

PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE TOWN OF PROSPER, TEXAS, AND
THE CATALYST GROUP

THIS AGREEMENT is made and entered by and between the **Town of Prosper, Texas**, hereinafter referred to as the “**Town**,” and **The Catalyst Group**, an urban development consultant, hereinafter referred to as “**Services Provider**,” to be effective from and after the Parties’ execution date of this Agreement.

WITNESSETH:

WHEREAS, the Town Council of the **Town** desires to engage the services of a qualified and respected consultant to assist in the **Town’s** visioning of the Dallas North Tollway corridor; and

WHEREAS, **Services Provider** desires to render such services for the **Town** upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the Parties hereto agree as follows:

I. ENGAGEMENT

The **Town** hereby agrees to retain **Services Provider** to serve as an urban development consultant to the **Town** as it evaluates the development of the Dallas North Tollway, and to provide services related thereto in accordance with the terms and conditions of this Agreement.

II. SCOPE OF SERVICES

The Parties agree that **Services Provider** shall perform such services as are further described in **Exhibit A** hereto (collectively “**Scope of Services**”). The parties understand and agree that deviations or modifications in the **Scope of Services** may be authorized from time to time by the **Town**, but said authorization must be made in writing.

III. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon the execution of the Agreement by **Town** and **Services Provider**.

IV. COMPENSATION AND EXPENSES

Services Provider shall be paid for performance of the **Scope of Services** set forth in Exhibit A, in accordance with the compensation schedule set forth therein. **Services Provider** shall invoice the **Town** periodically for services rendered and the

Town agrees to pay **Services Provider** within thirty (30) days of the **Town's** receipt of an invoice from **Services Provider**.

V. INDEMNIFICATION

SERVICES PROVIDER AGREES TO INDEMNIFY AND HOLD THE TOWN AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT FROM THE TOWN ARISING OUT OF OR OCCASIONED BY SERVICES PROVIDER 'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW BY SERVICES PROVIDER, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE SERVICES PROVIDER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE SERVICES PROVIDER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OF THE TOWN, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE TOWN DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

VI. INDEPENDENT CONTRACTOR

Services Provider covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of the **Town**; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between the **Town** and **Services Provider**, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between the **Town** and **Services Provider**.

VII. ASSIGNMENT AND SUBLETTING

Services Provider agrees that this Agreement shall not be assigned without the prior written consent of the **Town**. **Services Provider** shall be permitted to enter into subcontracts for performance of portions of the **Scope of Services**; however, **Services Provider** shall not subcontract the entirety of the **Scope of Services** to a single

subcontractor without the **Town's** consent. **Services Provider** further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the **Services Provider** from its full obligations to the **Town** as provided by this Agreement.

VIII. CONTRACT TERMINATION

The Parties agree that the **Town** shall have the right to terminate this Agreement upon thirty (30) days' written notice to **Services Provider**. In the event of such termination, **Services Provider** shall deliver to the **Town** all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by **Services Provider** in connection with this Agreement. In the event of termination by the **Town**, **Services Provider** shall be compensated for services rendered at the time of termination.

IX. COMPLETE AGREEMENT

This Agreement, including Exhibit A, constitutes the entire agreement by and between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

X. AMENDMENTS

Amendments to this Agreement may be made at any time upon agreement by the **Town** and **Services Provider**.

XI. MAILING OF NOTICES

Unless instructed otherwise in writing, **Services Provider** agrees that all notices or communications to the **Town** permitted or required under this Agreement shall be addressed to the **Town** at the following address:

Town of Prosper, Texas
Attn: Mario Canizares, Town Manager
250 W. First Street
Prosper, TX 75078

The **Town** agrees that all notices or communications to **Services Provider** permitted or required under this Agreement shall be addressed to **Services Provider** at the following address:

The Catalyst Group
Attn: Paris Rutherford
7001 Preston Road, Fifth Floor
Dallas, TX 75205

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XII. AUTHORITY TO SIGN

The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto.

