

WASTEWATER LINE CONSTRUCTION COSTS REIMBURSEMENT AGREEMENT
(H-E-B)

THIS SANITARY SEWER CONSTRUCTION COSTS REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2024 (“Effective Date”), by and between the Town of Prosper, Texas (“Prosper” or the “Town”), and H-E-B, LP, a Texas limited partnership (“Developer”), individually referred to as a “Party” and collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, although Developer is constructing a wastewater line on its property (the “Property”) depicted on Exhibit A, to serve its development, Developer has agreed to construct at Town’s cost a parallel wastewater line on its Property for the Town’s and the Developer’s use (“Project”), and any reference to the “Project” in this Agreement relates only to that construction by Developer of the parallel wastewater line for the Town’s and the Developer’s use as provided herein; and

WHEREAS, the wastewater line the Developer is constructing on its property to serve its development that will connect to the parallel wastewater line on the Property is attached as Exhibit B, incorporated by reference; and

WHEREAS, subject to the terms, provisions and conditions hereof, the Project shall be constructed by Developer on the Property, and further, the Parties agree and acknowledge that the construction of the Project in conjunction with Developer’s construction of a wastewater line will result in cost savings to the Town and Developer, less inconvenience to Developer and its customers, and will result in less disruption on Developer’s Property since Developer’s construction of a wastewater line in conjunction with the construction of the parallel wastewater line for the Town’s and Developer’s use will be more timely and expeditious; and

WHEREAS, this Agreement clearly is in the best interests of the Town and Developer and it is deemed mutually beneficial to each that the construction of the Project proceed uniformly with Developer’s construction of its wastewater line.

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. **Developer’s Construction of the Project.** The Parties agree and acknowledge that, subject to Developer obtaining all permits and approvals for the construction thereof, Developer shall construct the Project in accordance with the plans attached hereto as Exhibit C (the “Plans”), and Developer’s construction shall be undertaken in conjunction with Developer’s construction of the wastewater line on its Property. Within thirty (30) days of the Town’s acceptance of the Project, Developer shall be eligible for reimbursement of actual construction costs incurred by Developer in construction of the Project, and such other reimbursable and related costs, if any, all as

set forth on **Exhibit D** or as otherwise mutually agreed upon by the Town and Developer (collectively, the "**Reimbursement**"). 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 and any fees associated with the Project. Further, upon the Town's acceptance of the Project, all improvements comprising the Project constructed by Developer shall become the property of the Town.

2. The Parties agree and acknowledge that Developer shall bid the construction of the Project with at least three (3) qualified contractors and shall provide copies of the bids received for such items to the Town within five (5) business days of Developer's receipt of same. The Town agrees to assist Developer in the bidding process. Developer shall not proceed to award a contract(s) for the design and construction of the Project unless and until the Town provides written approval of said contract(s), which approval shall be granted or denied within seven (7) days after Town's receipt of same. It is expressly understood and agreed that Developer shall operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the Town. The Parties agree that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the Town and Developer.

3. **Default.** If Developer fails to comply with any provision of this Agreement after receiving thirty (30) 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 30-day period and proceeds with reasonable diligence thereafter to complete such cure, then so long as such default continues and is not cured following a second 30-day written notice from Town to Developer, subject to Paragraph 15 of this Agreement, the Town shall have the right, as its sole remedy hereunder, to complete the construction of the Project at the Town's cost in accordance with the Plans and shall pay to Developer the costs incurred by Developer as of the date thereof, limited to such costs for the portion of the Project constructed by Developer which comply with the Plans.

In the event the Town fails to comply with the terms and conditions of this Agreement, subject to Paragraph 15 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.

4. **Other Applicable Development Ordinances.** Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve Developer from compliance with the construction of the Project under applicable development ordinances of the Town, provided that Town will expeditiously process and cooperate with Developer's requests for permits and approvals for the Project.

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. Venue for any action arising under this Agreement shall lie in Collin County, Texas.

6. **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: H-E-B, LP
646 S. Flores Street
San Antonio, Texas 78204
Attn: Benjamin R. Scott
Telephone: (210) 938-8766
Email: scott.ben@heb.com

With copy to: Golden Steves & Gordon LLP
200 E. Basse Rd., Suite 200
San Antonio, Texas 78209
Attn: Ami Gordon
Telephone: (210) 745-3700
Email: agordon@goldensteves.com

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. **Sovereign Immunity.** The Parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement; however, for purposes of enforcement of this Agreement by Developer, the Town agrees that it has waived its sovereign immunity, and to that extent only.

