TOWN OF PROSPER, TEXAS **ORDINANCE NO. 16-77**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 13, "UTILITIES," OF THE CODE OF ORDINANCES BY ADOPTING A NEW ARTICLE 13.12, "STORM WATER MANAGEMENT;" PROVIDING LEGAL AUTHORITY FOR THE TOWN TO CONTROL POLLUTANT DISCHARGES INTO AND FROM THE TOWN'S MUNICIPAL SEPARATE STORM SEWER SYSTEM; PROVIDING REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2003, the United States Environmental Protection Agency ("US EPA") promulgated Phase II of the National Pollutant Discharge Elimination System (NPDES) Program, which requires Small Municipal Separate Storm Sewer Systems (MS4s) to implement programs and practices to control polluted storm water runoff; and

WHEREAS, the US EPA and the Texas Commission on Environmental Quality ("TCEQ") signed a memorandum of agreement for TCEQ to assume the regulatory authority for the NPDES Program as it applies to the State of Texas; and

WHEREAS, the Town of Prosper, Texas ("Town"), is designated by TCEQ as an MS4 that includes part of an Urbanized Area ("UA"), and is therefore required to implement a Storm Water Management Program; and

WHEREAS, the Town has investigated and determined that it would be advantageous and beneficial to the citizens of the Town to adopt an ordinance that provides authority to control pollutant discharges into and from its MS4 in order to meet the requirements of General Permit TXR040500, establishing regulations applicable within the Town limits to protect properties, prevent damage to the environment in the Town, and promote public health, safety and general welfare by implementing regulations for storm water discharge in the Town.

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Chapter 13, "Utilities," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended by adding thereto a new Article 13.12, "Storm Water Management," to read as follows:

"ARTICLE 13.12 STORM WATER MANAGEMENT

Sec. 13.12.001 General

Division 1. Generally

(a) The following abbreviations when used in this article shall have the designated meanings:

BMP	Best Management Practices
CFR	Code of Federal Regulations
DDES	Deputy Director of Engineering Services
EPA	U.S. Environmental Protection Agency
MS4	Municipal Separate Storm Sewer System
NOI	Notice of Intent
NOT	Notice of Termination
NPDES	National Pollutant Discharge Elimination System
PST	Petroleum Storage Tank
SWPPP	Storm Water Pollution Prevention Plan
TPDES	Texas Pollutant Discharge Elimination System
USC	United States Code
V.T.C.A.	Vernon's Texas Codes Annotated

(b) Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated:

Agricultural storm water runoff. Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

Best management practices (BMP). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Coal pile runoff. The rainfall runoff from or through any coal storage pile.

Commencement of construction. The disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

Commercial. Pertaining to any business, trade, industry, or other activity engaged in for profit.

Deputy Director of Engineering Services (DDES). The person appointed to by the Town Manager to provide engineering and technical services, or his/her duly authorized representative.

Discharge. Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

Discharger. Any person, who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.

Domestic sewage. Human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

Environmental Protection Agency (EPA). The United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

Extremely hazardous substance. Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

Facility. Any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.

Fertilizer. A solid or nonsolid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

Final stabilization. The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70 percent of the cover for unpaved areas and areas not covered by permanent structures has been established, or equivalent

permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Fire department. The Fire Department of the Town of Prosper, or any duly authorized representative thereof.

Fire protection water. Any water, and any substances or materials contained therein, used by any person other than the fire department to control or extinguish a fire.

Garbage. Putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

Generally accepted maintenance activities. Procedures, work tasks, techniques and schedules established for the sustainability and function of a storm water feature published by a governmental agency, educational organization, professional organization or other subject matter experts.

Good working order. As applicable to a storm water system, when the storm water feature functions as designed to achieve its purpose pursuant to the design intent and record drawings and is not a public nuisance. This includes preserving and continuing its function in controlling storm water quality and quantity in the degree or amount for which the storm water feature was designed.

Harmful quantity. The amount of any substance that will cause pollution of water in the state.

Hazardous household waste. Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR sec. 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

Hazardous substance. Any substance listed in Table 302.4 of 40 CFR Part 302.

Hazardous waste. Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

Hazardous waste treatment, disposal and recovery facility. All contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

Herbicide. A substance or mixture of substances used to destroy a plant or to inhibit plant growth.

Industrial waste. Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.

Maintenance activities. Practices required for the long-term sustainability and function of a component or system. This includes periodic inspections, debris removal and disposal, replanting of trees, maintaining vegetation, removal of silt, and repair of manmade components.

The maintenance activities in natural channels and riparian areas shall be as minimal as possible.

Motor vehicle fuel. Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

Municipal landfill (or landfill). An area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the Texas Water Commission).

Municipal separate storm sewer system (MS4). The system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the Town and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

Municipal solid waste. Solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

Natural channels. Channels left in or near their natural state, maintaining the natural alignment and grade and riparian corridor.

NPDES general permit for storm water discharges associated with industrial activity (or industrial general permit). The industrial general permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

NPDES general permit for storm water discharges from construction sites (or construction general permit). The construction general permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.

NPDES permit. A permit issued by EPA (or by the state under authority delegated pursuant to 33 USC sec. 1342(b)), as amended, that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Nonpoint source. Any source of any discharge of a pollutant that is not a "point source."

Notice of intent (NOI). The notice of intent that is required by either the industrial general permit or the construction general permit.

