

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("**MOU**") is made and entered into as of the Effective Date (defined below), by and between the Town of Prosper, Texas (the "**Town**"), Costco Wholesale Corporation, a Washington corporation ("**Costco**"), and WestSide Prosper LLC, a limited liability company ("**WestSide**"), relative to the construction of the US 380 Improvements (defined below) to serve the Costco development in the Town.

The parties covenant and agree as follows:

1. Costco requested that the TxDOT (defined below) US 380 contractor, Zachry Construction Corporation ("**Zachry**") complete the construction and any work necessary for the use of the following improvements to serve the Costco development as described below and depicted on Exhibits 1 and 2 attached (the "**US 380 Improvements**"):
 - A. Three (3) deceleration lanes on US 380 (the "**Decel Lanes**");
 - B. North leg of the FM 1385 intersection and westbound lanes; and
 - C. Left turn lane and hooded median opening on US 380 at Costco main driveway.
2. Zachry has quoted the construction costs of the US 380 Improvements to be \$1,200,000.00 million (the "**Cost**").
3. The Town shall enter into an agreement with the Texas Department of Transportation ("**TxDOT**") to pay for the US 380 Improvements (the "**TxDOT Agreement**"). The Cost shall be increased by 12.39% to compensate TxDOT for the oversight of construction for a total cost of \$1,348,680.00 (the "**Total Cost**").
4. Upon TxDOT's receipt of an executed agreement from the Town and the funds required as provided herein, TxDOT and Zachry shall execute a change order (the "**Change Order**") to its existing contract which will specify that (A) Zachry must complete US 380 Improvements described in 1.A and 1.B on or before 5:00pm (CST) on February 7, 2025, with a budget at the Total Cost; and (B) Zachry will forfeit \$50,000.00 per day that the US 380 Improvements described in 1.A and 1.B are not completed by February 14, 2025, up to a cap of \$500,000.00. TxDOT will refund to the Town any forfeited funds at the completion of the entire US 380 project, and The Town shall promptly refund Costco the same amount of any forfeited funds. In accordance with TxDOT Specification Item 4.5, at any time during the completion of the 380 Improvements any unknown physical condition of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided are encountered, Zachry will immediately notify Costco. Any time stoppage or additional time allowed, shall be mutually agreed in good faith upon between Costco and Zachry.

4. WestSide (as successor in interest to 1385 & 380 INVESTMENTS LP (the “**Prior Developer**”)) and the Town are party to a Water Impact Fee Reimbursement Agreement dated February 25, 2020 (the “**Water Agreement**”). The Water Agreement requires the Town to reimburse WestSide water impact fees collected towards the total sum of construction costs in the amount of \$438,235 for water line improvements previously constructed by the Prior Developer. WestSide (as successor in interest to the Prior Developer) and the Town are party to an Escrow Agreement dated June 22, 2022 (the “**Escrow Agreement**”). The Escrow Agreement allows the Town to prepay reimbursement of water impact fee eligible construction costs to WestSide so that WestSide can deposit the same funds with the Town for funding of the Decel Lanes. As of the date of this MOU, the Town has prepaid \$199,685.97 of water impact fees towards the \$438,235.00 of eligible construction costs that resulted in \$199,685.97 being escrowed with the Town towards the construction cost of the Decel Lanes. In addition, WestSide received a water impact fee reimbursement of \$16,047.00. According to the Water Agreement, there is \$222,502.03 of remaining eligible water impact fees may be prepaid to WestSide and deposited with the Town under the Escrow Agreement and applied to the construction costs of the Decel Lanes.
5. Costco and the Town entered into a Chapter 380 Economic Development Agreement dated May 19, 2023 (the “**380 Agreement**”). Section 9.3 Waiver of Impact Fees states the following.

“The Town agrees to waive a portion of the roadway impact fees equivalent to the cost of improvements proposed on U.S. Highway 380 and FM Road 1385 that Costco is responsible for constructing, as approved by the Town in coordination with the Texas Department of Transportation. Any amount of roadway impact fees remaining above the cost of roadway improvements shall be paid to the Town by Costco. If the cost of improvements exceeds the total amount of roadway impact fees, Costco shall owe no roadway impact fees and fund any costs above the total amount of roadway impact fees.”
6. Costco and Town entered into an Escrow Agreement dated July 5, 2023, which requires Costco fund the left turn lane and median opening to serve the Costco development.
7. To fund the Total Cost, the parties agree as follows:
 - A. **\$199,685.97**: The Town shall apply these funds held under the Escrow Agreement for construction costs of the Decel Lanes.
 - B. **\$222,502.03**: WestSide agrees that these funds will be deposited with the Town and held pursuant to the Escrow Agreement and will be applied towards the cost of the Decel Lanes. Westside and the Town agree that upon the

application of these funds to the cost of the Decel Lanes will complete the Town's obligations pursuant to the Escrow Agreement.

