

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is made and entered into this 4th day of March ~~day of February~~, 2022, by and between the **TOWN OF PROSPER, TEXAS** (the "Town"), and **RESPONSIVE EDUCATION SOLUTIONS** ("Owner"), collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Owner, a Texas nonprofit corporation, has opened Founders Classical Academy of Prosper, on open-enrollment charter school in the Town located on property at the southwest corner of First Street and Custer Road in the Town (the "Property"), the legal description of which property is attached as an exhibit to the Development/Interlocal Agreement between the Town of Prosper, Texas, and Founders Classical Academy of Prosper, previously executed by the Parties and the terms of which are incorporated by reference; and

WHEREAS, pursuant to the Town's building regulations and ordinances, Owner is required to construct the following improvements along First Street in the Town to serve Founders Academy: (1) two deceleration lanes; (2) one left turn lane and median opening; and (3) a six-foot (6') sidewalk along First Street, all of which are hereinafter referred to as the "First Street Improvements"; and

WHEREAS, also pursuant to the Town's building regulations and ordinances, Owner is required to construct the following improvements along Custer Road (FM 2478) in the Town to serve Founders Academy: (1) one deceleration lane; and (2) a six-foot (6') sidewalk along Custer Road, all of which are hereinafter referred to as the "Custer Road Improvements"; and

WHEREAS, since the Town will construct the First Street Improvements in conjunction with its reconstruction of and improvements to First Street, with such reconstruction and improvements to First Street anticipated by the Town to commence in the summer of 2022, Owner has agreed to escrow with the Town the costs of such First Street Improvements in the amount of \$205,963.83 upon execution of this Agreement, subject to the provisions in this Agreement; and

WHEREAS, since the Texas Department of Transportation ("TxDOT") is currently improving Custer Road (FM 2478) and it is anticipated that Owner will contract with TxDOT's Custer Road contractors to construct the Custer Road Improvements, Owner has agreed to escrow with the Town the costs of such Custer Road Improvements in the amount of \$68,407.82 upon execution of this Agreement, subject to the provisions of this Agreement.

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

1. **Payment of First Street Improvements and Custer Road Improvements Escrow Funds to the Town.** The Parties agree and acknowledge that as of the date of execution of this Agreement, Owner will escrow with the Town (1) \$205,963.83 for the costs of the First Street Improvements referenced in the Preamble to this Agreement; and (2) \$68,407.82 for the costs of the Custer Road Improvements referenced in the Preamble to this Agreement.
2. **Return of Custer Road Improvements Escrow to Owner.** In the event that either TxDOT or Owner constructs the Custer Road Improvements referenced in the Preamble to this Agreement, the Town shall return to Owner the Custer Road Improvements escrow in the amount of \$68,407.82 upon the Town's acceptance of the Custer Road Improvements, such acceptance not to be unreasonably withheld.
3. **Extension of Temporary Certificate of Occupancy Upon Payment of Escrow Funds.** Upon Owner's payment of \$205,963.83 for the costs of the First Street Improvements and \$68,407.82 for the costs of the Custer Road Improvements, both as referenced in the Preamble to this Agreement, the Town shall extend the temporary certificate of occupancy on the kindergarten—8th Grade and gymnasium/cafeteria building to June 6, 2022.
4. **Release of Building Permit for Proposed High School; Conditions.** Upon Owner's payment of \$205,963.83 for the costs of the First Street Improvements and \$68,407.82 for the costs of the Custer Road Improvements, both as referenced in the Preamble to this Agreement, the Town shall release a building permit for the proposed High School on the Property after building plans for said High School have been approved by the Town; however, the Parties agree and acknowledge that a temporary certificate of occupancy for the High School shall not be issued until the Custer Road Improvements have been constructed by Owner or the Town is provided proof of Owner's payment to the TxDOT contractor(s) to incorporate the Custer Road Improvements into TxDOT's Custer Road (FM 2478) project.
5. **Use of Escrow Funds.** The Escrow Funds provided by Owner to the Town for the First Street Improvements shall be available to the Town to pay for the construction, design and related costs of the construction of the First Street Improvements referenced herein. The Escrow Funds provided by Owner to the Town for the Custer Road Improvements shall be returned to Owner upon the Town's acceptance of the Custer Road Improvements, as outlined in Paragraph 2, above. The Town shall be entitled to any and all interest that may accrue on the Escrow Funds, and Owner hereby waives and relinquishes any and all rights or claims to the interest earned, if any, on the Escrow Funds.
6. **Remaining Escrow Funds.** If any amount of the Escrow Funds remains in the Escrow Account after the Town has accepted the construction of the public improvements referenced herein and paid all of the costs associated with such public improvements, as solely determined by the Town ("Remaining Escrow Funds"), Owner

