

**DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS,  
AND FOUNDERS CLASSICAL ACADEMY OF PROSPER**

**THIS DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND FOUNDERS CLASSICAL ACADEMY OF PROSPER** (“Agreement”), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Town of Prosper, Texas (“Prosper” or the “Town”), and Founders Classical Academy of Prosper (“Developer”), collectively referred to as the “Parties.”

**WITNESSETH:**

**WHEREAS**, Developer, a Texas nonprofit corporation, is constructing a Charter School (“Charter School”) in the Town to be located on property at the southwest corner of East First Street and Custer Road in the Town (the “Property”); and

**WHEREAS**, the legal description of the Property on which the Charter School shall be constructed is attached hereto as Exhibit A and incorporated by reference; and

**WHEREAS**, in this Agreement the Town and Developer wish to address a variety of issues related to the construction and eventual operation of the Charter School, including building construction materials and architectural standards, and dedications and easements, among others; and

**WHEREAS**, this Agreement clearly is in the best interests of the Town and Developer and it is deemed mutually beneficial to each.

**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 Developer covenant and agree as follows:

1. **Building Materials and Architectural Standards.** Following the execution of this Agreement by the Parties, for any structure built on the Property (which includes any structure in Phase 1 (elementary school and gym/cafeteria), as well as any structure contemplated in any future phase of the Charter School, Developer shall comply with the applicable building construction materials and architectural standards contained in the elevations reflected in Exhibit B, attached hereto and incorporated by reference. The Parties specifically agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Further, with respect to any and all structures to be constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

2. **Outdoor Lighting Standards.** All outdoor lighting on the Property shall be in compliance with all applicable Town standards and regulations, and lighting around the athletic field also shall comply with the light emission standards referenced in the Field Lighting Photometric Plan, attached hereto as Exhibit C incorporated by reference.

3. **Rough Proportionality.** Developer hereby agrees that any land or property donated and/or dedicated to the Town pursuant to this Agreement, whether in fee simple or otherwise, including any easements (as reflected in the Final Plat, attached hereto as Exhibit C and incorporated by reference), relative to any development on the Property is roughly proportional to the need for such land and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the development referenced herein. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the provision of roadway services to the Property.

4. **Exactions/Infrastructure Costs.** Developer has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Developer hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

5. **Notification of Sale or Transfer; Assignment of Agreement.** Developer shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Developer has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Developer under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Developer. Each assignment shall be in writing executed by Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor Assignee assumes the liabilities, responsibilities, and obligations of the Developer under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by Developer shall release Developer from any liability that resulted from an act or omission by Developer that occurred prior to the effective date of the assignment. Developer shall maintain true and correct copies of all

assignments made by Developer to Assignees, including a copy of each executed assignment and the Assignee's Notice information. Further, this Agreement shall be filed in the real property records of Collin County, Texas.

6. **Default.** If Developer fails to comply with any provision of this Agreement after receiving ten (10) days' written notice to comply from the Town, then so long as such default continues and is not cured, the Town shall have the following remedies, in addition to the Town's other rights and remedies:

- (a) to refuse to accept any public improvements on the Property; and/or
- (b) to seek specific enforcement of this Agreement; and/or
- (c) declare Developer in default of this Agreement and pursue any remedy authorized by law; and/or
- (d) Not issue a building permit for any remaining structure or phase contemplated by this Agreement until such default is cured by Developer.

7. **Other Applicable Development Ordinances.** Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve Developer from responsibilities for the construction of other public improvements under applicable development ordinances of the Town.

8. **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.

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

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

If to Developer:                   Founders Classical Academy of Prosper  
  c/o Responsive Education Solutions  
  P.O. Box 292730  
  Lewisville, Texas 75029  
  Attn: \_\_\_\_\_

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

11. **Sovereign Immunity.** The parties agree that Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

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

13. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of Town, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides Town with fair notice of any Developer's project. **DEVELOPER SPECIFICALLY WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

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

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

16. **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.

17. **Savings/Severability.** Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect. 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. **Authority to Execute.** 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. This Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

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.

20. **Indemnification.** FROM THE EFFECTIVE DATE OF THIS AGREEMENT TO THE DATE ON WHICH ALL PUBLIC IMPROVEMENTS, AS CONTEMPLATED HEREIN, INCLUDING ANY AND ALL PHASES REFERENCED HEREIN, HAVE BEEN ACCEPTED BY THE TOWN, DEVELOPER, INDIVIDUALLY AND ON BEHALF OF ITS RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN AND ITS ELECTED AND APPOINTED OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE) LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE APPLICABLE DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, REPRESENTATIVES, AGENTS, OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND THE TOWN AGAINST ALL SUCH CLAIMS ARISING UNDER THIS AGREEMENT, AND THE TOWN IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE.

21. **Approval of Counsel.** In its reasonable discretion, the Town shall have the right to approve counsel to be retained by Developer in fulfilling its obligation hereunder to defend and indemnify the Town. The Town reserves the right to provide a portion or all of its' own defense, at its sole cost; however, the Town is under no obligation to do so. Any such action by the Town is not to be construed as a waiver of Developer's obligation to defend the Town or as a waiver of Developer's obligation to indemnify the Town pursuant to this Agreement. Developer shall retain Town-approved defense counsel within seven (7) business days of the Town's written notice that the Town is invoking its right to indemnification under this Agreement.

22. **Survival.** Paragraph 20, "Indemnification," shall survive the termination of this Agreement.

23. **Time.** Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

24. **Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

25. **Miscellaneous Drafting Provisions; Interpretation.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Moreover, in the event of any conflict between any term or provision contained in this Agreement and any applicable Town ordinances related to non-zoning development standards for the Project, the terms or provisions of this Agreement shall apply.

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

**[Remainder of Page Intentionally Left Blank]**

**THE TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_

Name: Harlan Jefferson

Title: Town Manager

**STATE OF TEXAS        )**

**)**

**COUNTY OF COLLIN    )**

This instrument was acknowledged before me on the \_\_\_\_ day of December, 2020, by Harlan Jefferson, Town Manager for the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

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

**FOUNDERS CLASSICAL ACADEMY OF PROSPER**, a Texas nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF TEXAS**                    )  
  )  
**COUNTY OF \_\_\_\_\_**            )

Before me, the undersigned authority, a notary public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Founders Classical Academy of Prosper, a Texas nonprofit corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated, on behalf of such entity.

Given under my hand and seal of office this \_\_\_\_ day of December, 2020.

\_\_\_\_\_  
Notary public in and for the State of Texas  
My commission expires: \_\_\_\_\_



**EXHIBIT A**  
**(Property Legal Description)**

**EXHIBIT B**  
**(Building Elevations, Building Construction Materials and  
Architectural Standards)**

**EXHIBIT C**  
**(Field Lighting Photometric Plan)**