XIII. MISCELLANEOUS

A. This is a contract for the purchase of personal or professional services, and is therefore exempt from any competitive bidding requirements of the **Town**.

B. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

C. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the Parties agree that the terms of the Agreement shall not be construed more favorably for either Party.

D. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County Texas. Exclusive venue shall lie in Collin County, Texas.

E. Successors and Assigns:

The **Town** and **Services Provider** and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

F. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

G. Effective Date:

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

SIGNED on the date indicated below.

THE CATALYST GROUP

DATE: _____

BY: _____
Paris Rutherford, President

TOWN OF PROSPER, TEXAS

DATE: _____

BY: _____
Mario Canizares, Town Manager

Exhibit A
Scope of Services

1. Hold broker discussions to confirm “proof of concept” discussing the vision framework concepts contained in the Vision Plan. This would be with 4 leading brokerage houses that represent tenants and end users. Emphasis would be on discussing end-user desires, not just land sales. 4 meetings are anticipated to be held over a 3-week period, and a summary write up of these meetings will be the deliverable. — Fee: \$3,000

2. Collect and evaluate all existing PD’s. This involves preparing a land use table showing what existing entitlement is allowed for use in each PD, density and FAR. It also places each physical framework in the context of the corridor and identifies challenges with the approved plans (if any) that need to be fixed if possible. Consultant would then meet with the Town Staff / Council members to go through its findings and have a discussion on the strategy approach desired for each PD. Town Staff will provide Consultant with all owner information broken out by parcel within the DNT Frontage zone within a Microsoft Excel spreadsheet that identifies the parcel number, ownership, and ownership that ties back to a cumulative graphic of these parcels with numerical callouts for each parcel. Town Staff would also provide all PD’s associated with each related parcel, and zoning code sections that pertain to the other parcels. This analysis will help define the small area plan and will start with Consultant meeting with Town Manager and Mayor to go over existing PD and related site plan at NE quadrant of 380/DNT with related comments. — This includes 2 meetings over 5-week period. Deliverable will be an expansion to the spreadsheet provided by Town Staff to include existing zoning use / density / quantity summary. — Fee: \$8,000

3. Prepare a small area plan that starts with existing PD’s. — Based on the discussions held in the previous task, Consultant would prepare a land use and transportation framework plan for the DNT frontage area, showing road framework (primary and secondary), with the understanding the primary roadways would be, at minimum, public rights of way. Land use would be defined by ownership parcel with related uses/density/FAR. This would be placed in comparison to the spreadsheet by parcel prepared in the previous task. It is anticipated that the transportation and open space framework would be the same regardless of the degree/density of land use, which would be finalized through discussions with the landowners. This work is anticipated to occur over a 5-week period. Deliverable would be a planning framework plan — Fee: \$30,000

4. Consolidate an infrastructure funding plan based on phasing concept — Consultant will have up to 3 meetings with Town Staff to go over the small area plan, discuss desired phasing based on access to existing infrastructure,

and incorporate the Town Engineer's opinion of probable cost into a spreadsheet that combines with the land use program. Town Staff would prepare an outline of how these costs would be funded by identified phase and source of funds for inclusion into Consultant's presentation report. It is anticipated this work occurs over a 5-week period. — Fee: \$6,000.