shall be entitled to reimbursement of any Remaining Escrow Funds. Further, Owner shall be entitled to any and all interest that may accrue on the Remaining Escrow Funds.

7. **Construction Cost Overruns.** The Parties agree and acknowledge that on occasion the construction projects referenced herein may have construction cost overruns. For purpose of this Agreement, the term "construction cost overruns" shall mean those costs which may be incurred by the Town in the design and construction of the First Street Improvements referenced herein and which are over and above the amount of the Escrow Funds (\$205,963.83) received for the First Street Improvements. In such event, the Town shall give Owner prompt written notice of such construction cost overruns and seek the approval of Owner in writing for the payment of such construction cost overruns. In the event of any disagreement between the Town and Owner about such construction cost overruns, the Town and Owner shall jointly review such cost overruns and mutually resolve such disagreement promptly. This paragraph shall not be construed to require Owner to pay for such construction cost overruns.

8. **Amendment of this Agreement.** It is specifically agreed by the Parties that any amendments to this Agreement shall be in writing.

9. **Captions and Headings.** The captions and headings of the Sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement nor shall they be employed to interpret or aid in the construction of this Agreement.

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

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

If to the Town: Town of Prosper, Texas
 250 W. First Street
 Prosper, Texas 75078
 Att'n: Town Manager's Office

If to Owner: Founders Classical Academy of Prosper
 c/o Responsive Education Solutions
 1301 Waters Ridge Drive,
 Lewisville, Texas 75057
 Attn: Robert Davison, Chief Operating Officer

12. **Prevailing Party in Event of Legal Action.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms

of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

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

14. **Invalidation.** Invalidation of any one of the provisions of this Agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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

16. **Sovereign Immunity.** The Parties agree that neither the Town nor Owner has waived its governmental immunity from suit by entering into and performing its obligations under this Agreement.

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

18. **Binding Obligation.** The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owner warrants and represents that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same.

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

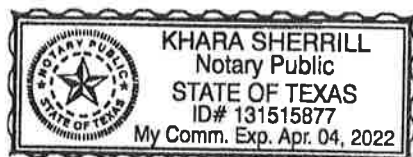
IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

THE TOWN OF PROSPER, TEXAS

By: 
Name: Harlan Jefferson
Title: Town Manager

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the 4th day of March, 2022, by Harlan Jefferson, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.




Notary Public, State of Texas

OWNER:

RESPONSIVE EDUCATION SOLUTIONS, a Texas 501(c)(3) non-profit corporation
and open enrollment public charter school

By: Robert Davison 2/25/2022
Robert Davison, Chief Operating Officer Date

THE STATE OF TEXAS §
§
COUNTY OF DENTON §

This instrument was acknowledged before me on 25TH day of FEBRUARY,
2022, by Robert Davison, Chief Operating Officer of **RESPONSIVE EDUCATION
SOLUTIONS**, a Texas 501(c)(3) non-profit corporation and open enrollment public
charter school, on behalf of said entity.

Rob Flores #13064171-4
Notary Public, State of Texas

Approved as to Form:

DocuSigned by:
Lindsey Gordon 2/23/2022
LINDSEY GORDON, General Counsel



SCHULMAN LOPEZ HOFFER & ADELSTEIN, LLP

By: Mark Moreno
Mark Moreno, Associate Attorney