

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (“Agreement”) is made and entered into as of the last date set forth after the signature lines hereto (“Effective Date”) by and between the Town of Prosper, Texas (“Town”), and Vulcan Materials Company, its affiliates and subsidiaries, legally authorized to do business in Texas (“Vulcan”) (Town and Vulcan hereinafter may be referred to as “Party” or collectively as the “Parties”), for and in consideration of the mutual promises and covenants contained herein.

**WHEREAS**, Vulcan operates a concrete batch facility (“Operation”) located at 570 S. Dallas Parkway, Prosper, Texas 75078 (the “Property,” a legal description of which is attached to this Agreement as Exhibit A, and is incorporated by reference), which Operation involves generally the use of equipment, including but not limited to, mixers, cement batchers, aggregate batchers, conveyors, radial stackers, aggregate bins, cement bins, heaters, chillers, cement silos, batch plant controls, and dust collectors, and other equipment necessary for the production of concrete, together with all related appurtenances thereto (collectively, “Equipment”), as well as an on-site modular office; and

**WHEREAS**, on or about January 12, 2021, the Town adopted Ordinance No. 2021-02, which Ordinance approved a specific use permit for the Operation on the Property until October 1, 2024; and

**WHEREAS**, on or about \_\_\_\_\_, 2023, the Town adopted Ordinance No. 2023-\_\_\_, which Ordinance approved an extension of the Operation by specific use permit until October 1, 2026; and

**WHEREAS**, the forgoing approval of a specific use permit on the Property by the Town Council and this Agreement seek to incorporate, in part, the negotiated and agreed upon standards contained in the Ordinance granting the specific use permit on the Property, and to recognize Vulcan’s reasonable investment-backed expectations in the Property and as more fully described herein; and

**WHEREAS**, with the ongoing development of properties along the Dallas North Tollway, the Operation is not a use generally compatible with such development, and but for this Agreement, the Town may not extend the Operation’s specific use permit past the October 1, 2026, deadline referenced herein; and

**WHEREAS**, the Parties desire and have worked together to establish an agreed-upon time period for the conclusion of the Operation on the Property and the eventual relocation of the Operation from the Property to another location; and

**WHEREAS**, in exchange for the agreed-upon Compliance Date and relocation, as well as the Town’s extension of the Operation on the Property until October 1, 2026, the Parties desire to compromise, resolve, and settle any disputes regarding the Operation on the Property and to establish a Completion Date for the Operation on the

Property; and

**WHEREAS**, the Parties desire to enter into this Agreement to effectuate all of the foregoing.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and Vulcan agree as follows:

**1. Vulcan's Agreement to Cease Operations on or before October 1, 2026.** Vulcan hereby agrees and affirms that (i) its Operation on the Property will cease on or before October 1, 2026; (ii) it already has recouped at least one hundred percent (100%) of its investment in the Operation on the Property; and (iii) it waives any rights or remedies it may have under subchapter A of Chapter 211 of the Texas Local Government Code, as amended. Further, Vulcan shall remove all Equipment from the Property, including the on-site modular office, as of the date it ceases its operations.

**2. Town's Agreement Not to Institute Amortization or Related Proceedings.** In exchange for Vulcan's agreement to cease all Operation and related uses on the Property on or before October 1, 2026, the Town agrees that it will not institute, pursue or undertake any amortization processes or procedures against Vulcan and its nonconforming use of property (in the event a subsequent specific use permit is either denied or expires), pursuant to the Town's Zoning Ordinance and/or applicable provisions of state law.

**3. Covenant Running with the Land.** The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of Vulcan and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other owners of the Property, regardless of whether this Agreement is expressly referenced therein.

**4. Default.** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

5. **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. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.

6. **Notice.** Any notices required or permitted to be given hereunder (each, a “Notice”) 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  
                                  250 W. First Street  
                                  P.O. Box 307  
                                  Prosper, Texas 75078  
                                  Attention: Town Manager

If to Vulcan:             Vulcan Materials Company  
                                  Corporate Office  
                                  1200 Urban Center Drive  
                                  Birmingham, Alabama 35242  
                                  Attention: Mitchell M. Mataya

7. **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).

8. **Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property 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.

9. **Savings/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.

10. **Binding Agreement.** 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, including without limitation a scanned copy sent via electronic mail by either party.

11. **Authority to Execute.** This 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. Vulcan warrants and represents that the individual executing this Agreement on behalf of Vulcan has full authority to execute this Agreement and bind Vulcan to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

**12. Filing in Deed Records.** This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Collin County, Texas.

**13. 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 nonbinding mediation.

**14. Notification of Sale or Transfer; Assignment of Agreement.** Vulcan 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. Any new owner or transferee shall be bound by the terms of this Agreement.

**15. 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.

**16. 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. This Section shall survive the termination of this Agreement.

**17. 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.

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

19. **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.

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

21. **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.

22. **Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor owner of all or any part of the Land; however, the failure to provide such copies shall not affect the validity of any amendment.

23. **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.

**IN WITNESS WHEREOF**, the parties hereto have caused this document to be executed as of the date referenced herein.

**TOWN:**

**THE TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_  
Name: Mario Canizares  
Title: Town Manager, Town of Prosper

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

**VULCAN:**

**VULCAN MATERIALS COMPANY**

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

STATE OF \_\_\_\_\_ )  
  )  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of Vulcan Materials Company, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Vulcan Materials Company.

Notary Public, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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