



ENGINEERING SERVICES

To: Mayor and Town Council

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

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

Re: First Amendment: Roadway Construction Reimbursement Agreement
MSW Prosper 380 II, LP (TIRZ No. 2)

Town Council Meeting – April 30, 2024

Strategic Visioning Priority: 1. Acceleration of Infrastructure

Agenda Item:

Consider and act upon authorizing the Town Manager to execute the First Amendment to the Roadway Construction Reimbursement Agreement between MSW Prosper 380 II, LP, and the Town of Prosper, Texas, related to the construction of roadways within the Town's Tax Increment Reinvestment Zone No. 2 (TIRZ No. 2).

Description of Agenda Item:

At the April 12, 2022, Town Council meeting, the Town Council approved a Roadway Construction Agreement with MSW Prosper 380 II, LP, for the construction of the following roadways (including underground utilities, median landscaping and street lighting) within the boundaries of the Town's Tax Increment Reinvestment Zone No. 2 (TIRZ No. 2):

- 4 lanes concrete pavement: Mahard Parkway from Toyota and Texas Health Resources, extending north to the intersection of Prairie Drive.
- 4 lanes concrete pavement: Prairie Drive from the intersection of Mahard Parkway, extending east to the intersection of Shawnee Trail.
- 4 lanes concrete pavement: Shawnee Trail from the intersection of Prairie Drive, extending north to the future intersection of Lovers Lane.
- 4 lanes concrete pavement: Prairie Drive East from the intersection of Shawnee Trail, extending east to the Dallas North Tollway.

Paragraph 1 of the original agreement states the following:

"1. **Construction of the Roadways by Developer.** Developer agrees to construct the Roadways, and the location and anticipated construction costs of the Roadways are described in Exhibit A, attached hereto and incorporated by reference. All roadway construction by Developer shall be subject to applicable state bidding laws and Town engineering, design and construction standards. In the event the Roadways have not been accepted by the Town within two (2) years of the date of execution of this Agreement, then this Agreement shall be null and void and of no further force or effect."

With April 12, 2024, being the expiration of the agreement due to the roadways not yet being accepted, the purpose of the First Amendment to the Roadway Construction Reimbursement Agreement is to extend the expiration deadline for the completion and acceptance of the roadways. At the April 16, 2024, Town Council meeting, the proposed change to the last sentence of Paragraph 1. of the original agreement was discussed:

"In the event the Roadways have not been accepted by the Town on or before March 31, 2025, then this Agreement shall be null and void and of no further force or effect."

Based on feedback received from the Town Council, the First Amendment has been revised to include the following:

- Beginning on April 13, 2024, Developer agrees and acknowledges that it shall be liable for a late penalty of One Thousand Dollars (\$1,000.00) per day until the Roadways are substantially complete. "Substantially complete" shall mean the date on which the Roadways have progressed to the point where, in the opinion of the Town Engineer, the construction of the Roadways is sufficiently complete, in accordance with all Town specifications and requirements, so that the Roadways may be utilized by and are open for traffic thereon.
- All Improvements referenced in the Agreement (median landscaping and irrigation and streetlights, except where streetlights are not authorized by Atmos) shall be finally accepted by the Town on or before August 30, 2024. "Final acceptance" shall mean the date on which the Town formally accepts all Improvements referenced in the Agreement. Final acceptance by the Town shall not be unreasonably withheld or delayed.
- Beginning on August 31, 2024, Developer agrees and acknowledges that it shall be liable for a late penalty of One Thousand Dollars (\$1,000.00) per day until all Improvements referenced in the Agreement (median landscaping and irrigation and streetlights, except where streetlights are not authorized by Atmos) are finally accepted by the Town.
- Any late penalties assessed Developer shall be deducted from any eligible reimbursements to Developer from the funds of the Town's Tax Increment Reinvestment Zone No. 2.

Budget Impact:

The estimated cost for the design and construction of the proposed roadways within TIRZ No. 2 is approximately \$14,399,970.

Legal Obligations and Review:

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

Attachments:

1. First Amendment to Roadway Construction Reimbursement Agreement

Town Staff Recommendation:

Town staff recommends that the Town Council authorize the Town Manager to execute the First Amendment to the Roadway Construction Reimbursement Agreement between MSW Prosper 380 II, LP, and the Town of Prosper, Texas, related to the construction of roadways within the Town's Tax Increment Reinvestment Zone No. 2 (TIRZ No. 2).

Proposed Motion:

I move to authorize the Town Manager to execute the First Amendment to the Roadway Construction Reimbursement Agreement between MSW Prosper 380 II, LP, and the Town of Prosper, Texas, related to the construction of roadways within the Town's Tax Increment Reinvestment Zone No. 2 (TIRZ No. 2).