

## **ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Town of Prosper, Texas (the "Town"), and the Prosper Independent School District ("PISD"), collectively referred to herein as the "Parties."

### **WITNESSETH:**

**WHEREAS**, the Town is constructing roadway improvements to Teel Parkway from US 380 to First Street; and

**WHEREAS**, PISD is planning and will construct a new high school on Teel Parkway and as a consequence, the Town will construct two (2) northbound lanes of Teel Parkway adjacent to the new high school site, deceleration and right turn lanes to the new high school, median opening and a left turn lane onto further Prairie Drive and half a median opening and a left turn lane at Pine Leaf into the new high school and one-half of the design and construction of the traffic signals at Artesia Boulevard and First Street (collectively, "Roadway and Traffic Signal Improvements");

**WHEREAS**, for the Roadway and Traffic Signal Improvements, PISD is required to pay to the Town funds for the construction of same, estimated at the present time to be \$2,796,222.00; and

**WHEREAS**, the Town has not yet begun construction of the Roadway and Traffic Signal Improvements, and the Town has requested that PISD be permitted to forego the escrow of the funds referenced above ("Escrow Funds") for the construction of the Roadway Improvements and the design and construction of the Traffic Signal Improvements, until such time as the Town notifies PISD in writing that it intends to bid the construction of the Roadway and Traffic Signal Improvements; and

**WHEREAS**, at such time that the Town notifies PISD of the Town's intent to bid the Roadway and Traffic Signal Improvements, the Parties have agreed that PISD shall deposit the Escrow Funds with the Town, pursuant to the terms referenced in 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 PISD agree as follows:

1. **Escrow Funds.** The amount of the Escrow Funds, estimated in the amount of Two Million Seven Hundred Ninety-Six Thousand Two Hundred Twenty Two and no/100 Dollars (\$2,796,222.00) is based on estimates of the construction and related costs of the Roadway and Traffic Signal Improvements provided by the Town's Engineer, as specified in Exhibit A, attached hereto, and incorporated by reference. The Parties agree and acknowledge that the actual costs of the Roadway and Traffic Signal Improvements may be modified, and PISD agrees to deposit the actual costs for such

escrow amount at the location specified by the Town ("Escrow Account"). The Parties agree that within fifteen (15) days of the Town's written notification to PISD that the Town has executed contracts for the construction of Teel Parkway, the design and construction of the Artesia Boulevard and First Street Traffic Signals, the PISD shall escrow to the Town one-half (1/2) of the bid Roadway and Traffic Signals Improvement construction costs, engineering and inspection fees, and when construction of Teel Parkway, and the design and construction of the Artesia Boulevard and First Street Traffic Signals is fifty percent (50%) complete, as determined by the Town Engineer, PISD shall escrow to the Town the remaining fifty percent (50%) of bid Roadway and Traffic Signals Improvements construction costs, engineering and inspection fees.

2. **Use of Escrow Funds.** The Escrow Funds shall be available to the Town to pay for the construction, design and related costs of the Roadway and Traffic Signals Improvements, and the Town, in its sole discretion, is entitled to use, at any time, all or a portion of the Escrow Funds in connection with the construction of the Roadway and Traffic Signals Improvements. The Town shall be entitled to any and all interest that may accrue on the Escrow Funds, and PISD hereby waives and relinquishes any and all rights or claims to the interest earned, if any, on the Escrow Funds.

3. **Remaining Escrow Funds.** If any amount of the Escrow Funds remains in the Escrow Account after the Town has accepted the Roadway and Traffic Signals Improvements referenced herein and paid all of the costs associated with the Roadway and Traffic Signals Improvements, as solely determined by the Town ("Remaining Escrow Funds"), PISD shall be entitled to reimbursement of any Remaining Escrow Funds. Further, PISD shall be entitled to any and all interest that may accrue on the Remaining Escrow Funds.

4. **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 Roadway and Traffic Signals Improvements, and which are over and above the amount of the Escrow Funds. In such event, the Town shall give PISD prompt written notice of such construction cost overruns and seek the approval of PISD in writing for the payment of such construction cost overruns. In the event of any disagreement between the Town and PISD about such construction cost overruns, the Town and PISD shall jointly review such cost overruns and endeavor to mutually resolve such disagreement promptly.

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

6. **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.

7. **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.

