

57

**After Recording Return to:**  
**Town Manager**  
**Town of Prosper**  
**P. O. Box 307**  
**Prosper, Texas 75078**

**WASTEWATER DEVELOPMENT AGREEMENT**  
**(PROSPER TOLLROAD J.V.)**

**THIS WASTEWATER DEVELOPMENT AGREEMENT** (the “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **PROSPER TOLLROAD J.V.**, a Texas limited liability company (“**Developer**”), and the **TOWN OF PROSPER, TEXAS**, a Texas home-rule municipality (the “**Town**”), collectively referred to as the “Parties,” on the terms and conditions hereinafter set forth.

**W I T N E S S E T H:**

**WHEREAS**, Developer and/or Developer’s affiliates have acquired and/or are under contract to acquire approximately 66.05 acres of land, more or less, situated in the Collin County School Survey, Abstract No. 147, Town of Prosper, Collin County, Texas, as more particularly described and depicted on **Exhibit A**, attached hereto and incorporated herein by reference (the “**Property**”);

**WHEREAS**, pursuant to the Town’s Water and Wastewater Improvement Plan (the “**Master Sewer Plan**”), Developer desires to, subject to the terms and conditions set forth herein, construct certain Sewer Improvements, as defined herein, to serve the Property;

**WHEREAS**, for purposes of this Agreement and as more fully described herein, the Property is included in a wastewater impact fee reimbursement area, hereinafter referenced as the Reimbursement Area, as depicted in attached **Exhibit B**, incorporated by reference; and

**WHEREAS**, Developer desires to fulfill its obligation to pay Wastewater Impact Fees (as defined in Paragraph 4 below) as prescribed in Article 10.02 of Chapter 10 of the Town’s Code of Ordinances, as amended (the “**Impact Fee Ordinance**”); and

**WHEREAS**, subject to the terms and provisions hereof, the Parties agree that Developer may fulfill its obligation to pay Wastewater Impact Fees in the manner set forth below.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained in this Agreement, the Town and Developer agree as follows:

1. **Land Subject to Agreement.** The land that is subject to this Agreement is the Property. Developer represents that it is the sole owner of the Property.
2. **Developer’s Construction of Sewer Improvements.** Developer shall, at its sole cost and expense, except as provided in Paragraph 4 below, construct and install

the sewer improvements that are depicted on **Exhibit B**, attached hereto and incorporated herein for all purposes, in accordance with the Master Sewer Plan and in accordance with the Town's design and construction standards, applicable engineering plans, specifications and designs approved in writing by the Town's engineer, which approval shall not be unreasonably withheld or delayed (the "**Project**"). Within ninety (90) days of the Town's acceptance of the Project, Developer shall be eligible for reimbursement of actual costs incurred by Developer in construction of the Project, and such other reimbursable and related costs, if any, mutually agreed upon by the Town and Developer. Further, upon the Town's acceptance of the Project, all improvements constructed by Developer shall become the property of the Town, and Developer agrees that it will execute all appropriate documentation relative thereto, including the dedication at no cost of necessary right-of-way or utility easements for the benefit of the Town.

3. **Reimbursements from Wastewater Impact Fees.** Any reimbursement to Developer contemplated by this Agreement shall come only from wastewater impact fees collected by the Town from wastewater impact fee-eligible development. Specifically, any wastewater impact fees by the Town as contemplated by this Agreement collected from eligible property in the Reimbursement Area, as depicted in **Exhibit D**, shall be paid to Developer until the entire amount due to Developer is paid in full. The reimbursement of wastewater impact fees for any Wastewater CIP Project in the Reimbursement Area shall cease when the amount tendered, through the reimbursement of collected wastewater impact fees and/or the waiver of impact fees equals the actual Construction Costs. The phrase "Construction Costs" as used herein shall mean the actual construction costs, including design costs, construction costs, engineering costs, surveying costs and geotechnical materials testing associated with the Project. Estimated construction costs are depicted in attached **Exhibit C**. The Town will use its reasonable efforts to forward any reimbursement amount to Developer, quarterly and as applicable, on January 15, April 15, July 15, and October 15 of each year beginning the year of completion of and acceptance of construction.

