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. <u>**Transaction Fee.**</u> 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. <u>Prosper's Attorney's Fees</u>. 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 Prosper Town Council, in an amount not to exceed \$10,000.00, within ten (10) days upon receipt of an invoice of same from Prosper.

3. <u>Effective Date of Agreement</u>. This Agreement shall be deemed effective on and from the date that this Agreement is approved by the Town of Prosper and the City of Aubrey ("Effective Date"), whichever approval occurring last being deemed the Effective Date.

4. <u>Modification</u>. No change, amendment or modification of this Agreement shall be made or be effective except by means of written agreement executed by the Parties hereto.

5. <u>Addresses and Notice</u>. Unless otherwise provided herein, any notice, communication, request, reply or advise (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by either Party to any other Party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For any purposes of notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

If to Prosper, to:	Town of Prosper P.O. Box 307 Prosper, Texas 75078 Attention: Town Manager
If to Aubrey, to:	City of Aubrey 107 S. Main Street Aubrey, Texas 76227 Attention: City Administrator

6. <u>Representations</u>. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that each Party has had an opportunity to confer with its counsel.

7. <u>No Third-Party Beneficiaries</u>. 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.

8. <u>State or Federal Laws, Rules, Orders or Regulations</u>. This Agreement is subject to all applicable Federal and State law, as they exist, may be amended or in

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. <u>Savings/Severability</u>. 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. <u>Venue</u>. 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. <u>Sovereign Immunity</u>. 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. <u>Miscellaneous Drafting Provisions</u>. 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. <u>Assignment</u>. 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

Ву: _____

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