5. Town Council Discussion — Consultant will present this information to the Town Council for additional input and refine the documents accordingly in preparation for discussions with property owners — Fee: \$2,000
6. Hold property owner discussions — Consultant will meet with frontage property owners in the frontage zone (with or without Town Staff and the Town Council subcommittee based on direction given to the Consultant). These meetings would take place in three worksessions grouping property owners by location within the frontage area. There will be separate individual meetings with property owners that have PD zoning outside of the overall worksessions. Consultant will present the Town's desired vision and identify the comparison in land use between those with existing PD's and the vision program. Consultant will also review the infrastructure funding plan concept prepared by Town Staff that goes with this small area planning. Emphasis would be placed on devising "win - win" strategies that allow the property owners to understand the benefits of going with the Town's vision. The degree of "buy-in" and acceptance of these ideas by the property owners will be recorded for later discussion with the Town Council. It is not anticipated that full consensus will be achieved, but rather a clear understanding of what the options are that would allow the refined zoning to advance will be discussed at the meeting with Town Council. Deliverable will be summary write up of issues determined by parcel. — Fee: \$25,000
7. Refine existing zoning into one frontage district with subdistricts per this Vision — Consultant would work with the Town attorney to prepare the content text that would be placed into a new zoning District for the frontage area. It is anticipated this zoning would be broken down into subdistricts per the Vision Document. Consultant will provide performance language to the Town Attorney and provide input and editing once the Town Attorney prepares the formal legal document required for Town Council action. It is possible that existing PD's may remain in place, some with revisions to match this new zoning, and others closer to what exists depending on the input received through the property owner discussions. Deliverable to be zoning performance standards memo. — Fee: \$35,000
8. Hold public meetings on zoning concept — Consultant would work with Town Staff in presenting these concepts at 3 public meetings, broken down by each

mile section of the frontage zone. Consultant would take input from these meetings and make a revision as directed by Town Staff. — Fee: \$6,000

9. Presentation to Town Planning and Zoning Commission and Town Council — We will present the final draft documents to a joint session of the Plan Commission and Town Council for review, comments and related refinements. Based on this input, we would make final edits to the zoning performance language. — Fee: \$2,000

Compensation, terms and additional services

This scope reflects a total fee of \$117,000 over an anticipated 6-month work period excluding (a) time taken to schedule meetings, (b) time taken for Town Staff to prepare and deliver required information identified in the scope and schedule, (c) any additional services requested during the timeframe, or (d) unforeseen issues that develop along the way. Town Staff will arrange and host all meetings working off the schedule provided by Consultant and any updated schedule required due to such noted delays. All costs are built into this lump sum fee per the deliverables described in this Exhibit, and with the understanding deliverables are all digital. Consultant will invoice monthly basis by completion percentage of each task.

Exhibit B Anticipated Schedule

Prosper DNT Frontage Plan -- Schedule							
The Catalyst Group	2025						
Scope Tasks	March	April	May	June	July	August	September
Task 1: (4) Brokerage House Discussions							
* Brokerage House #1		*					
* Brokerage House #2		*					
* Brokerage House #3		*					
* Brokerage House #4		*					
* Summary Write-Up							
Task 2: Evaluate Existing PD's							
* Staff Assembles and Distributes Info							
* Analyze Existing Zoning and Plan for NE 380/DNT		*					
* Meeting with Mayor and Town Manager on NE 380/DNT							
* Analyze Existing Zoning and Plans for Full Frontage Area							
Task 3: Prepare Small Area Plan Concepts							
* Entitlement Summary Spreadsheet Entries for Properties							
* DNT Planning Framework Concepts							
* DNT Frontage Infrastructure Phasing Concepts							
* Meet with Town Staff to Review and Refine			*				
Task 4: Infrastructure Funding Plan							
* Town Engineer prepares Opinion of Probable Cost							
* Meeting with Town Staff to Discuss Phasing/Funding			*				
* Meeting with Town Staff#2				*			
* Meeting with Town Staff to Review Consolidated Strategy					*		
Task 5: Present Framework and Funding Concepts							
* Meet with Town Council to Review Concepts Prepared					*		
* Refine Concepts in Preparation for Owner Discussions							
Task 6: Property Owner Discussions							
* Worksession #1 (380 - First Street)					*		
* Individual PD Discussions					*		
* Worksession #2 (First Street - Prosper Trail)					*		
* Individual PD Discussions					*		
* Worksession #3 (Prosper Trail - Frontier Parkway)					*		
* Individual PD Discussions					*		
Task 7: Frontage Area District Zoning							
* Prepare Frontage District Zoning Performance Language							
* Collaborate with Town Attorney on its Assembly of Doc.							
Task 8: Public Input Meetings on Zoning							
* Meeting #1						*	
* Meeting #2							*
Task 9: Presentation to P&Z and Town Council							
* Presentation							*
* Final Document							*