4. **Additional Sewer Improvements.** The Town acknowledges that Developer may construct certain sewer improvements that extend from the Project and tie-in to the Town's lift station in the Lakes of Prosper development (the "**Additional Sewer Improvements**"), which sewer improvements are solely for the benefit and use of the Town, and do not benefit or serve the Property. The total construction costs incurred by Developer in constructing the Additional Sewer Improvements is estimated at **\$12,000.00** (the "**Additional Sewer Improvement Construction Costs**"). The Additional Sewer Improvement Construction Costs shall not be included within or subject to the reimbursement provisions set forth in Paragraph 3, above. Rather, the Town agrees that it will reimburse Developer, within thirty (30) days after the Town finally accepts the construction of the Additional Sewer Improvements, an amount equal to the actual Additional Sewer Improvement Construction Costs.

5. **Obligation to Reimburse.** In the event that full reimbursement has not been made to Developer by the Town after the expiration of ten (10) years from the date of the Town's acceptance of the Project as set forth in Paragraph 2 above, as reflected in the Master Sewer Plan and as contemplated by this Agreement, the Town shall endeavor to reimburse Developer from applicable wastewater impact fee funds.

6. **Third Party Project Easements or Right-of-Way.**

(a) The Parties shall cooperate with each other in obtaining from third parties any and all easements or right-of-way (collectively, "Third Party Project Easements") for the Project depicted in **Exhibit B**.

(b) Developer shall be responsible for any and all costs and expenses associated with acquiring, by purchase or condemnation, all Third Party Project Easements, including, but not limited to, title work, appraisals, expert fees, attorneys' fees and expenses, engineering fees and expenses, surveying fees and expenses, court costs, commissioner's fees and costs of appeal, if any ("Easement Acquisition Fees"). If requested by the Town, Developer shall, at its sole cost and expense, lead all easement acquisition efforts for the Third Party Project Easements, including, but not limited to, providing all necessary engineering and surveying support required to obtain the Third Party Project Easements as required. Developer shall pay any and all Easement Acquisition Fees within twenty-one (21) calendar days of receiving a written request from the Town for the same.

(c) The Town will, at Developer's sole cost and expense, provide, among any other assistance deemed reasonably necessary by the Town, technical, engineering, legal and administrative assistance, as selected by the Town, to acquire, by purchase or condemnation, the Third Party Project Easements. The Town shall review and approve any and all documents associated with the Third Party Project Easements required herein. If the Town determines, in its reasonable discretion, that condemnation proceedings are necessary to secure the Third Party Project Easements, the Town shall have the right to, at Developer's sole cost and expense, take any and all steps the Town deems necessary to initiate said proceedings.

(d) The Third Party Project Easements shall be filed and recorded prior to the commencement of construction of the Project or any portion thereof, unless a Right of Entry is secured, a condemnation award is tendered with the registry of the court and/or a right of possession by any other means is obtained on an earlier date.

(e) If the Third Party Project Easements are not obtained, or the Town has not secured the right to possess, in a form reasonably acceptable to the Town, the land made the subject of the Third Party Project Easements, within ninety (90) days after the execution hereof on terms acceptable to the Town, then the Town shall commence, and thereafter diligently pursue to completion, condemnation proceedings to obtain such Third Party Project Easements as soon as reasonably possible. Notwithstanding anything to the contrary herein, the Town and Developer agree that the Town may initiate condemnation proceedings prior to the expiration of the ninety (90) days referred to in this Paragraph.

7. **Assignment.** Developer shall have the right to assign this Agreement, in whole or in part, which party (or parties) shall have the option to construct the Project. As to the sale of land by Developer to any party to whom this Agreement has not been assigned, in whole or in part, the purchaser thereof shall have no rights or obligations under this Agreement and this Agreement shall not apply with respect to such land.

