

**TRANSACTION FEE AGREEMENT BETWEEN THE TOWN OF PROSPER AND THE CITY OF AUBREY FOR THE RELEASE OF EXTRATERRITORIAL JURISDICTION**

**THIS TRANSACTION FEE AGREEMENT BETWEEN THE TOWN OF PROSPER AND THE CITY OF AUBREY FOR THE RELEASE OF EXTRATERRITORIAL JURISDICTION** (“Agreement”) is entered into by the Town of Prosper, Texas (“Town”), and the City of Aubrey, Texas (“City”), and is to be effective on the date that the last approving Party executes the Agreement. Prosper and Aubrey are sometimes referred to collectively as the “Parties” or individually as a “Party.”

**WHEREAS**, Section 42.023 of the Texas Local Government Code, as amended, authorizes Prosper to reduce its extraterritorial jurisdiction (“ETJ”) by ordinance or resolution; and

**WHEREAS**, the Town has agreed to release and reduce certain of its ETJ, more particularly described in an ordinance contemporaneously adopted by the Town Council of the Town, so that development may occur in the area to be released and reduced; and

**WHEREAS**, the Town anticipates that the area in its ETJ that it releases and reduces will become the ETJ of the City of Aubrey; and

**WHEREAS**, all property to be released and reduced by the Town, as referenced in this Agreement, is contiguous and generally is adjacent to the Town’s existing municipal boundaries and ETJ areas; and

**WHEREAS**, by agreeing to release and reduce its ETJ, the Town has incurred and in the future may incur costs related thereto, and it is the desire of the Parties to address in this Agreement those costs incurred or which may be incurred by the Town related to the release and reduction of ETJ.

**NOW, THEREFORE**, this Agreement is made and entered into by the Town of Prosper and the City of Aubrey, upon and for the mutual consideration hereinafter stated, which entities hereby agree and understand as follows:

**1. Transaction Fee.** The City of Aubrey agrees to pay to the Town of Prosper a transaction fee of \$2,500.00 per acre, as consideration for Prosper’s release of said acreage from the Town’s ETJ, for a total amount of \$62,350.00. This fee shall be paid contemporaneously with or before the Town’s release of any property from its ETJ.

**2. Prosper’s Attorney’s Fees.** The City of Aubrey agrees to pay to the Town of Prosper any attorney’s fees charged to Prosper by its 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 Aubrey’s attorney as well as the provision of advice to applicable Prosper Town Staff and



the future arising, and any applicable permits, ordinances, rules, orders and regulations of any local, State or Federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

**9. Savings/Severability.** The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance shall be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Texas or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstances, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional sections, subsection, provision, clause or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

**10. Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Denton County, Texas, which is the County in which the ETJ property is located. It is specifically agreed between the Parties to this Agreement that Denton County, Texas, is the place of performance of this Agreement; and in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought and exclusive venue shall lie in Denton County, Texas.

**11. Sovereign Immunity.** By entering into and executing this Agreement, the Parties agree they have not and do not waive, limit or surrender their respective sovereign immunity, except as specifically provided for herein.

**12. Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and the presumption or principle that the language herein is to be construed against either 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 Agreement.

**13. Assignment.** This Agreement may not be assigned, in whole or in part, without the prior written approval of all Parties.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original.

**APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF PROSPER, TEXAS**, at its meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2022, and executed by its authorized representative.

**TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_  
Harlan Jefferson  
Title: Town Manager, Town of Prosper

**ATTEST:**

\_\_\_\_\_  
Name: Michelle Lewis Sirianni  
Title: Town Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Name: Terrence S. Welch  
Title: Town Attorney

**APPROVED BY THE CITY COUNCIL FOR THE CITY OF AUBREY, TEXAS**, at its meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2022, and executed by its authorized representative.

**CITY OF AUBREY, TEXAS**

By: \_\_\_\_\_  
Title: City Administrator, City of Aubrey

**ATTEST:**

\_\_\_\_\_  
Name: Jenny Huckabee  
Title: City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Name: Patricia Adams  
Title: City Attorney