$25,000
8. FF&E Specifications and Interior Design	\$125,000
Total Basic Services Fees	\$1,389,146

Note: The above fees are based on a Town Hall/Multi-Purpose Facility and associated site work at a budgeted construction cost of \$14M. Should the construction cost of this project exceed \$14M, RSA's fees shall be increased at a fee percentage of 8.9% times the increased amount of the construction cost exceeding \$14M.

B. ADDITIONAL SERVICES

1. Additional Services shall be provided at the following hourly rates or negotiated on a lump sum basis at the time they are required:

Principal	\$250.00/hr.
Vice President	\$225.00/hr.
Studio Leader	\$200.00/hr.
Project Architect	\$150.00/hr.
Staff Architect	\$125.00/hr.
3D Visualization Artist	\$125.00/hr.
Administrative Staff	\$85.00/hr.

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2. Optional Additional Services

a. Early structural foundation and underground utilities bid package	\$22,000
b. Vertical structural expansion design services	\$15,000
c. Structurally supported slab (on carton forms or pier and beam with crawl space)	\$7,500

C. REIMBURSABLE EXPENSES

Reimbursable Expenses constitute expenses incurred on the Town's behalf by the Design Team. These expenses include, but are not limited to: reproduction of preliminary and final documents, mounting and laminating of presentation boards, Agency & City Review fees, hotel, meals and per diem expenses, mileage, air fare, rental cars, overnight express, courier services and postage. Reimbursable expenses shall be marked up 15% to cover RSA's handling costs and billed to the Owner in addition to any Basic and Additional Services incurred on the project. Reimbursable expenses are estimated **not to exceed \$15,000**. However, if they should exceed this figure, RSA reserves the right to request an increase from the Town of Prosper to cover the additional expenses over and above the \$15,000 NTE amount.

V. PROFESSIONAL REGISTRATION

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, phone: 512.305.9000, has jurisdiction over individuals licensed under the Architects' Registration Law, Article 249A, VTCS.

VI. OTHER CONDITIONS

- A. This Proposal is valid for 30 days from the date at the top of the first page of this document unless included as an attachment to a fully executed formal agreement between the RSA and the Client prior to expiration of the 30 day period.
- B. This Proposal shall be an attachment to a standard AIA Owner/Architect Agreement as part of the final agreement between RSA and Town of Prosper.
- C. The Owner shall provide and the Architect and his subconsultants shall be entitled to rely upon the accuracy of: 1) a Geotechnical Report with shallow and deep borings located as required by the Design Team and prepared specifically for this project; 2) a detailed on-site topographic and boundary survey with contours at 1' intervals, top and bottom of curb spot grades at 5' intervals, 2 benchmarks, adjacent street grades and ROW's, and all above and below ground utilities including flow elevations.
- D. The Owner acknowledges that all projects such as the one being contemplated are required by law to be submitted to the Texas Department of Licensing & Regulation for handicap accessibility review. The Architect will submit plans for the proposed project to TDLR for review. The Owner acknowledges that the construction documents are not complete until TDLR has approved them and any comments they require are incorporated even though construction may have begun and even be completed before comments are received. The Architect and his Consultants shall not be held financially responsible for changes to the project required by TDLR.
- E. The Owner acknowledges that RSA has no responsibility for construction means and methods and that these are the sole responsibility of the Contractor/CM at Risk.
- F. The Owner acknowledges that RSA has no responsibility for construction site safety and safety procedures and that these are the sole responsibility of the Contractor/CM at Risk.
- G. The Owner acknowledges that RSA has no responsibility for the discovery of nor remediation of hazardous materials including, but not limited to, asbestos, PCP's, lead, etc. and that these are the responsibility of the Owner.

VII. EXCLUSIONS

The following items are specifically excluded from the Design Team’s scope of work and this proposal:

- A. Geotechnical engineering services.
- B. Environmental engineering services such as Phase I & Phase II environmental surveys of the site.
- C. Construction materials testing services.
- D. Cost estimating services (shall be provided by the CM at Risk).
- E. Site surveying (topographic and boundary with utilities information)
- F. Off-site paving, utilities and drainage system design services

Randall Scott Architects appreciates the opportunity to submit the above Proposal and looks forward to working with the Town of Prosper on this important Project!

Thank you,

RANDALL SCOTT ARCHITECTS, INC.

Randall B. Scott, AIA
President & CEO

Site Plan of project site is indicated with red boundary in the image shown below:



3.8 acre site for new
Town Hall, Municipal
Court and Library for
the Town of Prosper



Location of Storm Drainage
Area design included in RSA’s
proposal (limited to project site
for Town Hall/Multi-purpose
Facility) shown in gold color



EXHIBIT B

CERTIFICATE OF LIABILITY INSURANCE

Item 8

DATE (MM/DD/YYYY)

5/21/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: McLaughlin Brunson Insurance Agency, LLP
INSURED: Randall Scott Architects, Inc.
CONTACT NAME: Melissa Pratt
PHONE: (214) 503-1212
INSURER(S) AFFORDING COVERAGE: Travelers Indemnity Company, Hudson Insurance Company, Travelers Indemnity Co of Am, Travelers Casualty & Surety Co.

COVERAGES CERTIFICATE NUMBER: Cert ID 28873 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, Workers Compensation and Employers' Liability, and Professional Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The claims made professional liability coverage is the total aggregate limit for all claims presented within the policy period and is subject to a deductible. Thirty day notice of cancellation in favor of certificate holder on all policies.

CERTIFICATE HOLDER: Town Of Prosper, PO Box 307, Prosper TX 75078
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Melissa Pratt

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EXHIBIT C**JUNE 1, 2015****TOWN OF PROSPER, TEXAS****SUPPLEMENTARY CONDITIONS
TO AIA DOCUMENT B101-2007**

These Supplementary Conditions are incorporated into the Architectural Services Agreement between Randall Scott Architects, Inc. (“Architect”) and the TOWN OF PROSPER, TEXAS (“Town” or “Owner”), dated June 9, 2015. The following terms and conditions supplement and modify the “Standard Form of Agreement Between Owner and Architect,” AIA Document B101-2007. Where a portion of AIA Documents B101-2007 is modified or deleted by these Supplementary Conditions, the unaltered portions of AIA Document B101-2007 shall remain in effect.

SUPPLEMENTARY CONDITIONS TO AIA DOCUMENT B101-2007

§2.3 Add at the end of the section: “If at any time after entering into this Agreement, the Town has any objection to the Architect’s representative or to any of Architect’s personnel, or any objection to any personnel of consultants retained by Architect and assigned to the Project, Architect shall promptly propose substitutes to whom the Town has no objection.”

§2.4 Delete from the second line “reasonably appear to.”

§2.5 Delete second sentence. Add the following regarding types and limits of insurance coverage:

The Architect shall, at its own expense, procure, pay for and maintain during the term of this Agreement the following insurance written by companies approved by the State of Texas and acceptable to Owner. The Architect shall furnish to the Owner certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, and expiration dates in compliance with all applicable required provisions.