8. **Default.** If Developer fails to comply with any provision of this Agreement after receiving fifteen (15) days written notice to comply from the Town or such longer period as may be reasonably necessary provided that Developer commences to cure the default or breach within the 15-day period and proceeds with reasonable diligence thereafter to complete such cure, 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 construct and/or complete the Project and to recover any and all costs and expenses associated with the construction and/or completion of same, including, but not limited to, any and all reasonable attorney's fees and costs associated therewith; and/or
- (c) to seek specific enforcement of this Agreement.

In the event Developer fails to commence construction of the Project by December 31, 2025, such failure will be deemed a default to the agreement, with no requirement of notice, as referenced in Paragraph.

Furthermore, in the event Developer does commence construction of the Project by December 31, 2025, but fails to complete construction of the Project by December 31, 2028, such failure may be declared a default, in the Town's sole discretion, with no requirement of notice, as referenced in Paragraph. In such event, Developer shall not be eligible for Reimbursements from Wastewater Impact Fees for the construction costs incurred by Developer for the Project until such time as the Project has been accepted by the Town and full payment has been made to any person or business entity that has completed the Project after Developer's default.

In the event the Town fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement and/or bring suit to recover any amounts due and owing hereunder (but not consequential or punitive damages) as its sole and exclusive remedies.

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

10. **Acknowledgements/Release/Waiver.** Developer agrees and acknowledges that: (i) the Town is entering into this Agreement based on Developer's representation and warranty that wastewater service is needed to serve Developer's development of the Property; (ii) the Town makes no representations whatsoever with regard to the completion of the Sewer Improvements, other than that the Town agrees to process Developer's request for acceptance of the Sewer Improvements in a similar manner as the Town normally processes such requests; (iii) as of the date hereof, all necessary Sewer Improvements have not been completed and/or secured so as to serve

the Property; and (iv) until acceptance of the Sewer Improvements as provided in this Agreement, the Town is not required to and will not release any building permits and/or any Certificates of Occupancy for the Property. This paragraph shall survive the termination of this Agreement.

11. **Limitation of Liability.** Notwithstanding anything to the contrary herein, the Parties agree and acknowledge that the Town shall not, under any circumstance, be required to tender, and/or be liable to Developer for, any reimbursement of and/or payment of any monies with regard to the matters set forth herein, save and except as provided herein.

12. **Covenant Running with Land.** This Agreement shall be a covenant running with the land and the Property and shall be binding upon and inure to the benefit of Developer, and its successors and assigns. In addition, the Parties shall cause this Agreement to be filed in the Real Property Records of Collin County, Texas. Notwithstanding the foregoing, the obligations herein that burden the Property shall be released automatically upon acceptance by the Town of the Sewer Improvements as set forth in this Agreement. Any third party, including any title company, grantee or lien holder, shall be entitled to rely on the immediately preceding sentence to establish whether such termination has occurred with respect to any lot. The Town agrees to execute and deliver, in recordable form, a form of release or other evidence of termination as Developer may reasonably request and that is reasonably satisfactory to the Town.

13. **Limitations of Agreement.** The Parties hereto acknowledge that this Agreement is limited to the Wastewater Impact Fees as described in the Impact Fee Ordinance. Except as expressly otherwise provided herein, the Town ordinances covering property taxes, utility rates, permit fees, inspection fees, development fees, thoroughfare fees, park fees, tap fees, pro-rata fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Developer to the Town under any other ordinance, whether now existing or in the future arising.

14. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to the Town, addressed to it at:

Town of Prosper  
Att'n: Town Manager  
P. O. Box 307  
121 West Broadway Street  
Prosper, Texas 75078

With a copy to:

Brown & Hofmeister, L.L.P.  
Att'n: Terrence S. Welch  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

If to Developer, addressed to it at:

Scott Norris  
Prosper Tollroad J.V.  
4265 Kellway Circle  
Addison, Texas 75001



15. **INDEMNIFICATION.** (A) DEVELOPER DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN AND ITS TOWN COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES 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 ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE CONSTRUCTION OF THE SEWER IMPROVEMENTS, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST THE TOWN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER, AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY

CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

(B) IN ITS SOLE DISCRETION, THE TOWN SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY THE TOWN, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY THE TOWN IN WRITING. THE TOWN RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; 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. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, THE TOWN SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY THE TOWN.