- C. \$193,619.30: Pursuant to the 380 Agreement, the Town shall apply the roadway impact fees collected by the Town in conjunction with Costco's payment of the building permit application costs towards the construction of the US 380 Improvements.
 - D. \$732,872.70: Costco shall deposit these funds with the Town which shall be held in escrow pursuant to the terms of this MOU and applied toward the remaining balance owed to TxDOT to construct the US 380 Improvements pursuant to the TxDOT Agreement. After completion of the US 380 Improvements, Costco will be responsible for any additional costs required by TxDOT as calculated pursuant to the TxDOT Agreement.
8. The Town Manager is duly authorized by the Town Council to execute this MOU on behalf of the Town. Costco and WestSide represent that its signatory below has the authority to enter into this MOU.

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THIS MOU IS EFFECTIVE AS OF THE LAST DATE OF EXECUTION BY THE PARTIES, AS LISTED BELOW (THE “EFFECTIVE DATE”).

APPROVED:

TOWN OF PROSPER, TEXAS

Mario Canizares, Town Manager

Date

APPROVED:

COSTCO WHOLESALE CORPORATION
a Washington corporation

By: 

Name: Jeffrey Ishida

Title: Vice President - Real Estate

Date: December 4, 2024

APPROVED:

WESTSIDE PROSPER LLC
a limited liability company

By: shiva kondru

Name: Shiva Kondru

Title: Principal

Date: 12/03/, 2024

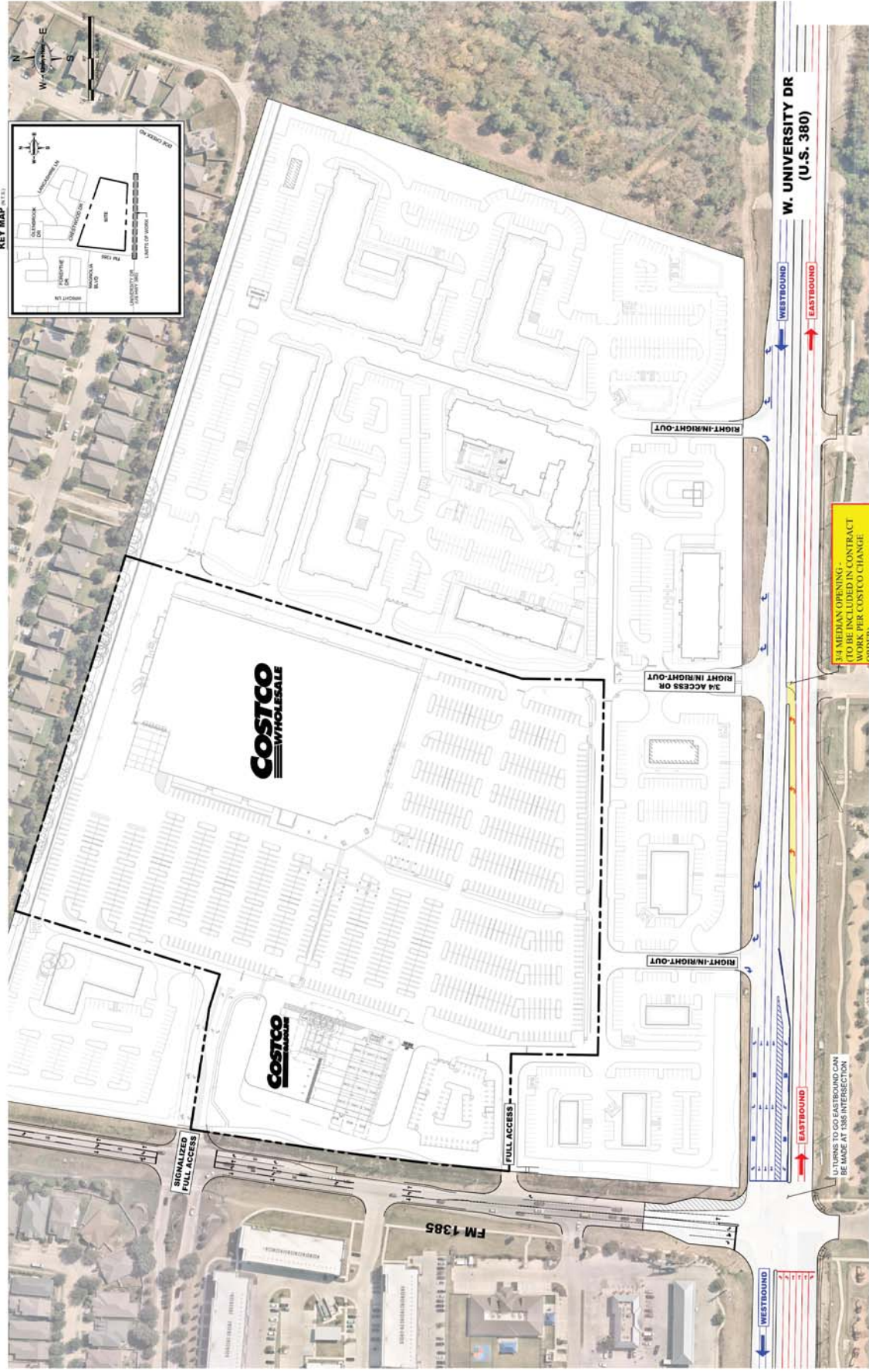


EXHIBIT 2

**COSTCO PROSPER, TX
 US-380 CONSTRUCTION -
 IMPROVEMENTS COMPLETE WITH US380
 SUBSTANTIAL COMPLETION**