.1 General Liability: 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 \$1,000,000.00 per occurrence, \$2,000,000.00 Products/Completed Operations Aggregate, and \$2,000,000.00 General Aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

.2 Automobile Liability: Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

.3 Worker's Compensation: Worker's Compensation insurance with statutory limits; and Employer's Liability coverage with minimum limits for bodily injury: (a) by accident, \$1,000,000.00 each accident, and (b) by disease, \$1,000,000.00 per employee, with a per policy aggregate of \$1,000,000.00.

.4 Professional Liability: Professional Liability insurance to provide coverage against any claim which the Architect and all consultants engaged or employed by the Architect become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$1,000,000 per claim, \$2,000,000 annual aggregate.

If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of this Agreement and acceptance by Owner.

With reference to the foregoing required insurance, the Architect shall endorse applicable insurance policies as follows: (1) a waiver of subrogation in favor of Owner, its officials, employees and officers shall be contained in the Workers' Compensation insurance policy; (2) the Owner, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader; and (3) all insurance policies shall be endorsed to the effect that Owner will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or a material change of the policies. All insurance shall be purchased from an insurance company that meets a financial rating of B+IV or better as assigned by A. M. Best Company or equivalent.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§3.1.4 Add at the end of the section, "which approval shall not be unreasonably withheld."

§3.1.7 Add this new subsection, to read as follows: "If requested, Architect shall provide Owner redacted copies of all subcontracts and agreements with subcontractors who perform Work on the Project. Owner approval of all subcontractors performing Mechanical/Equipment/Plumbing work, Civil Engineering work, Electrical Engineering work, Structural Engineering work, and Landscape Architecture work is required."

§3.1.8 Add this new subsection, to read as follows: "Architect shall coordinate with Owner the establishment and identification of benchmark(s)/datum elevation(s) for use on the Project. Architect shall be responsible providing the Owner provided survey benchmark information to the CM at Risk during construction of the Project."

§3.6 CONSTRUCTION PHASE SERVICES

§3.6.2.1 In the sixth line, delete "reasonably."

§3.6.2.3 Delete from the end of the section, "or otherwise with reasonable promptness."

§3.6.2.4 Replace the second sentence with the following sentence, “When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, and shall not show partiality to either, and shall not be liable for Contractor’s performance of interpretations or decisions.”

§3.6.6.5 Add the following at the end of the section, “Said meeting shall occur at the facility during the eleventh (11th) month after the date of Substantial Completion.

ARTICLE 4 ADDITIONAL SERVICES

§4.2 Add the following: “If additional design sets of drawings provided hereunder are required, Architect shall provide same over and above the number of design sets already provided as part of Architect’s Work under this Agreement. Architect shall be paid by Owner for each additional design set of drawings over and above the number of sets provided as part of this Agreement, in the agreed upon amounts per set as stated in the scope of work.”

§4.3.1.6 Delete this subsection.

§4.3.1.7 Delete this subsection.

§4.3.1.9 Delete this subsection.

§4.3.1.10 Replace “cause” with “casualty”.

§4.3.2.3 Delete this subsection.

§4.3.2.4 Delete this subsection.

ARTICLE 5 OWNER’S RESPONSIBILITIES

§5.2 Add in the first line, after the word “update” the following: “the Architect regarding.”

§5.6 In the third line, replace “shall” with “may.”

ARTICLE 6 COST OF THE WORK

§6.4 In the last line, replace “shall” with “may.”

§6.5 Add at the end of the section, “Notwithstanding any provision herein to the contrary, this provision does not guarantee or authorize any automatic adjustment to the Cost of the Work, and the Owner’s decision on any adjustment shall be final.”

ARTICLE 7 COPYRIGHTS AND LICENSES

§§7.1, 7.2, 7.3, 7.3.1, and 7.4 Delete these sections and replace with the following:

“All materials, documents and ‘Instruments of Service’ prepared or assembled by the Architect under this Agreement shall become the sole property of the Owner and shall be delivered to the Owner without restriction on future use. The Architect may retain in its files copies of all drawings, specifications and other pertinent information for the work. The Architect shall have no liability for changes made to any materials or other documents by others subsequent to the completion of this Agreement.”

ARTICLE 8 CLAIMS AND DISPUTES

§8.2 MEDIATION

§8.2.1 Delete the second sentence of this section.

§8.2.2 Delete the first sentence of this section, and replace with the following sentence: “The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them first, informally and, second, by mediation.” Delete the last sentence of this section, and replace with the following: “The parties shall have fifteen (15) days after receipt of a request for mediation to agree on a mediator. If the parties are unable to agree on a mediator within fifteen (15) days, each party shall have an additional five (5) days to designate a mediator. The two mediators so designated shall then designate a third unbiased mediator who shall be the mediator to conduct the mediation. The decision of the mediator shall be non-binding.”

ARTICLE 9 TERMINATION OR SUSPENSION

§9.1 In the fourth line, replace “seven days” with “ten days.” Replace the last sentence with the following: “Before resuming services, the Architect shall be paid all sums due prior to suspension.”

§9.3 In the second line, replace “seven days” with “ten days.”

§9.4 In the first line, replace “seven days” with “ten days.”

§9.5 In the first line, replace “seven days” with “thirty days.”

ARTICLE 10 MISCELLANEOUS PROVISIONS

§10.1 Delete this section and replace with the following: “This Agreement shall be governed by the law of the State of Texas, and venue for any dispute shall be in any court of competent jurisdiction in Collin County, Texas.”

§10.3 Add “prior” before “written” in the second line of this section. Put a period after the word “other” in the third line, and delete the remaining language from the last two lines of this section.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Add: “12.3 Town of Prosper, Texas Architectural Services Agreement; and these Supplementary Conditions, including the following: All submittals for site plans, plats, engineering plans, façade plans, landscape plans, etc., shall comply with (1) the Town’s Annexation, Zoning, and Development Manual, which may be found online at <http://www.prospertx.gov/tabid/728/Default.aspx>; (2) the Town’s Zoning and Subdivision Ordinances, as amended, and (3) all applicable Building and Uniform Codes.

ARTICLE 13 SCOPE OF THE AGREEMENT

§13.2.3 Add: “Town of Prosper, Texas Architectural Services Agreement and contract documents referenced therein, and the order of precedence provisions stated therein.”

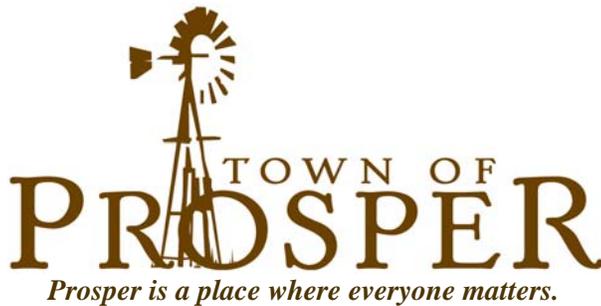
ACKNOWLEDGED AND AGREED:

Randall Scott Architects, Inc.

Date

Town of Prosper, Texas

Date



PARKS & RECREATION

To: Mayor and Town Council
From: Paul Naughton, RLA, Landscape Architect
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – June 9, 2015

Agenda Item:

Discussion on the Frontier Park North and Sexton Park Conceptual Master Plans.