Notice of termination (NOT). The notice of termination that is required by either the industrial general permit or the construction general permit.
Oil. Any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.

Operator. The person or persons who, either individually or taken together, meet the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner. The person who owns a facility, part of property.

Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

Pesticide. A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in V.T.C.A., Agriculture Code sec. 76.001, as amended).

Petroleum product. A petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

Petroleum storage tank (PST). Any one or combination of above ground or underground storage tanks that contain petroleum products and any connecting underground pipes.

Point source. Any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

Pollution. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Public nuisance. A condition which meets all of the requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; or (2) affects at the same time an

entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Qualified personnel. Persons who possess the appropriate competence, skills and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.

Reportable quantity. For any "hazardous substance," the quantity established and listed in Table 302.4 of 40 CFR Part 302, as amended; for any "extremely hazardous substance," the quantity established in 40 CFR Part 355, as amended, and listed in Appendix A thereto.

Rubbish. Nonputrescible solid waste, excluding ashes that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Sanitary sewer (or sewer). The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the Town sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).

Septic tank waste. Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

Service station. Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

Sewage (or sanitary sewage). The domestic sewage and/or industrial waste that is discharged into the Town sanitary sewer system and passes through the sanitary sewer system to the town sewage treatment plant for treatment.

Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid waste. Any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.

State. The State of Texas.

Storm water. Storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity. The discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR sec. 122.26(b)(14), as amended, and which is not excluded from EPA's definition of the same term.

Storm water feature. A natural or manmade component or system which remains as a permanent part of a development also known as structural BMPs. The purpose of which includes storm water conveyance, storm water quality improvement, flood mitigation, or erosion reduction. The features include but are not limited to, channels, detention facilities, retention ponds, bioretention, rain harvest systems, landscape buffers, riparian areas, enhanced swales, filter strips, permeable pavers and manufactured devices.

Storm water pollution prevention plan (SWPPP). A plan required by either the construction general permit or the industrial general permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the facility.

Town. The Town of Prosper, Texas, or the Town Council of the Town of Prosper.

Town inspector(s) shall refer to the DDES or representative who goes on-site to determine if the provisions of this article are being met.

Uncontaminated. Not containing a harmful quantity of any substance.

Used oil (or used motor oil). Any oil that has been refined from crude oil or synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties, but that may be suitable for further use and is recyclable in compliance with state and federal law.

Water in the state (or water). Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Water quality standard. The designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Texas Administrative Code, tit. 31 ch. 307, as amended.

Water resource zone. A landscape area that receives surface runoff from an adjacent impervious paved surface and uses one or more BMPs such as bioretention to capture and treat the runoff near the source.

Waters of the United States. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters

identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR sec. 122.2, as amended; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

Wetland. An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Yard waste. Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

Sec. 13.12.002 Legal Authority

This article provides the Town Council of the Town, and its designees, with the requisite legal authority to address the following:

(1) Authority to prohibit illicit discharges and illicit connections;

(2) Authority to respond to and contain other releases, control the discharge of spills, and prohibit dumping or disposal of materials other than storm water into the Town's MS4;

(3) Authority to require compliance with conditions in the Town of Prosper's ordinances, permits, contracts, or orders;

(4) Authority to require installation, implementation, and maintenance of control measures;

(5) Authority to receive and collect information, such as storm water plans, inspection reports, and other information deemed necessary to asses compliance with this permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;

(6) Authority as needed, to enter and inspect private property including facilities, equipment, practices, or operations related to storm water discharges to the Town of Prosper's MS4;

(7) Authority to respond to non-compliance with BMP requirements that are consistent with the Town's ordinances or other regulatory mechanisms;

(8) Authority to assess penalties, including monetary, civil, or criminal penalties; and

(9) Ability to enter into interagency or interloccal agreements or other maintenance agreements, as necessary.

Sec. 13.12.003 Geographic Jurisdiction

The Town is hereby authorized to implement the following Storm Water Management program and enforce the this article within the corporate limits of the Town.

Division 2. Storm Water Discharge

Sec. 13.12.004 General provisions

(a) The purposes and objectives of this article are as follows:

(1) To protect human life, health, and property;

(2) To maintain and improve the quality of surface water and groundwater within the Town of Prosper, the North Central Texas Region, and the State of Texas;

(3) To prevent the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the Town of Prosper;

(4) To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers and natural waters of the town;

(5) To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;

(6) To facilitate compliance with state and federal standards and permits by owners and operators of industrial and construction sites within the town; and

(7) To enable the town to comply with all federal and state laws and regulations applicable to storm water discharges.

(b) Except as otherwise provided herein, the Deputy Director of Engineering Services (DDES) shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon these people may be delegated to other town personnel.

Sec. 13.12.005 General prohibitions

(a) No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of storm water.

(b) It is an affirmative defense to any enforcement action for violation of subsection (a) of this section that the discharge was composed entirely of one or more of the following categories of discharges: (As found in the permit)

(1) Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);

(2) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;

(3) Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;

(4) Diverted stream flows;

(5) Rising groundwaters and springs;

(6) Uncontaminated groundwater infiltration;

(7) Uncontaminated pumped groundwater;

(8) Foundation and footing drains;

(9) Air conditioning condensation;

(10) Water from crawl space pumps;

(11) Individual residential vehicle washing;

(12) Flows from wetlands and riparian habitats;

(13) Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;

(14) Street wash water excluding street sweeper waste water;

(15) Discharges or flows from fire-fighting activities (fire-fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);

(16) Other allowable non-storm water discharges listed in 40 CFR 122.26(d)(2)(iv)(B)(1), as amended;

(17) Non-storm water discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;

(18) A discharge from a temporary car wash sponsored by a civic group, school, religious or nonprofit organization where only soap and water are used and where efforts are made to minimize pollutants in the discharge; and

(19) Other similar occasional incidental non-storm water discharges, unless the TCEQ develops permits or regulations addressing these discharges.