(C) THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

16. THE PARTIES' ACKNOWLEDGEMENT OF THE TOWN'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

(A) DEVELOPER ACKNOWLEDGES AND AGREES THAT:

(I) THE SEWER IMPROVEMENTS TO BE CONSTRUCTED BY DEVELOPER PURSUANT TO THIS AGREEMENT AND/OR THE SEWER IMPACT FEES TO BE IMPOSED BY THE TOWN REGARDING THE PROPERTY, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:

- (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
- (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
- (C) NUISANCE; AND/OR
- (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE TOWN FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

(II) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON THE TOWN'S INFRASTRUCTURE.

(iii) **DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO THE TOWN PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER 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 VALUE RECEIVED BY THE TOWN RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON THE TOWN'S INFRASTRUCTURE. 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 PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.**

(iv) **DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS THE TOWN FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPERS' RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.**

(b) **DEVELOPER RELEASES THE TOWN FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS IN CONNECTION WITH THIS AGREEMENT.**

(c) **DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST THE TOWN FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.**

(d) **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

17. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of the 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 the Town with fair notice of any Developer's project. **DEVELOPER 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.**

18. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

19. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Town and the authorized representative of Developer.

20. **Developer's Warranties and Representations.** All warranties, representations and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to the Town under this Agreement shall be considered to have been relied upon by the Town and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by the Town or on the Town's behalf.

21. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

22. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

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

24. **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 or email signature will also be deemed to constitute an original if properly executed.

25. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

26. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

27. **Representations**. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

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

29. **No 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.

30. **Assignment/Binding Effect**. This Agreement is assignable upon the following conditions:

(a) the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of the Town;

(b) at the time of any assignment, Developer must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of the Town;

(c) Developer will file any approved, executed assignment in the Land Records of Collin County, Texas; and

(d) Developer shall provide the Town with the name, address, phone number, fax number and the name of a contact person for the assignee.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, as authorized herein.

31. **Indemnification**. The Parties agree that the Indemnity provisions set forth in Paragraphs 15 and 16 herein are conspicuous, and the Parties have read and understood the same.

32. **Construction**. All construction described herein shall be subject to and in compliance with all ordinances of the Town, whether now existing, hereafter amended or in the future arising. Evidence of any bonds required by Section 212.073 of the Texas Local Government Code, or other applicable law, shall be provided by Developer to the Town.

33. **Conveyances**. All conveyances required herein shall be made in a form acceptable to the Town and free and clear of any and all encumbrances.

34. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

35. **Reference to Developer.** When referring to "Developer" herein, this Agreement shall refer to and be binding upon and inure to the benefit of, Developer, and its successors and assignees.

36. **Miscellaneous Drafting Provisions.** 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. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

37. **Force Majeure.** Notwithstanding anything herein to the contrary, no party shall be liable for the failure to perform its duties described herein if such failure is caused by a catastrophe, riot, war, governmental order or regulation, fire, accident, Act of God, or other similar or different contingency beyond the reasonable control of the subject party.

38. **Attorney's Fees.** Developer agrees to pay, or cause to be paid, to Prosper any attorney's fees charged to Prosper by Prosper's legal counsel for, among other things, legal review and revision of this Agreement and all further agreements, ordinances or resolutions contemplated by this Agreement, negotiations and discussions with Developer's attorney and the provision of advice to applicable Prosper Town Staff and the Prosper Town Council, in an amount not to exceed \$5,000.00 within ten (10) days upon receipt of an invoice of same from the Town.