Description of Agenda Item:

At the December 9, 2014, Town Council meeting, Elizabeth McIlrath of Dunaway Associates presented the on-site assessment of Frontier Park North and Sexton Park. Ms. McIlrath reviewed the existing conditions of Frontier Park and Sexton Park and received initial ideas for program and facility improvements to the sites.

At the February 10, 2015, Town Council meeting, Council received two concepts of Frontier Park North and three concepts of Sexton Park. The Town Council asked for the consultants to consider artificial turf on practice and game fields at Frontier Park North and indicated that they may be willing to forego some of the parking area on the east side and rely on shared parking with the future Prosper ISD stadium in order to provide more usable field space. The consultants were directed to revise the conceptual plan by maximizing the number of diamond sports fields, maximizing the area of multi-use field sports, and making use of artificial turf wherever possible.

Comments on Sexton Park concepts, included the community center being located along First Street, where it would be more visible and accessible, and maximize the number of youth diamond sports fields and multi-use field sports areas. It was also mentioned that the Prosper Historical Society may consider Sexton Park an appropriate location for a Veterans Memorial.

At the March 19, 2015, Parks and Recreation Board (PARBd) meeting, Jack Dixon presented the Veterans Memorial conceptual design and informed PARBd that the Prosper Historical Society would like to have the Veterans Memorial located at Sexton Park. PARBd approved a recommendation to locate the Veterans Memorial at Sexton Park, subject to having the consultant evaluate the location.

At the April 14, 2015, Town Council meeting, Dunaway Associates presented Frontier Park North based on the feedback received from the Town Council with costs associated with the latest option. Council asked the consultant to provide a cost comparison between natural turf and artificial turf.

Dunaway Associates has incorporated the feedback received from the Town Council and developed two concept plan options for Frontier Park North to receive direction to either provide flexibility of the baseball field, or maximize the multi-use field sports area. Dunaway also incorporated a detailed cost comparison between natural turf and artificial turf.

As for Sexton Park, Dunaway Associates has revised the conceptual master plan based on the feedback from the Town Council and the PARBd recommendation of including the Veteran's Memorial at Sexton Park.

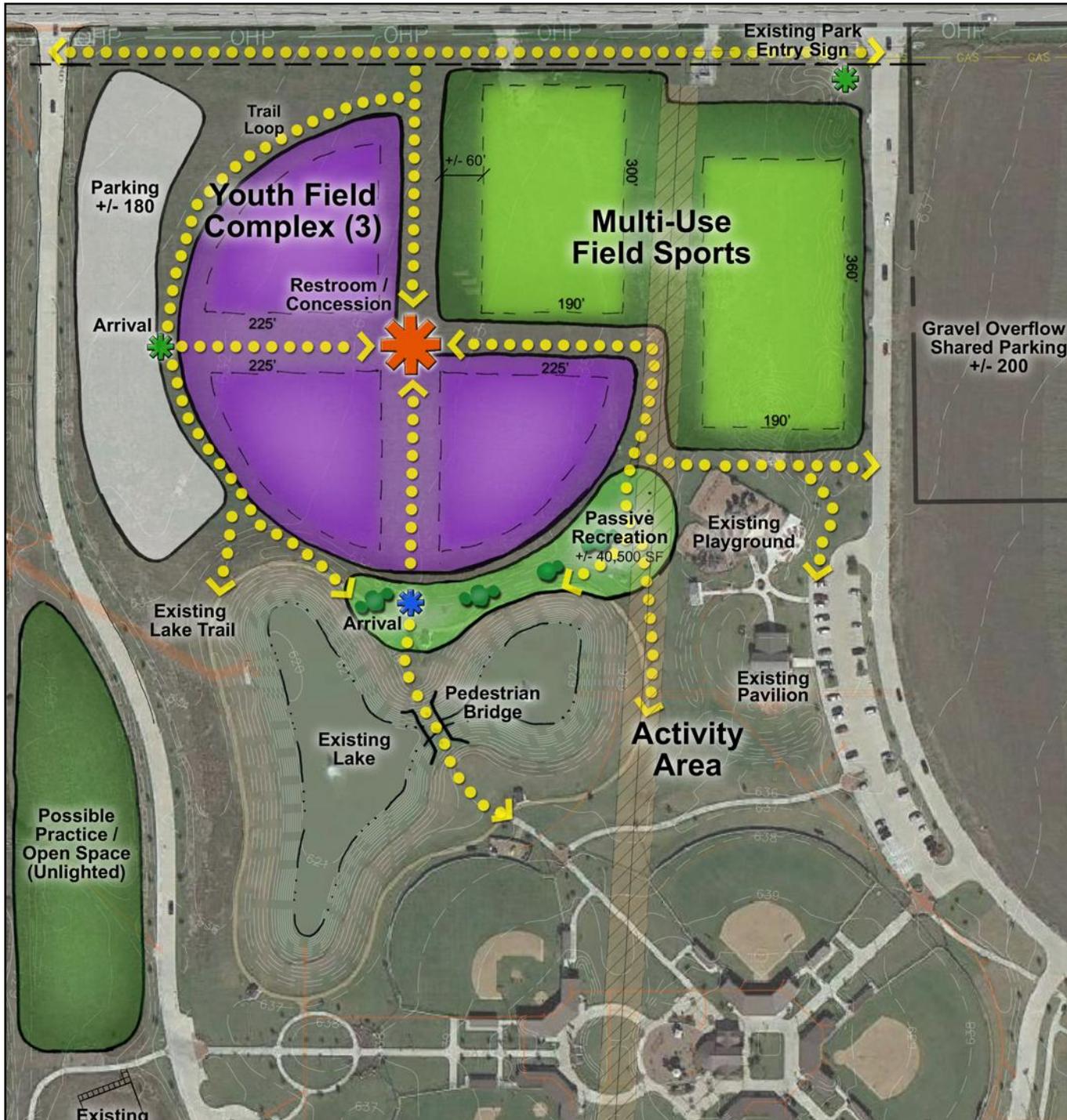
Attached Documents:

1. Frontier Park North Concept Plans
2. Frontier Park North Cost Estimates
3. Sexton Park Concept Plan
4. Sexton Park Cost Estimates

Town Staff Recommendation:

Town staff requests that the Town Council provide feedback on the Frontier Park North and Sexton Park Conceptual Master Plan.

Consensus Concept



- (3) Field Complex with 225' Foul Lines Shifted West
- Multi-Use Fields with More Buffer
- Parking West of 3-Plex with Overflow to East (+/- 200 Spaces)
- Passive Recreation Area at Water
- Trail Connections w/ Pedestrian Bridge
- Possible Practice Area near Batting Cages

Consensus Concept Alternative



- (3) Field Complex with 225' Foul Lines
- Western Buffer
 - Allows for Possible Future Expansion (*Older Youth Play*)
 - Possible Warm Up Area
- Other Uses Remain:
 - Parking West of 3-Plex w/ Overflow to East (+/- 200)
 - Passive Recreation at Water
 - Trail Connections w/ Pedestrian Bridge
 - Possible Practice Area near Batting Cages

Frontier
Park North

Budget Projections

- General Site Items.....\$ 1.1 M
- Youth Field Complex.....\$ 1.6 M
- Multi-Use Field Areas.....\$ 1.2 M
- Passive Recreation Area.....\$ 300k
- Overflow Practice Area.....\$ 20k
- Overflow Parking (Gravel).....\$ 180k
- Contingency (15%).....\$ 665k

CONSTRUCTION TOTAL.....\$ 5 M

- Other Costs.....\$ 577k
(Owner's Costs, Testing, Geotech, Design, TDLR, etc.)