(c) No affirmative defense shall be available under subsection (b) of this section if the discharge or flow in question has been determined by the DDES to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has occurred more than 14 calendar days beyond such notice. The correctness of the DDES's determination that a discharge is a

source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

Sec. 13.12.006 Specific prohibitions and requirements

(a) The specific prohibitions and requirements in this section are not necessarily inclusive of all the discharges prohibited by the general prohibition in Judicial Enforcement Remedies.

(b) No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the town to violate a water quality standard, the town's NPDES permit, or any state-issued discharge permit for discharges from its MS4.

(c) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:

(1) Any industrial waste;

(2) Any used motor oil;

(3) Any hazardous waste, including hazardous household waste;

(4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;

(5) Any release from a PST, or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge satisfies all of the following criteria:

a. Compliance with all state and federal standards and requirements; and

b. No discharge containing a harmful quantity of any pollutant.

(d) No person shall intentionally dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or introduce any of the following substances into the MS4 and all persons shall to the maximum extent practicable under prevailing circumstances employ control measures to prevent the following substances from entering into the MS4:

(1) Any motor oil, antifreeze, or any other motor vehicle fluid;

(2) Any garbage, rubbish or yard waste;

(3) Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity;

(4) Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;

(5) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;

(6) Any wastewater from floor, rug or carpet cleaning;

(7) Any wastewater from the wash-down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;

(8) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;

(9) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;

(10) Any runoff or wash-down water from any animal pen, kennel, or foul or livestock containment area;

(11) Any filter backwash from a swimming pool, fountain or spa;

(12) Any swimming pool water containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;

(13) Any discharge from water line disinfection by super chlorination or other means if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;

(14) Any fire protection water containing oil or hazardous substances or materials that the fire code in this Code of Ordinances requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. (This prohibition does not apply to discharges or flow from fire-fighting by the fire department.);

(15) Any water from a water curtain in a spray room used for painting vehicles or equipment;

(16) Any contaminated runoff from a vehicle wrecking yard;

(17) Any substance or material that will damage, block or clog the MS4.

(e) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with landfilling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on-site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.

(f) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.

(g) No person shall cause or allow any pavement wash water from a service station to be discharged into the MS4 unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.

(h) Pesticides, herbicides and fertilizers. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced harmful levels of pesticides, herbicides and fertilizers into the MS4. All persons shall to the maximum extent practicable under prevailing circumstances employ control measures to minimize pesticides, herbicides and fertilizers from entering the MS4. This includes the following:

(1) Applying products according to manufacture recommendations.

(2) Applying products according to all state and federal laws.

(3) Proper storage and disposal.

Sec. 13.12.007 Release and reporting and cleanup

(a) The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall immediately telephone and notify the fire department and the DDES concerning the incident:

(1) An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR Part 302, as amended;

(2) An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355, as amended;

(3) An amount of oil that either: (a) violates applicable water quality standards; or (b) causes a film or sheen upon or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or

(4) Any harmful quantity of any pollutant.

(b) The immediate notification required by subsection (a) shall include the following information:

(1) The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;

(2) The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;

(3) The time and duration (thus far) of the release;

(4) An estimate of the quantity and concentration (if known) of the substance released;

(5) The source of the release;

(6) Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;

(7) Any precautions that should be taken as a result of the release;

(8) Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and

(9) The names and telephone numbers of the person or persons to be contacted for further information.

(c) Within 14 calendar days following such release, the responsible person in charge of the facility, vehicle, or other source of the release shall, unless waived by the DES, submit a written report containing each of the items of information specified above in subsection (b), as well as the following additional information:

(1) The ultimate duration, concentration, and quantity of the release;

(2) All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;

(3) Any known or anticipated acute or chronic health risks associated with the release;

(4) Where appropriate, advice regarding medical attention necessary for exposed individuals;

(5) The identity of any governmental/private sector representatives responding to the release; and

(6) The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.

(d) The notifications required by subsections (b) and (c), above, shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the town, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this article or to state or federal law.

(e) Any person responsible for any release as described in subsection (a) above shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.

(f) Any person responsible for a release described in subsection (a) above shall reimburse the town for any cost incurred by the town in responding to the release.

Sec. 13.12.008 Storm water discharges from construction activities

(a) General requirements.

(Note: The requirements of this ordinance do not replace the requirements established by TCEQ pertaining to construction sites.)