9. **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.

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

11. **Counterparts**. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. Electronic signatures shall be binding and shall have the same force and effect as an original signature.

12. **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 either Party.

13. **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.

14. **Authority to Execute**. The 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. This Agreement is and shall be binding upon Developer, its successors and assigns.

15. **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 Parties agree to submit such disagreement to a non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any Party, unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The Parties shall endeavor to resolve their claims by non-binding mediation for a period not to exceed sixty (60) days from the date of such disagreement. The Town and Developer shall share the costs of mediation equally. The mediation shall be held at a mutually agreed location.

16. **Intentionally Omitted**.

17. **Indemnification.** From the Effective Date of this Agreement to the date on which all work with respect to the Project is completed and all improvements, as contemplated herein, have been accepted by the Town, Developer does hereby agree to release, defend, indemnify and hold harmless the Town and its elected and appointed officials, officers, employees and agents from and against all actual damages (but not consequential or punitive damages), injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs pertaining to injury to person or damage to property arising out of the Developer's construction of the Project, including reasonable attorney's fees and expenses (including reasonable attorney's fees and expenses incurred in enforcing this indemnity), caused by the negligent, grossly negligent, and/or intentional act and/or omission of Developer, or any other third parties for whom Developer engaged, in its/their performance of this Agreement. Developer is expressly required to defend the Town against all such claims arising under this Agreement as expressly set forth above pursuant to this indemnity, and the Town is required to reasonably cooperate and assist developer(s) in providing such defense. Developer shall not be required to indemnify the Town from claims caused in whole or in part by the Town's negligent, grossly negligent, and/or intentional acts and/or omissions, or any other third parties for whom the Town engaged.

18. **Approval of Counsel.** The Town reserves the right to provide a portion or all of its' own defense, at its sole cost; 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.

19. **Survival.** Paragraph 17, "Indemnification," shall survive the termination of this Agreement.

20. **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.

21. **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.

22. **Applicability of Town Ordinances.** The signatories hereto shall be subject to all applicable ordinances of the Town provided that Town represents (i) that it is in compliance with all ordinances applicable to this Agreement and has the authority to enter into and perform its obligations hereunder, and (ii) Town has set aside the amounts payable by Town to Developer hereunder and has obtained all approvals to pay such amounts to Developer hereunder as provided herein.

IN WITNESS WHEREOF, the Parties hereto have caused this document to be executed as of the Effective Date.

THE TOWN OF PROSPER, TEXAS

By: _____
Name: Mario Canizares
Title: Town Manager

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2024, by Mario Canizares, Town Manager for the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

EXHIBIT A
(Depiction of the Property)

Next 1 Page

EXHIBIT B
(Utility Plan)

Next 1 Page

EXHIBIT C
(Plans)

Next 5 Pages

EXHIBIT D
(Construction Costs)

UPPER DOE BRANCH WASTEWATER LINE (TEEL - PISD STADIUM)					
H.E.B. SITE INSTALLATION					
ITEM	DESCRIPTION	UNIT	BID QNTY	UNIT COST	TOTAL ITEM COST
1	15" PVC (SDR 35) WASTEWATER LINE BY OPEN CUT	LF	700	\$ 100.00	\$ 70,000.00
2	12" PVC (SDR 35) WASTEWATER LINE BY OPEN CUT	LF	280	\$ 89.00	\$ 24,920.00
3	5' DIAMETER SSMH (Avg. 17' Depth)	EA	3	\$ 16,158.00	\$ 48,474.00
4	SEWER FITTINGS	LS	1	\$ 3,822.00	\$ 3,822.00
5	WATER TESTING	LF	980	\$ 2.00	\$ 1,960.00
6	TRENCH SAFETY	LF	980	\$ 1.00	\$ 980.00
7	HAUL SPOILS OFFSITE	CY	360	\$ 15.00	\$ 5,400.00
8	MAINTENANCE BOND	LS	1	\$ 3,200.00	\$ 3,200.00
9	GENERAL CONDITIONS	LS	1	\$ 1,340.00	\$ 1,340.00
10	INSURANCE	LS	1	\$ 1,175.00	\$ 1,175.00
11	GC FEE	LS	1	\$ 25,725.00	\$ 25,725.00
	ESTIMATED TOTAL				\$ 186,996.00