PROJECT BUDGET TOTAL.....\$ 5.6 M

Frontier
Park North

Budget Projections

(w/ Artificial Turf Option)

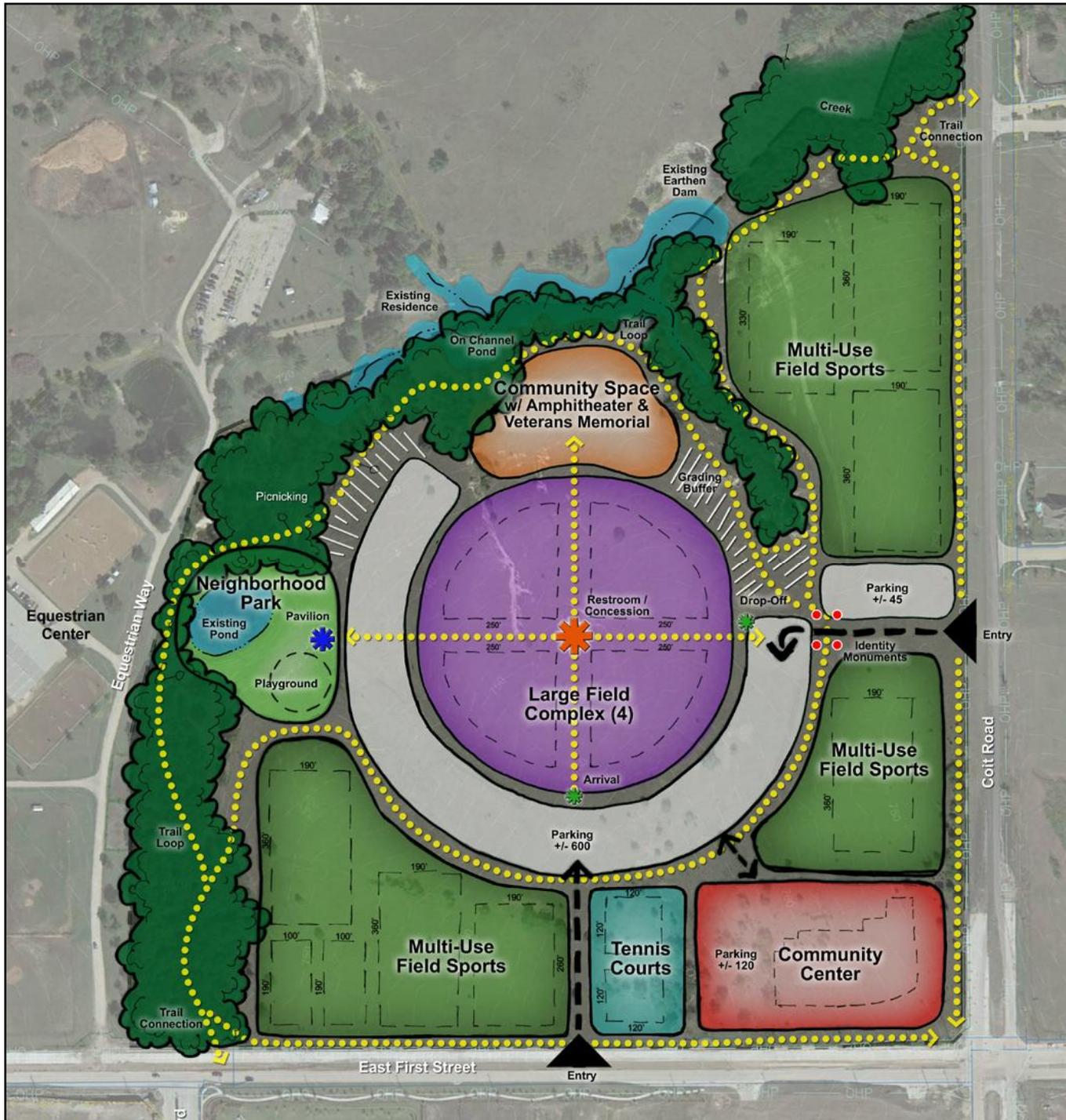
- General Site Items.....\$ 1.1 M
- Youth Field Complex.....\$ **2.7 M**
- Multi-Use Field Areas.....\$ **2.6 M**
- Passive Recreation Area.....\$ 300k
- Overflow Practice Area.....\$ 20k
- Overflow Parking (Gravel).....\$ 180k
- Contingency (15%).....\$ **1 M**

CONSTRUCTION TOTAL.....\$ **8 M**

- Other Costs.....\$ **870k**
(Owner's Costs, Testing, Geotech, Design, TDLR, etc.)

PROJECT BUDGET TOTAL.....\$ **8.8 M**

Consensus Concept



- (4) Field Complex w/ 250' Foul Lines
- Parking Increased to +/- 645 Spaces
- Community Space w/ Amphitheater and Veterans Memorial
- Trail Connections to Town Trail Network along First and Coit
- Other Uses Remain:
Multi-Use Fields
Neighborhood Park
Community Center
Tennis Courts

Sexton
Park

Budget Projections

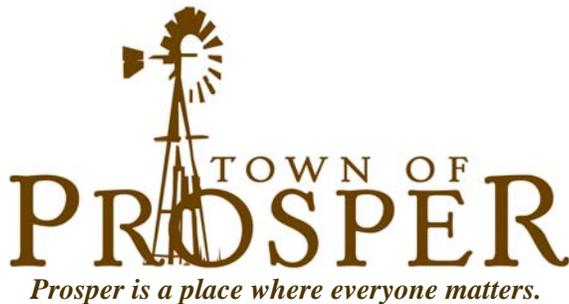
- General Site Items.....\$ 4.7 M
- Youth Field Complex.....\$ 2.1 M
- Multi-Use Field Areas.....\$ 4 M
- Lighted Tennis Courts.....\$ 300k
- Community Space Area.....\$ 1.5 M*
- *Includes \$550K for Veterans Memorial
- Neighborhood Park.....\$ 620k
- Contingency (15%).....\$ 2 M

CONSTRUCTION TOTAL.....\$ 15.2 M

- Other Costs.....\$ 1.6 M
(Owner's Costs, Testing, Geotech, Design, TDLR, etc.)

PROJECT BUDGET TOTAL.....\$ 16.8 M*

*Excludes Future Community Center (Approx. \$15 M per Parks Master Plan)



ENGINEERING

To: Mayor and Town Council
From: Matt Richardson, P.E., Senior Engineer
Through: Harlan Jefferson, Town Manager
Re: Town Council Meeting – June 9, 2015

Agenda Item:

Consider and act upon authorizing the Town Manager to execute a Professional Engineering Services Agreement between Brown & Gay Engineers, Inc., and the Town of Prosper, Texas, related to the Prosper Trail Elevated Storage Tank project.