(1) All operators of construction sites shall use best management practices to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with the clearing, grading, excavation, and other construction activities to the maximum extent practicable under the circumstances. Such best management practices may include, but not be limited to the following measures:

a. Ensuring that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased. Stabilization measures may include: Temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures;

b. Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from the site to the extent feasible;

c. Minimization of the tracking of sediments off-site by vehicles, the generation of dust, and the escape of other windblown waste from the site;

d. Prevention of the discharge of building materials, including cement, lime, concrete, and mortar, to the MS4 or waters of the United States;

e. Providing general good housekeeping measures to prevent and contain spills of paints, solvents, fuels, septic waste, and other hazardous chemicals and pollutants associated with construction, and to assure

proper cleanup and disposal of any such spills in compliance with state, federal and local requirements;

f. Implementation of proper waste disposal and waste management techniques, including covering waste materials and minimizing ground contact with hazardous chemicals and trash;

g. Timely maintenance of vegetation, erosion and sediment control measures, and other best management practices in good and effective operating condition; and

h. Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. Such installed structural measures may include, but not be limited to the following: Storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetative swales and natural depressions; other velocity dissipation devices; infiltration of runoff on-site; and sequential systems which combine several practices. Operators of construction sites are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have terminated.

(2) Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be revised as appropriate, and as soon as is practicable.

(3) The DDES may require any plans and specifications that are prepared for the construction of site improvements to illustrate and describe the best management practices required by subsection (a)(1) above, that will be implemented at the construction site. The town may deny approval of any building permit, grading permit, or any other town approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the management practices described in the plans or observed upon a site inspection by the DDES are determined not to control and reduce the discharge of sediment, silt, earth, soil, and other materials associated with clearing, grading, excavation, and other construction activities to the maximum extent practicable under the circumstances.

(4) Any owner of a site of construction activity, whether or not he/she is an operator, is jointly and severally responsible for compliance with the requirements in subsection (a).

(5) Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure, is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure if such failure causes or contributes to causing the town to violate a water quality standard, the town's NPDES permit, or any state-issued discharge permit for discharges from its MS4.

(b) Disturbances of Five Acres or more

(1) All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of five or more acres of total land area, or disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five acres of land, or who are required to obtain an NPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in subsection (a)):

a. Any operator who intends to obtain coverage for storm water discharges from a construction site under the NPDES general permit for storm water discharges from construction sites ("the construction general permit") shall submit a signed copy of its notice of intent (NOI) to the DDES at least two days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of this article, the NOI shall be submitted within 30 days. For storm water discharges from construction sites where the operator changes, an NOI shall be submitted at least two days prior to when the operator commences work at the site.

b. A storm water pollution prevention plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group NPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this article and any other town ordinance.

c. The SWPPP shall be completed prior to the submittal of the NOI to the DDES and, for new construction, prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the construction general permit and this article.

d. A copy of any NOI that is required by subsection (b)(1)a., shall be submitted to the town in conjunction with any application for a building permit, grading permit, site development plan approval, and any other

town approval necessary to commence or continue construction at the site.

e. The DDES may require any operator who is required by subsection (b)(1)b. to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the DDES for review. Such submittal and review of the SWPPP may be required by the DDES prior to commencement of or during construction activities at the site.

f. Upon the DDES's review of the SWPPP and any site inspection that he/she may conduct, the town may deny approval of any building permit, grading permit, or any other town approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the construction general permit, any individual or group NPDES permit issued for storm water discharge from the construction site, or any additional requirement imposed by or under this article. Also, if at any time the DDES determines that the SWPPP is not being fully implemented, the town may similarly deny approval of any building permit, grading permit, subdivision plat, site development plan or any other town approval necessary to commence or continue construction, or to assume occupancy, at the site.

g. All contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification, with the Storm water Ordinance of the Town of Prosper, and with those provisions of the storm water pollution prevention plan (SWPPP) for the construction site for which I am responsible.

h. The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

i. The SWPPP, and the certifications of contractors and subcontractors required by subsection (b)(1)g., and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.

j. The operator shall make the SWPPP and any modification thereto available to the DDES upon request (as well as to EPA and state inspectors).

k. The DDES may notify the operator at any time that the SWPPP does not meet the requirements of the construction general permit, any applicable

individual or group NPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this article. Such notification shall identify those provisions of the permit or ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven days of such notification from the DDES (or as otherwise provided by the DDES), the operator shall make the required changes to the SWPPP and shall submit to the DDDES a written certification that the requested changes have been made.

l. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be amended to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.

m. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven (7) calendar days. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

An alternative to the above-described inspection schedule may be used if the alternative schedule complies with the current TPDES General Permit for construction sites.

n. Based on the results of the inspections required by subsection (b)(l)m., the site description and/or the pollution prevention measures identified in the SWPPP shall be revised as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection.

o. A report summarizing the scope of any inspection required by subsection (b)(l)m., and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to

the implementation of the SWPPP, and actions taken in accordance with subsection (b)(l)n. above, shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES permit, and this article. The report shall be certified and signed by the person responsible for making it.

p. The operator shall retain copies of any SWPPP and all reports required by this article or by the NPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

q. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this article and by the NPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the DDES a notice of termination (NOT) in accordance with the construction general permit.

r. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit written certification to the DDES that the site has been finally stabilized. (See definition of final stabilization in this article.) The town may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the DDES has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

(c) Disturbances of at least One Acre but less than Five Acres

(1) All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of at least one acre but less than five acres of total land area, or the disturbance of less than one acre of total land area that is part of larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres of land, or who are required to obtain an NPDES permit for storm water discharges associated with construction activity, shall comply with the following requirements (in addition to those in subsection (a)):

a. Any operator who intends to obtain coverage for storm water discharges from a construction site under the NPDES general permit for storm water discharges from construction sites ("the construction general permit") shall post the Site Notice as well as submit a signed copy of its Site Notice to the DDES at least two days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of this article, the NOI shall be submitted within 30 days. For storm water discharges from construction sites where the

operator changes, an NOI shall be submitted at least two days prior to when the operator commences work at the site.