39. **IN WITNESS WHEREOF,** the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures on the following pages.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**TOWN:**

**TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_  
Mario Canizares, Town Manager

Date: \_\_\_\_\_

**STATE OF TEXAS                   §**  
  **§**  
**COUNTY OF COLLIN           §**

**BEFORE ME**, the undersigned authority, on this day personally appeared Mario Canizares, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **TOWN OF PROSPER, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: \_\_\_\_\_

**DEVELOPER:**

**PROSPER TOLLROAD J.V.,**  
a Texas limited liability company

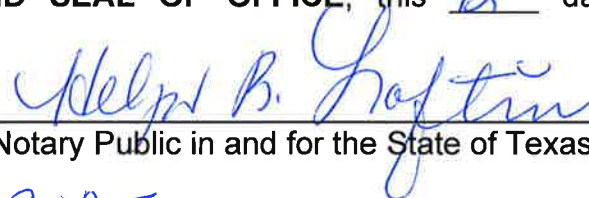
  
\_\_\_\_\_  
Dan Tomlin III, President

Date: April 12, 2023

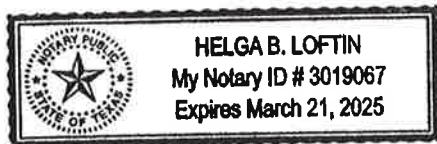
**STATE OF TEXAS**                   §  
   §  
**COUNTY OF DALLAS**           §

**BEFORE ME**, the undersigned authority, a Notary Public, on this day personally appeared Dan Tomlin III, the President of **PROSPER TOLLROAD J.V.**, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf of said company.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this 12<sup>th</sup> day of April, 2023.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires: 3-21-2025



**EXHIBIT A**

**(Legal Description and Depiction of the Property)**

**Next 2 Pages**

[illegible]

# EXHIBIT A SHT.2



## PROSPER TOLLROAD BOUNDARY DESCRIPTION

A tract or parcel of land situated in the Collin County School Land Survey, Abstract No. 147, in Collin County, Texas, being a combination of three tracts (a) the called 19.27 acres tract and (b) the called 33.3868 acres tract described in the deed to Prosper-Tollroad Joint Venture, Ltd, recorded in file number 96-0090247 in the Collin County Deed Records, and (c) the called 19.257 acres tract described in the deed to Prosper Tollroad, Ltd, recorded in file number 19-0088560 in the CCOR, and being more particularly described as follows:

COMMENCING at a found 1/2 inch iron rod with DAA cap at the southwest corner of LOT 13 BLOCK B of the Replat of LAKES OF PROSPER PHASE ONE, an addition to the Town of Prosper recorded in Cabinet 2007 Page 32 in the Collin County Plat Records;

THENCE South 00°04'56" West 25.00 feet to the POINT OF BEGINNING on the north right-of-way line of Prosper Trail (45 feet north of the center);

THENCE Westerly along the north line of Prosper Trail the following:

South 89°22'15" West 748.68 feet;

North 80°39'53" West 202.27 feet;

South 89°22'15" West 155.06 feet;

North 45°49'14" West 63.85 feet;

THENCE Northerly along the east right-of-way line of Dallas North Tollroad the following:

Northerly an arc distance of 353.30 feet along a non-tangent curve to the right having a radius of 16988.73 feet, a central angle of 01°11'29", and the chord bears North 00°20'25" West 353.29 feet;

North 00°15'19" East 435.05 feet;

Northerly an arc distance of 179.67 feet along a tangent curve to the left having a radius of 5744.58 feet, a central angle of 01°47'31", and the chord bears North 00°38'26" West 179.66 feet to a found 1/2 inch iron rod with a H&M Assoc Inc cap;

THENCE Northerly around the called 3.350 acres tract described in the deed to One Longhorn Land I, L.P. recorded in Volume 5964 Page 285 in the CCOR the following:

North 89°48'27" East 183.84 feet to a found 1/2 inch iron rod;

North 00°22'12" West 518.84 feet to a found 1/2 inch iron rod;

South 89°37'24" West 183.64 feet;