Description of Agenda Item:

The 2011 Water System Capital Improvement Plan, recommended that a new water tower be constructed along Prosper Trail between Preston Road and Coit Road. Originally, this plan recommended that the water tower be in-service by this summer; however, further analysis of water demands and system operations has allowed the in-service date to shift back two years to summer 2017. To meet this in-service date, design must begin this summer and construction must begin in early 2016.

The Professional Engineering Services Agreement with Brown & Gay Engineers in the amount of \$342,915 is for the engineering design of the Prosper Trail Elevated Storage Tank. The land acquisition for the tank site on the north side of Prosper Trail between Preston Road and Coit Road is also on this agenda. This water tower will consist of a concrete pedestal and steel tank that will be almost identical in appearance to the existing water tower located at First Street and Craig Road.

The agreement includes topographic and property surveys, preliminary and final design submittals, preparation of construction specifications, and bidding and construction administration services. In addition to these traditional design elements, the agreement also includes submittal of a site plan and plat to comply with the Town's development regulations, coordination with TCEQ and FAA for permitting, and additional inspections and observations that are outside the expertise of Town staff.

A list of qualified firms to provide professional engineering and related services to the Town of Prosper was approved by Town Council on March 25, 2014. Brown & Gay Engineers, Inc., is one of six firms on the list qualified in the area of water and sewer design. This will be Brown & Gay Engineer's first job in Prosper, but they have completed work successfully for numerous other municipalities in the region including Frisco and McKinney.

Budget Impact:

Funding for the agreement, in the amount of \$342,915, is provided from previously issued Certificate of Obligation Bonds and is currently available in the Capital Improvement Fund. This is less than the budgeted amount of \$352,300.

Legal Obligations and Review:

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

Attached Documents:

1. Location Map
2. Professional Engineering Services Agreement

Town Staff Recommendation:

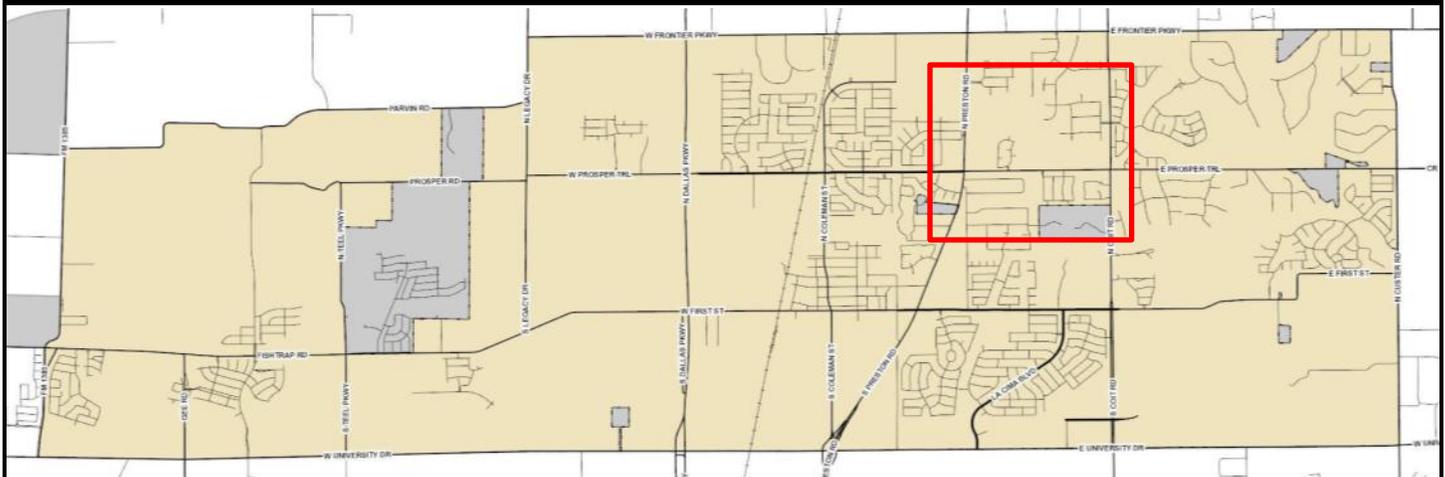
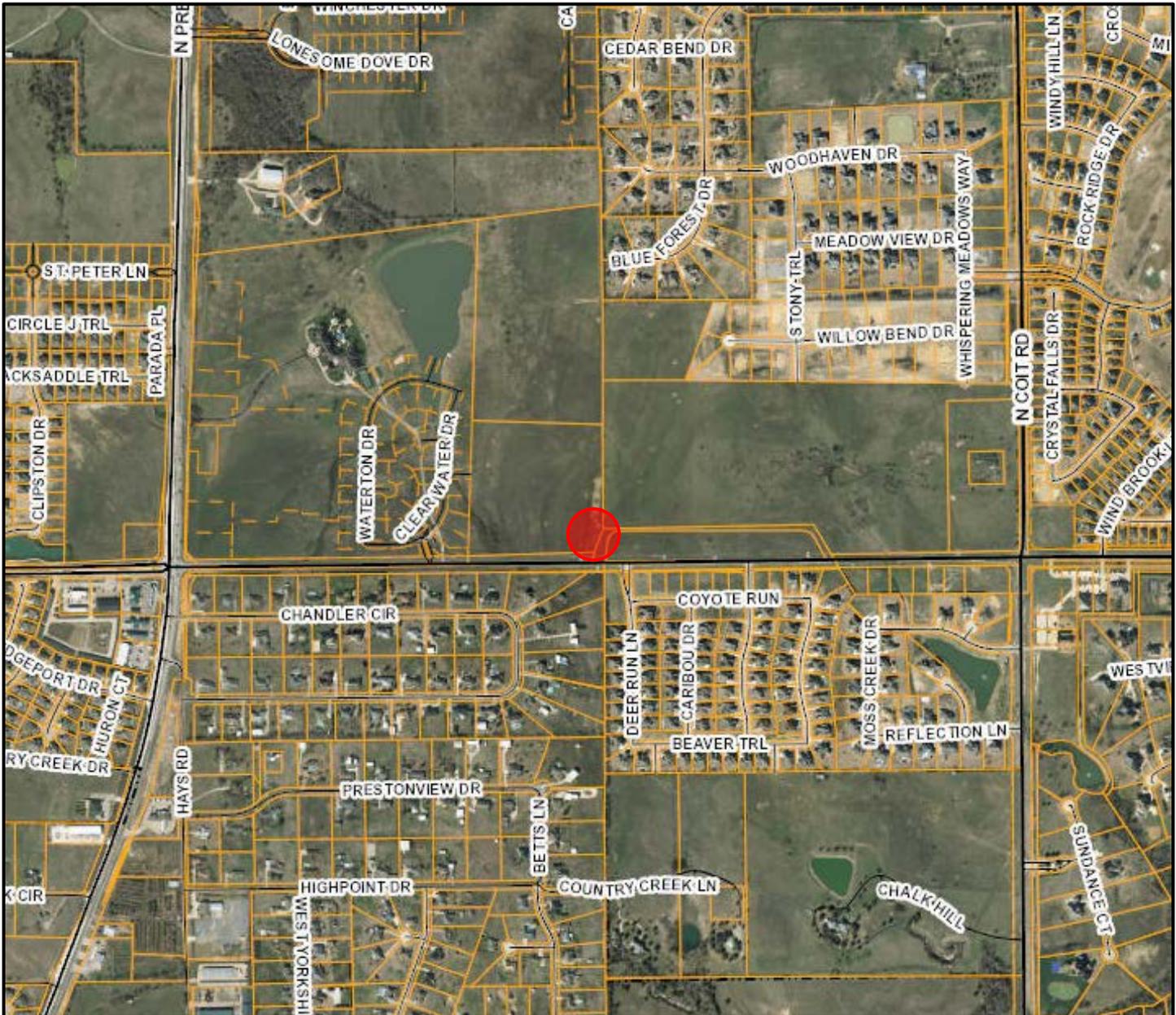
Town staff recommends that the Town Council authorize the Town Manager to execute a Professional Engineering Services Agreement between Brown & Gay Engineers, Inc., and the Town of Prosper, Texas, related to the Prosper Trail Elevated Storage Tank project.