8. **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 PISD:                              Prosper Independent School District  
   605 E. Seventh Street  
   Prosper, Texas 75078  
   Att'n: Superintendent

9. **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).

10. **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.

11. **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.

12. **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.

13. **Sovereign Immunity.** The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

14. **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.

15. **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. PISD warrants and represents that the individual executing this Agreement on behalf of PISD has full authority to execute this Agreement and bind PISD to the same.

16. **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: Mario Canizares  
Title: Town Manager

STATE OF TEXAS       )  
                                  )  
COUNTY OF COLLIN   )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

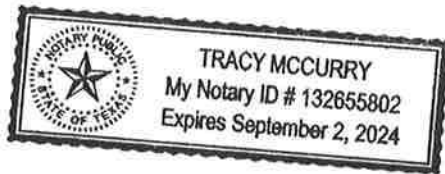
\_\_\_\_\_  
Notary Public, State of Texas

PROSPER INDEPENDENT SCHOOL  
DISTRICT

By: Holly Ferguson  
Name: Dr. Holly Ferguson  
Title: Superintendent

STATE OF TEXAS       )  
                                  )  
COUNTY OF COLLIN    )

This instrument was acknowledged before me on the 16 day of October, 2023, by Dr. Holly Ferguson, Superintendent of the Prosper Independent School District, on behalf of the Prosper Independent School District.



Tracy McCurry  
Notary Public, State of Texas

**EXHIBIT A**

(Estimated Construction Costs of Roadway and Traffic Improvements)

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## ITEMIZED COST ESTIMATES : TEEL PARKWAY EXPANSION (PISD)

ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Demolition</b>					
1	Remove and dispose of Ex. Fencing	LF	1,742	\$ 8.00	\$13,936.00
2	Remove and dispose of Ex. Concrete curb & gutter	LF	629	\$ 10.00	\$6,290.00
3	Remove and dispose of Ex. PW-1 Headwall	LS	0.50	\$ 30,000.00	\$15,000.00
4	Remove and dispose of Ex. Rock Rip-Rap	SY	32.5	\$ 30.00	\$975.00
5	Remove and dispose of Ex. Solid double yellow lane marking	LF	1,648	\$ 2.50	\$4,120.00
6	Remove and dispose of Ex. 18" RCP	LF	23	\$ 15.00	\$345.00
7	Remove and dispose of Ex. 21" RCP	LF	9	\$ 17.00	\$153.00
8	Remove Ex. Barrier free ramp	SY	21	\$ 300.00	\$6,300.00
<b>Subtotal Demolition</b>					\$47,119.00
ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Erosion Control</b>					
1	Silt fence	LF	3,495	\$ 3.00	\$10,485.00
2	Rock check dam	EA	0.50	\$ 3,000.00	\$1,500.00
3	Silt fence stone overflow	EA	7	\$ 1,000.00	\$7,000.00
4	Hydro mulch	SY	3,078	\$ 7.50	\$23,085.00
5	Sod	SY	430	\$ 10.00	\$4,300.00
6	Inlet protection	EA	13	\$ 250.00	\$3,250.00
<b>Subtotal Erosion Control</b>					\$49,620.00
ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Excavation</b>					
1	Clearing and grubbing	AC	3.57	\$ 15,000.00	\$53,550.00
2	Unclassified Excavation	CY	12,245	\$ 20.00	\$244,900.00
3	Spoil (Haul off)	CY	10,853	\$ 20.00	\$217,060.00
<b>Subtotal Excavation</b>					\$515,510.00
ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Paving</b>					
1	9" 4000 psi (4500 psi hand pour) reinforced concrete pavement (5.5 sack per cubic yard) w/No.4 bars on 18" centers both ways	SY	7,414	\$ 80.00	\$593,120.00
2	12" lime stabilized subgrade @ 8% (72lbs/SY)	SY	8,275	\$ 10.00	\$82,750.00
3	Hydrated Lime	TON	261	\$ 300.00	\$78,300.00
4	36" moisture conditioning	SY	8,275	\$ 10.00	\$82,750.00
5	Moisture barrier extending 6' behind BOC	SY	2,409	\$ 4.00	\$9,636.00
6	6' wide 5" thick sidewalk (3500 psi, 5.5 sack w/No.3 bars @ 16" o.c.e.w)	SY	41	\$ 65.00	\$2,665.00
7	Longitudinal butt joint	LF	645	\$ 12.00	\$7,740.00
8	Install street header	LF	126	\$ 15.00	\$1,890.00
9	Directional Barrier Free Ramp	EA	6	\$ 2,500.00	\$15,000.00
10	Type II mid-block barrier free ramp	EA	1	\$ 3,000.00	\$3,000.00
11	Bi-directional barrier free ramp	EA	1	\$ 3,000.00	\$3,000.00
12	Metal beam guard fence	LF	46.5	\$ 50.00	\$2,325.00
13	Metal Beam Guard Fence Transition (Thrie-Beam) TXDOT 540-6001	EA	0.50	\$ 2,000.00	\$1,000.00
14	Guard Rail End Treatment TXDOT 544-6001	EA	0.50	\$ 5,000.00	\$2,500.00
15	Type A Dry Rock Rip-Rap	SY	70	\$ 150.00	\$10,500.00
16	Install Type III Barricade	LF	126	\$ 15.00	\$1,890.00
17	Traffic control	LS	0.42	\$ 25,000.00	\$10,500.00
18	Median Maintenance Ramp	EA	2	\$ 1,650.00	\$3,300.00
19	Stamped Concrete at Median Nose	SF	1,935	\$ 12.50	\$24,187.50
<b>Subtotal Paving</b>					\$936,053.50