THENCE Northerly along the east line of Dallas North Tollroad the following:

Northerly an arc distance of 31.38 feet along a non-tangent curve to the right having a radius of 5714.58 feet, a central angle of 00°18'53", and the chord bears North 01°25'32" East 31.38 feet;

North 01°34'59" East 585.09 feet to a found 1/2 inch iron rod;

Northerly an arc distance of 409.18 feet along a tangent curve to the left having a radius of 17368.73 feet, a central angle of 01°20'59", and the chord bears North 00°54'29" East 409.17 feet;

THENCE North 88°44'35" East 496.41 feet to a found 1/2 inch iron rod with yellow cap;

THENCE North 88°53'03" East 638.51 feet

THENCE South 00°04'55" West 1321.58 feet along the west side of LAKES OF PROSPER NORTH PHASE 1, an addition to the Town of Prosper recorded in Cabinet 2013 Page 366, and the west side of LAKES OF PROSPER PHASE 2, an addition to the Town of Prosper recorded in Cabinet 2010 Page 146, and along the west side of said LAKES OF PROSPER PHASE ONE;

THENCE South 00°04'56" West 1280.71 feet continuing along the west side of said LAKES OF PROSPER PHASE ONE to the Point of Beginning and Containing 66.047 acres of land more or less.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

SURVEY  
PROSPER TOLLROAD  
COLLIN COUNTY SCHOOL SURVEY  
ABSTRACT NUMBER 147  
TOWN OF PROSPER  
COLLIN COUNTY, TEXAS

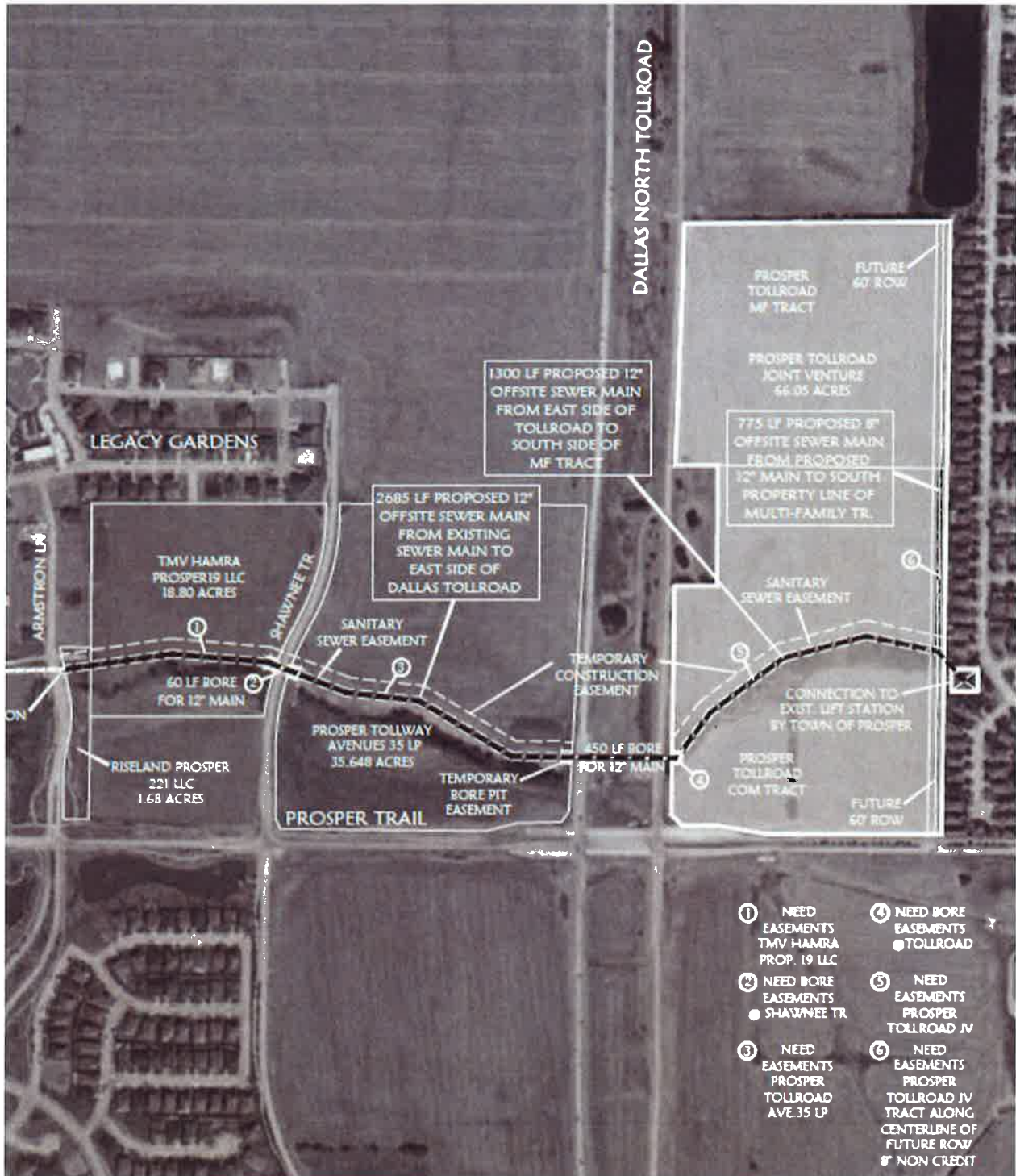
OWNER  
PROSPER TOLLROAD J.V. LTD  
600 HOLLWAY CIRCLE  
ADDICKS, TEXAS 75001  
972-380-0800  
SCOTT HENNING

