

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

**THIS DEVELOPMENT/INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND FOUNDERS CLASSICAL ACADEMY OF PROSPER** (“Agreement”), is made and entered into this \_\_\_ day of December, 2020, 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**, this Agreement is entered into pursuant to the home-rule authority of the Town, pursuant to Article XI of the Texas Constitution, and to applicable provisions of the Texas Education Code for Developer, and to the extent applicable, Chapter 791 of the Texas Government Code; and

**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 agrees to 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 new 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 agrees and acknowledges that no building it plans to initially construct on the Property shall be a commercial or residential

structure, and therefore 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. **Portable/Temporary Buildings.** No portable or temporary buildings are contemplated on the Property as of the date of execution of this Agreement. In the event a portable or temporary building is requested, Developer shall submit a permit and all documentation required by the Town's zoning regulations, as same may be amended from time to time, for such building(s).

4. **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.

5. **Exactions/Infrastructure Costs.** Both the Town and Developer have been represented by legal counsel in the negotiation of this Agreement and been advised or each has had the opportunity to have legal counsel review this Agreement and advise them, regarding Developer's and the Town's rights under Texas and federal law. Developer and the Town hereby waive any requirement that the other retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions 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 and any exemptions from impact fees under current or future law; however, notwithstanding the foregoing and to the extent permitted by law, 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.

6. **Notification of Sale or Transfer; Assignment of Agreement.** 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 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.

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

- (a) to seek specific enforcement of this Agreement; and/or
- (b) declare a default of this Agreement and pursue any remedy authorized by law; and/or
- (c) in the case of the Town, not issue a building permit for any new structure or phase contemplated by this Agreement until such default is cured by Developer.

8. **Other Applicable Development Ordinances.** Unless otherwise expressly stipulated in this Agreement or exempted under applicable law (now or hereafter enacted), nothing herein shall relieve Developer from responsibilities for the construction of other public improvements under applicable development ordinances of the Town.

9. **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.

10. **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  
1301 Waters Ridge Drive,  
Lewisville, Texas 75057  
Attn: Robert Davison, Chief Operating Officer

With a copy to: Schulman, Lopez, Hoffer & Adelstein, LLP  
845 Proton Road  
San Antonio, Texas 78258  
Attn: Jason Adelstein

11. **Prevailing Party.** In the event either party 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).

12. **Sovereign Immunity.** The parties agree that neither Developer nor the Town has otherwise waived its sovereign or governmental immunity by entering into and performing its obligations under this Agreement excepting only for purposes of Local Government Code Chapter 271.

13. **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 Developer; 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.

14. **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.**

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

16. **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.

17. **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.

18. **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.

19. **Authority to Execute.** The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town and Developer each warrant and represent that the individual executing this Agreement on behalf of each party has full authority to execute this Agreement and bind that party to the same. This Agreement is and shall be binding upon the Town and Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

20. **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.

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

22. **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.

23. **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.

**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 January, 2021, 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: \_\_\_\_\_  
Robert Davison, Chief Operating Officer

**Approved as to Form:**

\_\_\_\_\_  
Lindsey Gordon, General Counsel

**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 Robert Davison, the Chief Operating Officer 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 January, 2021.

\_\_\_\_\_  
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**  
**(Final Plat)**