Proposed Motion:

I move to authorize the Town Manager to execute a Professional Engineering Services Agreement between Brown & Gay Engineers, Inc., and the Town of Prosper, Texas, related to the Prosper Trail Elevated Storage Tank project.



Prosper Trail Elevated Storage Tank



**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND BROWN & GAY ENGINEERS, INC.
FOR THE PROSPER TRAIL ELEVATED STORAGE TANK PROJECT (0407-WA)**

This Agreement for Professional Engineering Services, hereinafter called "Agreement," is entered into by the **Town of Prosper, Texas**, a municipal corporation, duly authorized to act by the Town Council of said Town, hereinafter called "Town," and **Brown & Gay Engineers, Inc.**, a Texas corporation, acting through a duly authorized officer, hereinafter called "Consultant," relative to Consultant providing professional engineering services to Town. Town and Consultant when mentioned collectively shall be referred to as the "Parties."

W I T N E S S E T H:

WHEREAS, Town desires to obtain professional engineering services in connection with the **Prosper Trail Elevated Storage Tank Project (0407-WA)**, hereinafter called "Project";

For the mutual promises and benefits herein described, Town and Consultant agree as follows:

1. **Term of Agreement.** This Agreement shall become effective on the date of its execution by both Parties, and shall continue in effect thereafter until terminated as provided herein.

2. **Services to be Performed by Consultant.** The Parties agree that Consultant shall perform such services as are set forth and described in **Exhibit A - Scope of Services** and incorporated herein as if written word for word. All services provided by Consultant hereunder shall be performed in accordance with the degree of care and skill ordinarily exercised under similar circumstances by competent members of their profession. In case of conflict in the language of Exhibit A and this Agreement, this Agreement shall govern and control. Deviations from the Scope of Services or other provisions of this Agreement may only be made by written agreement signed by all Parties to this Agreement.

3. **Prompt Performance by Consultant.** Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay as is necessary to cause Consultant's services hereunder to be timely and properly performed. Notwithstanding the foregoing, Consultant agrees to use diligent efforts to perform the services described herein and further defined in any specific task orders, in a manner consistent with these task orders; however, the Town understands and agrees that Consultant is retained to perform a professional service and such services must be bound, first and foremost, by the principles of sound professional judgment and reasonable diligence.

4. **Compensation of Consultant.** Town agrees to pay to Consultant for satisfactory completion of all services included in this Agreement a total fee of \$342,915 (Three hundred and forty two thousand, nine hundred and fifteen dollars) for the Project as set forth and described in **Exhibit B - Compensation Schedule** and incorporated herein as if written word for word. Lump sum fees shall be billed monthly based on the percentage of completion. Hourly not to exceed fees shall be billed monthly based on hours of work that have been completed. Direct Costs for expenses such as mileage, copies, scans, sub-consultants, and similar costs are included in fees and shall be billed as completed.

Consultant agrees to submit statements to Town for professional services no more than once per month. These statements will be based upon Consultant's actual services performed and reimbursable

expenses incurred, if any, and Town shall endeavor to make prompt payments. Each statement submitted by Consultant to Town shall be reasonably itemized to show the amount of work performed during that period. If Town fails to pay Consultant within sixty (60) calendar days of the receipt of Consultant's invoice, Consultant may, after giving ten (10) days written notice to Town, suspend professional services until paid.

Nothing contained in this Agreement shall require Town to pay for any work that is unsatisfactory as reasonably determined by Town or which is not submitted in compliance with the terms of this Agreement.

The Scope of Services shall be strictly limited. Town shall not be required to pay any amount in excess of the original proposed amount unless Town shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

5. **Town's Obligations.** Town agrees that it will (i) designate a specific person as Town's representative, (ii) provide Consultant with any previous studies, reports, data, budget constraints, special Town requirements, or other pertinent information known to Town, when necessitated by a project, (iii) when needed, assist Consultant in obtaining access to properties necessary for performance of Consultant's work for Town, (iv) make prompt payments in response to Consultant's statements and (v) respond in a timely fashion to requests from Consultant. Consultant is entitled to rely upon and use, without independent verification and without liability, all information and services provided by Town or Town's representatives.

6. **Ownership and Reuse of Documents.** Upon completion of Consultant's services and receipt of payment in full therefore, Consultant agrees to provide Town with copies of all materials and documents prepared or assembled by Consultant under this Agreement and that Town may use them without Consultant's permission for any purpose relating to the Project. Any reuse of the documents not relating to the Project shall be at Town's risk. Consultant may retain in its files copies of all reports, drawings, specifications and all other pertinent information for the work it performs for Town.

7. **Town Objection to Personnel.** If at any time after entering into this Agreement, Town has any reasonable objection to any of Engineer's personnel, or any personnel, professionals and/or consultants retained by Engineer, Engineer shall promptly propose substitutes to whom Town has no reasonable objection, and Engineer's compensation shall be equitably adjusted to reflect any difference in Engineer's costs occasioned by such substitution.

8. **Insurance.** Consultant shall, at its own expense, purchase, maintain and keep in force throughout the duration of this Agreement applicable insurance policies as described in **Exhibit C - Insurance Requirements** and incorporated herein as if written word for word. Consultant shall submit to Town proof of such insurance prior to commencing any work for Town.

9. **Indemnification.** **CONSULTANT DOES HEREBY COVENANT AND AGREE TO RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS OFFICIALS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES FROM AND AGAINST LIABILITY, CLAIMS, SUITS, DEMANDS AND/OR CAUSES OF ACTION, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION), WHICH MAY ARISE BY REASON OF DEATH OR INJURY TO PROPERTY OR PERSONS BUT ONLY TO THE EXTENT OCCASIONED BY THE NEGLIGENT ACT, ERROR OR**

OMISSION OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, INVITEES OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT.