b. A storm water pollution prevention plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group NPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by or under this article and any other town ordinance.

c. All contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification, with the Storm water Ordinance of the Town of Prosper, and with those provisions of the storm water pollution prevention plan (SWPPP) for the construction site for which I am responsible.

d. The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

e. The SWPPP, and the certifications of contractors and subcontractors required by subsection (b)(1)g., and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.

f. The operator shall make the SWPPP and any modification thereto available to the DDES upon request (as well as to EPA and state inspectors).

g. The DDES may notify the operator at any time that the SWPPP does not meet the requirements of the construction general permit, any applicable individual or group NPDES permit issued for storm water discharges from the construction site, or any additional requirement imposed by or under this article. Such notification shall identify those provisions of the permit or ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven days of such notification from the DDES (or as otherwise provided by the DDES), the operator shall make the required changes to the SWPPP and shall submit to the DDES a written certification that the requested changes have been made.

h. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant

effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in storm water discharges associated with construction activity. In addition, the SWPPP shall be amended to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.

i. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven (7) calendar days. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

An alternative to the above-described inspection schedule may be used if the alternative schedule complies with the current TPDES General Permit for construction sites.

j. Based on the results of the inspections required by subsection (b)(l)m., the site description and/or the pollution prevention measures identified in the SWPPP shall be revised as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection.

k. A report summarizing the scope of any inspection required by subsection (b)(l)m., and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with subsection (b)(l)n. above, shall be made and retained as part of the SWPPP for at least three years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's NPDES permit, and this article. The report shall be certified and signed by the person responsible for making it.

l. The operator shall retain copies of any SWPPP and all reports required by this article or by the NPDES permit for the site, and records of all data

used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

m. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this article and by the NPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the DDES a notice of termination (NOT) in accordance with the construction general permit.

n. Upon final stabilization of the construction site, the owner (or the duly authorized representative thereof) shall submit written certification to the DDES that the site has been finally stabilized. (See definition of final stabilization in this article.) The town may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the DDES has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

(d) Disturbances less than One Acre

All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in land disturbance of less than one acre of land, (provided the disturbance is not part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre of land, and who are not otherwise required to obtain an NPDES permit for storm water discharges associated with construction activity), are not required to obtain an NPDES permit for storm water discharges associated with construction activity, but shall utilize all applicable erosion control BMPs to reduce erosion and discharge of pollutants in storm water runoff from the site, and shall properly stabilize the site at completion of disturbance.

Sec. 13.12.009 Compliance monitoring

(a) Right of entry; inspection and sampling. Town inspectors shall have the right to enter the premises of any person reasonably suspected by the town of discharging pollutants into the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this article, and with any state or federal discharge permit, limitation or requirement. Dischargers shall allow the town inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make available to the town inspector, upon request, any SWPPPs, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, and other documents related to compliance with this article and with any state or federal discharge permit.

(1) Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the town inspector will be permitted to enter without unreasonable delay for the purposes of performing his/her responsibilities.

(2) The town inspector shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.

(3) When pollutants have been discharged the DDES may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.

(4) The DDES may require that discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the town inspector and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

(6) Unreasonable delays in allowing the town inspector access to the discharger's premises shall be a violation of this article.

(b) Search warrants. If the town inspector has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article or any state or federal discharge permit, limitation or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the town designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the town inspector may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 13.12.10 Publication

Publication of dischargers in significant noncompliance. The DDES may periodically publish, in a daily newspaper generally distributed within the town, a list of owners and operators of discharges to the MS4 or waters of the United States from sites of construction and industrial activity which, during the previous three months, were in significant noncompliance with the requirements of this article. The term "significant noncompliance" shall mean:

(1) Introducing or causing to be introduced into the waters of the United States any discharge that violates a water quality standard;

(2) Introducing or causing to be introduced into the MS4 any discharge that causes or contributes to causing the town to violate a water quality standard, the town's NPDES/TPDES permit, or any state-issued discharge permit for discharges from the town's MS4;

(3) Any connection of a line conveying sanitary sewage, domestic or industrial, to the MS4, or allowing any such connection to continue;

(4) Any discharge of pollutants to the MS4 or waters of the United States that has caused an imminent or substantial endangerment to the health or welfare of persons or to the environment, or has resulted in the DDES's exercise of his/her emergency authority to halt or prevent such a discharge;

(5) Any violation that has resulted in injunctive relief, civil penalties, or criminal fine being imposed as a judicial remedy under Judicial Enforcement Remedies of this article;

(6) Any other violation(s) which the DDES determines to be chronic or especially dangerous to the public or to the environment; or

(7) Any failure to comply with a compliance schedule, whether imposed by the town or by a court.

Sec. 13.12.11 Administrative enforcement remedies

(a) Warning notice. When the DDES finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the DDES may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of the DDES to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

(b) Notification of violation. When the DDES finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the DDES may serve upon that person a written notice of violation. Within ten days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the DDES. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the DDES within ten days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the DDES to take any action, including emergency action or any other enforcement action, without first issuing a notice of violation.

(c) Consent orders. The DDES may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this article or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to subsections (e), (f) and (g) in this section and shall be judicially enforceable.