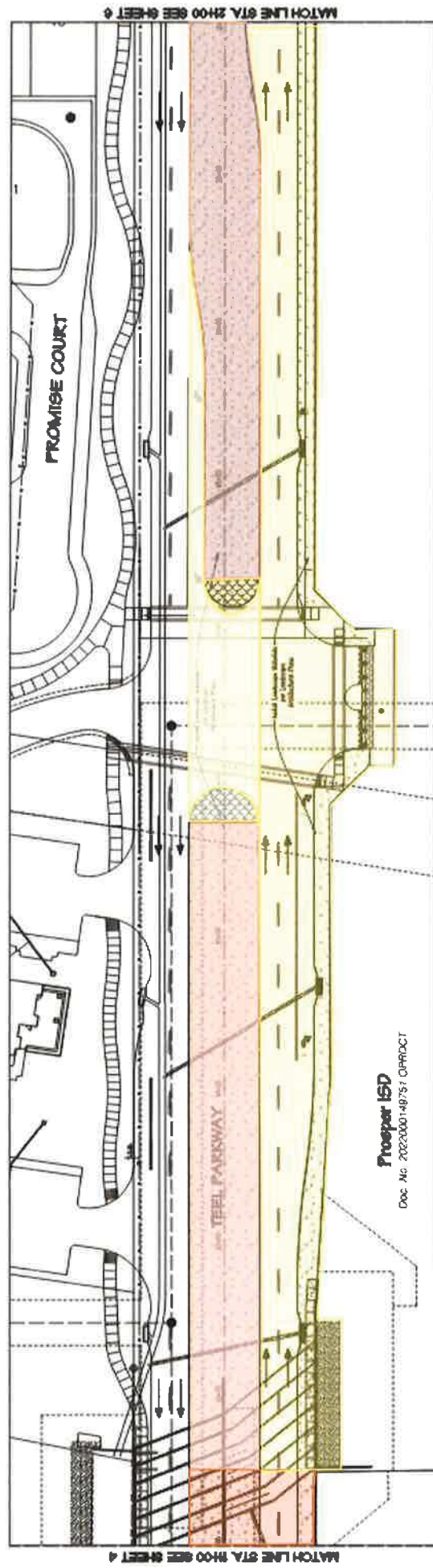
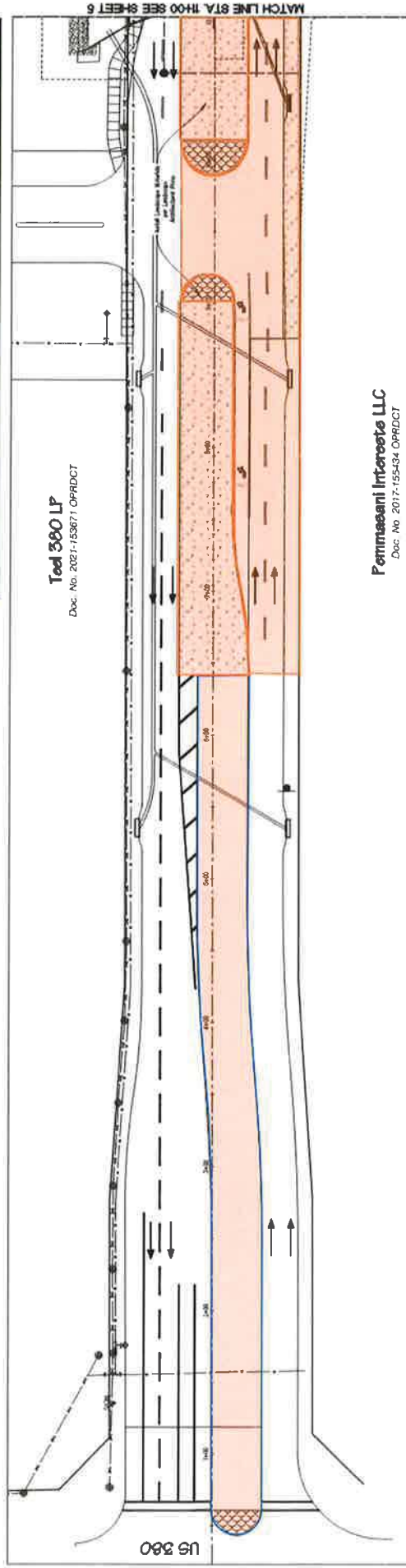


ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Storm Sewer</b>					
1	18" Class III RCP with trench embedment, backfill and compaction	LF	256	\$ 120.00	\$30,720.00
2	21" Class III RCP with trench embedment, backfill and compaction	LF	253	\$ 130.00	\$32,890.00
3	10'X6' Class III RCB with trench embedment, backfill and compaction	LF	219.5	\$ 800.00	\$175,600.00
4	10' Recessed reinforced concrete curb inlet	EA	6	\$ 6,500.00	\$39,000.00
5	12' Recessed reinforced concrete curb inlet	EA	1	\$ 7,500.00	\$7,500.00
6	Headwall	EA	0.50	\$ 175,000.00	\$87,500.00
7	Headwall Staining	SF	318.00	\$ 20.00	\$6,360.00
8	Type R Dry Rock Riprap	SY	163	\$ 150.00	\$24,450.00
9	Connect to Ex. 6 - 10'x6' RCB	EA	0.50	\$ 20,000.00	\$10,000.00
10	Trench safety plans and program for open ditch excavation	LF	31	\$ 2.50	\$77.50
11	Storm sewer line testing	LF	729	\$ 5.00	\$3,645.00
<i>Subtotal Storm Sewer</i>					\$417,742.50
ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Mobilization</b>					
1	Mobilization/Demolition, Bonds, and Insurance (Max 5%)	LS	0.4	\$ 260,000.00	\$109,200.00
<i>Subtotal Mobilization</i>					\$109,200.00
ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT PRICE	Extended Price
<b>Street Signage &amp; Pavement Markings</b>					
1	White thermoplastic lane arrow marking	EA	9	\$ 200.00	\$1,800.00
2	White thermoplastic "ONLY" marking	EA	10	\$ 200.00	\$2,000.00
3	8" Solid white line	LF	405	\$ 3.00	\$1,215.00
4	12" Solid white reflective crosswalk lines	LF	734	\$ 12.00	\$8,808.00
5	4" Broken white lane line	LF	2,917	\$ 1.00	\$2,917.00
6	Speed limit sign	EA	2	\$ 1,000.00	\$2,000.00
<i>Subtotal Street Signage &amp; Lights</i>					\$18,740.00
<b>PISD SUBTOTAL</b>					<b>\$2,093,985.00</b>
<b>10% contingency</b>					<b>\$209,398.50</b>
<b>Total Cost</b>					<b>\$2,303,383.50</b>
<i>Surveying/Engineering/Geotechnical/Environmental Fee (7%)</i>					<b>\$161,237.00</b>
<i>Construction/Inspection Fees (3%)</i>					<b>\$69,101.50</b>
<i>1/2 Cost of the Traffic Signal at First St. &amp; Artesia Blvd</i>					<b>\$262,500.00</b>
<b>Total Project Cost</b>					<b>\$2,796,222.00</b>



Orange sections represent what the Town is responsible for.

Yellow sections represent what PSD is responsible for.



Orange sections represent what the Town is responsible for.

Yellow sections represent what PID is responsible for.