IN THE EVENT THAT TOWN AND CONSULTANT ARE CONCURRENTLY NEGLIGENT, THE PARTIES AGREE THAT ALL LIABILITY SHALL BE CALCULATED ON A COMPARATIVE BASIS OF FAULT AND RESPONSIBILITY AND THAT NEITHER PARTY SHALL BE REQUIRED TO DEFEND OR INDEMNIFY THE OTHER PARTY FOR THAT PARTY'S NEGLIGENT OR INTENTIONAL ACTS, ERRORS OR OMISSIONS.

10. **Notices.** Any notices to be given hereunder by either Party to the other may be affected either by personal delivery, in writing, or by registered or certified mail to the following addresses:

Brown & Gay Engineers, Inc.	Town of Prosper
William D. Dillon, PE	Harlan Jefferson
Executive Vice President	Town Manager
2595 Dallas Parkway, suite 204	121 W. Broadway
Frisco, TX 75034	PO Box 307
	Prosper, TX 75078

11. **Termination.** The obligation to provide further services under this Agreement may be terminated by either Party in writing upon thirty (30) calendar days notice. In the event of termination by Town, Consultant shall be entitled to payment for services rendered through receipt of the termination notice.

12. **Sole Parties and Entire Agreement.** This Agreement shall not create any rights or benefits to anyone except Town and Consultant, and contains the entire agreement between the Parties. Oral modifications to this Agreement shall have no force or effect.

13. **Assignment and Delegation.** Neither Town nor Consultant may assign their rights or delegate their duties without the written consent of the other Party. This Agreement is binding on Town and Consultant to the extent permitted by law. Nothing herein is to be construed as creating any personal liability on the part of any Town officer, employee or agent.

14. **Texas Law to Apply; Successors; Construction.** This Agreement shall be construed under and in accordance with the laws of the State of Texas. It shall be binding upon, and inure to the benefit of, the Parties hereto and their representatives, successors and assigns. Should any provisions in this Agreement later be held invalid, illegal or unenforceable, they shall be deemed void, and this Agreement shall be construed as if such provision had never been contained herein.

15. **Conflict of Interest.** Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated in **Exhibit D - Conflict of Interest Affidavit** and incorporated herein as if written word for word, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit included in the exhibit. Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E - Conflict of Interest Questionnaire** and incorporated herein as if written word for word.

16. **Venue.** The Parties herein agree that this Agreement shall be enforceable in Prosper, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Collin County, Texas.

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

18. **Prevailing Party.** In the event a Party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney’s fees (including its reasonable costs and attorney’s fees on any appeal).

19. **Signatories.** Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Consultant warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Consultant to same.

IN WITNESS WHEREOF, the Parties, having read and understood this Agreement, have executed such in duplicate copies, each of which shall have full dignity and force as an original, on the _____ day of _____, 20____.

BROWN & GAY ENGINEERS, INC.

TOWN OF PROSPER, TEXAS

By: _____
Signature

By: _____
Signature

William D. Dillon
Printed Name

Harlan Jefferson
Printed Name

Executive Vice President
Title

Town Manager
Title

Date

Date

**EXHIBIT A
SCOPE OF SERVICES**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND BROWN & GAY ENGINEERS, INC.
FOR THE PROSPER TRAIL ELEVATED STORAGE TANK PROJECT (0407-WA)**

I. PROJECT DESCRIPTION

Design of a 2.0 million gallon composite elevated water storage tank, on an approximately 2 acre site, that includes platting, site work, paving, drainage, site utilities, overflow piping, connection to distribution system including pipe sizing. Other services include construction administration and inspections for steel erection and coatings observation.

II. TASK SUMMARY

Task 1 – Preliminary Engineering.

This Task will include the following: Pre-design conference, site and topographical survey, geotechnical investigation, FAA obstruction light requirements, subsurface utility investigation, preparation of preliminary engineering plans including all Town required submittals and preliminary design review workshop. The plans will include the following elements: Cover sheet with location map, general notes, site plan, tree survey, grading plan, paving plan, water line plan and profile, tank elevation and details, drainage area map, drainage calculations, storm drain plan and profile (if needed), tank elevation and details, landscape plan and details, irrigation plan and details, electrical plans and details. This will include a preliminary opinion of probable construction cost.

Task 2 – Final Engineering.

This task will include the following: Incorporation of comments from the preliminary design review workshop, and all Town required submittals into the plans, and development of final engineering plans and specifications for review by the Town. This will include a final opinion of probable construction cost and final engineering design review workshop. The plans will include the following elements: Cover sheet with location map, general notes, site plan, tree survey, grading plan, paving plan, water line plan and profile, tank elevation and details, drainage area map, drainage calculations, storm drain plan and profile (if needed), tank elevation and details, structural details, landscape plan and details, irrigation plan and details, electrical plans and details, traffic control plan, erosion control plan and Town standard details. This task will also include submittal to the TCEQ and the FAA.

Task 3 – Bidding.

This task will include providing bid documents to the Town, selling bid documents to bidders at our office, answering RFI's during bidding as directed by Town and providing documents for Addenda to Town if necessary. Costs for any reproduction of bid documents will be covered by the sale of bid documents.

Task 4 – Platting.

This tasks includes preparing preliminary and final plats and submittal to the Town per the procedures prescribed in the Town of Prosper Development Manual.

Task 5 – Construction Administration & Inspection.

This task includes two activities: General project representation and specialty construction inspection. The general project representation will include the following: Pre-construction conference, construction control staking, periodic observations (12) and submittal reviews. Review and issuance of documents to Town for field orders, work change directives and change orders and maintain submittal log if required. The specialty inspection services will include inspections of the steel erection and coatings application. The steel erection inspection includes up to one shop visit and 8 site visits during welding operations. The coatings inspections will include almost daily onsite inspections during coating operations. All inspection reports will be provided to the Town in electronic format.

Task 6 – Record Drawings.

This task includes preparation of record drawings by incorporating Contractor's redlines and any issued Field Orders, Change Orders and other documented changes, into the plans.

III. DELIVERABLES

Task 1 – Preliminary Engineering	Three (3) 11x17 blackline preliminary plans Two (2) copies of geotechnical report One (1) Preliminary OPCC PDF copy of each of the above
Task 2 – Final Engineering	Three (3) 11x17 blackline final plans One (1) Final OPCC PDF copy of each of the above
Task 3 – Bidding	Three (3) 11x17 blackline final plans Three (3) Project Manuals One (1) Engineer's OPCC PDF copy each of the above
Task 4 – Platting	One (1) 11x17 blackline preliminary plat Six (6) 22x34 blackline preliminary plat One (1) CD of PDF and DWG files of the above One (1) 11x17 blackline final plat Six (6) 22x34 blackline final plat One (1) CD of PDF and DWG files of the above
Task 5 – Construction Admin & Inspection	Submittal Log (if required) Copies of all inspection reports Copies of all issued directives (Field Orders, Change Orders, etc.)
Task 6 – Record Drawings	One (1) 22x34 bond copy of the record drawings One (1) 22x34 mylar copy of the record drawings One (1) PDF copy of each sheet of the record drawings One (1) DWG of the record drawings base map

**EXHIBIT B
COMPENSATION SCHEDULE**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND BROWN & GAY ENGINEERS, INC.
FOR THE PROSPER TRAIL ELEVATED STORAGE TANK PROJECT (0407-WA)**

I. COMPENSATION SCHEDULE

Task	Completion Schedule	Compensation Schedule
Notice-to-Proceed	June 1, 2015	
Task 1 – Preliminary Engineering	August, 2015	\$149,960
Task 2 – Final Engineering	Oct, 2015	\$113,090
Task 3 – Bidding	Nov, 2015	\$8,405
Task 4 – Platting	Aug, 2015	\$8,280
Task 5 – Construction Admin & Inspection	Jan2016–May2017	\$53,530
Task 6 – Record Drawings	June 2017	\$9,650
Total Compensation		\$342,915

II. COMPENSATION SUMMARY

Basic Services (Lump Sum)	Amount
Task 1 – Preliminary Engineering	\$149,960
Task 2 – Final Engineering	\$113,090
Task 3 – Bidding	\$8,405
Task 4 – Platting	\$8,280
Task 5 – Construction Administration & Inspection	Special Services
Task 6 – Record Drawings	\$9,650
Total Basic Services:	\$289,385

Special Services (Hourly Not-to-Exceed)	Amount
Construction Administration	\$18,530
Construction Inspection (Steel & Coatings)	\$35,000
Total Special Services:	\$53,530

Direct Expenses	Amount
None	\$0
Total Direct Expenses:	\$0

**EXHIBIT C
INSURANCE REQUIREMENTS**

**PROFESSIONAL ENGINEERING SERVICES AGREEMENT
BETWEEN THE TOWN OF PROSPER, TEXAS, AND BROWN & GAY ENGINEERS, INC.
FOR THE PROSPER TRAIL ELEVATED STORAGE TANK PROJECT (0407-WA)**

I. COMMON REQUIREMENTS

Consultant shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by Consultant. Consultant shall declare any deductible or self-insured retentions in excess of Ten Thousand Dollars (\$10,000) for approval by the Town.

Consultant shall maintain insurance policies with a company that maintains a financial strength rating of "A- VI" or greater by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

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

II. GENERAL LIABILITY INSURANCE

Consultant shall maintain a general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) for each occurrence, and Two Million Dollars (\$2,000,000) in the aggregate for third-party bodily injury, personal injury, and property damage. Policy will include coverage for premises/operations, broad form contractual liability, products and completed operations, personal injury, and broad form property damage.

Town, its officers, officials, employees and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of Consultant, products and completed operations of Consultant, premises owned, occupied or used by consultant. The coverage shall contain no special limitations on the scope of protection afforded to Town, its officers, officials, employees or volunteers.

Consultant's insurance coverage shall be primary insurance in respects to Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Town, its officers, officials, employees or volunteers shall be in excess of the provider's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policy shall not affect coverage provided to Town, its officers, officials, employees or volunteers.

Consultant's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the insured's limits of liability.

III. AUTOMOBILE LIABILITY

Consultant shall maintain an automobile liability policy in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit. Automobile liability shall apply to all owned, hired, and non-owned autos that will be used under this Agreement.

III. PROFESSIONAL LIABILITY

Consultant shall maintain a professional liability (errors and omissions) insurance policy in an amount not less than One Million Dollars (\$1,000,000) for each claim, and Two Million Dollars (\$2,000,000) in the aggregate. A "claims made" policy is acceptable coverage which must be maintained during the course of the Project, and up to two (2) years after completion and acceptance of the Project by Town.

IV. WORKERS COMPENSATION

Consultant shall maintain all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. The insurer shall agree to waive all rights of subrogation against Town, its officers, officials, employees and volunteers for losses arising from work performed by Consultant for the Project.

V. OTHER INSURANCE REQUIREMENTS

Umbrella coverage or excess liability coverage is / X is not required. If Project size and scope warrant, and if required by this section, Consultant shall maintain an umbrella coverage or excess liability coverage insurance policy in an amount of Two Million Dollars (\$2,000,000).

XCU coverage is / X is not required. If Project scope warrants, and if required by this section, Consultant shall maintain XCU coverage not less than One Million Dollars (\$1,000,000) for each occurrence, and Two Million Dollars (\$2,000,000) in the aggregate.

EXHIBIT E CONFLICT OF INTEREST QUESTIONNAIRE

PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND BROWN & GAY ENGINEERS, INC. FOR THE PROSPER TRAIL ELEVATED STORAGE TANK PROJECT (0407-WA)

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of person who has a business relationship with local governmental entity.</p> <p style="text-align: center;">None</p>	<p>Date Received</p>	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p style="font-size: small;">(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>		
<p>3 Name of local government officer with whom filer has employment or business relationship.</p> <p style="text-align: center;">_____</p> <p style="text-align: center; font-size: small;">Name of Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
<p>4</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">  <p>_____ Signature of person doing business with the governmental entity</p> </div> <div style="text-align: center;"> <p>5/1/2015 _____ Date</p> </div> </div>		

Adopted 06/29/2007

DESCRIPTIONS (Continued from Page 1)

Noncontributory" wording.

The General Liability, Automobile Liability, Workers Compensation and Professional Liability policies provide a Blanket Waiver of Subrogation when required by written contract.

Valuable Papers Limit: \$100,000 Policy Limit

The Umbrella Liability policy follows form to the underlying General Liability, Automobile and Workers Compensation policies. The Umbrella Liability coverage limits are in addition to those provided by the General Liability, Automobile and Workers Compensation policies.

The General Liability, Automobile, Workers Compensation, Umbrella Liability and Professional Liability policies include an endorsement providing that 30 days notice of cancellation for reasons other than nonpayment of premium and 10 days notice of cancellation for nonpayment of premium will be given to the Certificate Holder by the Insurance Carrier.



**TOWN SECRETARY'S
OFFICE**

To: Mayor and Town Council

From: Robyn Battle, Town Secretary

Through: Harlan Jefferson, Town Manager

Re: Town Council Meeting – June 9, 2015

Agenda Item:

Consider and act upon the appointment of a Town of Prosper representative to the Board of Directors of the Upper Trinity Regional Water District.

Description of Agenda Item:

This item was tabled at the May 26, 2015, Town Council Meeting for further discussion by Council. The Upper Trinity Regional Water District (UTRWD) is a conservation district, created by the State of Texas in 1989 to provide towns, cities, and utilities with a long-term water supply. UTRWD is authorized to provide water, wastewater, solid waste, and storm water services.

The boundaries of UTRWD include all of Denton County, plus some portions of Collin and Dallas counties. The District is composed of 25 member entities (21 cities and towns, 1 utility authority, and 3 special districts). The District is governed by a Board of Directors appointed by the governing bodies of Denton County and the District's member entities. Denton County appoints two Directors and each member entity, including Prosper, appoints one Director. Each Director is appointed for a four-year term.

George Dupont has been Prosper's representative on the UTRWD Board of Directors since 2011. His term expired on May 31, 2015, but he may continue to serve until the Town Council appoints a new Director.

Town Staff Recommendation:

Town staff recommends the Town Council appoint a Town of Prosper representative to the Board of Directors of the Upper Trinity Regional Water District.

Proposed Motion:

I move to appoint _____ as the Town of Prosper representative to the Board of Directors of the Upper Trinity Regional Water District.