(d) Show cause hearing. The DDES may order any person who has violated, or continues to violate, any provision of this article, or any order issued hereunder, to appear before the

DDES and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in Judicial Enforcement Remedies(a)(7) of this article. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

(e) Compliance orders. When the DDES finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the DDES may issue an order to the violator directing that the violator come into compliance within a specified time limit. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(f) Remediation, abatement and restoration orders. When the DDES finds that a person has violated, or continues to violate, any provision of this article, or any order issued hereunder, and that such violation has adversely affected the MS4, the waters of the United States or any other aspect of the environment, the DDES may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, the waters of the United States, or any other aspect of the environment, and/or to restore any part of the MS4, the waters of the United States, or any other aspect of the environment that has been harmed. Such remedial, abatement, and restoration action may include, but not be limited to: Monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of town property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

(g) Emergency cease and desist orders. When the DDES finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the DDES may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

(1) Immediately comply with all ordinance requirements; and

(2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the DDES may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The DDES may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the DDES that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the DDES within two days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(h) "Red tags". Whenever the DDES finds that any operator of a construction site has violated, or continues to violate, any provision of this article, or any order issued thereunder, the DDES may order that a "red tag" be issued to the operator, posted at the construction site, and distributed to all Town departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the DDES, the "red tag" shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the town associated with a building permit, grading permit, subdivision plat approval, site development plan approval, or any other town approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a "red tag" order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Sec. 13.12.12 Right to reconsideration, hearing and appeal

(a) Reconsideration and hearing.

(1) Any person subject to a compliance order under Judicial Enforcement Remedies (e), a remediation, abatement, or restoration order under Judicial Enforcement Remedies (f), an emergency cease and desist order under Judicial Enforcement Remedies (g), or a red tag order under Judicial Enforcement Remedies (h) of this article may petition the DDES to reconsider the basis for his/her order within 30 days of the affected person's notice of issuance of such an order.

(2) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

(3) In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

(4) The effect of any compliance order under Judicial Enforcement Remedies(e), remediation, abatement, or restoration order under Judicial Enforcement Remedies(f), and any red tag order under Judicial Enforcement Remedies(h) shall be stayed pending the DDES's reconsideration of the petition, and any hearing thereon, unless the DDES expressly makes a written determination to the contrary. The effectiveness of any emergency cease and desist order under Judicial Enforcement Remedies (g) shall not be stayed pending the DDES's reconsideration, or any hearing thereon, unless the DDES expressly and in writing stays his/her emergency order.

(5) Within ten days of the submittal of a petition for reconsideration, the DDES shall either: (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

(6) Written notice of any hearing set by the DDES pursuant to subsection (a)(5) above, shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

(7) The DDES may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the town or any specially-designated attorney or engineer to:

a. Issue in the name of the town notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;

b. Take evidence;

c. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the DDES for action thereon.

At any hearing held pursuant to this subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

(8) After the DDES has reviewed the evidence, he/she shall either: (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The DDES may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

(b) Appeal.

(1) Any person whose petition for reconsideration by the DDES has not been granted in its entirety and who remains adversely affected by the DDES's order, or who is subject to an order of the DDES issued following a show cause hearing under Judicial Enforcement Remedies(d), may appeal the action of the DDES to the town council by filing a written appeal with the town council within ten days of the person's notice of the DDES's adverse action on the petition for reconsideration, or within ten days of the person's notice of the issuance of the order following the show cause hearing, as the case may be.

(2) Failure to submit a timely written appeal to the town council shall be deemed to be a waiver of further administrative review.

(3) In its written appeal to the town council, the appealing party shall indicate the particular provisions of the order objected to, the particular determinations of the DDES that are contested, the reasons that the DDES's order and/or determinations are contested, and any alternative order that the appealing party would accept.

(4) The effect of the DDES's order, as issued or modified, shall not be stayed pending the appeal to the town council, unless the town council expressly so states.

(5) Within 30 days of the submittal of a written appeal to the town council, the town council shall hear and consider the appeal in open meeting. The appellant shall be notified at least three days in advance of the date and time of the town council meeting at which the appeal will be heard and considered.

(6) The appellant shall have the right to public appearance before the town council to present oral and written statements in support of his/her appeal. If the town council wishes to consider testimony of witnesses or other evidence beyond that in the record of any hearing before the DDES, the town council may remand the matter to the DDES for the taking of additional testimony or other evidence.

(7) Upon consideration of any written and oral statements made to the town council, as well as the record made before the DDES, the town council shall act on the appeal by affirming, vacating, or modifying the order of the DDES, and/or by remanding the matter to the DDES for further action.

(8) Following final action by the town council on the appeal, any adversely affected party may challenge such action by the town council in an appropriate court of competent jurisdiction.

Sec. 13.12.13 Judicial enforcement remedies

(a) Civil remedies

(1) Whenever it appears that a person has violated, or continues to violate, any provision of this article that relates to:

a. The preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;

b. The preservation of public health or to the fire safety of a building or other structure or improvement;

c. The establishment of criteria for land subdivision or construction of buildings, including street design;

d. Dangerous damaged or deteriorated structures or improvements;

e. Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or

f. Point source effluent limitations or the discharge of a pollutant, other than from a nonpoint source, into the MS4.

The town may invoke V.T.C.A., Local Government Code secs. 54.011-54.017, as amended, and petition the state district court or the county court at law of Collin or Denton County, through the town attorney, for either the injunctive relief specified in subsection (a)(2), or the civil penalties specified in subsection (a)(3) below, or both the specified injunctive relief and civil penalties.