OWNER - SURVEYED ESTATE  
LAND ADJACENT LTD  
600 HOLLWAY CIRCLE  
ADDICKS, TEXAS 75001  
972-380-0800  
SCOTT HENNING

THE SURVEYOR HAS REVIEWED THE RECORDS OF THE COLLIN COUNTY CLERK AND HAS FOUND NO OTHER RECORDS THAT AFFECT THE SURVEY.

## EXHIBIT B

### (Description and Location of Sewer Improvements)



## **EXHIBIT C**

### **(Estimated Construction Costs)**

#### **PRELIMINARY COST ESTIMATE PROSPER TOLLROAD JV OFFSITE WASTEWATER**

2/21/2023

DESCRIPTION	QTY	UNIT	PRICE	AMOUNT
<b>SEWER MAIN CREDITS</b>				
12" Dia. Pvc Sewer Main - Offsite	2685	LF	\$ 50.00	\$ 134,250.00
12" Dia. Pvc Sewer Main - Onsite	1300	LF	\$ 50.00	\$ 65,000.00
Bore w/Enc. for 12" Main under DNT	450	LF	\$ 300.00	\$ 135,000.00
Bore w/Enc. for 12" Main under Shawnee	60	LF	\$ 300.00	\$ 18,000.00
5' Dia. Manholes	6	EA	\$ 8,000.00	\$ 48,000.00
4' Dia. Manholes	6	EA	\$ 6,000.00	\$ 36,000.00
Connect to Existing Main	1	EA	\$ 10,000.00	\$ 10,000.00
Trench Safety	5370	LF	\$ 1.00	\$ 5,370.00
TV Testing	5370	LF	\$ 1.50	\$ 8,055.00
Cont. and Misc.	1	LS	\$ 68,951.25	\$ 68,951.25
Subtotal				\$ 528,626.25
Engineering / Construction Staking	1	LS	\$ 105,725.25	\$ 105,725.25
TOTAL				\$ 634,351.50
Connection to Exist. Lift Station	1	LS	\$ 10,000.00	\$ 10,000.00
Engineering / Construction Staking	1	LS	\$ 2,000.00	\$ 2,000.00
Subtotal				\$ 12,000.00
TOTAL				\$ 646,351.50

## EXHIBIT D

(Area of Reimbursement)