(2) Pursuant to V.T.C.A., Local Government Code sec. 54.016, as amended, the town may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:

a. Prohibits any conduct that violates any provision of this article that relates to any matter specified in subsections (a)(1)a-f. above; or

b. Compels the specific performance of any action that is necessary for compliance with any provision of this article that relates to any matter specified in subsections (a)(1)a-f. above.

(3) Pursuant to V.T.C.A., Local Government Code sec. 54.017, as amended, the town may recover a civil penalty of not more than $1,000.00 per day for each violation of any provision of this article that relates to any matter specified in subsections (a)(1)a-e. above, and a civil penalty of not more than $5,000.00 per day for each violation of any provision of this article that relates to any matter specified in subsection (a)(1)f. above, if the town proves that:

a. The defendant was actually notified of the provisions of the ordinance; and

b. After the defendant received notice of the ordinance provisions, the defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.

(b) Criminal penalties

(1) Any person, who has violated any provision of this article, or any order issued hereunder, shall be strictly liable for such violation regardless of the presence or absence of a culpable mental state, except as expressly provided herein, and shall, upon conviction, be subject to a fine of not more than $2,000.00 per violation, per day, or any greater fine authorized by state statute.

(2) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this article shall, upon conviction, be subject to a fine of not more than $2,000.00 per violation, per day, or any greater fine authorized by state statute.

(3) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

(c) Civil suit under the Texas Water Code. Whenever it appears that a violation or threat of violation of any provision of V.T.C.A., Water Code sec. 26.121, as amended, or any rule, permit, or order of the Texas Water Commission, has occurred or is occurring within the jurisdiction of the Town of Prosper, exclusive of its extraterritorial jurisdiction, the town, in the same manner as the Texas Water Commission, may have a suit instituted in a state district court through its town attorney for the injunctive relief or civil penalties or both authorized in V.T.C.A., Water Code sec. 26.123(a), as amended, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to V.T.C.A., Water Code sec. 26.124, as amended. In any suit brought by the town under this subsection (c), the Texas Water Commission is a necessary and indispensable party.

(d) Remedies nonexclusive. The remedies provided for in this article are not exclusive of any other remedies that the town may have under state or federal law or other town ordinances. The town may take any, all, or any combination of these actions against a violator. The town is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

Sec. 13.12.14 Supplemental enforcement action

(a) Performance bonds. The DDES may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the town, in a sum not to exceed a value determined by the DDES to be necessary to achieve consistent compliance with this article, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. The town may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other town permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance bond has been filed.

(b) Liability insurance. The DDES may, by written notice, order any owner or operator of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the DDES, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

(c) Public nuisances. A violation of any provision of this article, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the DDES. Any person(s) creating a public nuisance shall be subject to the provisions of the Town Code governing such nuisances, including reimbursing the town for any costs incurred in removing, abating, or remedying said nuisance.

Sec. 13.12.15 Construction activities in right-of-way

The following is required for all construction activity within public right-of-way dedicated to an agency such as the town, county or state or all construction activity within right-of-way dedicated to a homeowners association, except for construction activity performed by or for the agency responsible for the right-of-way:

(1) At the end of each workday, the street shall be free of pollutants originating from the construction site.

(2) No loose material may be placed or stored in right-of-way without sufficient BMPs installed and maintained to prevent any discharge to pavement or other drainage conveyance.

(3) Sediment controls may not be placed on or near inlets or on pavement unless the control:

a. Does not impede the flow of water or traffic; and

b. Does not create siltation on pavement.

(4) A minimum 8.5" x 11" approved town storm water placard shall be posted and made visible on the construction site.

Division 3. Storm Water Feature Maintenance

Sec. 13.12.16 General provisions

(a) Purposes. The purposes and objectives of this article are as follows:

(1) To address storm water runoff from the construction of new development and redevelopment projects that will disturb land and discharge into the small MS4 by regulating storm water features.

(2) To enable the town to comply with all federal and state laws and regulations applicable to post construction runoff.

(b) Administration. Except as otherwise provided herein, the Director of Engineering Services (DDES) shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon these people may be delegated to other town personnel.

Sec. 13.12.17 General requirements

(a) The owner of any storm water feature shall have full responsibility for maintenance activities so that the storm water feature remains in good working order.

(b) The maintenance activities shall be performed according to the below guidelines with the first applicable item to serve as the prevailing guideline:

(1) Documents submitted to and reviewed by the town, and filed at the county with the property that establish the maintenance activities for the storm water feature, if available.

(2) The manufacturer's recommended maintenance activities if the storm water feature was manufactured.

(3) Generally accepted maintenance activities suitable in the North Texas Region, if available.

(4) Generally accepted maintenance activities.

(c) Maintenance activities resulting in the following are prohibited:

(1) Increased erosion potential;

(2) Decreased bank stability;

(3) Increased flooding potential;

(4) Increased pollutants;

(5) Unnecessary disturbance of vegetation and riparian areas; or

(6) Increased proliferation of invasive species.

Sec. 13.12.18 Notice of violation

(a) In the event any owner, tenant, agent or person responsible for or claiming or having supervision or control over real property governed by this article fails to comply with the provisions of this article, the town, by and through the DDES or designee shall give notice of the violation to such owner. Such notice shall be given in any one of the following ways:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) If personal service cannot be obtained:

a. By publication in the town's official newspaper at least once;

b. By posting notice on or near the front door of each building on the property to which the violation relates; or

c. By posting a notice to a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(b) If the town mails a notice to the owner in accordance with subsection (a), and the United States Postal Service returns the notice as "refused," "unclaimed," or if the address required by subsection (a)(2) was used and the notice is returned as "not deliverable as addressed" (or an equivalent marking), the validity of the notice is not affected, and the notice is considered as delivered.

(c) In a notice provided under this section, the town may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature on or before the anniversary of the date of the notice, the town, without further notice, may correct the violation at the owner's expense and assess the expense against the property or issue citations. If a violation covered by a notice under this subsection occurs within one (1) year, and the town has not been informed in writing by the owner of an ownership change, then the town, without notice, may take any action permitted by the Citations section below_and assess its expenses as provide in the Assessment of expenses section below.

Sec. 13.12.19 Citations; Work or improvements by the town; charges against owner

If the owner fails or refuses to comply with the demand for compliance in the notice within ten (10) days of such notice, the town may:

(1) Issue citations; and

(2) Do the work or make the improvement required, pay for the work done or improvements made and charge the expenses to the owner of the property as provided herein. The property owner will have twenty (20) days to reimburse the town from the completion date of such work to abate the violation(s) at the property.

Sec. 13.12.20 Assessment of expenses; lien

(a) In the event the owner fails or refuses to pay such expenses charged to the owner, within twenty (20) days after the abatement work is completed, a lien may be obtained. The lien

and other expenses incurred by the town may be filed against the property. Expenses will include, but are not limited to the following:

(1) Fees for service work to abate violation(s);

(2) Fees to file lien;

(3) Fees to release lien;

(4) Postage fees;

(5) Courier fees;

(6) Legal fees; and

(7) Any other fees charged to the Town.

(b) To obtain a lien, the town shall file a statement of the expenses incurred to correct the condition of the real property with the county clerk of the county in which the property is located. The statement must also state the name of the owner, if known, and the legal description of the property. The lien attaches upon filing of the statement with the county clerk.

(c) The town's lien shall be a prior lien on such property, second only to tax liens and liens for street improvements. The lien amount shall include simple interest, which shall accrue at the rate of ten percent (10%) per annum on the date of the expenses were incurred by the town. The town may bring suit for foreclosure to recover the expenditures and the interest due.

Sec. 13.12.21 Right of entry; Inspection

The owner shall grant the town a right of entry in the event that the DDES has reason to believe it has become necessary to inspect, monitor, maintain, repair, reconstruct, or discontinue the use of storm water features and/or structural BMPs; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the storm water feature and/or structural BMPs.

(1) Where an owner has security measures in force which require proper identification and clearance before entry into its premises, the owner shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the town will be permitted to enter without unreasonable delay for the purposes of performing his/her responsibilities.

(2) The town shall have the right to set up on the owner's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the owner's operations.

(3) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the owner at the written or verbal request of the town and shall not be replaced. The costs of clearing such access shall be borne by the owner.

(4) Unreasonable delays in allowing the town access to the owner's premises shall be a violation of this article.

Division 4. Sediment and Siltation Control

Sec. 13.12.22 Owner responsibility

It is the responsibility of each property owner within the municipal limits of the town to take appropriate measures to control the erosion and siltation of soil materials from the owner's property. The owner shall not allow water runoff to transport silt, earth, topsoil, etc., from the owner's property to others properties or on to town streets, drainage easements, drainage facilities or storm drains. The property owner shall be responsible for damages to others created by the actions of builders, contractors, developers and others performing construction or other activities on the owner's property which create conditions that cause or aggravate erosion.

Sec. 13.12.23 Contractor responsibility

Plans and specifications prepared for construction of improvements shall address suggested erosion/siltation control measures and techniques to assist the contractor in implementing a suitable program to control erosion. The town shall not be required to approve and may, in the town's discretion, deny approval of plans and specifications based upon the town's opinion as to the suitability of erosion measures submitted. The contractor shall take whatever measures are necessary to control and limit the transport of silt, earth, topsoil, etc., from the site of construction, including, but not limited to, the erosion/siltation control measures and techniques provided on the plans and specifications. The contractor shall, upon completion of his work, leave the owner's property in a condition that minimizes the transportation of the owner's silt, earth, topsoil, etc.

Sec. 13.12.24 Town approval

The town, through its building officials, town engineers and inspectors, may refuse to issue approvals or permits, including plats, drainage studies, plans and specifications, building permits, interim inspections, acceptance of maintenance of completed construction of public streets or storm drainage facilities or certificates of occupancy if, at the time the approval or permit is sought, the owner, developer and/or contractor does not have in place adequate erosion/siltation control measures.

Sec. 13.12.25 Penalty

Any person, firm, company, partnership, corporation or association violating any provision of this article shall be deemed to be guilty of a misdemeanor and upon conviction thereof, shall be fined in the sum of not more than $500.00 for each such conviction, and each and every day such violation continues shall constitute a separate offense."

SECTION 3

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for

any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The Town hereby declares that it would have passed this Ordinance, and each section, subsection, 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 5

This Ordinance shall become effective from and after its adoption.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 13TH DAY OF DECEMBER, 2016.

APPROVED:

Ray Smith, Mayor

ATTEST:

Robyn Battle, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney