



Agenda
Prosper Town Council Meeting
Prosper Town Hall, Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, January 14, 2025
6:15 PM

Welcome to the Prosper Town Council Meeting.

Citizens may watch the meeting live by using the following link: www.prospertx.gov/livemeetings

Addressing the Town Council:

Those wishing to address the Town Council must complete the Public Comment Request Form located on the Town's website or in the Council Chambers.

If you are attending in person, please submit this form to the Town Secretary or the person recording the minutes for the Board/Commission prior to the meeting. When called upon, please come to the podium, and state your name and address for the record.

If you are watching online, please submit this form to the Town Secretary prior to 4:00 p.m. on the day of the meeting in order for your comments to be read into the record. The Town assumes no responsibility for technical issues beyond our control.

In compliance with the Texas Open Meetings Act, the Town Council/Board/Commission may not deliberate or vote on any matter that does not appear on the agenda. The Council/Board/Commission, however, may provide statements of fact regarding the topic, request the topic be included as part of a future meeting, and/or refer the topic to Town staff for further assistance.

Citizens and other visitors attending Town Council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, profane or slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the meeting shall be removed from the room, if so directed by the Mayor or presiding officer, and the person shall be barred from further audience before the Town Council during that session. Disruption of a public meeting could constitute a violation of Section 42.05 of the Texas Penal Code.

Call to Order/ Roll Call.

Invocation, Pledge of Allegiance and Pledge to the Texas Flag.

Announcements of recent and upcoming events.

Presentations.

1. Presentation regarding the 2024 Mayor's Fitness Challenge. (TH)
2. Presentation recognizing the Town of Prosper's Frontier Park as the Texas Turfgrass Baseball Field of the Year. (MF)

CONSENT AGENDA:

Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda by the request of Council Members or staff.

3. Consider and act upon the minutes from the December 10, 2024, Town Council Work Session meeting. (MLS)
4. Consider and act upon the minutes from the December 10, 2024, Town Council Regular meeting. (MLS)
5. Consider and act upon approving the purchase of ammunition from GT Distributors, Inc. in the amount of \$103,268 utilizing BuyBoard Contract #698-23. (DK)
6. Consider and act upon authorizing the Town Manager to approve an agreement with Nortex Concrete Lift & Stabilization for repairs at various locations throughout Star Trail and Windsong Ranch for \$112,668. (CJ)
7. Consider and act upon authorizing the Town Manager to execute Change Order No. 2 to Dean Construction for two tennis courts at Raymond Community Park in the amount of \$536,146. (DB)
8. Consider and act upon an ordinance establishing a no-parking zone on Bryan Street from Coleman Street to Trail Drive, Dave Trail from Gray Lane to Trail Drive, Gray Lane from Dave Trail to Trail Drive, and Wilson Drive from Gray Lane to Trail Drive. (HW)

CITIZEN COMMENTS

The public is invited to address the Council on any topic. However, the Council is unable to discuss or take action on any topic not listed on this agenda. Please complete a "Public Comment Request Form" and present it to the Town Secretary prior to the meeting. Please limit your comments to three minutes. If multiple individuals wish to speak on a topic, they may yield their three minutes to one individual appointed to speak on their behalf. All individuals yielding their time must be present at the meeting, and the appointed individual will be limited to a total of 15 minutes.

REGULAR AGENDA:

Pursuant to Section 551.007 of the Texas Government Code, individuals wishing to address the Council for items listed as public hearings will be recognized when the public hearing is opened. [If you wish to address the Council, please fill out a "Public Comment Request Form" and present it to the Town Secretary, preferably before the meeting begins.]

Items for Individual Consideration:

9. Presentation of the 2025 Library Master Plan. (GL)
10. Consider and act upon awarding RFP 2025-02-B Construction Manager-At-Risk for the Public Works and Parks Service Center to Byrne Construction Group for \$1,204,986; and authorizing the Town Manager to execute documents for the same. (CE)
11. Discuss and consider Town Council Subcommittee reports. (DFB)

Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

Section 551.087 – To discuss and consider economic development incentives and all matters incident and related thereto.

Section 551.072 – To discuss and consider the purchase, exchange, lease, or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.089 - To deliberate security information collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity, pursuant to Section 2059.055 of the Texas Government Code, and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with code enforcement activities and substandard structures, law enforcement activities, and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding BFS Real Estate LLC, et al., v. Town of Prosper, et al., pending in the 471st Judicial District Court of Collin County, Texas, and all matters incident and related thereto.

Section 551.074 - To discuss appointments to the Board of Adjustment/Construction Board of Appeals, Prosper Economic Development Corporation Board, Community Engagement Committee, Downtown Advisory Committee, Library Board, Parks and Recreation Board, Planning and Zoning Commission, and all matters incident and related thereto.

Reconvene in Regular Session and take any action necessary as a result of the Closed Session.

Adjourn.

CERTIFICATION

I, the undersigned authority, do hereby certify that this Notice of Meeting was posted at Prosper Town Hall, located at 250 W. First Street, Prosper, Texas 75078, a place convenient and readily accessible to the general public at all times, and said Notice was posted by 5:00 p.m., on Friday, January 10, 2025, and remained so posted at least 72 hours before said meeting was convened.

Michelle Lewis Sirianni, Town Secretary

Date Notice Removed

Pursuant to Section 551.071 of the Texas Government Code, the Town Council reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

NOTICE

Pursuant to Town of Prosper Ordinance No. 13-63, all speakers other than Town of Prosper staff are limited to three (3) minutes per person, per item, which may be extended for an additional two (2) minutes with approval of a majority vote of the Town Council.

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS: The Prosper Town Council meetings are wheelchair accessible. For special services or assistance, please contact the Town Secretary's Office at (972) 569-1073 at least 48 hours prior to the meeting time.



MINUTES

Item 3.

Prosper Town Council Work Session
Prosper Town Hall – Council Chambers
250 W. First Street, Prosper, Texas
Tuesday, December 10, 2024

Call to Order/ Roll Call.

The meeting was called to order at 5:00 p.m.

Council Members Present:

Mayor David F. Bristol
Mayor Pro-Tem Marcus E. Ray
Deputy Mayor Pro-Tem Amy Bartley
Councilmember Craig Andres
Councilmember Chris Kern
Councilmember Jeff Hodges
Councilmember Cameron Reeves

Staff Members Present:

Mario Canizares, Town Manager
Jeremy Page, Town Attorney
Michelle Lewis Sirianni, Town Secretary
Bob Scott, Deputy Town Manager
Chuck Ewings, Assistant Town Manager
Robyn Battle, Executive Director
Dan Baker, Parks & Recreation Director
Kaylynn Stone, Special Events Manager
David Hoover, Development Services Director
Hulon Webb, Engineering Director
Pete Anaya, Assistant Director of Engineering - Capital Projects

Items for Individual Consideration:

1. Receive a presentation regarding the Children's Hunger Fund project. (MLS)

Michael Richards, Senior Vice-President of Children's Hunger Fund provided an update on the facility that is coming to Prosper, which included a layout of the building, the experiences it will offer, and how the project came to the area.

2. Discussion regarding a potential partnership for a Downtown concert in Spring 2025. (DB)

Mr. Baker presented the item, providing an overview of the event and what the Town's obligations would include.

The Town Council discussed the sponsorship and cost, projected attendance numbers, and the partnership with the downtown businesses. The consensus of the Town Council was to move forward with planning and drafting an agreement for the event.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

Section 551.087 – To discuss and consider economic development incentives and all matters incident and related thereto.

Section 551.072 – To discuss and consider the purchase, exchange, lease, or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with code enforcement activities and substandard structures, law enforcement activities, and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with irrigation and water supply contracts, and all matters incident and related thereto.

Section 551.071 – Consultation with the Town Attorney to discuss legal issues associated with any agenda item.

The Town Council recessed into Executive Session at 5:50 p.m.

Reconvene into Work Session.

The Town Council reconvened into the Work Session at 6:19 p.m.

No action was taken.

Adjourn.

The meeting was adjourned at 6:19 p.m.

These minutes were approved on the 14th day of January 2025.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

MINUTES

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250 W. First Street, Prosper, Texas
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Call to Order/ Roll Call.

The meeting was called to order at 6:19 p.m.

Council Members Present:

Mayor David F. Bristol
Mayor Pro-Tem Marcus E. Ray
Deputy Mayor Pro-Tem Amy Bartley
Councilmember Craig Andres
Councilmember Chris Kern
Councilmember Jeff Hodges
Councilmember Cameron Reeves

Staff Members Present:

Mario Canizares, Town Manager
Jeremy Page, Town Attorney
Michelle Lewis Sirianni, Town Secretary
Bob Scott, Deputy Town Manager
Chuck Ewings, Assistant Town Manager
Robyn Battle, Executive Director
Mary Ann Moon, EDC Executive Director
David Hoover, Development Services Director
Suzanne Porter, Planning Manager
Dakari Hill, Senior Planner
Pete Anaya, Assistant Director of Engineering – Capital Projects
Leigh Johnson, IT Director
Muya Mwangi, Help Desk Technician I
Dan Baker, Parks & Recreation Director
Carrie Jones, Public Works Director
Tony Luton, Human Resources Director
Chris Landrum, Finance Director
Wilson Haynes, Communications Specialist
Doug Kowalski, Police Chief
Scott Brewer, Assistant Police Chief
Aidan Daily, Police Crime Analyst

Invocation, Pledge of Allegiance and Pledge to the Texas Flag.

Jeremy Meister with Gateway Church led the invocation. The Pledge of Allegiance and the Pledge to the Texas Flag were led by Prosper Cub Scout Pack 289.

Announcements of recent and upcoming events.

Councilmember Reeves made the following announcements:

We would like to thank everyone who came out for the Christmas Festival this past Saturday, especially due to the weather conditions. A special thanks to our Parks and Recreation Department for all their hard work preparing for the event, the Rotary for putting on the parade, all the staff who helped and volunteered, and the vendors, and the sponsors for all venturing out in the rain.

Join Mayor Bristol and members of the Prosper Town Council and staff on Saturday, December 14 from 10:00 a.m. to 6:00 p.m. for the ringing of the bell for the Salvation Army Red Kettle Challenge at the Kroger located at 1250 N. Preston Road. All money raised will support various services that combat poverty, addiction, and homelessness in Collin County.

A reminder that Town Hall Offices will be closed on Tuesday, December 24, and Wednesday, December 25 for the Christmas Holiday and Wednesday, January 1 for the New Year's Holiday. Trash services will be delayed by one day due to the Christmas and New Year's holidays. The special bulk drop-off location at Public Works will be closed on Saturday, December 28.

The Prosper Community Library will close at 4 p.m. on Monday, December 23, and remain closed through Wednesday, December 25 for the Christmas Holiday. The Library will also close at 4 p.m. on Tuesday, December 31, and remain closed through Wednesday, January 1 for the New Year's Holiday.

Lastly, a reminder that the Tuesday, December 24 Town Council Work Session and Regular meeting have been cancelled. We wish everyone a Happy Holiday Season and New Year!

CONSENT AGENDA:

Items placed on the Consent Agenda are considered routine in nature and non-controversial. The Consent Agenda can be acted upon in one motion. Items may be removed from the Consent Agenda at the request of Council Members or staff.

1. **Consider and act upon the minutes from the November 26, 2024, Town Council Work Session meeting. (MLS)**
2. **Consider and act upon the minutes from the November 26, 2024, Town Council Regular meeting. (MLS)**
3. **Consider acceptance of the September 2024 monthly financial report. (CL)**
4. **Receive the Quarterly Investment Report for September 30, 2024. (CL)**
5. **Consider and act upon awarding RFP No. 2024-36-B Compensation and Classification Services to Evergreen Solutions for \$52,500 and authorizing the Town Manager to execute all documents for the same. (TL)**
6. **Consider and act upon authorizing the Town Manager to enter into a Professional Services Agreement with GFF Design to conduct a facility needs assessment for the Police Department in the amount of \$78,500. (CE)**
7. **Consider and act upon authorizing the Town Manager to execute a Memorandum of Understanding between Costco Wholesale Corporation, WestSide Prosper LLC, and the Town of Prosper, Texas, related to the construction of the US 380 Improvements to serve the Costco development. (HW)**
8. **Consider and act upon authorizing the Town Manager to execute a Change Order to the Advance Funding Agreement for Voluntary Local Government Contributions to Texas Improvement Projects with No Required Match for On-System Improvements between the Texas Department of Transportation, and the Town of Prosper, Texas, related to the construction of the US 380 Improvements to serve the Costco development. (HW)**

9. Consider and act upon authorizing the Town Manager to enter into an agreement with Mels Electric LLC, related to the installation of the Traffic Signal at Fishtrap Road and Denton Way Intersection project for \$300,932.50. (PA)
10. Consider and act upon Ordinance 2024-76 to rezone 5.7± acres from Agricultural (AG) to Planned Development-130 (PD-130) on George Horn Survey, Abstract 412, Tract 2, located on the west side of Custer Road and 470± feet south of Frontier Parkway. (ZONE-24-0017) (DH)
11. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Naznat LP and the Town of Prosper relative to George Horn Survey, Abstract 412, Tract 2. (ZONE-24-0017) (DH)
12. Consider and act upon Ordinance 2024-77 to rezone 120.5± acres from Planned Development-44 (PD-44) to Planned Development-129 (PD-129) on Collin County School Land Survey 12, Abstract 147, Tract 45, located on the southeast corner of Legacy Drive and Frontier Parkway. (ZONE-24-0013) (DH)
13. Consider and act upon authorizing the Town Manager to execute a Development Agreement between Legacy Frontier LLC and the Town of Prosper relative to Collin County School Land Survey 12, Abstract 147, Tract 45. (ZONE-24-0013) (DH)
14. Consider and act upon whether to direct staff to submit a written notice of appeals on behalf of the Town Council to the Development Services Department, pursuant to Chapter 4, Section 1.5(C)(7) and 1.6(B)(7) of the Town's Zoning Ordinance, regarding action taken by the Planning & Zoning Commission on Preliminary Site Plans and Site Plans. (DH)

Deputy Mayor Pro-Tem Bartley requested to pull items 12 and 14.

Deputy Mayor Pro-Tem Bartley moved to approve consent agenda items 1 through 11, and 13. Councilmember Reeves seconded the motion. Motion carried unanimously.

Regarding item 12, Deputy Mayor Pro-Tem Bartley asked for clarification on the retail uses listed within Exhibit C. Mr. Hoover clarified and noted that Exhibit C marked Retail would be corrected to be reflected accurately as previously discussed.

Deputy Mayor Pro-Tem Bartley made a motion to approve item 12. Mayor Pro-Tem Ray seconded the motion. Motion carried unanimously.

Regarding item 14, Deputy Mayor Pro-Tem Bartley inquired if the developer knew of the Town's landscaping and maintenance requirements and/or if there would be a Property Owner's Association (POA). Mr. Hoover noted they will have a POA.

Deputy Mayor Pro-Tem Bartley made a motion to approve item 14. Councilmember Andres seconded the motion. Motion carried unanimously.

CITIZEN COMMENTS

Jenny Rau, 260 Stephanie Lane, deferred her time to Mr. DaCosta.

Gwen Ray, 341 Stephanie Lane, deferred her time to Mr. DaCosta.

Octavio DaCosta, 141 Dave Trail, expressed concerns regarding the safety of children during school drop-off and pick-up at Reynolds Middle School. There has been an increase in cars stopping on Wilson Drive, Gray Lane, Dave Trail, and Bryan Street. Mr. DaCosta requested the Town Council to consider enforcing a no-parking/no-stopping restriction from 3:00 p.m. to 4:00 p.m. on these streets to help with this matter.

Items for Individual Consideration:

- 15. Conduct a public hearing and consider and act upon Ordinance 2024-78 to amend Planned Development-26 (Prosper Business Park), on 71.1± acres, to reduce the minimum side setback adjacent to Technology Lane on Prosper Business Park, Block B, Lot 9, located on the northeast corner of Mike Howard Lane and Safety Way. (ZONE-24-0023) (DH)**

Mr. Hoover presented this item stating the request to amend the PD is to allow for a reduced side yard setback adjacent to Technology Lane. The amendment would only permit the reduction to Lot 9. However, the reduced side yard setback would provide additional screening for the storage yard to the east of the development. The Planning and Zoning Commission recommended approval with no notices received. Staff is recommending approval.

Mayor Bristol opened the public hearing.

No comments were made.

Mayor Bristol closed the public hearing.

Councilmember Andres made a motion to approve an Ordinance 2024-78 to amend Planned Development-26 (Prosper Business Park), on 71.1± acres, to reduce the minimum side setback adjacent to Technology Lane on Prosper Business Park, Block B, Lot 9, located on the northeast corner of Mike Howard Lane and Safety Way. Councilmember Reeves seconded the motion. Motion carried unanimously.

- 16. Consider and act upon Ordinance 2024-79 amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget). (CL)**

Mr. Landrum presented the item outlining the specific funds, amounts of the transfers, and reasoning behind the amendments to each fund. Mr. Landrum noted the item was presented to the Finance Subcommittee for their review.

The Town Council discussed the amendment to the General Fund regarding Police overtime, and the expectations to stay within each department's respective budgets. Mr. Canizares emphasized that staff will continually monitor and identify trends during the fiscal year. Chief Kowalski addressed their policy, how they are moving forward, and now monitoring with the help of the Finance Department.

Mayor Pro-Tem Ray made a motion to approve Ordinance 2024-79 amending Ordinance No. 2023-60 (FY 2023-2024 Annual Budget). Councilmember Kern seconded the motion. Motion carried unanimously.

- 17. Consider and act upon authorizing the Town Manager to execute Change Order No. 1 to Dean Construction to include a water well and all required appurtenances, new electrical service to a well and well equipment, multi-use field irrigation, and a hike and bike trail with a pedestrian bridge at Raymond Community Park in the amount of \$2,637,633. (DB)**

Mr. Baker presented the item providing an overview of the original budget and funding sources for the project, including the costs associated with the addition of the well and irrigation, the hike and bike trail, tennis courts, and multipurpose field irrigation if the Council approves the Change Order. The anticipated completion date of the park is Summer 2025. The CIP Subcommittee reviewed this item and recommended approving the Change Order with the following caveats: to not fund the well until a solution can be developed, to approve the bid alternates for the tennis courts, the multipurpose fields irrigation, and the trail project.

The Town Council discussed the recommendations provided by the CIP Subcommittee, including the hike and bike trail, the multipurpose field, and the well.

Mr. Canizares added that the caption does not include the tennis courts. Therefore, would need consensus from the Town Council and the item would come back to ratify the CO to include the tennis courts.

Deputy Mayor Pro-Tem Bartley made a motion to approve a Change Order for Raymond Community Park to include multi-use field irrigation for \$458,426 and the trail project for \$1,000,000. Councilmember Hodges seconded the motion. Motion carried unanimously.

18. Discuss and provide design feedback on the First Street (Coleman – Craig) project. (HW)

Mr. Webb presented the item for the design of the First Street project, which includes the construction of two lanes with a continuous center turn lane, a five-foot sidewalk on the north side, and a ten-foot sidewalk on the south side of the roadway. The proposed ten-foot sidewalk is per the Town's Hike and Bike Trails Master Plan. To address concerns on the south side of First Street, the staff is seeking feedback to consider either relocating the ten-foot sidewalk to the north side of the roadway or reducing the width of the sidewalk to eight feet.

Councilmember Reeves provided feedback received from residents who expressed concerns about speeding. Councilmember Andres questioned if reducing the size of the sidewalk would affect the right-of-way for utility work. Mr. Webb commented that it would not, and they would have the necessary access.

Mr. Webb stated that staff would plan on having a public meeting to communicate the feedback received from the Town Council showing the eight-foot sidewalk.

19. Discuss and consider Town Council Subcommittee reports. (DFB)

Legislative Subcommittee: Councilmember Andres noted they are preparing and planning key items coming forward in the next Legislative session and engagement with the delegation.

CIP Subcommittee: Deputy Mayor Pro-Tem Bartley noted they discussed cameras for Raymond Community Park, locations and funding for additional zap stands, and the timeline for the Prosper Trail project.

Community Engagement Committee: Mayor Pro-Tem Ray noted they discussed a recap of the recommendations made to the Parks and Recreation Board regarding events, a desire to collaborate more with the Board, and did some vision casting regarding possible future items.

Downtown Advisory Committee: Councilmember Reeves noted they discussed recent updates regarding the sidewalk staining and the parking lot behind the EDC. The committee discussed several key elements, including the installation of bollards and park benches. They were also guided to focus on specific items outlined in the Master Plan. Additionally, there was a strong interest expressed in establishing a Farmer's Market.

Possibly direct Town staff to schedule topic(s) for discussion at a future meeting.

Mayor Bristol asked to bring back a solution to the parking mentioned during Citizen Comments and to add Board and Commissions for the Downtown Advisory Committee to the next meeting agenda.

Deputy Mayor Pro-Tem Bartley requested an update on Lakewood Park and the cost of the repairs due to the recent damage at the park.

EXECUTIVE SESSION:

Recess into Closed Session in compliance with Section 551.001 et seq. Texas Government Code, as authorized by the Texas Open Meetings Act, to deliberate regarding:

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Section 551.072 – To discuss and consider the purchase, exchange, lease, or value of real property for municipal purposes and all matters incident and related thereto.

Section 551.074 – To discuss and consider personnel matters and all matters incident and related thereto.

Section 551.071 - To consult with the Town Attorney regarding legal issues associated with code enforcement activities and substandard structures, law enforcement activities, and all matters incident and related thereto.

Section 551.071: To consult with the Town Attorney regarding legal issues associated with irrigation and water supply contracts, and all matters incident and related thereto.

The Town Council recessed into Executive Session at 7:38 p.m.

Reconvene in Regular Session and take any action necessary as a result of the Closed Session.

The Town Council reconvened into Regular Session at 8:34 p.m.

Mayor Pro-Tem Ray made a motion to authorize the Town Manager to execute documentation for the purchase and sale of property described as Bryant's First Addition, Block 3, Lots 3, 4, and 5, to the Prosper EDC pursuant to the terms discussed in Closed Session. Councilmember Kern seconded the motion. Motion carried unanimously.

Adjourn.

The meeting was adjourned at 8:35 p.m.

These minutes were approved on the 14th day of January 2025.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

DRAFT



POLICE DEPARTMENT

To: Mayor and Town Council
From: Doug Kowalski, Police Chief
Through: Mario Canizares, Town Manager
Re: FY2025 Ammunition Purchase

Town Council Meeting – January 14, 2025

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon approving the purchase of ammunition from GT Distributors, Inc. in the amount of \$103,268 utilizing BuyBoard Contract #698-23.

Description of Agenda Item:

This item is being submitted as part of the Fiscal Year 2025 budget to purchase ammunition for training and duty use of new and existing sworn positions.

Budget Impact:

Total cost of \$103,268.11 and will be funded from the Police Department, Patrol Division, Ammunition account #12022011-52210.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. GT Distributor Quote

Town Staff Recommendation:

Town Staff recommends that the Town Council approve the purchase of ammunition from GT Distributors, Inc. in the amount of \$103,268 utilizing BuyBoard Contract #698-23.

Proposed Motion:

I move to approve the purchase of ammunition from GT Distributors, Inc. in the amount of \$103,268 utilizing BuyBoard Contract #698-23.



GT Distributors - Austin
1124 New Meister Ln., Ste 100
Pflugerville TX 78660
(512) 451-8298 Ext. 0000

Quote	QTE0107022
Date	10/1/2020 Item 5.
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Bill To:

Prosper, Town of (TX)
Attn: Accounts Payable
P.O. Box 307
Prosper TX 75078

Ship To:

Prosper, Town of (TX)
801 Safety Way
Attn: Lt. Barrett Morris
PO #:
Prosper TX 75078

Purchase Order No.		Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
MORRIS 01OCT24 AM		005576	MPH	FACTORY DIRECT	NET 15	0/0/0000	2,969,048
Quantity	Item Number	Description			UOM	Unit Price	Ext. Price
75.00	FC-AE9AP*	Federal Cartridge 9Mm 124 Gr FMJ			M	\$301.44	\$22,608.00
20.00	CCI-53618*	CCI-9MM 124 GR GDHP			M	\$656.57	\$13,131.40
1,000	HORNADY-FR200-BX*	Hornady Frontier 5.56 20/BX 55gr FMJ			BX	\$9.52	\$9,520.00
16.00	FC-LE223T3*	Federal Cartridge-.223 62 Gr. Tactical			M	\$2,069.67	\$33,114.72
200	HORNADY-80725-BX*	Hornady 308 Win 168 Gr Eld Match Tap 20/Box			BX	\$28.79	\$5,758.00
100	FOF-FF556B1-BX	Force on Force 5.56Marking 20/BX Blue			BX	\$20.01	\$2,001.00
40	FOF-FF9B2-BX	Force on Force 9mm 50/BX Blue			BX	\$42.10	\$1,684.00
100	DT-8922NRSC*	Deftech *FEL* Low Roll II DD - Non-Reload w/ s			EA	\$84.15	\$8,415.00
150	DT-6326-A*	Direct Impact® Round, Marking, Adjustable Rar			EA	\$45.24	\$6,786.00
1	NOTES:	Notes: Contact Name: Lt. Barrett Morris Phone number: 972-569-1032 Email: bmorris@prospertx.gov Special Instructions: N/A			EA	\$0.00	\$0.00
1	NOTES:	Notes: Quotation reflects BuyBoard Contract 698-23. Contract period 4/1/23-3/31/25. Email BuyBoard PO's to info@buyboard.com			EA	\$0.00	\$0.00
1	NOTES:	Notes: Quote is valid for 30 days. QUOTE # MUST BE REFERENCED ON PO. Freight may vary with quantity changes, reconsignment or lift-gate requirements.			EA	\$0.00	\$0.00



GT Distributors - Austin
1124 New Meister Ln., Ste 100
Pflugerville TX 78660
(512) 451-8298 Ext. 0000

Quote	QTE0107022
Date	10/1/2020 Item 5.
Page:	2

Bill To:

Prosper, Town of (TX)
Attn: Accounts Payable
P.O. Box 307
Prosper TX 75078

Ship To:

Prosper, Town of (TX)
801 Safety Way
Attn: Lt. Barrett Morris
PO #:
Prosper TX 75078

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
MORRIS 01OCT24 AM	005576	MPH	FACTORY DIRECT	NET 15	0/0/0000	2,969,048
Quantity	Item Number	Description	UOM	Unit Price	Ext. Price	
1	NOTES:	Notes: Ammo manufacturers are currently quoting lead-times of 12-months, or greater, on SOME SKUs.	EA	\$0.00	\$0.00	
1	NOTES:	Notes: Def Tech is currently quoting lead-times of 45-60 days (not including launchers). Launcher lead times may vary upon ATF approval times.	EA	\$0.00	\$0.00	

QUOTE IS GOOD FOR 30 DAYS. IN ORDER TO RECEIVE QUOTED PRICE PLEASE PRESENT A COPY OF QUOTE AT POINT OF SALE IN STORES OR REFERENCE QUOTE NUMBER ON PO OR REQUISITION

Morris, Barrett
BMorris@prospertx.gov
Your salesperson was James.
We appreciate your business!

Subtotal	\$103,018.12
Misc	\$0.00
Tax	\$0.00
Freight	\$249.99
Total	\$



PUBLIC WORKS

To: Mayor and Town Council

From: Carrie Jones, Director of Public Works

Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager

Re: Agreement with Nortex Concrete Lift & Stabilization for various repairs in Starr Trail and Windsong

Town Council Meeting – January 14, 2025

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon authorizing the Town Manager to approve an agreement with Nortex Concrete Lift & Stabilization for repairs at various locations throughout Starr Trail and Windsong Ranch for \$112,668.

Description of Agenda Item:

Existing concrete panels at various locations throughout the neighborhoods of Starr Trail and Windsong Ranch have sunken creating low spots where water holds. The concrete at each of these locations is still in good condition and candidates to have the concrete lifted to remove the low spot. The proposed agreement with Nortex is to inject polymer to stabilize and void fill each panel to level and improve the existing condition. The work is estimated to take no longer than 30 working days, weather permitting.

These services have been procured utilizing the TxShare Co-Operative through the North Central Texas Council of Governments.

Budget Impact:

The annual streets budget provides funding for annual maintenance activities up to \$1,120,000.00. This proposal is \$112,667.50 to be charged to account 15050010-56120, Contract – Annual Street Maintenance.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Nortex Proposal
2. TxSHARE Contract

Town Staff Recommendation:

Town Staff recommends authorizing the Town Manager to approve an agreement with Nortex Concrete Lift & Stabilization for repairs at various locations throughout Starr Trail and Windsong for \$112,668.

Proposed Motion:

I move to authorize the Town Manager to approve an agreement with Nortex Concrete Lift & Stabilization for repairs at various locations throughout Starr Trail and Windsong for \$112,668.



**MASTER SERVICES AGREEMENT #2024-108
Concrete Pavement Panel Lifting Services**

THIS MASTER SERVICES AGREEMENT (“**Agreement**”), effective the last date of signed approval (“**Effective Date**”), is entered into by and between the **North Central Texas Council of Governments** (“**NCTCOG**”), a Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and

Nortex Concrete Lift & Stabilization, Inc.
 (“**Contractor**”)
 with offices located at
201 NW 26th Street
Fort Worth, TX 76164

**ARTICLE I
RETENTION OF THE CONTRACTOR**

- 1.1 This Agreement defines the terms and conditions upon which the Contractor agrees to provide Executive Search Consulting and Related Services, (hereinafter, “Services”) to governmental entities participating in the TXShare program (hereinafter “Participating Entities”). The Contractor is being retained to provide services described below to Participating Entities based on the Contractor’s demonstrated competence and requisite qualifications to perform the scope of the services described herein and in the Request for Proposals #2024-108 (hereinafter, “RFP”). In the event of a conflict between this Agreement and the RFP, this Agreement will prevail. The Contractor demonstrated they have the resources, experience, and qualifications to perform the described services, which is of interest to Participating Entities and was procured via the RFP. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide services to Participating Entities, in accordance with the terms and conditions provided in this Agreement and consistent with Contractor’s response to the RFP.

**ARTICLE II
SCOPE OF SERVICES**

- 2.1 The Contractor will provide Services described in a written Purchase Order issued by NCTCOG or a TXShare Participating Entity. Any such Purchase Order is hereby incorporated by reference and made a part of this Agreement and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Purchase Order, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Purchase Order.

- 2.2 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; iii) in accordance with Participating Entities' standard operating procedures and applicable policies, as may be amended from time to time; and iv) in compliance with all applicable laws, government regulatory requirements, and any other written instructions, specifications, guidelines, or requirements provided by NCTCOG and/or Participating Entities.
- 2.3 Any agreed-upon changes to a Purchase Order shall be set forth in a subsequent Purchase Order amendment. Contractor will not implement any changes, or any new Services until a Purchase Order has been duly executed by Participating Entity. For the avoidance of doubt, the Contractor acknowledges that Participating Entity is under no obligation to execute a Purchase Order. Participating Entity shall not be liable for any amounts not included in a Purchase Order in the absence of a fully executed amendment of Purchase Order.
- 2.4 Pricing for items in Appendix A represent the maximum cost for each item offered by the Contractor. Contractor and Participating Entity may mutually agree to a lower cost for any item covered under this agreement.
- 2.5 **NCTCOG Obligations**
- 2.5.1 NCTCOG shall make available a contract page on its TXShare.org website which will include contact information for the Contractor(s).
- 2.6 **Participating Entity Obligations.**
- 2.6.1 In order to utilize the Services, Participating Entities must have executed a Master Interlocal Agreement for TXShare with NCTCOG. This agreement with the Participating Entity will define the legal relationship between NCTCOG and the Participating Entity.
- 2.6.2 In order to utilize the Services, Participating Entities must execute a Purchase Order with the Contractor. This agreement with the Participating Entity will define the Services and costs that the Participating Entity desires to have implemented by the Contractor.
- 2.7 **Contractor Obligations.**
- 2.7.1 Contractor must be able to deliver, perform, install, and implement services with the requirements and intent of the RFP.
- 2.7.2 If applicable, Contractor shall provide all necessary material, labor and management required to perform this work. The scope of services shall include, but not be limited to, items listed in Appendix A.
- 2.7.3 Contractor agrees to market and promote the use of the TXSHARE awarded contract whenever possible among its current and solicited customer base, such as, but not limited to via the Contractor's website. Contractor shall agree to follow reporting requirements and report sales made under this Master Services Agreement in accordance with Section 4.2.

ARTICLE III TERM

- 3.1 This Agreement will commence on the Effective Date and remain in effect for an initial term ending on **November 30, 2026** (the "**Term**"), unless earlier terminated as provided herein. This Agreement will automatically be renewed, unless NCTCOG explicitly desires otherwise, for an additional term, through **November 30, 2029**.
- 3.2 **Termination.** NCTCOG and/or Participating Entities may terminate this Agreement and/or any Purchase Order to which it is a signatory at any time, with or without cause, upon thirty (30) days' prior written notice to Contractor. Upon its receipt of notice of termination of this Agreement or Purchase Order, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and/or Participating Entities to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG or Participating Entity at its request. If NCTCOG or Participating Entity elects to continue any activities underlying a terminated

Purchase Order after termination, Contractor shall cooperate with NCTCOG or Participating Entity to provide for an orderly transfer of Contractor's responsibilities with respect to such Purchase Order to NCTCOG or Participating Entity. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG or Participating Entity shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG or Participating Entity shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

- 3.2.1 **Termination for Cause:** Either party may immediately terminate this Agreement if the other party breaches its obligations specified within this Agreement, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- 3.2.2 **Breach:** Upon any material breach of this Agreement by either party, the non-breaching party may terminate this Agreement upon twenty (20) days written notice to the breaching party. The notice shall become effective at the end of the twenty (20) day period unless the breaching party cures such breach within such period.

ARTICLE IV COMPENSATION

- 4.1 **Invoices.** Contractor shall submit an invoice to the ordering Participating Entity in accordance with billing terms as stated in Appendix A for each Scope of Service. If billing terms are not specified for a particular Scope of Service, then the Contractor will submit an invoice to the Participating Entity upon receipt of an executed Purchase Order and after completion of the work, with Net 30 payment terms.

Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG or Participating Entities, other than from the monies designated for this Agreement and/or executed Purchase Order. Contractor expressly agrees that NCTCOG shall not be liable, financial or otherwise, for Services provided to Participating Entities.

- 4.2 **Reporting.** NCTCOG intends to make this Agreement available to other governmental entities through its TXShare cooperative purchasing program. Contractor shall submit to NCTCOG on a calendar quarterly basis a report that identifies any new client Participating Entities, the date and order number, and the total contracted value of services that each Participating Entity has purchased and paid in full under this Master Service Agreement. Reporting and invoices should be submitted to:

NCTCOG
ATTN: TXShare
PO Box 5888
Arlington, TX 76005-5888
Email: TXShare@nctcog.org

ARTICLE V SERVICE FEE

- 5.1 **Explanation.** NCTCOG will make this Master Service Agreement available to other governmental entities, Participating Entities, and non-profit agencies in Texas and the rest of the United States through its TXShare cooperative purchasing program. The Contractor is able to market the Services under this Agreement to any

Participating Entity with emphasis that competitive solicitation is not required when the Participating Entity purchases off of a cooperative purchasing program such as TXShare. However, each Participating Entity will make the decision that it feels is in compliance with its own purchasing requirements. The Contractor realizes substantial efficiencies through their ability to offer pricing through the TXShare Cooperative and that will increase the sales opportunities as well as reduce the need to repeatedly respond to Participating Entities' Requests for Proposals. From these efficiencies, Contractor will pay an administrative fee to TXShare calculated as a percentage of sales processed through the TXShare Master Services Agreement. This administrative fee is not an added cost to TXShare participants. This administrative fee covers the costs of solicitation of the contract, marketing and facilitation, as well as offsets expenses incurred by TXShare.

- 5.2 **Administrative Fee.** NCTCOG will utilize an administrative fee, in the form of a percent of cost that will apply to all contracts between awarded contractors and NCTCOG or participants resulting from this solicitation. The administrative fee will be remitted by the Contractor to NCTCOG on a quarterly basis, along with required quarterly reporting. The remuneration fee for this program will be 2% on all fees for service, with the exception of expenses that are passed through to Participating Entities without markup from the Contractor, such as, but not limited to, advertising, travel expenses and per diem costs, temporary housing, and materials production.
- 5.3 **Setup and Implementation.** NCTCOG will provide instruction and guidance as needed to the Contractor to assist in maximizing mutual benefits from marketing these Services through the TXShare purchasing program.

ARTICLE VI RELATIONSHIP BETWEEN THE PARTIES

- 6.1 **Contractual Relationship.** It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder and shall give reasonable proof and supporting documents, if reasonably requested, to verify the payment of such taxes. No Contractor personnel shall obtain the status of or otherwise be considered an employee of NCTCOG or Participating Entity by virtue of their activities under this Agreement.

ARTICLE VII REPRESENTATION AND WARRANTIES

- 7.1 **Representations and Warranties.** Contractor represents and warrants that:
- 7.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor's performance under this Agreement; or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;
- 7.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.

- 7.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor's sub-contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor's sub-contractors may result in immediate termination of this Agreement.
- 7.1.4 Contractor and its employees and sub-contractors have all necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing.
- 7.1.5 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor's obligations under this Agreement.

ARTICLE VIII CONFIDENTIAL INFORMATION AND OWNERSHIP

- 8.1 **Confidential Information.** Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG or Participating Entities, its products, services, policies, customer, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor's retention hereunder or at any time thereafter without the express written permission of NCTCOG or Participating Entity.

Notwithstanding anything in this Agreement to the contrary, Contractor shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Contractor; (ii) was in Contractor's lawful possession prior to the disclosure and had not been obtained by Contractor either directly or indirectly from the NCTCOG or Participating Entity; (iii) is lawfully disclosed to Contractor by a third party without restriction on disclosure; (iv) is independently developed by Contractor without use of or reference to the NCTCOG's Participating Entity's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Contractor gives the NCTCOG or Participating Entity prompt written notice of such requirement to permit the NCTCOG or Participating Entity to seek a protective order or other appropriate relief. Contractor acknowledges that NCTCOG and Participating Entities must strictly comply with applicable public information laws, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.

8.2 **Ownership.** No title or ownership rights to any applicable software are transferred to the NCTCOG by this agreement. The Contractor and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the software (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications NCTCOG may develop), and all copies thereof. All final documents, data, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor's invoices therefore, the property of NCTCOG or Participating Entity and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG or Participating Entity, except otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by NCTCOG or Participating Entity for any documentation related to this Agreement and/or applicable Purchase Orders for the NCTCOG and/or any Participating Entity, whether after termination of this Agreement or otherwise, the same shall be turned over to NCTCOG without delay, and in no event later than thirty (30) days after such demand is made. Contractor shall have the right to retain copies of documentation, and other items for its archives. If for any reason the foregoing Agreement regarding the ownership of documentation is determined to be unenforceable, either in whole or in part, the Contractor hereby assigns and agrees to assign to NCTCOG all rights, title, and interest that the Contractor may have or at any time acquire in said documentation and other materials, provided that the Contractor has been paid the aforesaid.

ARTICLE IX GENERAL PROVISIONS

- 9.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to NCTCOG:

North Central Texas Council of Governments
P.O. Box 5888
Arlington, TX 76005-5888
Attn: Charlie Oberrender
(817) 695-9289
coberrender@nctcog.org

If to Contractor:

Nortex Concrete Lift & Stabilization, Inc.
201 NW 26th Street
Fort Worth, TX 76164
Attn: Casey DeRosa
casey@nortexconcretelift.com
(817) 831-1240

The above contact information may be modified without requiring an amendment to the Agreement.

- 9.2 **Tax.** NCTCOG and several participating entities are exempt from Texas limited sales, federal excise and use tax, and does not pay tax on purchase, rental, or lease of tangible personal property for the organization's use. A tax exemption certificate will be issued upon request.
- 9.3 **Indemnification.** Contractor shall defend, indemnify, and hold harmless NCTCOG and Participating Entities, NCTCOG's affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and court costs) (collectively, "Losses") arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG's or Participating Entities' gross negligence or willful misconduct.
- 9.4 **Limitation of Liability.** In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise, even if it has been advised of their possible existence or if such loss, damages or expenses were reasonably foreseeable.

Notwithstanding any provision hereof to the contrary, neither party's liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party's infringement of the other party's intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

9.5 Insurance. At all times during the term of this Agreement, Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, unless otherwise agreed in a Purchase Order between Contractor and Participating Entities. Further, Contractor shall require all contractors and sub-contractors performing work for which the same liabilities may apply under this Agreement to do likewise. All subcontractors performing work for which the same liabilities may apply under this contract shall be required to do likewise. Contractor may cause the insurance to be effected in whole or in part by the contractors or sub-contractors under their contracts. NCTCOG reserves the right to waive or modify insurance requirements at its sole discretion.

Requirements:

Workers' Compensation:

Statutory limits and employer's liability of \$100,000 for each accident or disease.

Commercial General Liability with NCTCOG endorsed as a Named Additional Insured.

Required Limits:

\$1,000,000 per occurrence;

\$3,000,000 Annual Aggregate

Commercial General Liability policy with NCTCOG endorsed as a Named Additional Insured.

Shall include:

Coverage A: Bodily injury and property damage;

Coverage B: Personal and Advertising Injury liability;

Coverage C: Medical Payments;

Products: Completed Operations;

Fire Legal Liability;

Policy coverage must be on an "occurrence" basis using CGL forms as approved by the Texas State Board of Insurance.

Business Auto Liability with NCTCOG endorsed as a Named Additional Insured.

Coverage shall be provided for all owned hired, and non-owned vehicles. Required Limit: \$1,000,000 combined single limit each accident.

Professional Errors and Omissions liability:

Required Limits:

\$1,000,000 Each Claim

\$1,000,000 Annual Aggregate

9.5 Conflict of Interest. During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

9.6 Force Majeure. It is expressly understood and agreed by both parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within a reasonable time of the existence of such force majeure.

- 9.7 **Ability to Perform.** Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which may reasonably be expected to negatively affect the Contractor's ability to perform its obligations under this Agreement in the manner contemplated by the parties.
- 9.8 **Availability of Funding.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the Participating Entities by NCTCOG dedicated for the purposes of this Agreement.
- 9.9 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.
- 9.10 **Waiver.** Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.
- 9.11 **Entire Agreement.** This Agreement and any attachments/addendums, as provided herein, constitutes the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.
- 9.12 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.
- 9.13 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
- 9.14 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.
- 9.15 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to dispute resolution policies of NCTCOG, before resorting to litigation.
- 9.16 **Publicity.** Contractor shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of NCTCOG.
- 9.17 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

ARTICLE X ADDITIONAL REQUIREMENTS

- 10.1 **Equal Employment Opportunity.** Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. Contractor

shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- 10.2 **Davis-Bacon Act.** Contractor agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
- 10.3 **Contract Work Hours and Selection Standards.** Contractor agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this Agreement indicates any employment of mechanics or laborers.
- 10.4 **Rights to Invention Made Under Contract or Agreement.** Contractor agrees to comply with all applicable provisions of 37 CFR Part 401.
- 10.5 **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** Contractor agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
- 10.6 **Debarment/Suspension.** Contractor is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall comply with the Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions.
- 10.7 **Restrictions on Lobbying.** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 10.8 **Procurement of Recovered Materials.** Contractor agrees to comply with all applicable provisions of 2 CFR §200.322.
- 10.9 **Drug-Free Workplace.** Contractor shall provide a drug free workplace in compliance with the Drug Free Work Place Act of 1988.
- 10.10 **Texas Corporate Franchise Tax Certification.** Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments.
- 10.11 **Civil Rights Compliance**
Compliance with Regulations: Contractor will comply with the Acts and the Regulations relative to Nondiscrimination in Federally assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.

Nondiscrimination: Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor will not participate directly or indirectly in the

discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 45 CFR Part 21.

Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, sex, or national origin.

Information and Reports: Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor will so certify to NCTCOG, the Texas Department of Transportation ("the State") or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of Contractor's noncompliance with the Nondiscrimination provisions of this Agreement, NCTCOG will impose such sanctions as it or the State or the FHWA may determine to be appropriate, including, but not limited to: withholding payments to the Contractor under this Agreement until the Contractor compiles and/or cancelling, terminating or suspension of this Agreement, in whole or in part.

Incorporation of Provisions: Contractor will include the provisions of the paragraphs listed above, in this section 10.11, in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take such action with respect to any subcontract or procurement as NCTCOG, the State, or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, Contractor may request the State to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter such litigation to protect the interests of the United States.

10.12 **Disadvantaged Business Enterprise Program Requirements**

Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. Each sub-award or subcontract must include the following assurance: *The Contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

10.13 **Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).

- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- e. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- h. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- i. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- i. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

10.14 **Ineligibility to Receive State Grants or Loans, or Receive Payment on State Contracts**

In accordance with Section 231.006 of the Texas Family Code, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five (25) percent is not eligible to:

- a. Receive payments from state funds under a contract to provide property, materials or services; or
- b. Receive a state-funded grant or loan.

By signing this Agreement, the Contractor certifies compliance with this provision.

10.15 **House Bill 89 Certification**

If contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, contractor certifies that contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If contractor does not make that certification, contractor state in the space below why the certification is not required.

10.16 **Certification Regarding Disclosure of Conflict of Interest.**

The undersigned certifies that, to the best of his or her knowledge or belief, that:

“No employee of the contractor, no member of the contractor’s governing board or body, and no person who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this contract shall participate in any decision relating to this contract which affects his/her personal pecuniary interest.

Executives and employees of contractor shall be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the contract, shall exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates. When it is in the public interest for the contractor to conduct business with a friend or associate of an executive or employee of the contractor, an elected official in the area or a member of the North Central Texas Council of Governments, a permanent record of the transaction shall be retained.

Any executive or employee of the contractor, an elected official in the area or a member of the NCTCOG, shall not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by contractor or Department. Supplies, tools, materials, equipment or services purchased with contract funds shall be used solely for purposes allowed under this contract. No member of the NCTCOG shall cast a vote on the provision of services by that member (or any organization which that member represents) or vote on any matter which would provide a direct or indirect financial benefit to the member or any business or organization which the member directly represents”.

No officer, employee or paid consultant of the contractor is a member of the NCTCOG.

No officer, manager or paid consultant of the contractor is married to a member of the NCTCOG.

No member of NCTCOG directly owns, controls or has interest in the contractor.

The contractor has disclosed any interest, fact, or circumstance that does or may present a potential conflict of interest.

No member of the NCTCOG receives compensation from the contractor for lobbying activities as defined in Chapter 305 of the Texas Government Code. Should the contractor fail to abide by the foregoing covenants and affirmations regarding conflict of interest, the contractor shall not be entitled to the recovery of any costs or expenses incurred in relation to the contract and shall immediately refund to the North Central Texas Council of Governments any fees or expenses that may have been paid under this contract and shall further be liable for any other costs incurred or damages sustained by the NCTCOG as it relates to this contract.

10.17 Certification of Fair Business Practices

That the submitter affirms that the submitter has not been found guilty of unfair business practices in a judicial or state agency administrative proceeding during the preceding year. The submitter further affirms that no officer of the submitter has served as an officer of any company found guilty of unfair business practices in a judicial or state agency administrative during the preceding year.

10.18 Certification of Good Standing Texas Corporate Franchise Tax Certification

Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for profit corporations that are delinquent in making state franchise tax payments. The undersigned authorized representative of the corporation making the offer herein certified that the following indicated Proposal is true and correct and that the undersigned understands that making a false Proposal is a material breach of contract and is grounds for contract cancellation.

10.19 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Pursuant to Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, NCTCOG is prohibited from using federal funds to procure, contract with entities who use, or extend contracts with entities who use certain telecommunications and video surveillance equipment or services provided by certain Chinese controlled entities. The Contractor agrees that it is not providing NCTCOG with or using telecommunications and video surveillance equipment and services as prohibited by 2 CFR §200.216 and §200.471. Contractor shall certify

its compliance through execution of the "Prohibited Telecommunications and Video Surveillance Services or Equipment Certification," which is included as Appendix D of this Contract. The Contractor shall pass these requirements down to any of its subcontractors funded under this Agreement. The Contractor shall notify NCTCOG if the Contractor cannot comply with the prohibition during the performance of this Contract.

10.20 Discrimination Against Firearms Entities or Firearms Trade Associations

Pursuant to Texas Local Government Code Chapter 2274, Subtitle F, Title 10, prohibiting contracts with companies who discriminate against firearm and ammunition industries. NCTCOG is prohibited from contracting with entities, or extend contracts with entities who have practice, guidance, or directive that discriminates against a firearm entity or firearm trade association. Contractor shall certify its compliance through execution of the "Discrimination Against Firearms Entities or Firearms Trade Associations Certification," which is included as Appendix D of this Contract. The Contractor shall pass these requirements down to any of its subcontractors funded under this Agreement. The Contractor shall notify NCTCOG if the Contractor cannot comply with the prohibition during the performance of this Contract.

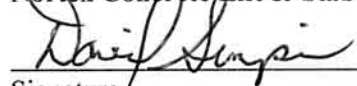
10.21 Boycotting of Certain Energy Companies

Pursuant to Texas Local Government Code Chapter 2274, Subtitle F, Title 10, prohibiting contracts with companies who boycott certain energy companies. NCTCOG is prohibited from contracting with entities or extend contracts with entities that boycott energy companies. Contractor shall certify its compliance through execution of the "Boycotting of Certain Energy Companies Certification," which is included as Appendix D of this Contract. The Contractor shall pass these requirements down to any of its subcontractors funded under this Agreement. The Contractor shall notify NCTCOG if the Contractor cannot comply with the prohibition during the performance of this Contract.

10.22 Domestic Preference

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Consistent with §200.322, the following items shall be defined as: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Nortex Concrete Lift & Stabilization, Inc.


Signature _____ Date 11/15/2024

David Simpson

Printed Name

CFO/Secretary

Title

North Central Texas Council of Governments

Signed by: 
Signature _____ Date 11/22/2024
AAE72C1BEF0F426...

R. Michael Eastland
Executive Director

APPENDIX A
Statement of Work

NORTEX

CONCRETE LIFT & STABILIZATION

Nortex was founded in 2003, and since then, our mission and focus have been to strive for excellence in customer service and satisfaction and to introduce new and proven methods to repair roads. To achieve this, we must prove to our customers and partners every day that we will perform and fulfill our duties and responsibilities with a work ethic of honest hard work, respect, integrity and professionalism.

Nortex Concrete Lift & Stabilization is a nationally recognized road construction company focused on lifting and stabilizing concrete roadways, bridges, and other structures using specifically formulated polyurethane foam systems. Headquartered in Fort Worth, Texas, we have over 35 years of experience working with polyurethane foam systems. Nortex brings the expertise and resources needed to handle large highway projects to small residential repairs.

- Licensed and doing business in 15-plus states
- 11 fully operational box trucks to complete any size job
- Servicing over 50 U.S. cities
- Servicing Government, Commercial, Industrial and Residential Clients



RAISING & UNDERSEALING CONCRETE PAVEMENT SCOPE OF WORK AND QUALITY CONTROL PLAN

Nortex Concrete Lift & Stabilization, Inc. is committed to maintaining an effective Quality Control Plan that reinforces our commitment to deliver a consistent high quality product and service to our customers.

This plan addresses the following:

Equipment

Work Site Preparations

Construction Methods

Monitoring Procedures

Clean Up Procedures

Spill Clean Up Procedures

Material Information

Equipment: A listing of lifting and undersealing equipment, this list is a minimum and shall not preclude the use of additional equipment.

- A. Pneumatic drills and electric drills capable of drilling 5/8-inch diameter holes.
- B. Truck mounted pumping units (Gusmer H20/35 Hydraulic Proportioner Pumps) capable of injecting high-density polyurethane foam between the concrete pavement and the sub-base, and capable of controlling the rate of rise of the pavement.
- C. Hilti Self Leveling Laser Level unit and lifting gages to ensure that pavement is lifted to an even plane.

Work Site Preparations: Shall be specified per contract documents and/or general accepted practices and procedures.

- A. The contractor shall review a profile of the pavement and footing provided by the owner to determine where the slab and footing need to be raised or void filled.

Construction Methods:

- A. **Drilling:** A series of 5/8" holes shall be drilled at four to six foot intervals through the concrete pavement. The contractor will determine the exact location and spacing of holes based on site conditions and scope of work.
- B. **Injecting:** The injector on the discharge guns shall make a tight seal in the injection hole. The polyurethane foam is two-component mixtures that meet at the discharge gun and is injected beneath the concrete pavement with approximately 1000 psi. The polyurethane foam initially remains in liquid form for approximately 15 – 20 seconds, which allows the material to move laterally beneath the concrete filling all voids in the area. The polyurethane foam then begins to set up and expand into its solid form exerting the necessary lifting force.

Monitoring Procedures:

- A. **Controlling rise:** The amount of rise shall be controlled using the pumping unit, by regulating the rate of injection of material. Lifting gages and Laser shall be used to monitor the rise and ensure pavement is lifted to an even plane. Mix Ratio's on Gages must be monitored periodically to ensure proper mixture of material being pumped along with monitoring of heat to keep foam somewhere in the vicinity of 80 to 140 degrees Fahrenheit (depending on outside air temperature).
- B. Drain inlets, asphalt shoulders, MSE walls, etc...will be monitored frequently to ensure material below ground has not traveled to an area it is not intended to go.
- C. Supervisor shall be on site during entire operation and be fully trained in mechanical operation of equipment. Supervisor shall be responsible for safety of his crew at all times and responsible for monitoring lifting procedures.

Clean Up Procedures:

- A. All excess polyurethane material will be removed from the job site.

- B. All injections holes will be re-drilled to a depth of 2-3" and then non shrink cementitious grout will be to close over all holes.
- C. Entire work area will be cleaned and cleared to properly restore the operation lane.

Spill Clean Up Procedures:

- A. Entire area of spill to be covered and dispersed evenly with absorbent material kept on hand.
- B. After setting phase absorbent material is cleaned up and disposed of in thick trash bags and tied off for proper disposal.
- C. Process can be repeated until spill is sufficiently cleaned.

Material Information:

- A. All material used is certified for compliance with all state, and local authorities pertaining to the contract documents or special provisions.



TERRATHANE™ 24-003

Technical Data Sheet

TERRATHANE™ Product Line

The TerraThane™ product line is comprised of uniquely formulated, dual-component systems designed for a variety of geotechnical applications, such as lifting, soil compaction, void filling, and I/I mitigation. Each batch goes through stringent testing and quality assurance standards to ensure reliability in the field.

TERRATHANE™ 24-003

TerraThane™ 24-003 is a 4lb hydrophobic/hydro-insensitive, MDI-based, water blown system that is designed for exceptional spread and lifting capacity. The hydrophobic nature of 24-003 allows it to maintain exceptional physical properties even in saturated conditions. Available with NSF/ANSI 61 Section 5 – 2017 certification.

APPLICATIONS

Bridge Approaches and Departures
Highway and Streets
Airport Runways and Taxiways
Concrete Slab Lifting
Joint Matching
Void Filling
Deep Soil Injection



**CERTIFIED TO
NSF/ANSI 61**

*Upon request

UNIQUE ADVANTAGES

Hydrophobic / Hydro-Insensitive
Certified to NSF/ANSI-61
Contains No Solvents
Strengthens Loose Soil
Water Blown System

Reactivity at 110°F

Cream Time	5-8 seconds
Gel Time	11-15 seconds
Tack Free Time	16-19 seconds
Rise Time	25-30 seconds

Chemical Resistance

Solvents...	Excellent
Mold and Mildew...	Excellent

Performance

Wet Environments...	Excellent
Lifting Capacity...	Excellent

Physical Properties

Physical Properties	Test Method	Free Rise	Restrained
Density	ASTM D1622	4 pcf	5 – 6 pcf
Compressive Strength	ASTM D1621	80 psi	80 – 100 psi
Compressive Modulus	ASTM D1621	1900 psi	3000 psi
Tensile Strength	ASTM D1623	85 psi	100 – 120 psi
Tensile Modulus	ASTM D1623	1446 psi	3100 psi
Water Absorption	ASTM D2842	≤0.04lbs/ft ²	≤0.04lbs/ft ²
Closed Cell Content		>92%	>92%
Max Service Temp		200°F	200°F
Elongation	ASTM D1623	5.1%	
Shear Strength	ASTM C273	52 psi	90 psi
Shear Modulus	ASTM C273	602 psi	677 psi
Flexural Strength	ASTM D790	87 psi	139 psi
Flexural Modulus	ASTM D790	1625 psi	3147 psi

NCFI Polyurethanes – Geotechnical Division • 1023 Buffalo Run, Missouri City, TX 77489
800-346-8229 • www.ncfigeo.com



TERRATHANE™ 24-003

Technical Data Sheet

Special Testing

NYDOT Hydro-Insensitivity test, GTP-5		>96% density retention >93% comp strength retention	
Dimensional Stability, % volume change, 28 days aging (ASTM D-2126)	Heat age at 158°F	Freezer at -20°F	Humid age at 100% RH & 120°F
	-1.5%	-0.1%	-1.0%

Component Properties

Component	B-24-003	A2-000
Appearance	Transparent Liquid	Clear Brown Liquid
Brookfield Viscosity @20rpm	500 cps at 72°F	200 cps at 72°F
Specific Gravity	1.05	1.24
Weight per Gallon	8.78 lbs	10.3 lbs
Storage Temperature	50-100°F	50-100°F

Mix Ratio

By weight... 118 parts A-side: 100 parts B-side

By volume... 100 parts A-side: 100 parts B-side

Processing Parameters

A-side Temperatures	100 – 120°F
B-side Temperatures	100 – 120°F
Mixing Pressure	1000 psi static 800 psi dynamic

Storage and Handling

For optimum shelf life, the recommended storage temperature is 50°F to 100°F. Do not expose A-side to lower temperatures – freezing may occur. Avoid moisture contamination during storage, handling, and processing. After opening, pad the containers and day tanks with either nitrogen or dry air (desiccant cartridge or air dryer @ -40°F dew point).

Store components at 70°F to 90°F for several days prior to use to minimize viscosity issues.

Shelf life of B-side is 6 months and A-side is 2 years for factory sealed containers.

Application Cautions

Careful consideration should be given to selection and application of any NCFI Polyurethane foam system where excessive foam mass build-up can occur. Excessive polyurethane foam lift thickness will result in high internal temperatures within the injected foam, which can result in degraded foam properties, or in extreme cases, fire or spontaneous combustion. Any flammability rating contained in this literature is not intended to reflect hazards presented by this or any other material under actual fire conditions. Each person, firm or corporation engaged in the application, installation or use of any polyurethane product should carefully determine whether there is a potential fire hazard associated with such product in a specific usage and utilize all appropriate precautionary and safety measures. Please consult NCFI Polyurethanes for safety considerations, polyurethane system selection and application recommendations.

The information contained herein is believed to be reliable, but no representations, guarantees, or warranties of any kind are made as to its accuracy, suitability for particular applications, or the results to be obtained there from. The information is based on laboratory work with small-scale equipment and does not necessarily indicate end product performance. Because of the variation in methods, conditions and equipment used commercially in processing these materials, no warranties or guarantees are made as to the suitability of the products for the application disclosed. Full-scale testing and end product performance are the sole responsibility of the user. NCFI Polyurethanes shall not be liable for and the customer assumes all risk and liability of any use or handling of any material beyond NCFI's direct control. NCFI MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Nothing contained herein is to be considered as permission, recommendations, nor as an inducement to practice any patented invention without permission of the patent owner.

v.02082022

SUBSTRATUM 4F

Polyurethane Rigid Foam System

Substratum 4F is a two-component polyurethane rigid foam. This product is excellent for lifting settled pavement, stabilizing weak soil, and the filling or encapsulating of various voids. It has been specially formulated utilizing a fully EPA approved, non-CFC, non-HFC, zero ozone depleting blowing agent.

Substratum 4F is inherently hydrophobic and is capable of being directly injected into water. Due to the hydrophobic nature, this product is excellent for lifting and/or stabilizing in areas with a high level of moisture content. The low viscosity of the system allows for easy penetration into soil and displaces water without losing product integrity as it stabilizes and lifts.

Storage and Handling

Substratum 4F has a shelf life of 1 yr when stored in the original, sealed container at a temperature of 65° F - 85° F with humidity levels not greater than 85% and also not in direct sunlight. The "A" component is very sensitive to moisture and caution must be taken to ensure moisture is not introduced. Prolonged storage at temps below 60° F can affect both the "A" and "B" components.

Should the materials be subjected to temperatures at or below 40° F, there may be layering in the B-side containers. Should this occur, gradually raise the temperature to 70° F and use a drum or tote mixer for 30 minutes or more. The material will go back into the proper solution and is then usable.

Containers of Component-A should be kept properly closed and stored indoors at ambient temperatures (20-25° C) (65-80° F) in a well-ventilated area. Storage at low temperatures (below 5° C, 40° F) may lead to some crystallization; this material must, therefore, be protected from frost. If crystallization does occur, the material should be heated but not to exceed 70° C, 158° F, to melt it out, and should then be thoroughly agitated before use. Note that the product will decompose and give off gas above 230° C, 446° F.

DISCLAIMER: THE DATA PRESENTED HEREIN IS NOT INTENDED FOR USE BY NONPROFESSIONAL APPLICATORS, OR THOSE PERSONS WHO DO NOT PURCHASE OR UTILIZE THIS PRODUCT IN THE NORMAL COURSE OF THEIR BUSINESS. THE POTENTIAL USER MUST PERFORM ANY PERTINENT TEST IN ORDER TO DETERMINE THE PRODUCT'S PERFORMANCE AND SUITABILITY IN THE INTENDED APPLICATION, SINCE FINAL DETERMINATION OF FITNESS OF THE PRODUCT FOR ANY PARTICULAR USE IS THE RESPONSIBILITY OF THE BUYER.

CALL CARLISLE POLYURETHANE SYSTEMS FOR TECHNICAL QUESTIONS. (888) 899-9665.

THE INFORMATION HEREIN IS BELIEVED TO BE RELIABLE, BUT UNKNOWN RISKS MAY BE PRESENT. CARLISLE POLYURETHANE SYSTEMS WARRANTS ONLY THAT THE MATERIALS SHALL BE OF MERCHANTABLE QUALITY. THIS WARRANTY IS IN LIEU OF ALL OTHER WRITTEN OR UNWRITTEN, EXPRESSED OR IMPLIED WARRANTIES. CARLISLE POLYURETHANE SYSTEMS EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM PATENT INFRINGEMENT. ACCORDINGLY, BUYER ASSUMES ALL RISKS WHATSOEVER AS TO THE USE OF THESE MATERIALS. BUYER'S EXCLUSIVE REMEDY AS TO ANY BREACH OF WARRANTY OR NEGLIGENCE CLAIM SHALL BE LIMITED TO THE PURCHASE PRICE OF THE MATERIALS. FAILURE TO STRICTLY ADHERE TO RECOMMENDED PROCEDURES SHALL RELIEVE CARLISLE POLYURETHANE SYSTEMS OF ALL LIABILITY WITH RESPECT TO THE MATERIALS OR THE USE THEREOF.

Typical Physical Properties

Property	Substratum 4F	Test
Closed Cell Content	>85%	ASTM D 6226
Tensile Strength (PSI)	95	ASTM D 1623
Dimensional Stability	<2%	ASTM D 2126
Comprehensive Strength (PSI)	63	ASTM D 1621
Comprehensive Modules (PSI)	2100	ASTM D 1621
Tensile Modules (PSI)	2100	ASTM D 1623
Shear Strength	47	ASTM C 273
Shear Modulus	945	ASTM C 273
Flexural Strength	95	ASTM D 790
Flexural Modulus	2100	ASTM D 790
Water Absorption	<2%	ASTM D 2842
Core Density	3.90-4.10	

* Data generated under controlled laboratory conditions. Actual performance may vary due to environmental conditions.

Liquid Components as Supplied

	A (ISO)	B (Resin)
Specific Gravity @74°F (23°F)	1.22	1.04
Viscosity (Brookfield) @74°F (23°C), CPS	220-250	400-500
Mixing Ratio By Volume	1	1

Common Chemical Resistance

Chemical	Resistance
Water	Excellent
Toluene	Excellent
Gasoline	Excellent
Sulfuric Acid 10%	Excellent
Hydrochloric Acid 10%	Excellent
Isopropanol	Excellent
Benzene	Excellent
Motor Oil	Excellent
Acetone	Poor
Ethyl Alcohol	Poor
Methyl Alcohol	Poor

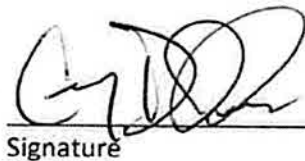


NORTEX

CONCRETE LIFT & STABILIZATION

Nortex Concrete Lift & Stabilization, Inc. issues a one -year unconditional warranty against settlement of concrete slabs. If settlement of more than 1/2" of concrete slabs in the injected area occurs, Contractor shall return to inject the affected area to lift to proper grade at no additional charge, except maintenance of traffic, to the owner.

The warranty will begin 1 day after the injection date and expire 1 year from the injection date. If a warranty claim is made, the customer will provide photos and the settlement total. In the event a repair is required, Nortex will have 120 days from the time of notification to complete the repair.


Signature

9/24/24
Date

Casey DeRosa GM
Name Title

Nortex Concrete Lift & Stabilization, Inc.

APPENDIX A.1
Pricing for TXShare Cooperative Purchase Program Participants

BID PRICE WORKSHEET 2024-108**Category 1: Pavement Lifting Services**

Item	Description	UOM	% Discount Off List Price
1	Concrete Pavement Raising and Undersealing, Complete in Place	LB	See sheet
2	Saw Cutting of material, cut, and complete in Place	LF	See sheet
3	Soil Injection to Lift Asphalt Pavement	LB	See sheet
4	Testing Services	Each	See sheet
5	Robotic Inspection Crawler CCTV Camera Service	Hour	See sheet
6	Mobilization	N/A	See sheet
7	Traffic Control, Flagger(s) Barricade Setters	Day	See sheet
8	Off-Duty Uniformed Law Enforcement Officers with Vehicle	Hour	See sheet
9	Signage (All Types)	Day	See sheet

Category 2: Ancillary Service, Maintenance, Equipment & Supplies			
Item	Description	UOM	% Discount Off Unit List Price

10

Describe Below:

A	Items included on pricing sheets		
B			
C			

Exhibit 2 - Market Basket Worksheet for RFP #2024-108 - North Central Texas List

ITEM	ITEM DESCRIPTION	QTY	UOM	CURRENT PRICE LST	% DISCOUNT	DISCOUNT	NET PRICE AFTER
1	Concrete Pavement Raising and Undersealing, Complete in Place	149500	LB	\$5.00	30%	\$3.50	
2	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), up to 5 feet	128500	LB	\$5.15	12%	\$4.53	
3	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 5 feet - 10 feet	72000	LB	\$5.25	12%	\$4.62	
4	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 10 feet - 20 feet	45500	LB	\$5.30	10%	\$4.95	
5	Soil Densification via Injections to Lift Concrete and Asphalt Pavement (Measured from Pavement Surface), over 20 feet - 30 feet	17500	LB	\$5.75	10%	\$5.17	
6	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 30 feet - 40 feet	5500	LB	\$6.00	10%	\$5.40	
7	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 40 feet - 50 feet	5500	LB	\$6.25	10%	\$5.63	
8	Infrastructure Repair - RCP or Galvanized Pipe Injections per joint - 12 inch - 30 inch pipe	500	LB	\$12.00	5%	\$11.40	
9	Infrastructure Repair - RCP or Galvanized Pipe Injections per joint - 32 inch pipe and Above	1000	LB	\$10.00	5%	\$9.50	
10	Infrastructure Repair - Box Culvert Injections per joint	1000	LB	\$10.00	5%	\$9.50	
11	Infrastructure Repair - Inlet Box Sealing and Lifting	1000	LB	\$10.00	5%	\$9.50	
12	Sidewalk Pavement Raising and Undersealing, Complete in Place	1000	LB	\$10.00	5%	\$9.50	
13	Saw Cutting of Material, Cut, and Complete in Place	3200	LF	\$65.00	20%	\$57.20	
14	Concrete Joint Grinding - 1 FT - 1,000 FT	1000	LF	\$12.00	5%	\$61.75	
15	Concrete Joint Grinding - 1,001 FT - 3,000 FT	1000	LF	\$10.00	10%	\$10.80	
16	Concrete Joint Grinding - 3,001 FT and Above	3001	LF	\$10.00	10%	\$9.00	
17	Joint Sealing - Cleaning and Resealing of Construction Joint - 1FT - 1,000FT	1000	LF	\$8.00	10%	\$7.20	
18	Joint Sealing - Cleaning and Resealing of Construction Joint - 1,001FT and Above	1000	LF	\$25.00	10%	\$22.50	
19	Dynamic Cone Penetrometer Test	1001	LF	\$20.00	10%	\$18.00	
20	Ground Penetrating Radar Test	50	Each	\$750.00	15%	\$637.50	
21	Water Flow Testing for Positive Drainage Flow	25	Each	\$1,500.00	10%	\$1,350.00	
22	Robotic Inspection Crawler CCTV Camera	5	Day	\$500.00	10%	\$450.00	
23	Traffic Control Services - Flaggers (2-man crew)	10	Hour	\$500.00	10%	\$450.00	
24	Traffic Control Services - Single lane closure - arterial roadway (includes signage, cones, arrow board, and barricades)	15	Day	\$2,000.00	10%	\$1,800.00	
25	Traffic Control Services - Single lane closure - arterial roadway (includes signage, cones, arrow board, and barricades)	20	Day	\$1,500.00	10%	\$675.00	
26	Traffic Control Services - Single lane closure - freeway/highway (includes signage, cones, arrow board, and barricades)	20	Day	\$2,500.00	10%	\$1,350.00	
27	Traffic Control Services - Double lane closure - arterial roadway (includes signage, cones, two arrow boards, and barricades)	20	Day	\$2,000.00	10%	\$2,250.00	
28	Traffic Control Services - Double lane closure - freeway/highway (includes signage, cones, two arrow boards, and barricades)	20	Day	\$3,500.00	10%	\$3,150.00	
29	Traffic Control Services - Portable Changeable Message Sign	100	Day	\$125.00	10%	\$112.50	
30	Traffic Control Services - Attenuator Truck and Trailer Mounted (Each)	50	Day	\$300.00	10%	\$270.00	
31	Traffic Control Services - Off Duty Uniformed Law Enforcement Officer with Vehicle (Each)	50	Hour	\$75.00	5%	\$71.25	
32	Traffic Control Services - Nighttime work - Lighting equipment for workzone	20	Night	\$300.00	10%	\$270.00	

Exhibit 2 - Market Basket Worksheet for RFP #2024-108 - All Texas Excluding North Central Texas Region

ITEM	ITEM DESCRIPTION	QTY	UOM	CURRENT PRICE LIST	% DISCOUNT	NET PRICE AFTER DISCOUNT
1	Concrete Pavement Raising and Undersealing, Complete in Place	149500	LB	\$5.00	15%	\$4.25
2	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), up to 5 feet	128500	LB	\$5.15	12%	\$4.53
3	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 5 feet - 10 feet	72000	LB	\$5.25	12%	\$4.62
4	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 10 feet - 20 feet	45500	LB	\$5.50	10%	\$4.95
5	Soil Densification via Injections to Lift Concrete and Asphalt Pavement (Measured from Pavement Surface), over 20 feet - 30 feet	17500	LB	\$5.75	10%	\$5.17
6	Soil Densification via Injections to Lift Concrete and Asphalt Pavement (Measured from Pavement Surface), over 30 feet - 40 feet	5500	LB	\$6.00	10%	\$5.40
7	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 40 feet - 50 feet	5500	LB	\$6.25	10%	\$5.63
8	Infrastructure Repair - RCP or Galvanized Pipe Injections per joint - 12 inch - 30 inch pipe	500	LB	\$12.00	5%	\$11.40
9	Infrastructure Repair - RCP or Galvanized Pipe Injections per joint - 32 inch pipe and Above	1000	LB	\$10.00	5%	\$9.50
10	Infrastructure Repair - Box Culvert Injections per joint	1000	LB	\$10.00	5%	\$9.50
11	Infrastructure Repair - Inlet Box Sealing and Lifting	1000	LB	\$9.00	20%	\$7.20
12	Sidewalk Pavement Raising and Undersealing, Complete in Place	1000	LB	\$10.00	5%	\$9.50
13	Saw Cutting of Material, Cut, and Complete in Place	3200	LF	\$65.00	5%	\$61.75
14	Concrete Joint Grinding - 1 FT - 1,000 FT	1000	LF	\$12.00	10%	\$10.80
15	Concrete Joint Grinding - 1,001 FT - 3,000 FT	3000	LF	\$10.00	10%	\$9.00
16	Concrete Joint Grinding - 3,001 FT and Above	3001	LF	\$8.00	10%	\$7.20
17	Joint Sealing - Cleaning and Resealing of Construction Joint - 1 FT - 1,000 FT	1000	LF	\$25.00	10%	\$22.50
18	Joint Sealing - Cleaning and Resealing of Construction Joint - 1,001 FT and Above	1001	LF	\$20.00	10%	\$18.00
19	Dynamic Cone Penetrometer Test	50	Each	\$750.00	15%	\$637.50
20	Ground Penetrating Radar Test	25	Each	\$1,500.00	10%	\$1,350.00
21	Water Flow Testing for Positive Drainage Flow	5	Day	\$500.00	10%	\$450.00
22	Robotic Inspection Crawler CCTV Camera	10	Hour	\$500.00	10%	\$450.00
23	Traffic Control Services - Flaggers (2-man crew)	15	Day	\$2,000.00	10%	\$1,800.00
24	Traffic Control Services - Single lane closure - residential roadway (includes signage, cones, arrow board, and barricades)	20	Day	\$750.00	10%	\$675.00
25	Traffic Control Services - Single lane closure - arterial roadway (includes signage, cones, arrow board, and barricades)	20	Day	\$1,500.00	10%	\$1,350.00
26	Traffic Control Services - Single lane closure - freeway/highway (includes signage, cones, arrow board, and barricades)	20	Day	\$2,500.00	10%	\$2,250.00
27	Traffic Control Services - Double lane closure - arterial roadway (includes signage, cones, two arrow boards, and barricades)	20	Day	\$2,000.00	10%	\$1,800.00
28	Traffic Control Services - Double lane closure - freeway/highway (includes signage, cones, two arrow boards, and barricades)	20	Day	\$3,500.00	10%	\$3,150.00
29	Traffic Control Services - Portable Changeable Message Sign	100	Day	\$125.00	10%	\$112.50
30	Traffic Control Services - Attenuator Truck and Trailer Mounted (Each)	50	Day	\$300.00	10%	\$270.00
31	Traffic Control Services - Off Duty Uniformed Law Enforcement Officer with Vehicle (Each)	50	Hour	\$75.00	5%	\$71.25
32	Traffic Control Services - Nighttime work - Lighting equipment for workzone	20	Night	\$300.00	10%	\$270.00

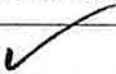
Exhibit 2 - Market Basket Worksheet for RFP #2024-108 -Other Specified States Outside of Texas

ITEM	ITEM DESCRIPTION	QTY	UOM	CURRENT PRICE LIST	% DISCOUNT	DISCOUNT	NET PRICE AFTER
1	Concrete Pavement Raising and Undersealing, Complete in Place	149500	LB	\$5.00	10%	\$4.50	
2	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), up to 5 feet	128500	LB	\$5.15	5%	\$4.89	
3	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 5 feet – 10 feet	72000	LB	\$5.25	5%	\$4.99	
4	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 10 feet – 20 feet	45500	LB	\$5.50	5%	\$5.23	
5	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 20 feet – 30 feet	17500	LB	\$5.75	5%	\$5.46	
6	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 30 feet – 40 feet	5500	LB	\$6.00	5%	\$5.70	
7	Soil Densification via Injections to Lift Concrete or Asphalt Pavement (Measured from Pavement Surface), over 40 feet – 50 feet	5500	LB	\$6.25	5%	\$5.94	
8	Infrastructure Repair - RCP or Galvanized Pipe Injections per joint - 12 inch - 30 inch pipe	500	LB	\$12.00	5%	\$11.40	
9	Infrastructure Repair - RCP or Galvanized Pipe Injections per joint - 32 inch pipe and Above	1000	LB	\$10.00	5%	\$9.50	
10	Infrastructure Repair - Box Culvert Injections per joint	1000	LB	\$10.00	5%	\$9.50	
11	Infrastructure Repair - Inlet Box Sealing and Lifting	1000	LB	\$10.00	5%	\$9.50	
12	Sidewalk Pavement Raising and Undersealing, Complete in Place	1000	LB	\$10.00	5%	\$9.50	
13	Saw Cutting of Material, Cut, and Complete in Place	1000	LB	\$9.00	20%	\$7.20	
14	Concrete Joint Grinding - 1 FT - 1,000 FT	3200	LF	\$65.00	5%	\$61.75	
15	Concrete Joint Grinding - 1,001 FT - 3,000 FT	1000	LF	\$12.00	10%	\$10.80	
16	Concrete Joint Grinding - 3,001 FT and Above	3000	LF	\$10.00	10%	\$9.00	
17	Joint Sealing - Cleaning and Resealing of Construction Joint - 1FT - 1,000FT	3001	LF	\$8.00	10%	\$7.20	
18	Joint Sealing - Cleaning and Resealing of Construction Joint - 1,001FT and Above	1000	LF	\$25.00	10%	\$22.50	
19	Dynamic Cone Penetrometer Test	1001	LF	\$20.00	10%	\$18.00	
20	Ground Penetrating Radar Test	50	Each	\$750.00	15%	\$637.50	
21	Water Flow Testing for Positive Drainage Flow	25	Each	\$1,500.00	10%	\$1,350.00	
22	Robotic Inspection Crawler CCTV Camera	5	Day	\$500.00	10%	\$450.00	
23	Traffic Control Services - Flaggers (2-man crew)	10	Hour	\$500.00	10%	\$450.00	
24	Traffic Control Services - Single lane closure - residential roadway (includes signage, cones, arrow board, and barricades)	15	Day	\$2,000.00	10%	\$1,800.00	
25	Traffic Control Services - Single lane closure - arterial roadway (includes signage, cones, arrow board, and barricades)	20	Day	\$750.00	10%	\$675.00	
26	Traffic Control Services - Single lane closure - freeway/highway (includes signage, cones, arrow board, and barricades)	20	Day	\$1,500.00	10%	\$1,350.00	
27	Traffic Control Services - Double lane closure - arterial roadway (includes signage, cones, two arrow boards, and barricades)	20	Day	\$2,500.00	10%	\$2,250.00	
28	Traffic Control Services - Double lane closure - freeway/highway (includes signage, cones, two arrow boards, and barricades)	20	Day	\$2,000.00	10%	\$1,800.00	
29	Traffic Control Services - Portable Changeable Message Sign	20	Day	\$3,500.00	10%	\$3,150.00	
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31	Traffic Control Services - Off Duty Uniformed Law Enforcement Officer with Vehicle (Each)	50	Day	\$300.00	10%	\$270.00	
32	Traffic Control Services - Nighttime work - Lighting equipment for workzone	50	Hour	\$75.00	5%	\$71.25	
		20	Night	\$300.00	10%	\$270.00	

APPENDIX A.2
Service Area Designation Forms

EXHIBIT 3

SERVICE DESIGNATION AREAS

Texas Service Area Designation or Identification			
Proposing Firm Name:	Nortex Concrete Lift & Stabilization, Inc.		
Notes:	Indicate in the appropriate box whether you are proposing to service the entire state of Texas		
	Will service the entire state of Texas	Will not service the entire state of Texas	
			
	If you are not proposing to service the entire state of Texas, designate on the form below the regions that you are proposing to provide goods and/or services to. By designating a region or regions, you are certifying that you are willing and able to provide the proposed goods and services.		
Item	Region	Metropolitan Statistical Areas	Designated Service Area
1.	North Central Texas	16 counties in the Dallas-Fort Worth Metropolitan area	DFW - Price/Discount List
2.	High Plains	Amarillo Lubbock	Non DFW - Price/Discount List
3.	Northwest	Abilene Wichita Falls	Non DFW - Price/Discount List
4.	Upper East	Longview Texarkana, TX-AR Metro Area Tyler	Non DFW - Price/Discount List
5.	Southeast	Beaumont-Port Arthur	Non DFW - Price/Discount List
6.	Gulf Coast	Houston-The Woodlands-Sugar Land	Non DFW - Price/Discount List
7.	Central Texas	College Station-Bryan Killeen-Temple Waco	Non DFW - Price/Discount List
8.	Capital Texas	Austin-Round Rock	Non DFW - Price/Discount List
9.	Alamo	San Antonio-New Braunfels Victoria	Non DFW - Price/Discount List
10.	South Texas	Brownsville-Harlingen Corpus Christi Laredo McAllen-Edinburg-Mission	Non DFW - Price/Discount List
11.	West Texas	Midland Odessa San Angelo	Non DFW - Price/Discount List
12.	Upper Rio Grande	El Paso	Non DFW - Price/Discount List

(Exhibit 3 continued on next page)

(Exhibit 3 continued)

Nationwide Service Area Designation or Identification Form							
Proposing Firm Name:							
Notes:		<p>Indicate in the appropriate box whether you are proposing to provide service to all Fifty (50) States.</p> <table border="1"> <tr> <td>Will service all fifty (50) states</td> <td>Will not service fifty (50) states</td> </tr> <tr> <td></td> <td style="text-align: center;">✓</td> </tr> </table> <p>If you are not proposing to service to all fifty (50) states, then designate on the form below the states that you will provide service to. By designating a state or states, you are certifying that you are willing and able to provide the proposed goods and services in those states.</p> <p>If you are only proposing to service a specific region, metropolitan statistical area (MSA), or City in a State, then indicate as such in the appropriate column box.</p>		Will service all fifty (50) states	Will not service fifty (50) states		✓
Will service all fifty (50) states	Will not service fifty (50) states						
	✓						
Item	State	Region/MSA/City (write "ALL" if proposing to service entire state)	Designated as a Service Area				
1.	Alabama	All	✓				
2.	Alaska						
3.	Arizona	All	✓				
4.	Arkansas	All	✓				
5.	California	All	✓				
6.	Colorado	All	✓				
7.	Connecticut						
8.	Delaware						
9.	Florida	All	✓				
10.	Georgia	All	✓				
11.	Hawaii						
12.	Idaho	All	✓				
13.	Illinois	All	✓				
14.	Indiana	All	✓				
15.	Iowa	All	✓				
16.	Kansas	All	✓				
17.	Kentucky	All	✓				
18.	Louisiana	All	✓				
19.	Maine						

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20.	Maryland		
21.	Massachusetts		
22.	Michigan	All	✓
23.	Minnesota	All	✓
24.	Mississippi	All	✓
25.	Missouri	All	✓
26.	Montana		
27.	Nebraska	All	✓
28.	Nevada	All	✓
29.	New Hampshire		
30.	New Jersey		
31.	New Mexico	All	✓
32.	New York		
33.	North Carolina	All	✓
34.	North Dakota		
35.	Ohio	All	✓
36.	Oregon		
37.	Oklahoma	All	✓
38.	Pennsylvania	All	✓
39.	Rhode Island		
40.	South Carolina	All	✓
41.	South Dakota		
42.	Tennessee	All	✓
43.	Texas	All	✓
44.	Utah	All	✓
45.	Vermont		
46.	Virginia	All	✓
47.	Washington		
48.	West Virginia	All	✓
49.	Wisconsin		
50.	Wyoming		

End of Exhibit 3

APPENDIX A.3

The categories awarded under this contract are listed on the following Exhibit 1.

EXHIBIT 1
CATEGORIES SELECTED, PRICING & CURRENT PUBLISHED PRICE LIST

- **Categories Offered**

Please place a checkmark next to each category below that you are offering in your proposal:

- ☒ Category #1: Pavement Lifting Services
- ☒ Category #2: Ancillary Service, Maintenance, Equipment & Supplies

- **Proposed Contractual Discounts on Pricing for Categories Offered**

For each of the categories you selected above, provide your proposed **discount** off your list price on the attached *Bid Price Worksheet*. You may offer tiers of discounts based on the different bid items or the sale quantity.

- **Current Published Price List for Items Offered**

For each of the bid items you wish to offer, please provide the current published list price. Please attach this information to your proposal on a separate sheet or via a weblink. Please match the Category item number from the Bid Price Worksheet to the matching item on your current published price list.

NOTE: The current price list will NOT be a part of your contractual obligation and may be modified at your discretion during the term of any contract that is awarded to you. You are however requested to provide us with an updated version of the current price list whenever it is updated. Only the percentage discount is contractually obligated.

APPENDIX B
DEBARMENT CERTIFICATION

I, David Simpson
(Name of certifying official)

being duly sworn or under penalty of perjury under the laws of the United States, certifies that neither

Nortex Concrete Lift & Stabilization, Inc.,
(Name of lower tier participant)

nor its principals are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any federal department or agency

Where the above identified lower tier participant is unable to certify any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:



Signature of Certifying Official
CFO/Secretary

Title

11/15/2024

Date of Certification

Form 1734
Rev.10-91
TPFS

APPENDIX C RESTRICTIONS ON LOBBYING

Section 319 of Public Law 101-121 prohibits recipients of federal contracts, grants, and loans exceeding \$100,000 at any tier under a federal contract from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Section 319 also requires each person who requests or receives a federal contract or grant in excess of \$100,000 to disclose lobbying.

No appropriated funds may be expended by the recipient of a federal contract, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any federal executive department or agency as well as any independent regulatory commission or government corporation, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

As a recipient of a federal grant exceeding \$100,000, NCTCOG requires its subcontractors of that grant to file a certification, set forth in Appendix B.1, that neither the agency nor its employees have made, or will make, any payment prohibited by the preceding paragraph.

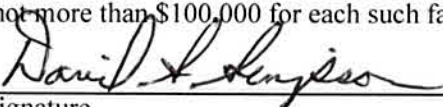
Subcontractors are also required to file with NCTCOG a disclosure form, set forth in Appendix B.2, if the subcontractor or its employees have made or have agreed to make any payment using nonappropriated funds (to include profits from any federal action), which would be prohibited if paid for with appropriated funds.

**LOBBYING CERTIFICATION
FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Signature

CFO/Secretary
Title

Nortex Concrete Lift & Stabilization, Inc.
Agency

11/15/2024
Date

APPENDIX D ATTESTATION OF CONTRACTS NULLIFYING ACTIVITY

The following provisions are mandated by Federal and/or State of Texas law. Failure to certify the following will result in disqualification of consideration for contract. Entities or agencies that are not able to comply with the following will be ineligible for consideration of contract award.

D-1: PROHIBITED TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT CERTIFICATION

This Contract is subject to the Public Law 115-232, Section 889, and 2 Code of Federal Regulations (CFR) Part 200, including §200.216 and §200.471, for prohibition on certain telecommunications and video surveillance or equipment.

Public Law 115-232, Section 889, identifies that restricted telecommunications and video surveillance equipment or services (e.g. phones, internet, video surveillance, cloud servers) include the following:

- A) Telecommunications equipment that is produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliates of such entities).
- B) Video surveillance and telecommunications equipment produced by Hytera Communications Corporations, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliates of such entities).
- C) Telecommunications or video surveillance services used by such entities or using such equipment.
- D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, Director of the National Intelligence, or the Director of the Federal Bureau of Investigation reasonably believes to be an entity owned or controlled by the government of a covered foreign country.

The entity identified below, through its authorized representative, hereby certifies that no funds under this Contract will be obligated or expended to procure or obtain telecommunication or video surveillance services or equipment or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system prohibited by 2 CFR §200.216 and §200.471, or applicable provisions in Public Law 115-232 Section 889.

Check one of the following:

☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of 2 CFR §200.216 and §200.471, or applicable regulations in Public Law 115-232 Section 889.

-OR-

☐ The Contractor or Subrecipient hereby certifies that it cannot comply with the requirements of 2 CFR §200.216 and §200.471, or applicable regulations in Public Law 115-232 Section 889.

Nortex Concrete Lift & Stabilization, Inc.

Name of Organization/Contractor



Signature of Authorized Representative

David Simpson

CFO/Secretary

Printed/Typed Name and Title of Authorized Representative

11/15/2024

Date

D-2: DISCRIMINATION AGAINST FIREARMS ENTITIES OR FIREARMS TRADE ASSOCIATIONS

This contract is subject to the Texas Local Government Code chapter 2274, Subtitle F, Title 10, prohibiting contracts with companies who discriminate against firearm and ammunition industries.

TLGC chapter 2274, Subtitle F, Title 10, identifies that "discrimination against a firearm entity or firearm trade association" includes the following:

- A) means, with respect to the entity or association, to:
 - I. refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; and
 - II. refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or
 - III. terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.
- B) An exception to this provision excludes the following:
 - I. contracts with a sole-source provider; or
 - II. the government entity does not receive bids from companies who can provide written verification.

The entity identified below, through its authorized representative, hereby certifies that they have no practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and that they will not discriminate during the term of the contract against a firearm entity or firearm trade association as prohibited by Chapter 2274, Subtitle F, Title 10 of the Texas Local Government Code.

Check one of the following:

☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of Chapter 2274, Subtitle F, Title 10.

-OR-

☐ The Contractor or Subrecipient hereby certifies that it cannot comply with the requirements of Chapter 2274, Subtitle F, Title 10.

Nortex Concrete Lift & Stabilization, Inc.

Name of Organization/Contractor

David Simpson

Signature of Authorized Representative

David Simpson

CFO/Secretary

Printed/Typed Name and Title of Authorized Representative

11/15/2024

Date

D-3: BOYCOTTING OF CERTAIN ENERGY COMPANIES

This contract is subject to the Texas Local Government Code chapter 809, Subtitle A, Title 8, prohibiting contracts with companies who boycott certain energy companies.

TLGC chapter Code chapter 809, Subtitle A, Title 8, identifies that "boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

- I. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; and
- II. does business with a company described by paragraph (I).

The entity identified below, through its authorized representative, hereby certifies that they do not boycott energy companies, and that they will not boycott energy companies during the term of the contract as prohibited by Chapter 809, Subtitle A, Title 8 of the Texas Local Government Code.

Check one of the following:

☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of Chapter 809, Subtitle A, Title 8.

-OR-

☐ The Contractor or Subrecipient hereby certifies that it cannot comply with the requirements of Chapter 809, Subtitle A, Title 8.

Nortex Concrete Lift & Stabilization, Inc.

Name of Organization/Contractor

David Simpson

Signature of Authorized Representative

David Simpson CFO/Secretary
Printed/Typed Name and Title of Authorized Representative

11/15/2024
Date

NCTCOG FEDERAL AND STATE OF TEXAS REQUIRED PROCUREMENT PROVISIONS

The following provisions are mandated by Federal and/or State of Texas law. Failure to certify to the following will result in disqualification of consideration for contract. Entities or agencies that are not able to comply with the following will be ineligible for consideration of contract award.

REQUIRED 2 CFR 200 CLAUSES

**Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards
(Contractor)**

1. **Equal Employment Opportunity.** PROVIDER shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. PROVIDER shall take affirmative actions to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. **Davis-Bacon Act.** PROVIDER agrees to comply with all applicable provisions of 40 USC § 3141 – 3148.
3. **Contract Work Hours and Safety Standards.** PROVIDER agrees to comply with all applicable provisions of 40 USC § 3701 – 3708 to the extent this agreement indicates any employment of mechanics or laborers.
4. **Rights to Invention Made Under Contract or Agreement.** PROVIDER agrees to comply with all applicable provisions of 37 CFR Part 401.
5. **Clean Air Act, Federal Water Pollution Control Act, and Energy Policy Conservation Act.** PROVIDER agrees to comply with all applicable provisions of the Clean Air Act under 42 USC § 7401 – 7671, the Energy Federal Water Pollution Control Act 33 USC § 1251 – 1387, and the Energy Policy Conservation Act under 42 USC § 6201.
6. **Debarment/Suspension.** PROVIDER is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. PROVIDER and its subcontractors shall comply with the special provision "Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions".
7. **Restrictions on Lobbying.** PROVIDER of these funds is prohibited from using monies for lobbying purposes; PROVIDER shall comply with the special provision "Restrictions on Lobbying". PROVIDER shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by subcontractors and included in subcontractor contracts, as applicable.
8. **Procurement of Recovered Materials.** PROVIDER agrees to comply with all applicable provisions of 2 CFR §200.322.
9. **Anti-Israeli Boycott.** By accepting this work order, PROVIDER hereby certifies the following:
 1. PROVIDER's Company does not boycott Israel; and
 2. PROVIDER's Company will not boycott Israel during the term of the contract.
 The following definitions apply to this statute:
 - (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli- controlled territory, but does not include an action made for ordinary business purposes; and
 - (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

10. Domestic Preference for Procurements

As appropriate and to the extent consistent with law, the PROVIDER should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Consistent with §200.322, the following items shall be defined as: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

11. Trafficking in Persons

Proposer agrees to comply with all applicable provisions of 2 CFR §175.15. NCTCOG, the Contractor, and its subcontractors are prohibited from (i) engaging in severe forms of trafficking in persons during the period of time that the award is in effect; (ii) procure a commercial sex act during the period of time that the award is in effect; (iii) used force labor in the performance of the award or subawards under the award. The Federal award agency may unilaterally terminate the award, without penalty, if the Contractor

(i) is determined to have violated an applicable prohibition; (ii) has an employee who is determined by the agency officially authorized to terminate the award to have violated an applicable prohibition of this award term. NCTCOG must notify the Federal award agency immediately if any information received from the Contractor indicates a violation of the applicable prohibitions.

☒ The Contractor or Subrecipient hereby certifies that it does comply with the requirements of 2 CFR 200 as stipulated above and required by the NCTCOG.

David Simpson
Signature of Authorized Person

David Simpson
Name of Authorized Person

Nortex Concrete Lift & Stabilization, Inc.
Name of Company

11/15/2024
Date

-OR-

☐ The Contractor or Subrecipient hereby certifies that it cannot comply with the requirements of 2 CFR 200 as stipulated above and required by the NCTCOG.

Signature of Authorized Person

Name of Authorized Person

Name of Company

Date

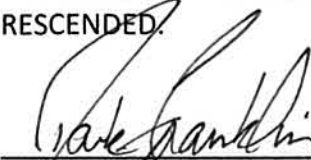
CORPORATE RESOLUTION

EXCERPT FROM MINUTES OF MEETING OF THE BOARD OF DIRECTORS OF
NORTEX CONCRETE LIFT & STABILIZATION, INCORPORATED.

AT THE MEETING OF DIRECTORS OF NORTEX CONCRETE LIFT &
STABILIZATION, INC., INCORPORATED, DULY NOTICED AND HELD ON
JANUARY 03, 2024 A QUORUM BEING THERE PRESENT, ONE MOTION
DULY MADE AND SECONDED. IT WAS

RESOLVED: THAT DAVID SIMPSON, BE AND IS HEREBY APPOINTED,
CONSTITUTED AND DESIGNATED AS AGENT AND ATTORNEY-IN-FACT
OF THE CORPORATION WITH FULL POWER AND AUTHORITY TO ACT
ON BEHALF OF THIS CORPORATION IN ALL NEGOTIATIONS, BIDDING,
CONCERNS AND TRANSACTIONS WITH ALL CITIES AND STATES OF ANY
OF ITS AGENCIES, DEPARTMENTS, EMPLOYEES OR AGENTS, INCLUDING
BUT NOT LIMITED TO, THE EXECUTION OF ALL BIDS, PAPERS, DOCUMENTS,
AFFIDAVITS, BONDS, SURETIES, CONTRACTS AND ACTS AND TO RECEIVE
AND RECEIPT THEREFORE ALL PURCHASE ORDERS AND NOTICES ISSUED
PURSUANT TO THE PROVISIONS OF ANY SUCH BID OR CONTRACT, THIS
CORPORATION HEREBY RATIFYING, APPROVING, CONFIRMING, AND
ACCEPTING EACH AND EVERY SUCH ACT PERFORMED BY SAID AGENT AND
ATTORNEY-IN-FACT.

I HEREBY CERTIFY THE FOREGOING
TO BE A TRUE AND CORRECT COPY OF AND
EXCERPT OF THE MINUTES OF THE ABOVE
DATED MEETING OF THE BOARD OF
DIRECTORS OF SAID CORPORATION, AND
THE SAME HAS NOT BEEN REVOKED OR
RESCENDED.



Mark A. Franklin, President

01/04/2024

DATE



NORTEX

CONCRETE LIFT & STABILIZATION

Estimate

TO: CITY OF PROSPER
ATTN: CARRIE JONES
RE: TXSHARE 2024-108: CONCRETE PAVEMENT PANEL LIFTING SERVICES
DATE: 12/20/2024

REMIT PAYMENT TO:
P.O. Box 4935
Fort Worth, TX 76164

LOC #	LOCATION	WORK AREA/LIFT	ADDITIONAL DETAILS	EST. QUANTITY
1	S.B STAR TRAIL BETWEEN KESSLER & STAR MEADOW	126' X 18' BIRDBATH W/ 3.00" LIFT		300
2	N.B STAR TRAIL BETWEEN KESSLER & STAR MEADOW	135' X 18' BIRDBATH W/ 3.00" LIFT		3200
3	N.B STAR TRAIL BETWEEN KESSLER & STAR MEADOW #2	63' X 10' BIRDBATH W/ 2.50" LIFT		700
4	N.B STAR TRAIL BETWEEN KESSLER & GLEN HEATHER	81' X 18' BIRDBATH W/ 4.50" LIFT		2300
5	STAR TRAIL & STARWOOD INTERSECTION	36' X 15' BIRDBATH W/ 1.50" LIFT		600
6	N.B STAR TRAIL AFTER STAR TRACE	90' X 12' BIRDBATH W/ 2.50" LIFT		1200
7	S.B STAR TRAIL BEFORE STAR TRACE	81' X 12' BIRDBATH W/ 2.50" LIFT		1075
8	ACROSS FROM 1931 VANDERBILT DRIVE	81' X 15' BIRDBATH W/ 4.50" LIFT		1650
9	1921-1931 VANDERBILT DRIVE	63' X 15' BIRDBATH W/ 2.50" LIFT		1025
10	CORNELL DR & ALEXIS LN INTERSECTION	54' X 15' BIRDBATH W/ 1.75" LIFT		855
11	STAR MEADOW & SOUTHGATE INTERSECTION	99' X 10' BIRDBATH W/ 2.15" LIFT		1075
12	ACROSS FROM 100 CRESTOVER COURT	72' X 10' BIRDBATH W/ 1.75" LIFT		800
13	ACROSS FROM 2340 FALLSVIEW COURT	63' X 14' BIRDBATH W/ 2.00" LIFT		940
14	FAIRFAX COURT & HONEY LOCUST INTERSECTION	72' X 10' BIRDBATH W/ 1.25" LIFT		775
15	W.B FIRST ST BEFORE HUDSON LN (RIGHT & LEFT LANE)	54' X 20' BIRDBATH W/ 1.75" LIFT		1175
16	S. WINDSONG PKWY & BRISTLELEAF INTERSECTION	45' X 10' BIRDBATH W/ 1.25" LIFT		505
17	S. WINDSONG PKWY & WILEY HILL INTERSECTION	54' X 10' BIRDBATH W/ 1.50" LIFT		600
18	S. WINDSONG PKWY & FREEMAN WAY INTERSECTION	3,348 SQ. FT. BIRDBATH W/ 2.00" LIFT		3600
19	N.B WINDSONG BETWEEN OLD ROSEBUD & FREEMAN	126' X 18' BIRDBATH W/ 2.75" LIFT		2450
20	S.B WINDSONG BETWEEN OLD ROSEBUD & FREEMAN	144' X 18' BIRDBATH W/ 3.38" LIFT		3400
21	N.B WINDSONG BETWEEN OLD ROSEBUD & IRONWOOD	45' X 18' BIRDBATH W/ 2.88" LIFT		880
22				
23				
24				
25				
26				
27				
28				
29				
30				
			TOTAL:	29105

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	EXTENSION
1	Concrete Pavement Raising and Undersealing - Complete In Place (per pound)	29105	3.50	101,867.50
24	Traffic Control: Single Lane Closure - Residentail Roadway (per day, per crew)	16	675.00	10,800.00
				0.00
				0.00
			TAX:	EXEMPT
			TOTAL:	\$112,667.50

All pricing, terms, and conditions are based off the TXShare Contract #2024-108. Town of Prosper member # 2018-02.

NORTEX CONCRETE LIFT & STABILIZATION

201 NW 26th St, Fort Worth, TX 76164
Tel: 817-831-1240 Fax: 817-831-1245

JR. Velazquez
JR@nortexconcretelift.com
(682)622-6773



PARKS AND RECREATION DEPARTMENT

To: Mayor and Town Council

From: Dan Baker, Parks and Recreation Director

Through: Mario Canizares, Town Manager
Robyn Battle – Executive Director

Re: Raymond Community Park Change Order No. 2

Town Council Meeting – January 14, 2025

Strategic Visioning Priority: 1. Acceleration of Infrastructure
4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon authorizing the Town Manager to execute Change Order No. 2 to Dean Construction for two tennis courts at Raymond Community Park in the amount of \$536,146.

Description of Agenda Item:

The proposed Change Order No. 2 will provide two tennis courts and associated improvements in Raymond Community Park. The CIP Subcommittee recommended moving forward with the tennis courts at their December 9, 2024, meeting and the Town Council concurred with the recommendation on December 10, 2024.

Budget Impact:

Change Order No. 2 is for \$536,146. Funds for Change Order #2 are available in account PK202122 – Raymond Community Park.

Below is a summary of the all-in project costs to date:

All-In Project Costs:	
Design, Testing, & Project Mgmt.	\$2,080,911
CMAR's Original GMP Contract Amount	\$17,906,950
Change Order #1 - MP Field Irrigation, Trail (approved 12/10/24)	\$1,350,756
Change Order #2 - Tennis Courts	\$536,146
CMAR's GMP Contract Amount After Change Order #2	\$19,793,852
Total:	\$21,874,763

The total Project Budget is **\$22,900,000**.

The attached Alternates Summary and Alternates Detail outline the status of approved bid alternates, and those that are not currently funded.

Item 7.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Change Order No. 2 document
2. Updated & Prioritized Alternates Summary
3. Updated & Prioritized Alternates Detail

Town Staff Recommendation:

Town Staff recommends that the Town Council authorize the Town Manager to execute Change Order No. 2 to Dean Construction for two tennis courts at Raymond Community Park in the amount of \$536,146.

Proposed Motion:

I move to authorize the Town Manager to execute Change Order No. 2 to Dean Construction for two tennis courts at Raymond Community Park in the amount of \$536,146.



AIA® Document G701® – 2017

Change Order

PROJECT: (Name and address)
Raymond Community Park
Prosper, TX

CONTRACT INFORMATION:
Contract For: General Construction
Date: November 23, 2022

CHANGE ORDER INFORMATION:
Change Order Number: 02
Date: January 15, 2025

OWNER: (Name and address)
Town of Prosper
250 W First Street
Prosper, TX 75078

ARCHITECT: (Name and address)
Dunaway
550 Bailey Ave, #400
Fort Worth, TX 76107

CONTRACTOR: (Name and address)
Dean Electric, Inc. dba Dean Construction
701 Hall Street
Cedar Hill, TX 75104

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Change the Contract Sum from \$19,257,706.00 to \$19,793,852.00.

The Scope of Work is modified as shown in the attached documents from the Architect.

The original Guaranteed Maximum Price after approval of GMP #2 was	\$ 17,906,950.00
The net change by previously authorized Change Orders	\$ 1,350,756.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 19,257,706.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 536,146.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 19,793,852.00


The Contract Time will be unchanged by zero (0) days.

The date of Substantial Completion will remain August 01, 2025 until a subsequent Change Order modifies it.

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Dunaway

ARCHITECT (Firm name)


SIGNATURE

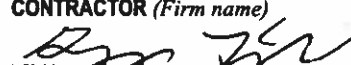
Arron Law, Team Leader

PRINTED NAME AND TITLE

12/30/2024

DATE

Dean Electric, Inc. dba Dean Construction

CONTRACTOR (Firm name)


SIGNATURE

Gregory Firebaugh, President

PRINTED NAME AND TITLE

12-30-24

DATE

Town of Prosper

OWNER (Firm name)

SIGNATURE

Mario Canizares, Town Manager

PRINTED NAME AND TITLE

DATE

Scope of Added Work for Change Order #02

Tennis Courts

To: Kurt Beilharz, PLA, ISA

From: Arron Law, PLA, ASLA

Date: December 17, 2024

Dunaway #: 7691.001

Re: Raymond Community Park – CO #02

The purpose of this MOU is to clearly identify the scope of work being proposed within Change Order #02 for tennis courts. The additional work being proposed is as follows:

The scope of work defined by Alternate #2.06, #2.07, and #2.17 are hereby accepted and added to GMP #2:

Tennis Courts, Subgrade Prep at Tennis Courts, and Site Furnishings at Tennis Courts

The Contract Documents are modified by this ChangeOrder #02 as described above.



APL

CO # 02 - CMAR's Cost + Fees and Owner's Contingency inside the GMP				
Alt #	Description	Subtotal	Total	Comments
2.06	Tennis Courts	423,552.01		Includes Trans Texas Subcontractor's Cost + DCI's General Cond + DCI's Fee (No OC)
2.07	Subgrade Prep at Tennis Courts	77,831.20		Includes Ten Hagen Subcontractor's Cost + DCI's General Cond + DCI's Fee (No OC)
2.17	Site Furnishings at Tennis	9,232.39		Includes DCI's Cost as a Subcontractor + DCI's General Cond + DCI's Fee (No OC)
	Owner's Tennis Court Contingency <i>inside the GMP</i>	25,530.78		For Unforeseen Events (i.e. Weather, Rock, Water, etc.)
CCD # 03 Subtotal for the Tennis Courts Scope		536,146		

Town of Prosper - Raymond Community Park - Master Project Schedule - GMP #s 1 and 2

ID	Description	Biz Days	Start	Finish
1	GMP Package #1	48 days	Tue 10/11/23	Fri 12/19/23
2	95% CD's Town Comments Received	0 days	Tue 10/11/23	Tue 10/11/23
3	GMP 1 100% CD's Released	4 days	Tue 10/11/23	Mon 10/16/23
4	GMP 1 100% CD's Amendment 1 Released	4 days	Tue 10/17/23	Fri 10/20/23
7	GMP 1 Sub Prepare Bids	23 days	Tue 10/17/23	Thu 11/16/23
5	GMP 1 Sub Questions Due to DCI	7 days	Mon 10/23/23	Tue 10/31/23
6	GMP 1 Addendum #3 Released	2 days	Wed 11/1/23	Thu 11/2/23
8	GMP 1 Bid Opening at Town Hall	0 days	Thu 11/16/23	Thu 11/16/23
9	GMP 1 Prep by DCI & Review by PPV	3 days	Fri 11/17/23	Tue 11/21/23
10	GMP 1 Final to PARD Team	0 days	Mon 11/27/23	Mon 11/27/23
11	GMP 1 Review Mtg w/PARD & DWY Team	0 days	Tue 11/28/23	Tue 11/28/23
12	GMP 1 Final Reviewed w/CMO (by RB)	0 days	Wed 11/29/23	Wed 11/29/23
13	GMP 1 Final OK'd by CMO Team	0 days	Thu 11/30/23	Thu 11/30/23
14	Town Council Packets Close (GMP 1 Done)	0 days	Mon 12/4/23	Mon 12/4/23
15	Town Council Mtg - GMP 1 Considered	0 days	Tue 12/12/23	Tue 12/12/23
16	Signed O-C Agreement to DCI	1 day	Wed 12/13/23	Wed 12/13/23
17	Draft NTP from CS to ToP	1 day	Thu 12/14/23	Thu 12/14/23
18	(AL) to Provide Value Options List Via Email to Team by EOD	1 day	Thu 12/14/23	Thu 12/14/23
19	Notice to Proceed for Construction GMP #1	0 days	Tue 12/19/23	Tue 12/19/23
20	GMP Package #2	147 days	Tue 10/31/23	Tue 5/28/24
21	Prepare 95% CDs for Town Engineer's Review	24 days	Tue 10/31/23	Tue 12/5/23
22	Town Engineer's Review & Comments Out	30 days	Wed 12/6/23	Wed 1/17/24
23	Confirm Paving & Fire Lane Direction	5 days	Thu 1/18/24	Wed 1/24/24
24	Update 99% CDs from Town Engineer's Final Review	16 days	Thu 1/25/24	Thu 2/15/24
25	Town Engineer's Review & Final Comments Out	11 days	Fri 2/16/24	Fri 3/1/24
29	DCI's Comments & Estimate on GMP 2 99% CDs	8 days	Fri 2/16/24	Tue 2/27/24
26	GMP 2 100% CDs Released by DWY to Team	0 days	Fri 3/8/24	Fri 3/8/24
27	GMP 2 100% CD's Released To Subs	0 days	Tue 3/12/24	Tue 3/12/24
28	GMP 2 Subs Prepare Bids	22 days	Tue 3/12/24	Wed 4/10/24
30	GMP 2 Prep by DCI	1 day	Thu 4/11/24	Thu 4/11/24
31	GMP 2 Review by PPV	1 day	Fri 4/12/24	Fri 4/12/24
32	GMP 2 Final to PARD Team	4 days	Wed 4/17/24	Mon 4/22/24
33	GMP 2 Final Review PARD Team	0 days	Mon 4/22/24	Mon 4/22/24
34	GMP 2 Final Reviewed w/CMO (by RB)	2 days	Tue 4/23/24	Wed 4/24/24
35	GMP 2 Final OK'd by CMO Team	1 day	Thu 4/25/24	Thu 4/25/24
36	Town Council Packets Close (GMP 2 Done)	7 days	Fri 4/26/24	Mon 5/6/24
37	Owner Directed Move of City Council Consideration	10 days	Tue 5/14/24	Tue 5/28/24
38	Town Council Mtg - GMP Considered	0 days	Tue 5/28/24	Tue 5/28/24
39	Plat Review and Filing	44 days	Mon 11/13/23	Tue 1/16/24
40	Submit Preliminary Plat to Town	0 days	Mon 11/13/23	Mon 11/13/23
41	Comments from Town on the Prelim Plat	11 days	Mon 11/13/23	Wed 11/29/23
42	Final Plat Submitted to Town	2 days	Thu 11/30/23	Fri 12/1/23
43	Final Plat Submitted to P&Z	1 day	Mon 12/4/23	Mon 12/4/23
44	P&Z Mtg - Consider Final Plat	30 days	Tue 12/5/23	Tue 1/16/24
45	Construction	452 days?	Tue 12/19/23	Thu 9/25/25
46	GMP # 1 Activities	228 days	Tue 12/19/23	Wed 11/6/24

Town of Prosper - Raymond Community Park - Master Project Schedule - GMP #s 1 and 2

Updated on 09 MAR 2024

Printed on 03/12/24

ID	Description	Biz Days	Start	Finish	A		S	Half 2, 2023							Half 1, 2024							Half 2, 2024							Half 1, 2025			Item 7.
					O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J							
47	Notice to Proceed w/GMP 1 - 19 DEC 2024	0 days	Tue 12/19/23	Tue 12/19/23	12/19/2023 ♦ Notice to Proceed w/GMP 1 - 19 DEC 2024																											
48	Erosion Control	180 days	Tue 12/19/23	Thu 8/29/24	12/19/2023 Erosion Control																											
49	Tree protection/ Temporary fence	180 days	Tue 12/19/23	Thu 8/29/24	12/19/2023 Tree protection/ Temporary fence																											
50	Demo / Earthwork	127 days	Tue 12/19/23	Fri 6/14/24	12/19/2023 Demo / Earthwork																											
56	Electrical	125 days	Fri 3/1/24	Mon 8/26/24	3/1/2024 Electrical																											
57	Irrigation Sleeving	20 days	Fri 3/1/24	Thu 3/28/24	3/1/2024 Irrigation Sleeving																											
51	Storm Sewer Submittals from Sub	10 days	Fri 4/12/24	Thu 4/25/24	4/12/2024 Storm Sewer Submittals from Sub																											
52	Storm Submittal Review	10 days	Fri 4/26/24	Thu 5/9/24	4/26/2024 Storm Submittal Review																											
53	Storm Material Lead Time	20 days	Fri 5/10/24	Fri 6/7/24	5/10/2024 Storm Material Lead Time																											
54	Utilities - Storm Sewer	43 days	Mon 6/10/24	Thu 8/8/24	6/10/2024 Utilities - Storm Sewer																											
55	Paving and Firelane with Lime	65 days	Tue 7/9/24	Tue 10/8/24	7/9/2024 Paving and Firelane with Lime																											
58	GMP # 1 Substantial Completion - 09 SEPT 2024	5 days	Wed 10/9/24	Tue 10/15/24	10/9/2024 GMP # 1 Substantial Completion - 09 SEPT 2024																											
59	GMP # 1 Punchlist Completion	15 days	Ned 10/16/24	Tue 11/5/24	10/16/2024 GMP # 1 Punchlist Completion																											
60	GMP # 1 Final Completion/Town Acceptance 01 OCT 2024	1 day	Wed 11/6/24	Wed 11/6/24	11/6/2024 GMP # 1 Final Completion/Town Acceptance 01 OCT 2024																											
61	GMP # 2 Activities	338 days?	Tue 5/28/24	Thu 9/25/25	5/28/2024																											
62	Council Approval Delay	0 days	Tue 5/28/24	Tue 5/28/24	5/28/2024 ♦ Council Approval Delay																											
65	GMP #2 Construction Work	231 days	Wed 5/29/24	Thu 4/24/25	5/29/2024 GMP #2 Construction Work																											
70	Moisture Conditioning @ Pickleball	20 days?	Thu 6/20/24	Thu 7/18/24	6/20/2024 Moisture Conditioning @ Pickleball																											
67	Site Concrete	180 days	Thu 6/27/24	Thu 3/13/25	6/27/2024 Site Concrete																											
80	Restroom Concession Building	60 days?	Thu 6/27/24	Fri 9/20/24	6/27/2024 Restroom Concession Building																											
69	Pickleball Courts	120 days?	Fri 7/19/24	Thu 1/9/25	7/19/2024 Pickleball Courts																											
71	Fabric Shade Structure Foundations	37 days?	Fri 7/26/24	Tue 9/17/24	7/26/2024 Fabric Shade Structure Foundations																											
76	Bleacher Shade Structures	100 days?	Tue 7/30/24	Thu 12/19/24	7/30/2024 Bleacher Shade Structures																											
77	Dugout Metal Roofs	40 days?	Tue 7/30/24	Tue 9/24/24	7/30/2024 Dugout Metal Roofs																											
68	Limestone Block walls	80 days?	Thu 8/1/24	Thu 11/21/24	8/1/2024 Limestone Block walls																											
72	Fence Posts	27 days?	Thu 8/22/24	Mon 9/30/24	8/22/2024 Fence Posts																											
74	Backstop Nets Posts	12 days?	Tue 9/17/24	Wed 10/2/24	9/17/2024 Backstop Nets Posts																											
63	Erosion Control	138 days	Mon 10/14/24	Tue 4/29/25	10/14/2024 Erosion Control																											
64	Tree Protection/ Temporary Fence	115 days	Mon 10/14/24	Thu 3/27/25	10/14/2024 Tree Protection/ Temporary Fence																											
66	Electrical (Long Lead Items from GMP # 01)	115 days	Mon 10/14/24	Thu 3/27/25	10/14/2024 Electrical (Long Lead Items from GMP # 01)																											
73	Fence	30 days	Tue 10/15/24	Mon 11/25/24	10/15/2024 Fence																											
75	Backstop Nets	20 days	Mon 12/16/24	Tue 1/14/25	12/16/2024 Backstop Nets																											
81	Aluminum Bleacher Seating	20 days?	Thu 12/19/24	Fri 1/17/25	12/19/2024 Aluminum Bleacher Seating																											
78	Entry Gateways	20 days?	Mon 1/20/25	Fri 2/14/25	1/20/2025 Entry Gateways																											
79	Coit Road Monument Signs	20 days?	Mon 1/20/25	Fri 2/14/25	1/20/2025 Coit Road Monument Signs																											
82	Parking Lot Striping	10 days?	Thu 10/3/24	Ned 10/16/24	10/3/2024 Parking Lot Striping																											
83	Tennis Courts add	140 days	Wed 1/1/25	Thu 7/17/25																												
84	Tennis courts Moisture conditioning	20 days	Thu 1/2/25	Wed 1/29/25	1/2/2025 Tennis courts Moisture conditioning																											
85	Tennis courts	119 days	Thu 1/30/25	Thu 7/17/25	1/30/2025																											
86	Trail Expansion	219 days?	Thu 11/14/24	Thu 9/25/25																												
87	Notice to Proceed	1 day	Tue 12/17/24	Tue 12/17/24																												
88	Design Stage	56 days	Thu 11/14/24	Wed 2/5/25																												
89	Trail Construction	30 days	Thu 1/2/25	Wed 2/12/25																												
90	Low water crossings	30 days	Thu 1/2/25	Wed 2/12/25																												
91	Order Bridge	148 days	Fri 1/31/25	Thu 8/28/25																												
92	Install Piers	30 days	Wed 2/12/25	Tue 3/25/25																												

Town of Prosper - Raymond Community Park - Master Project Schedule - GMP #s 1 and 2

Updated on 09 MAR 2024

Printed on 11/12/24

ID	Description	Biz Days	Start	Finish			Half 2, 2023							Half 1, 2024							Half 2, 2024							Half 1, 2025						
					A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J							
93	Install Abuttmnts	30 days	Tue 3/25/25	Mon 5/5/25																														
94	Install Bridge	1 day	Fri 8/29/25	Fri 8/29/25																														
95	Substantial Completion	1 day	Tue 9/2/25	Tue 9/2/25																														
96	Punchlist	15 days	Wed 9/3/25	Tue 9/23/25																														
97	Final Walkthrough	1 day	Wed 9/24/25	Wed 9/24/25																														
98	Multipurpose Irrigation/Purple pipe	137 days	Sun 12/15/24	Fri 6/27/25																														
99	Notice to proceed	1 day	Sun 12/15/24	Sun 12/15/24																														
100	Multipurpose Irrigation	30 days	Mon 12/16/24	Tue 1/28/25																														
101	RPZ Lead times	30 days	Mon 12/16/24	Tue 1/28/25																														
102	RPZ	5 days	Wed 1/29/25	Tue 2/4/25																														
103	ARAD 4" Lead time	120 days	Mon 12/16/24	Wed 6/4/25																														
104	Other ARAD's Lead times	0 days	Sun 12/15/24	Sun 12/15/24																														
105	Substantial Completion	1 day	Thu 6/5/25	Thu 6/5/25																														
106	Punchlist	15 days	Fri 6/6/25	Thu 6/26/25																														
107	Final Walkthrough	1 day	Fri 6/27/25	Fri 6/27/25																														
108	Dumpster Enclosure	40 days?	Wed 10/16/24	Thu 12/12/24																														
109	Ballfield Clay and Conditioner	40 days?	Thu 8/1/24	Thu 9/26/24																														
110	Irrigation System with Town Water	80 days?	Thu 10/24/24	Tue 2/18/25																														
111	Landscape	80 days	Thu 1/9/25	Wed 4/30/25																														
112	Fine Grade	180 days?	Thu 8/29/24	Wed 5/14/25																														
113	Turf Establishment	60 days?	Fri 3/7/25	Fri 5/30/25																														
114	Playground	45 days?	Fri 11/15/24	Wed 1/22/25																														
115	Playground shade Structure Foundation	20 days?	Thu 8/1/24	Wed 8/28/24																														
116	CXT Building at Playground	60 days?	Thu 10/17/24	Tue 1/14/25																														
117	Handrails/Guardrails	80 days?	Wed 11/6/24	Mon 3/3/25																														
118	Site Amenities	62 days?	Thu 1/2/25	Fri 3/28/25																														
119	Site Masonry	46 days?	Thu 12/26/24	Fri 2/28/25																														
120	Construction Layout	180 days?	Thu 5/30/24	Thu 2/13/25																														
121	Rain Delay	14 days	Tue 5/13/25	Mon 6/2/25																														
122	Owner's Weather Float	32 days?	Tue 6/17/25	Thu 7/31/25																														
123	GMP # 2 Substantial Completion - 01 August 2025	1 day	Fri 8/1/25	Fri 8/1/25																														
124	GMP # 2 Punchlist Completion	15 days	Mon 8/4/25	Fri 8/22/25																														
125	GMP # 2 Final Completion/Town Acceptance 25 AUGUST 2025	1 day	Mon 8/25/25	Mon 8/25/25																														

Raymond Park Alternates Owner's Budget Detail - Status Update for Town Council's Consideration												
Status	w/GMP Now	w/CO #2	w/GMP Now	For Town Coucil Consideration (Not Currently Funded)				w/GMP Now	for TC Future Consideration	Rejected	w/CO #1	w/CO #1
Description	Pedestrian Lighting	Tennis Courts	RR at Tennis Courts	Shade Structures @ Tennis & PB Courts	Other Amenities	Pavilion at Playground	Batting Cages w/Trail & Site Amenities	First Street Momument Sign	Added Landscaping (FY 25-26 Budget Request)	Water Well	Multi- Purpose Irrigation	Trail & Bridge
Budget	203,176	536,146	257,286	35,034	109,400	90,555	238,984	17,124	113,366	1,201,855	458,344	1,000,000
Expiration Date	15-Aug-24	15-Jan-25	15-Jul-24	15-Aug-24	15-Aug-24	15-Aug-24	15-Aug-24	15-Nov-24	N/A	15-Aug-24	15-Aug-24	01-Jan-25

Town of Prosper's Raymond Community Park
GMP #2 - Attachment A - Itemized Guaranteed Maximum Price

06-Jan-25

Cost Detail

Alternates to be Accepted or Rejected at Owner's Option (None of Which are Included in GMP #2)

			DCI's				Total		
Alt #	Source of the Alternate	Alternate Description	Alternate Cost	Add Design & PM Fees	Add Owner's Contngcy	Alternate Cost (Owner's Budget)	Expiration Date		
GMP # 01 Alternate (Still Being Considered by Owner)									
2.01	Nema	GMP 1 Alternate S3 Poles (Pedestrian Lighting)	\$180,246.00	\$193,500.16	\$0.00	\$9,675.01	\$203,175.17	15-Aug-24	
CMAR's Voluntary Alternate Alternates (Not Shown in Attachments D - Drawings & E - Specifications; Under Reiew by Owner)									
GC 1.01	Robinson	Credit for Alternate Backstop Nets	-\$90,000.00	-\$96,618.04	\$0.00	\$0.00	-\$96,618.04	14-Sep-24	
Alternates Shown in Attachments D - Drawings & E - Specifications									
2.01	Dean Construction	Concrete Enhancements	\$62,000.00	\$66,559.09	\$0.00	\$3,327.95	\$69,887.05	15-Sep-24	
2.02	Dean Construction	Concrete Trail along First Street	\$102,350.00	\$109,876.18	\$0.00	\$5,493.81	\$115,369.99	15-Sep-24	
2.03	Dean Construction	CXT Building at Tennis/Pickleball	\$228,250.00	\$245,034.08	\$0.00	\$12,251.70	\$257,285.78	30-Jun-24	
2.04	J&J Masonry	Stone Veneer at CXT Tennis	\$18,650.00	\$20,021.40	\$0.00	\$1,001.07	\$21,022.47	15-Aug-24	
2.05	J&J Masonry	Stone Veneer at CXT Playground	\$18,650.00	\$20,021.40	\$0.00	\$1,001.07	\$21,022.47	15-Aug-24	
2.06	Trans Texas Tennis	Tennis Courts	\$394,540.00	\$423,552.01	\$0.00	\$21,177.60	\$444,729.61	30-Aug-24	
2.07	Ten Hagen	Subgrade Prep @ Tennis Courts	\$72,500.00	\$77,831.20	\$0.00	\$3,891.56	\$81,722.76	30-Aug-24	
2.08	Childs Play	Fabric Shade Structure at Pickleball	\$31,080.00	\$33,365.43	\$0.00	\$1,668.27	\$35,033.70	15-Aug-24	
2.09	Dean Construction	Shade Structure at Playground	\$76,000.00	\$81,588.57	\$0.00	\$4,079.43	\$85,667.99	15-Aug-24	
2.10	Dean Construction	First Street Monument Sign	\$12,270.00	\$13,172.26	\$0.00	\$3,951.68	\$17,123.94	15-Nov-24	
2.11	Firefighters Landscape and Design	Irrigation using well water	\$287,000.00	\$308,104.19	\$0.00	\$30,810.42	\$338,914.60	15-Aug-24	
2.12	THI	Water Well	\$599,710.00	\$643,808.93	\$0.00	\$64,380.89	\$708,189.82	15-Aug-24	
2.13	Nema	Electrical Service to well	\$20,959.00	\$22,500.19	\$0.00	\$2,250.02	\$24,750.21	15-Aug-24	
2.14	Firefighters Landscape and Design	Required additional landscaping	\$96,000.00	\$103,059.24	\$0.00	\$10,305.92	\$113,365.16	15-Aug-24	
2.15	Dean Construction	Site Furnishings at Batting Cages	\$9,200.00	\$9,876.51	\$0.00	\$493.83	\$10,370.34	15-Sep-24	
2.16	Dean Construction	Pedestrian Concrete at Tennis	\$15,000.00	\$16,103.01	\$0.00	\$805.15	\$16,908.16	15-Sep-24	
2.17	Dean Construction	Site Furnishings at Tennis	\$8,600.00	\$9,232.39	\$0.00	\$461.62	\$9,694.01	15-Aug-24	
2.18	Dean Construction	Painted Concrete at Tennis	\$2,500.00	\$2,683.83	\$0.00	\$134.19	\$2,818.03	15-Sep-24	
2.19	Dean Construction	Batting Cages	\$177,663.00	\$190,727.23	\$0.00	\$9,536.36	\$200,263.59	15-Aug-24	
2.20	Nema	Electrical at Playground Pavillion	\$4,335.00	\$4,653.77	\$0.00	\$232.69	\$4,886.46	15-Aug-24	
2.21	Dean Construction	Concrete Trail at Batting Cages	\$25,150.00	\$26,999.37	\$0.00	\$1,349.97	\$28,349.34	15-Aug-24	
2.22	J&J Masonry	Masonry at Playground Columns	\$15,300.00	\$16,425.07	\$0.00	\$821.25	\$17,246.32	15-Aug-24	
2.21	Nema	Zap Stand Electrical Infrastructure	\$2,153.00	\$2,311.32	\$0.00	\$115.57	\$2,426.88	15-Aug-24	
Scope Options Added After Bid Day									
Additional 3Ph Electric Service to Well (May Be Required?)			\$100,000.00	\$20,000.00	\$10,000.00	\$130,000.00			
Add Artificial Turf at Baseball Field			\$6,653,213.07	\$125,000.00	\$677,821.31	\$7,456,034.38			
Add Artificial Turf at Multipurpose Fields			\$6,101,860.63	\$115,000.00	\$621,686.06	\$6,838,546.69			
Multipurpose Irrigation per CO # 01			\$372,722.33	\$64,927.22	\$20,690.55	\$458,343.61			
Add Signage Package for Raymond Park			by City	by City	w/Total	\$70,000.00			
Add Trail & Bridge			\$796,987.16	\$72,575.00	\$130,434.32	\$1,000,000.00			

Raymond Park Alternates Owner's Budget Detail - Status Update for Town Council's Consideration												
Status	w/GMP Now	w/CO #2	w/GMP Now	For Town Coucil Consideration (Not Currently Funded)				w/GMP Now	for TC Future Consideration	Rejected	w/CO #1	w/CO #1
Description	Pedestrian Lighting	Tennis Courts	RR at Tennis Courts	Shade Structures @ Tennis & PB Courts	Other Amenities	Pavilion at Playground	Batting Cages w/Trail & Site Amenities	First Street Momument Sign	Added Landscaping (FY 25-26 Budget Request)	Water Well	Multi- Purpose Irrigation	Trail & Bridge
Budget	203,176	536,146	257,286	35,034	109,400	90,555	238,984	17,124	113,366	1,201,855	458,344	1,000,000
Expiration Date	15-Aug-24	15-Jan-25	15-Jul-24	15-Aug-24	15-Aug-24	15-Aug-24	15-Aug-24	15-Nov-24	N/A	15-Aug-24	15-Aug-24	01-Jan-25
	203,175											
Not Included in Alts												
		w/GMP Cont Now	257,286									
					w/GMP Cont Now							
		444,730										
		81,723										
				35,034								
					w/Pavillion	85,668						
								17,124				
										338,915		
										708,190		
										24,750		
									113,365			
							10,370					
					16,908							
		9,694										
					2,818							
							200,264					
						4,886						
							28,349					
					17,246							
					2,427							
										130,000		
											458,344	
					70,000							
												1,000,000



ENGINEERING SERVICES

To: Mayor and Town Council

From: Hulon T. Webb, Jr., P.E., Director of Engineering Services

Through: Mario Canizares, Town Manager
Chuck Ewing, Assistant Town Manager

Re: Ordinance No-Parking
Bryan Street, Dave Trail, Gray Lane and Wilson Drive

Town Council Meeting – January 14, 2025

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon an ordinance establishing a no-parking zone on Bryan Street from Coleman Street to Trail Drive, Dave Trail from Gray Lane to Trail Drive, Gray Lane from Dave Trail to Trail Drive, and Wilson Drive from Gray Lane to Trail Drive.

Description of Agenda Item:

At the December 10, 2024, Town Council meeting, the Town Council received complaints regarding parents parking along Bryan Street from Coleman Street to Trail Drive, Dave Trail from Gray Lane to Trail Drive, Gray Lane from Dave Trail to Trail Drive, and Wilson Drive from Gray Lane to Trail Drive near Reynolds Middle School blocking traffic in the afternoon after school. In addition to the safety concerns with parents parking on both sides of the street, negatively impacting access of emergency vehicles, some property owners have reported damage to their lawns and irrigation systems from vehicles and increased pedestrians. To address similar concerns in 2020, the Town Council approved a no-parking zone along Wilson Drive from Coleman Street to Gray Lane where the homes side Wilson Drive with a parking restriction on school days from 7AM – 9AM and 2PM – 4PM.

The Trails of Prosper HOA conducted a survey of all 83 homeowners along the four (4) roadways to get their feedback on restricting parking from 3PM – 4PM in front of their home. Included in this report is a copy of the response map that shows the locations of the 35 homeowners in support of a no-parking zone in front of their homes, 8 homeowners that are not supportive of the restriction, and the remaining 40 homeowners that did not respond to the HOA' survey.

Previously approved no-parking zones that have been successful in addressing similar concerns were either along roads where homes sided the road, or along a road that had homes facing the road where one hundred percent of the affected homeowners supported the parking restriction. This will be the first time no-parking zones are implemented in front of homes that did not either approve the restriction or respond to the HOA's survey request for feedback. Since the intent of the no-parking restriction zones is to eliminate the safety concerns with parents parking and

waiting to pick up their kids in the afternoon after school, there can be some latitude in enforcement for those homeowners that do not support the no-parking zones due to a need to park their personnel vehicles in front of their homes during the hours of 3PM – 4PM on school days.

Budget Impact:

The estimated cost for signs and poles is \$3,000 and will be purchased from the Streets Department FY2025 Adopted Budget Account Number 15050010-54300 (Signs & Hardware).

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has reviewed the ordinance as to form and legality.

Attached Documents:

1. Location Map
2. No Parking Ordinance
3. HOA Survey

Proposed Motion:

I move to (approve/deny) an ordinance establishing a no-parking zone on Bryan Street from Coleman Street to Trail Drive, Dave Trail from Gray Lane to Trail Drive, Gray Lane from Dave Trail to Trail Drive, and Wilson Drive from Gray Lane to Trail Drive.

Location Map

Item 8.

Current No Parking Zone
on Wilson Drive:
7AM – 9AM
2PM – 4PM
School Days

Proposed No Parking Zone
on Bryan Street, Dave
Trail, Gray Lane and
Wilson Drive:
3PM – 4PM
School Days

Reynolds Middle School

TOWN OF PROSPER, TEXAS**ORDINANCE NO. 2025-__**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING DIVISION 2, "NO-PARKING ZONES," OF ARTICLE 12.05, "PARKING, STOPPING AND STANDING," OF CHAPTER 12, "TRAFFIC AND VEHICLES," OF THE CODE OF ORDINANCES OF THE TOWN OF PROSPER, TEXAS, BY AMENDING SECTION 12.05.034 "WILSON DRIVE", TO PROHBIT PARKING ON A PORTION OF WILSON DRIVE; BY ADDING A NEW SECTION 12.05.042, "BRYAN STREET," TO PROHIBIT PARKING ON BRYAN STREET; BY ADDING A NEW SECTION 12.05.043, "DAVE TRAIL," TO PROHIBIT PARKING ON DAVE TRAIL; AND BY ADDING A NEW SECTION 12.05.044, "GRAY LANE," TO PROHIBIT PARKING ON GRAY LANE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town of Prosper, Texas ("Town"), is a home-rule municipal corporation duly organized under the laws of the State of Texas; and

WHEREAS, the Texas Transportation Code, as amended, provides that the governing body of a municipality may adopt parking regulations; and

WHEREAS, the Town has investigated and determined that no-parking zones on Bryan Street, Dave Trail, Gray Lane and Wilson Drive, as more fully described herein, is both warranted and prudent, and it is the desire of the Town to adopt the following regulations related thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

Existing Division 2, "No-Parking Zones," of Article 12.05, "Parking, Stopping and Standing," of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances is hereby amended by amending Section 12.05.034 "Wilson Drive", adding a new Section 12.05.042, "Bryan Street", adding a new Section 12.05.043, "Dave Trail", and adding a new Section 12.05.044, "Gray Lane," to read as follows:

"ARTICLE 12.05 PARKING, STOPPING AND STANDING

* * *

Division 2. No-Parking Zones

* * *

Sec. 12.05.034 Wilson Drive

There shall be no parking on both sides of Wilson Drive from its intersection with Coleman Street east one-hundred fifty feet (150') to the intersection of Gray Lane, from 7:00 a.m. until 9:00 a.m. and from 2:00 p.m. until 4:00 p.m. on school days. A person commits an offense by violating any provision of this section.

There shall be no parking on both sides of Wilson Drive from its intersection with Gray Lane east eight-hundred feet (800') to the intersection of Dave Trail, from 3:00 p.m. until 4:00 p.m. on school days. A person commits an offense by violating any provision of this section.

Sec. 12.05.042 Bryan Street

There shall be no parking on both sides of Bryan Street from its intersection with Coleman Street east four-hundred twenty-five feet (425') to the intersection of Trail Drive, from 3:00 p.m. until 4:00 p.m. on school days. A person commits an offense by violating any provision of this section.

Sec. 12.05.043 Dave Trail

There shall be no parking on both sides of Dave Trail from its intersection with Gray Lane east and north one-thousand one-hundred fifty feet (1,150') to the intersection of Trail Drive, from 3:00 p.m. until 4:00 p.m. on school days. A person commits an offense by violating any provision of this section.

Sec. 12.05.044 Gray Lane

There shall be no parking on both sides of Gray Lane from its intersection with Dave Trail north and east one-thousand one-hundred feet (1,100') to the intersection of Trail Drive, from 3:00 p.m. until 4:00 p.m. on school days. A person commits an offense by violating any provision of this section."

SECTION 3

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portion of conflicting ordinances shall remain in full force and effect.

SECTION 4

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town of Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 5

Any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine not to exceed the sum of five hundred dollars (\$500.00) for each offense.

SECTION 6

This Ordinance shall become effective after its passage and publication, as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 14TH DAY OF JANUARY, 2025.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michell Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

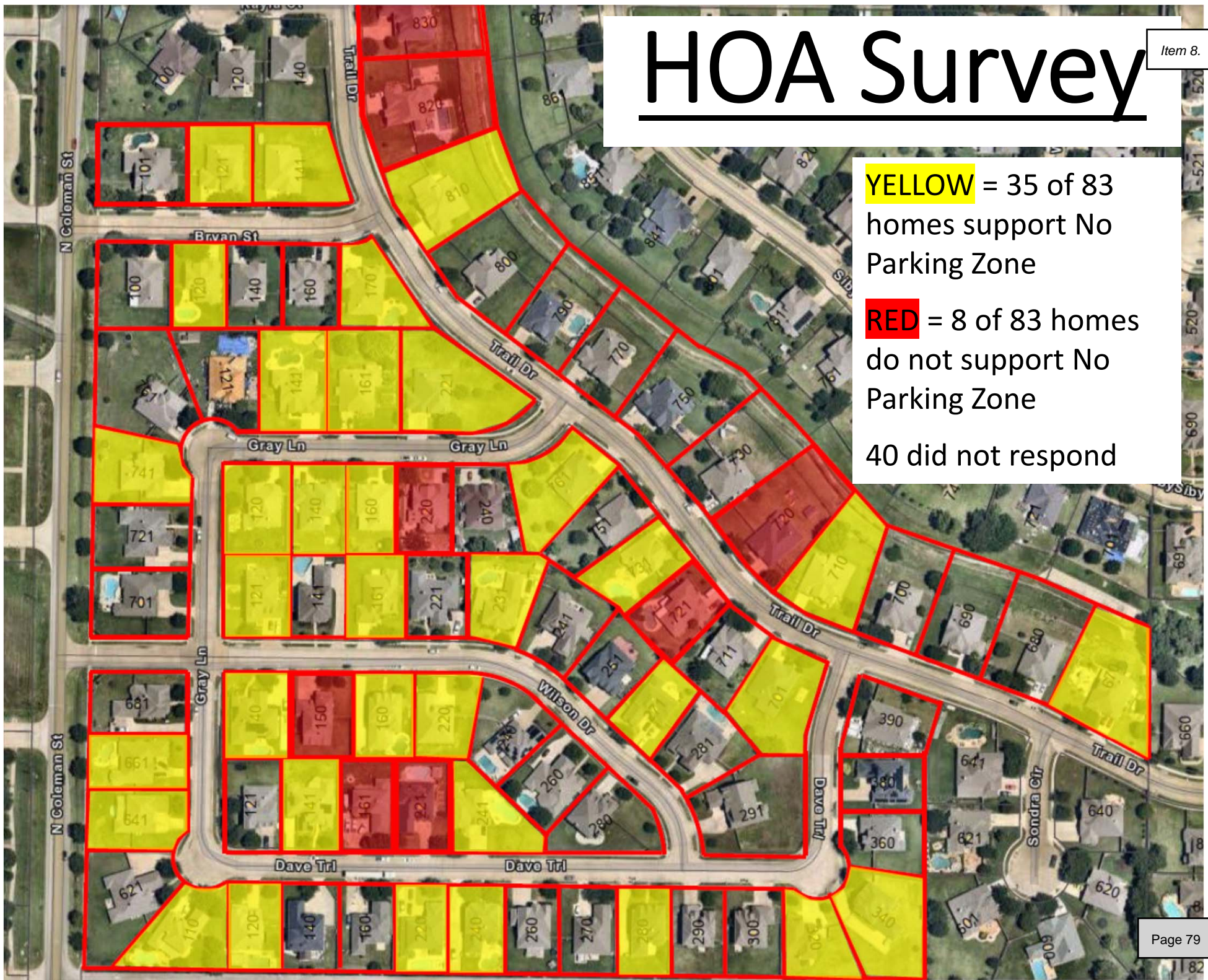
HOA Survey

Item 8.

YELLOW = 35 of 83 homes support No Parking Zone

RED = 8 of 83 homes do not support No Parking Zone

40 did not respond





LIBRARY SERVICES

To: Mayor and Town Council

From: Gary Landeck, Library Director

Through: Mario Canizares, Town Manager
Robyn Battle, Executive Director

Re: 2025 Library Master Plan

Town Council Meeting – January 14, 2025

**Strategic Visioning Priority: 1. Acceleration of Infrastructure
4. Provide Excellent Municipal Services**

Agenda Item:

Presentation of the 2025 Library Master Plan.

Description of Agenda Item:

During the course of 2024, the Prosper Community Library Master Plan was developed through a collaborative effort involving the Library Advisory Board, Town staff, elected representatives, community stakeholders, and expert consultants from 720 Design. This Plan outlines a bold vision for the library's evolution, addressing rapid community growth, facilities, and future demands.

Key milestones and accomplishments during the planning process include:

1. **Extensive Community Engagement:** Input from over 600 residents through surveys, focus groups, and leadership interviews shaped the vision for the "dream library."
2. **Benchmarking Analysis:** Comparisons with peer libraries revealed critical gaps in facility size, collection diversity, and programming capacity, underscoring the need for significant investment.
3. **Actionable Recommendations:** Short- and long-term strategies include service and facility expansion, enhanced technology, and sustainable design to meet Prosper's growing needs.

Current Status of the Master Plan:

The Master Plan identifies two facility expansion options:

- **Option 1:** A 72,000-square-foot facility meeting full build-out requirements.
- **Option 2:** A 50,000-square-foot facility with phased expansion.

Both options include:

- Flexible spaces for community programming and study areas.
- Enhanced technology resources, maker spaces, and digital literacy tools.
- Sustainable, inclusive designs prioritizing accessibility and sensory-friendly areas.

The Plan also outlines short-term actions to improve programming, expand collections, and increase community outreach, such as adding mobile services and extended library hours.

The Library Board unanimously recommended approval of the 2025 Library Master Plan at their January 7, 2025, Special Meeting by a vote of 6-0.

Budget Impact:

The contract with 720 Design for the Library Master Plan was approved on April 30, 2024, in the amount of \$98,375. The original budget for this project was \$130,000.

Attached Documents:

1. Volumes I and II of the 2025 Library Master Plan
2. Slide Presentation by 720 Design

Town Staff Recommendation:

Town staff requests Council feedback to finalize the Prosper Community Library Master Plan, ensuring alignment with the Town's strategic vision and community needs. Pending feedback from the Council, a Resolution adopting the 2025 Library Master Plan will be brought forward for Council consideration at a future Town Council meeting.

2025 PROSPER COMMUNITY LIBRARY MASTER PLAN

VOLUME 1





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INTRODUCTION:

LETTER FROM THE DIRECTOR

Dear Members of the Prosper Town Council,

It is with great enthusiasm that I introduce the Prosper Community Library Master Plan—a bold vision designed to transform our library into a cornerstone of innovation, creativity, and community connection. This plan, developed through a collaborative effort with our residents, Town staff, Council, Library Advisory Board members, and expert consultants from 720 Design, reflects Prosper’s forward-thinking spirit and the aspirations of our rapidly growing community.

At the heart of this vision is a commitment to building a facility that meets not only today’s needs but anticipates tomorrow’s opportunities. In the following pages, you will find a comprehensive strategy for addressing critical gaps and building a community asset that is a dynamic and adaptable hub of learning, creativity, and connection.

Key priorities include:

FLEXIBLE SPACES FOR ALL PURPOSES:

From small study rooms and flexible meeting spaces to expansive event areas, this facility will provide an adaptable environment for everything from business meetings to creative workshops and community gatherings.

SUPPORT FOR ENTREPRENEURSHIP AND CREATIVITY:

Plans for coworking spaces, artist studios, makerspaces, and recording and design tools ensure that Prosper’s residents will have access to the resources and inspiration needed to bring their ideas to life.

A FUTURE-FOCUSED APPROACH TO TECHNOLOGY AND INFRASTRUCTURE:

Designed to evolve with emerging trends, this new facility will provide access to tools and resources that empower all residents to thrive in a digital world.

STEM AND ARTS ENGAGEMENT:

The proposed facility will have a focus on experiential learning, offering hands-on programs and access to tools that inspire curiosity and creativity for all ages.

This Master Plan is a promise to the people of Prosper to create a space that reflects the values, energy, and potential of our Town. By approving this plan, you are not only investing in a building but in a future where education, creativity, and community thrive.

GARY LANDECK, DIRECTOR

PROSPER COMMUNITY LIBRARY

EXECUTIVE SUMMARY, RECOMMENDATIONS + NEXT STEPS

INTRODUCTION

The *Prosper Community Library Facility Master Plan* outlines a strategic vision for the library's evolution, addressing rapid community growth, facility inadequacies, and future demands. This comprehensive plan, developed with input from community members, library staff, and external consultants, provides actionable recommendations to ensure the library remains a vital community hub. It emphasizes community engagement, a robust methodology, and clear short- and long-term strategies to meet Prosper's evolving needs.

COMMUNITY ENGAGEMENT: BUILDING A SHARED VISION

The plan incorporated extensive community involvement to shape the vision for the library:

1. **Stakeholder Collaboration:** Focus groups, surveys, and interviews with over 600 community members and leaders provided insights into aspirations and priorities for a "dream library."
2. **Diverse Input:** Groups like the Mayor's Youth Advisory Council emphasized the importance of spaces tailored for teens and technological engagement.
3. **Top Priorities Identified:**
 - Small group study rooms and multi-purpose spaces.
 - A focus on children's interactive spaces and

teen-friendly zones.

- Outdoor areas, maker spaces, and technology equipped learning environments.

METHODOLOGY: A COMPREHENSIVE APPROACH

To create a forward-looking library plan, a robust methodology was employed:

- **Discovery and Benchmarking:** Tours of innovative libraries in Texas highlighted best practices in flexibility, technology, and community-centered design.
- **Environmental Scanning:** A comparison with peer libraries underscored Prosper's deficiencies, including a facility size ranking last among peers and limited seating, programming space, and collection accessibility.
- **Standards Alignment:** The plan aligns with Texas Public Library Standards, targeting 0.8 square feet per capita to achieve enhanced service levels.
- **Data-Driven Insights:** Surveys revealed barriers to library use, including space constraints and limited collection diversity, guiding recommendations for expansion.

EXECUTIVE SUMMARY, RECOMMENDATIONS + NEXT STEPS

RECOMMENDATIONS AND OPTIONS: SHORT- AND LONG-TERM STRATEGIES

SHORT-TERM ACTIONS

1. Expand Access and Programming:

- Increase collection size and enhance digital holdings.
- Introduce mobile outreach services, including book vending and lockers.
- Extend library hours and improve program options, especially for families and teens.

2. Upgrade Technology:

- Deploy laptop vending machines to maximize flexible seating.
- Enhance digital literacy offerings and Wi-Fi infrastructure.
- Offer laptop vending machines for technology use within the library.

3. Operational Enhancements:

- Recruit skilled library staff and develop a five-year collection growth plan.

LONG-TERM PLANS

1. Facility Expansion:

- Option 1: Build a 70,000-square-foot facility meeting full build-out requirements, providing exemplary service standards. Estimated total project cost: \$67.9 million.

- Option 2: Construct a 50,000-square-foot facility with phased expansion. Estimated total project cost: \$52 million.

2. Site Selection: Identify an 8-acre site integrating outdoor amenities, ample parking, and accessibility features.

3. Future-Proofing:

- Design flexible spaces adaptable for evolving community needs.
- Incorporate maker spaces, STEM labs, and creative hubs for lifelong learning.

4. Sustainability and Inclusivity:

- Ensure ADA-compliance, sensory spaces, and prioritize energy-efficient designs.

CONCLUSION

The Prosper Community Library Facility Master Plan reflects a commitment to community-driven growth, positioning the library as a cornerstone for education, creativity, and connection. By addressing immediate challenges and planning for long-term needs, Prosper aims to deliver a library that exceeds expectations and supports its vibrant and expanding community.

EXECUTIVE SUMMARY, RECOMMENDATIONS + NEXT STEPS

FACILITY SPACE RECOMMENDATIONS	POPULATION	POPULATION WITH ARTESIA	SF PER CAPITA	EXISTING SQUARE FOOTAGE	NEW TOTAL SQUARE FOOTAGE	TIMELINE
2023-2028						
Master Plan/Concept Design Option 1	77,000		0.91	9,627	70,000	Present-July 2025
WILL SERVE THE COMMUNITY THROUGH 2055		85,000	0.82			
Master Plan/Concept Design Option 2	63,448		0.79	9,627	50,000	Present-July 2025
WILL SERVE THE COMMUNITY THROUGH 2033		85,000	0.59			
Secure Funding						1-Nov-25
Secure Site						1-May-25
Design Process and Release for bid						November 2025- November 2026
Construction-Complete in 2028	85,000	85,000	0.85		72,000	18 months
NON TRADITIONAL SERVICES						
Expand Mobile Services/Outreach Vehicle						2025
Identify Locations for Lockers or Library Materials Vending						2025
TOTAL LIBRARY SPACE						

EXECUTIVE SUMMARY, RECOMMENDATIONS + NEXT STEPS

SERVICE RECOMMENDATIONS						TIMELINE
SUPPORT ORGANIZATIONS						
Create a Library Foundation						Present
COLLECTIONS						
Increase Collection Size	2025	2026	2027	2028	2029	2030
Physical Collection	33,224 current collection				Increase to 110,000 - 120,000 vols for enhanced collection	Weed and maintain collection
Digital Collection	Review consortium and access					
Convert Collection to RFID	Begin tagging library collection	Purchase new materials pre-tagged	Purchase opening day collection	Install new AMH in new building		
Purchase and Install Self Check	After books are tagged					
TECHNOLOGY						
Technology Vending	Remove one desktop station and replace with Laptops Anytime or similar: https://www.laptopsanytime.com/					Present
Meet minimum technology requirements for desktops		Utilize Laptop Vending	Utilize Laptop Vending	Vending + 20 desktops	Vending + 20 desktops	
STAFFING						
Update organizational chart and job descriptions for new services and programs in the new building						On-going
OPERATIONS						
Increase operating budget to allow for an increased physical collection, more accessible digital collection, and increased staff.						On-going

ACKNOWLEDGMENTS

Thank you to all who contributed to this Master Plan

David F. Bristol, *Mayor*

Marcus Ray, *Mayor Pro-Tem*

Amy Bartley, *Deputy Mayor Pro-Tem*

Craig Andres, *Town Council*

Chris Kern, *Town Council*

Jeff Hodges, *Town Council*

Cameron Reeves, *Town Council*

Danielle Philipson, *Chair, Library Advisory Board*

Jennifer Wattenbarger, *Vice-Chair Library Advisory Board*

Jennifer Lawler, *Library Advisory Board*

Lenorah Johnson, *Library Advisory Board*

Mary Beth Randecker, *Library Advisory Board*

Katie Williams, *Library Advisory Board*

Andrew Cartwright, *Library Advisory Board*

Mario Canizares, *Town Manager*

Bob Scott, *Deputy Town Manager*

Chuck Ewings, *Assistant Town Manager*

Stuart Blasingame, *Fire Chief*

Mary Ann Moon, *Executive Director, Prosper Economic Development Corporation*

Robyn Battle, *Executive Director*

Gary Landeck, *Library Director*

The many residents of Prosper to gave their time to provide input, insight, and inspiration in Focus Groups, the Online Survey, and other ways every day.



1 | INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

The *Prosper Community Library Facility Master Plan* was created in close collaboration with the Library Board, community leaders, engaged citizens, and Town/library staff. Developed under the guidance of library design consultants 720 design inc., this Master Plan is intended to be comprehensive, actionable, and forward-looking, providing flexible space planning options that enable the library to meet evolving community needs through the projected Town build-out in 2055.

The main objectives of the Library Master Plan are to assess current and anticipated community needs, provide detailed insights into required space and services, establish standards, and offer recommendations for meeting those standards.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

EXISTING LIBRARY

The Prosper Community Library is currently housed in a 9,600-square-foot space within the Town Hall building, which it has shared since 2018. However, the rapid growth in Prosper has increased space needs for both the library and Town Hall. The library has outgrown its current collection space, storing nearly 2000 items of its materials offsite and available only upon request. Programs are popular but constrained by limited space and a room divider that does not provide adequate acoustic separation. Staff are similarly limited, working in a small, remote room. Addressing these space constraints would also alleviate some of Town Hall's space limitations.

The 2023 Comprehensive Plan reports the Town's population at 38,312, expected to reach over 77,000 by 2055, exclusive of the Artesia development. If Artesia is included, Prosper's population could reach approximately 85,000.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

PLAN GOALS AND CRITERIA FOR SUCCESS

At the outset of the Master Plan development, Library and Town leaders identified key “criteria for a successful strategic plan” as follows:

1. Integrate the Town of Prosper’s Core Values:
 - **Teamwork:** Collaborate with Parks & Recreation to align both master plans as they develop in parallel, reference the Town Comprehensive Plan.
 - **Heart:** Engage community members and Town leaders throughout the master plan process.
 - **Respect:** Treat all with dignity, kindness, and courtesy.
 - **Integrity:** Act with honesty, transparency, and fairness.
 - **Vision:** Aim to proactively address community needs while supporting Council goals as noted here in this report.
 - **Excellence:** Pursue continuous improvement and personal professionalism. This report seeks to improve the library’s offerings to the community it serves by meeting and exceeding State of Texas standards as well as the community’s specific needs.
2. Strategic Visioning Priorities (Identified by Town Council in April 2024 and expanded to reflect the specific goals of this master plan report)
 - **Service:** Meet and exceed the needs of the community and respond positively to issues. By increasing the available library space, library services can expand to meet the needs of the community.
 - Accelerate infrastructure growth to match Prosper’s rapid expansion. The library is a critical amenity to the residents of Prosper.
 - Develop downtown Prosper as a destination, with the library as a potential, vibrant central community hub.
 - Continue providing excellent municipal services by fostering a high-performance culture and ensuring adequate resources, especially in the library.
3. Design a library that will “WOW!” and exceed the community’s expectations.

**“ I’m so excited that a new library is in the works!
We need something big and amazing to match
our growing, amazing town!!!”**

- STATEMENT FROM ONLINE SURVEY

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

DISCOVERY TOURS

Prior to initiating the Master Plan, town and library staff, along with consultants, toured three newly developed or renovated libraries in Texas to evaluate best practices and innovative services. These tours provided invaluable insights into aspirational services, systems, furniture, and layouts that could be adapted for Prosper Community Library.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

LIBRARY DISCOVERY TOUR DETAILS

GEORGE W. HAWKES DOWNTOWN LIBRARY (ARLINGTON, TX)

- Notable features: Multi-purpose community room, outdoor event plaza, children's space, and soundproof dividers, three story urban building.
- Lessons Learned: Flexible space design, robust power options in high-use areas, incorporating chair rails to protect walls, and the benefit of a multi-story building for acoustic separation.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

LIBRARY DISCOVERY TOUR DETAILS

TRAPHENE HICKMAN PUBLIC LIBRARY (CEDAR HILL, TX)

- Highlights: LEED-certified building, outdoor decks, dividable multi-purpose room, digital media suite, and adult reading porch located in a signature park with an amphitheater, reading swings and power at café tables.
- Lessons Learned: Involving the community in design, providing ample meeting/program/multi-purpose spaces, and ensuring additional parking.

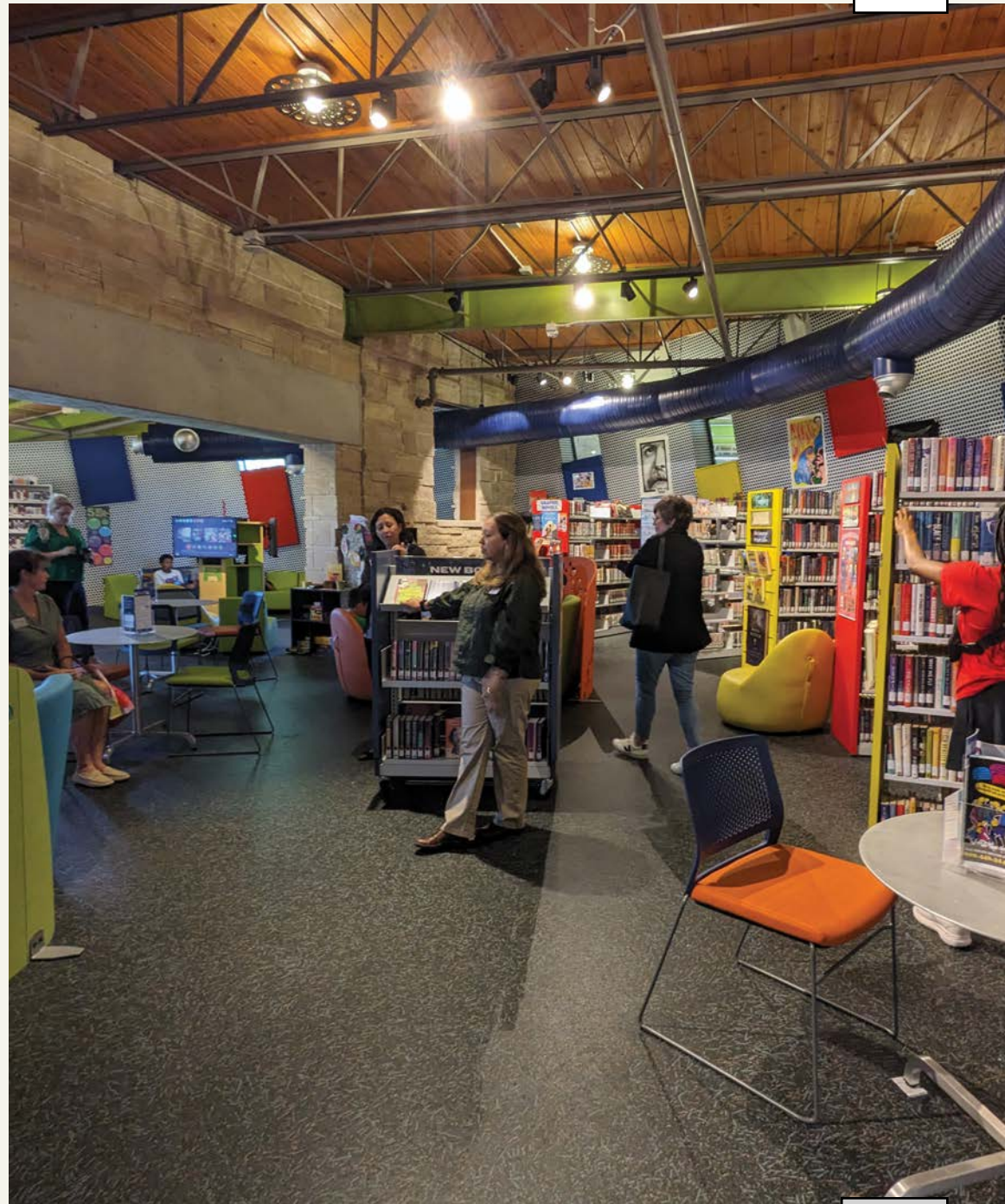


INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

LIBRARY DISCOVERY TOUR DETAILS

SMITH PUBLIC LIBRARY (WYLIE, TX)

- Key features: Traditional quiet reading rooms, themed children's area, and outdoor programming spaces. This library is located on a site shared with the Recreation Center and Town Hall.
- Lessons Learned: Ensure accessibility, power availability, and outdoor programming spaces to foster inclusivity. Pros and cons of co-locating a library and recreation center were discussed.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

EMERGING TRENDS NOTED:

- Flexible, reconfigurable spaces like mobile shelving and multi-purpose rooms are critical to ensuring the space can be transformed for multiple purposes.
- Integration of technology and digital literacy programs support education and entertainment goals.
- Maintain existing and develop new community-centric programming and partnerships for enhanced service offerings.

SUMMARY OF KEY TAKEAWAYS FOR PROSPER COMMUNITY LIBRARY:

- **Design Flexibility and Community Involvement:** Create flexible spaces with ample power and data and involve the community in design choices.
- **Location and Accessibility:** Central locations are ideal for library accessibility and community engagement.
- **Growth Planning:** Design with expansion in mind to meet future population demands.
- **Technology and Safety:** Ensure technology-enhanced spaces and prioritize safety with design choices like visibility and glass partitions.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

STAKEHOLDER INPUT

The Prosper Community Library master plan process included various methods for community involvement, including four focus groups, an online survey, and leadership interviews.

COMMUNITY FOCUS GROUPS

Three focus group sessions were held in July 2024 and one with the Mayor's Youth Advisory Council in November, attracting strategic community stakeholders and over 45 attendees. Participants provided input on their visions for a "dream library" and voted on priority spaces.

1 | AWARENESS OF LIBRARY PROGRAMS

Of the participants, 21 felt very well-informed about the library's offerings, 9 considered themselves fairly informed, and 9 expressed a desire for better communication and shared preferences for receiving updates. Email and Instagram were noted as the most effective.

2 | LIBRARY USE OUTSIDE PROSPER

Community members also utilize neighboring libraries: 24% go to Frisco, 22% to McKinney (John and Judy Gay Community Library or Downtown Library), 10% to Celina, and 8% access digital collections from libraries like Houston Public Library.



INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

3 | IMPORTANCE OF PHYSICAL VS. DIGITAL RESOURCES

In prioritizing physical versus digital library spaces, 53% of respondents preferred physical spaces and collections, while 47% valued an equal focus on physical and digital resources.

4 | SUGGESTIONS FOR NEW LIBRARY PLANNING

Thirty-three participants shared ideas for the new Prosper Community Library, emphasizing outdoor spaces, a larger collection, and creative, engaging spaces for children.

The top community priorities gathered from the “dot” voting exercise and the Mayor’s Youth Advisory Council online poll included:

- Small group study rooms (38% of the MYAC listed these as the most important space)
- Maker Space with high-tech equipment
- Quiet reading room (even the youth group indicated this is a top priority)
- Multi-purpose rooms with dividers
- Study pods and a reading deck
- Interactive Spaces for kids of all ages including reading niches and recording studios
- Vending and Tutoring Spaces

Reference **APPENDIX B** for more information.



NO. 1 | VENDING CAFE



NO. 2 | STUDY ROOMS



NO. 3 (TIE) | QUIET READING ROOM



NO. 5 | HIGH TECH MAKERSPACE



NO. 3 (TIE) | STUDY PODS



NO. 6 | READING NICHES

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT



NO. 7 | LOW TECH MAKERSPACE



NO. 9 (TIE) | INTERACTIVE LEARNING



NO. 8 | PLAZA AND WALKING PATHS



NO. 9 (TIE) | GAMING / CODING / ENTREPRENEURSHIP

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

ONLINE SURVEY SUMMARY:

The online survey, administered by The Ivy Group, aimed to gauge the community's current use of the library, identify key needs, and gather feedback on desired features for a future facility. Conducted in the summer of 2024, the survey was promoted through all of the Town's communication channels, including the Town website, e-newsletters, social media, and direct-mail postcards to 4,000 Prosper households. It received responses from 565 residents of varying ages, library usage patterns, and backgrounds, providing a broad perspective on community sentiment. The key findings from the survey are outlined below:

1 | BARRIERS TO LIBRARY USAGE

- **Space Limitations:** Nearly half (48%) of respondents noted the lack of adequate space for collections and programming as a barrier, leading to a perception of cramped, overcrowded conditions. Some users expressed that the limited seating and study areas hindered their ability to find a comfortable space to read, work, or study.
- **Limited Collection and Material Availability:** About 42% of respondents felt that the library's collection was insufficient, citing a lack of newer titles, specialized resources, and digital media. This led some users to turn to neighboring libraries or online resources for access to books and media.

- **Operating Hours:** Around 36% of respondents mentioned that the current hours of operation did not meet their needs, with many requesting extended evening and weekend hours to accommodate work and school schedules.

2 | LIBRARY USAGE AND FREQUENCY

- **Frequent Users:** Sixty-one percent of survey respondents used the library three or more times in the past year. Among these, young families and teens were particularly frequent visitors, indicating a strong demand for children's programming, study spaces, and youth resources.
- **Occasional or Non-Users:** Thirty-nine percent of respondents used the library infrequently (less than three times a year) or not at all. Non-users cited factors such as inadequate space, lack of programming, and perceived inaccessibility as deterrents, while occasional users often cited lack of resources that fit their specific needs.

3 | TOP REQUESTED SPACES AND SERVICES

Survey participants ranked their top priorities for a new library, with the following spaces consistently highlighted:

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

- **Collection and Book Space:** Nearly 60% of respondents prioritized additional shelving and space for physical collections, emphasizing the need for a larger selection of books, media, and periodicals. Many voiced a desire for more genre variety and expanded digital lending options.
- **Children's and Teen Spaces:** Around 54% of respondents expressed a need for designated areas tailored to children and teens. They called for comfortable, safe spaces with engaging, age-appropriate resources and programming, from story time rooms to teen lounges equipped with study pods and tech tools.
- **Flexible Programming and Event Areas:** Flexible multi-purpose rooms that could host a range of activities—from community events to tech workshops—were in high demand, with 47% of respondents citing this need. Many suggested these spaces be designed with dividers for soundproofing and adaptable layouts.
- **Technology and Maker Spaces:** A significant portion (45%) requested dedicated technology labs and maker spaces that could support digital literacy, creativity, and STEM learning. Popular requests included 3D printers, podcast studios, video editing stations, and robotics kits, catering to both youth and adults.

- **Outdoor Reading Areas and Reading Decks:** Almost 40% of respondents voiced enthusiasm for outdoor areas with comfortable seating for reading, socializing, and attending library programs. Respondents cited the calming, open-air atmosphere as beneficial for relaxation and family-friendly programming.

4 | EXPANDED PROGRAMMING INTERESTS

In addition to physical space needs, respondents suggested program expansions that reflect evolving community interests, with particular emphasis on:

- **Children's Storytimes and Early Literacy Programs:** Families with young children highlighted the importance of expanded story times, hands-on literacy activities, and sensory-friendly events.
- **Adult Learning and Professional Development:** Respondents expressed interest in workshops on financial literacy, career skills, digital literacy, and small business support.
- **Teen-Focused Offerings:** Teen respondents voiced interest in spaces and programs focused on creativity, study, and social connection, such as art workshops, coding classes, and teen-only social events.

Reference **APPENDIX B** for more information.

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

LEADERSHIP INTERVIEWS:

Library and Town leaders, including Town Council members, Library Board representatives, and Town staff, were interviewed to provide strategic insights into the library's future role, goals, and impact on the Prosper community. Their input was instrumental in shaping the long-term vision for the library as a community cornerstone.

- **1 | Priorities for Community Hub Role** Leaders uniformly agreed on the importance of the library as a community gathering space, central to Prosper's vision of a vibrant and connected downtown area. Emphasizing the library's potential as a hub for lifelong learning and cultural engagement, they advocated for designs that would draw diverse groups and foster community pride.
- **2 | Flexible Multi-Use Spaces** Nearly all leaders stressed the need for spaces that could adapt to a wide range of uses. A common theme was the value of flexible, multi-purpose rooms with soundproof dividers and movable furniture to allow for varied programming—such as community meetings, social gatherings, and educational workshops—without disrupting other library services. Leaders expressed particular interest in modular furniture that could accommodate different seating arrangements and easily adapt to event-specific

requirements.

- **3 | Focus on Technology and Digital Literacy** Leaders strongly supported integrating state-of-the-art technology to prepare Prosper's residents, especially youth, for a digitally-oriented future. They advocated for tech-driven spaces like maker labs, media studios, and digital literacy classrooms that could support STEM programming and vocational training, as well as traditional library resources. Several leaders noted that such spaces could help bridge digital divides and ensure Prosper residents have access to valuable career development and educational tools.
- **4 | Commitment to Inclusivity and Accessibility** Ensuring accessibility and inclusivity was a priority for all interviewees. Leaders emphasized the importance of ADA-compliant designs and accessibility features, not only in physical spaces but also in programming. Suggestions included offering sensory-friendly areas, multilingual resources, and inclusive program offerings that cater to a diverse community, including individuals with disabilities and non-English-speaking residents.

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

LEADERSHIP INTERVIEWS:

- **5 | Safety and Security Measures** Safety was identified as essential, with a focus on open layouts, visible sightlines, and thoughtful placement of entry and exit points to enhance security. Leaders recommended integrating elements such as glass partitions for transparency and monitoring, along with advanced security systems to provide a secure environment without detracting from the welcoming atmosphere.
- **6 | Community and Youth Engagement** The Mayor's Youth Advisory Council, representing Prosper's youth, provided a unique perspective on the library's role in supporting young residents. Youth Council members emphasized the need for spaces tailored to teens, such as study pods, social lounges, and tech-enabled areas for both studying and creative projects. They also requested regular teen-centered programming, like coding classes, art workshops, and social events, underscoring the need for an inclusive environment where teens feel comfortable and valued.
- **7 | Environmental and Sustainable Design** Several leaders highlighted the importance of sustainability in the library's design and operations. They encouraged the use of energy-efficient materials, natural lighting, and green building practices to align with Prosper's commitment to environmental responsibility and serve as a model for future Town projects. Outdoor areas were also encouraged, with a preference for landscaped reading gardens and eco-friendly materials.

Reference **APPENDIX B** for more information.

INTRODUCTION, METHODOLOGY + COMMUNITY INPUT

CONCLUSION

The robust input from Prosper's residents and leaders underscores the library's pivotal role in serving a diverse and rapidly growing community. Together, the survey and leadership interviews illuminate the community's vision for an adaptable, inclusive, and resource-rich library that remains relevant to Prosper's evolving needs. This feedback is woven into the recommendations of the Master Plan, ensuring that the library's future design is responsive to the voices of Prosper's residents and leaders alike.

“ *You should consider all age groups in your design and planning, from the very young to the very old as well. I love the idea of having outdoor space as well that can be utilized in a myriad of ways.* ”

- STATEMENT FROM ONLINE SURVEY





2 | BENCHMARKING + STANDARDS REPORT

BENCHMARKING + STANDARDS

ABOUT BENCHMARKING

Benchmarking is a comparison of performance among similar libraries that can be used to assess strengths and identify areas needing improvement. Library benchmarks utilized here are quantitative statistics related to library size, operating revenue, circulation, program attendance, staffing and visits as part of this facilities master plan.

Comparing the performance of the Prosper Community Library to libraries in similar communities allows the Town, library, and consulting team to highlight areas of excellence to maintain as well as under-performing areas that may require further study or action in the library master plan. The comparisons also provide persuasive data for change, reports to the state and elected officials. For example, benchmarks indicating comparative data of an under-sized library building can help build a case for additional space or a new facility.

Benchmarking is not to be considered in a vacuum. It does not represent a complete assessment of library performance. Data should be approached with an open mind and an interest in understanding the reasons why. Benchmarking results must be viewed



BENCHMARKING + STANDARDS

within the context of a library's unique situation, including its community demographics and expectations, facilities now and planned, financial situation, and management philosophy. It should be used in conjunction with online surveys, community focus groups and Town leadership interviews as detailed in this full report in order to develop a complete picture of performance.

Some considerations:

- The American Library Association (ALA) and the Pew Research Center have published comparative data regarding library budget allocations by state. Historically, personnel expenses comprising roughly 60% of a library's budget have been considered optimal. Personnel targets have ticked upward over the last decade to 65-70%—even higher in major metropolitan areas or for libraries that are unionized—as the costs of healthcare and other benefits have increased. However, the number and quality of staff is directly tied to the level of service to library users and as services provided increase, staffing levels must also increase.
- Some numbers, such as the number of items in the collection, need to be supplemented with additional information so as to be meaningful. For example, the number of holdings alone does not take into account the age, condition, accessibility of the collection/library or other attributes that fully describe the

quality of the collection and potential explanations for lower than expected check out rates.

- Many statistics have hidden “cause-and-effect” attributes, revealed only after further investigation. For example, libraries with short loan periods and more renewals will tend to have larger circulation numbers than peers with longer loan periods and fewer renewals.
- There are many opportunities for data entry errors, including both the library and the databases providing access to the numbers.
- Data reflects past performance. For this report the most recent publicly available information was pulled from the 2022 and 2023 Texas Public Libraries Statistics, Texas State Library and Archives database.

This study considers figures most important to the planning effort, vision, concerns, and facility master plan.

BENCHMARKING + STANDARDS

IDENTIFIED PEER LIBRARIES

The most meaningful benchmarking data is obtained by selecting peer libraries similar in size, population, and finances. The design team used the “Library Statistics and Accreditation Data Base” program on the website of the Texas State Library and Archives Commission to identify peer libraries.

Link to standards can be found here:
[Texas Public Library Standards | TSLAC](#)

Criteria focused on:

- Libraries serving a rapidly growing population that reflect the future size of Prosper
- Libraries serving similar demographics
- Cities that the Town of Prosper typically compares itself to

“We love the interactive science aspect of the Frisco library as well as the cozy nooks around the library to sit and read.”

- STATEMENT FROM ONLINE SURVEY



FINAL PEER SET:

LIBRARIES
MCKINNEY PUBLIC LIBRARY SYSTEM (TEXAS)
ANNA COMMUNITY LIBRARY (TEXAS)
CELINA (TEXAS)
COZBY LIBRARY & COMMUNITY COMMONS, COPPELL (TEXAS)
FLOWER MOUND PUBLIC LIBRARY (TEXAS)
FRISCO (TEXAS)
KELLER PUBLIC LIBRARY (TEXAS)
LITTLE ELM PUBLIC LIBRARY (TEXAS)
SOUTHLAKE PUBLIC LIBRARY (TEXAS)

It should be noted that the peer set has value beyond the completion of this report. Sharing information on a regular basis with peers can be a worthwhile activity, providing more precise and comprehensive benchmarks and facilitating ongoing discussions about best practices.

BENCHMARKING + STANDARDS

BENCHMARKING OVERVIEW

One of the most important comparisons is per capita use—that is, how frequently are services used by the population. Per capita use allows cities to compare their services without considering the population of the communities because it is based on services per person and not the size or budget of the library.

The 2024 Environmental Scan of the Prosper Community Library (PCL), conducted by the Ivy Group, provides insights into PCL's performance compared to peer libraries in North Texas. Using data-driven benchmarking, this scan identifies PCL's strengths and areas for improvement, establishing a foundation for informed decision-making. This summary highlights key findings and strategic recommendations to align the library's growth with Prosper's future needs.

INTRODUCTION AND GOALS

The primary goal of this report is to benchmark PCL against similar libraries to:

1. **Set growth and performance targets** based on population trends.
2. **Identify gaps in resources and services** that affect library performance.
3. **Support advocacy and funding efforts** by providing evidence of need.

Comparisons were made against a peer set of nine regional libraries with similar demographics, as well as two composite libraries representing populations of 25,001–50,000 and 50,001–100,000 residents, to mirror Prosper's current and projected size.

BENCHMARKING + STANDARDS

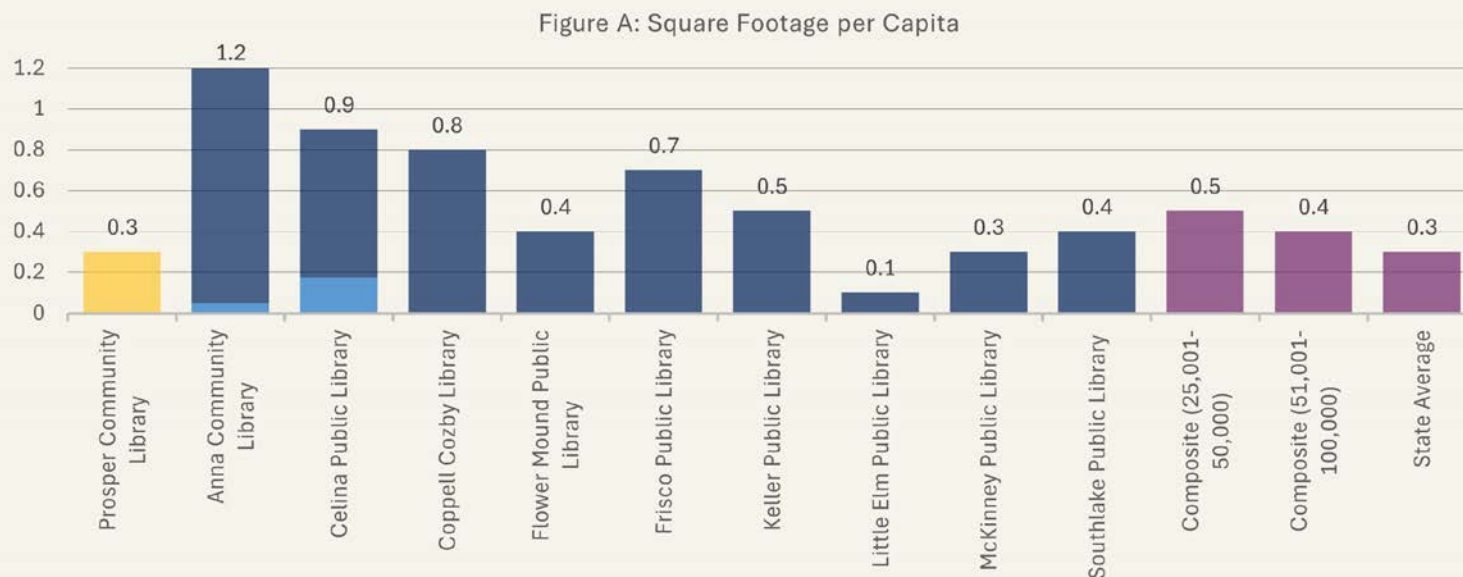
FACILITIES: EXPANDING TO MEET COMMUNITY NEEDS FINDINGS

- **Current Facility Size:** At 9,627 square feet, PCL ranks among the last of its peers. This translates to only **0.3 sq. ft. per capita**, below the Texas state recommendation of **0.8 sq. ft. per capita**.
- **Impact on Services:** The limited space restricts PCL's ability to expand collections, provide study areas, and host a variety of programs.

RECOMMENDATIONS:

Community input indicated that the biggest reason for not using the Prosper Community Library is space including comments like “I use the library, but the resources are limited due to the size of the current building.”

1. **Facility Expansion:** Additional space would support expanded collections, dedicated programming rooms, and more seating.
2. **Flexible Spaces:** Include flexible design elements in the expanded facility to accommodate diverse uses, from quiet study to group programs.

▼ **FIGURE A: SQUARE FOOTAGE PER CAPITA**

BENCHMARKING + STANDARDS

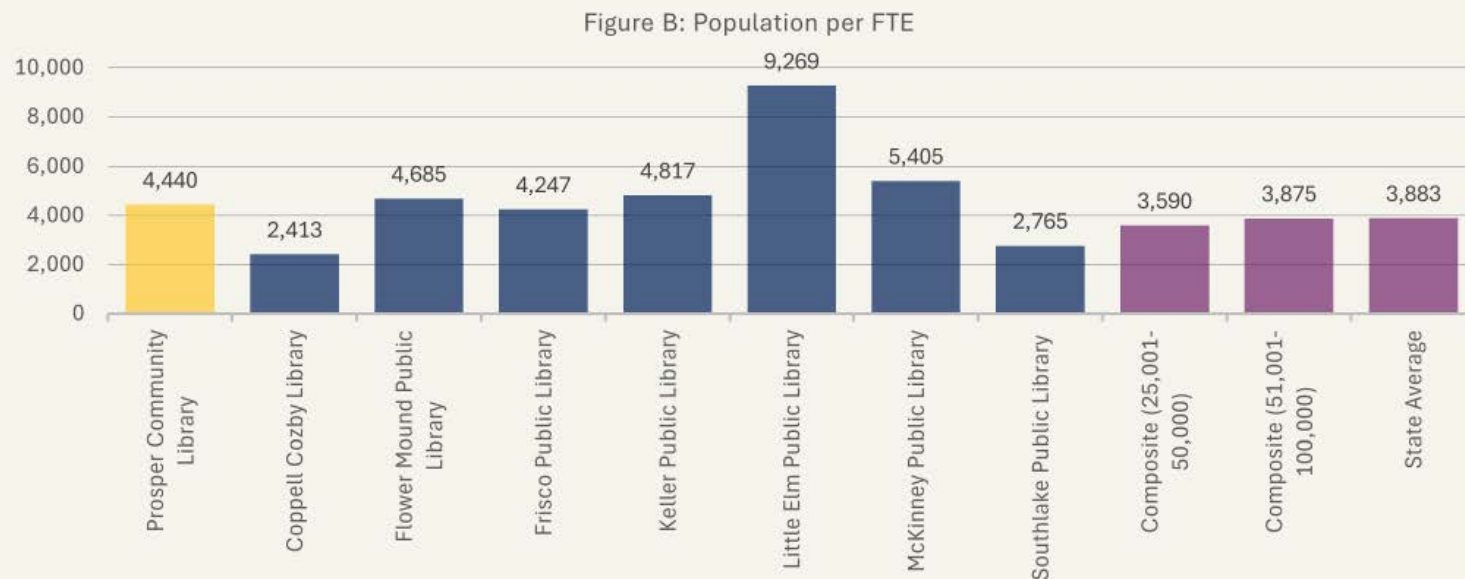
STAFFING: BUILDING CAPACITY WITH SKILLED PROFESSIONALS FINDINGS

- **Staff-to-Population Ratio:** PCL's *population per full-time equivalent (FTE)* is in line with peer libraries, yet the number of staff with advanced library science degrees is notably low (27% versus the peer average of 38%).
- **Budget Allocation:** Staff expenditures constitute **82% of the total budget**, indicating a reliance on personnel to deliver services, but underscoring the need for competitive wages and benefits.

RECOMMENDATIONS

1. **Increase Professional Staff:** PCL should recruit more staff with MLS/MLIS degrees to maintain high-quality service as Prosper grows.
2. **Review new services and staff required:** Additional space to provide more services (programs, technology, maker spaces) require specialized staff beyond space to store books and resources.

▼ **FIGURE B: POPULATION PER FTE**



BENCHMARKING + STANDARDS

COLLECTIONS: EXPANDING RESOURCES FOR A GROWING POPULATION

FINDINGS

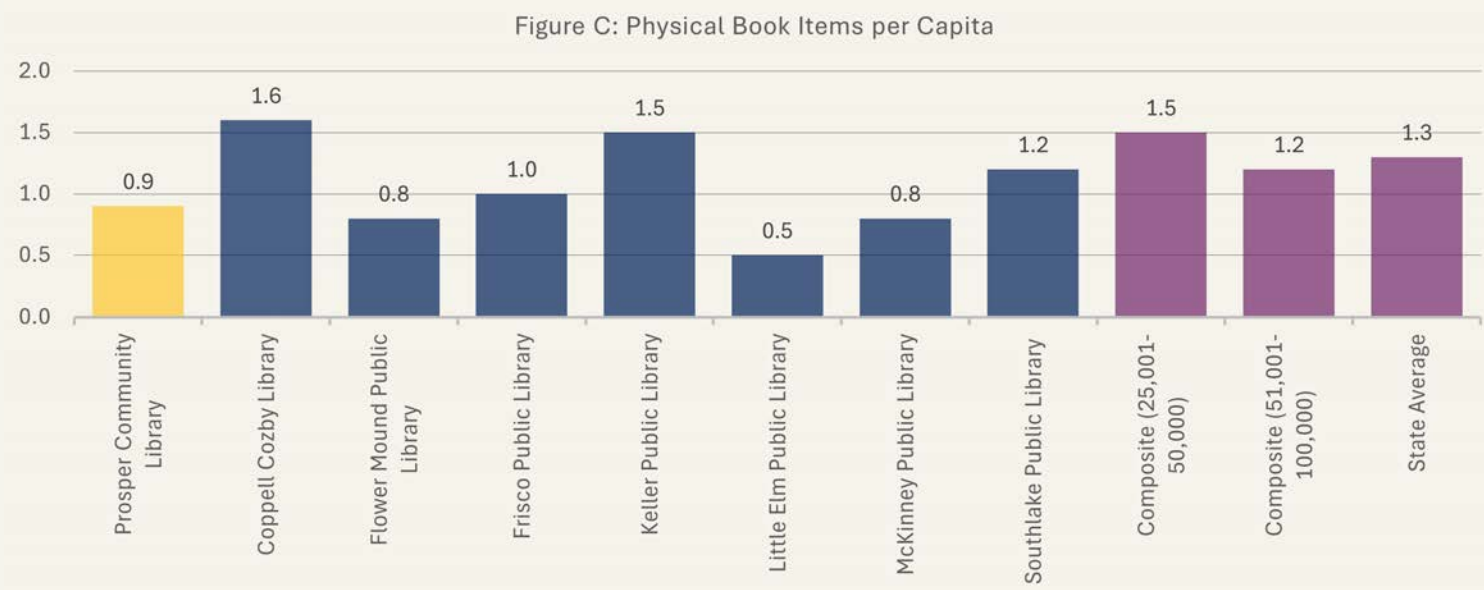
- **Physical and Digital Collections:** PCL ranks 8th in circulation among peers, with physical circulation dominating (90% of total). PCL offers fewer databases and digital materials, limiting patron access to varied resources.
- **Circulation Potential:** While the current collection effectively meets patron demand, circulation per capita remains below peer averages, likely due to space and budget limitations.

RECOMMENDATIONS

The community indicated that there are not enough offerings especially for adults.

1. **Enhance Digital and Physical Collections:** Expand digital holdings and consider high-demand physical items to address patron interests and alleviate wait times.
2. **Promote Database Awareness:** Increase training and marketing efforts to raise awareness of digital resources, particularly databases, which currently see lower usage.

▼ **FIGURE C: PHYSICAL BOOK ITEMS PER CAPITA**



BENCHMARKING + STANDARDS

PROGRAMMING: ENHANCING COMMUNITY ENGAGEMENT FINDINGS

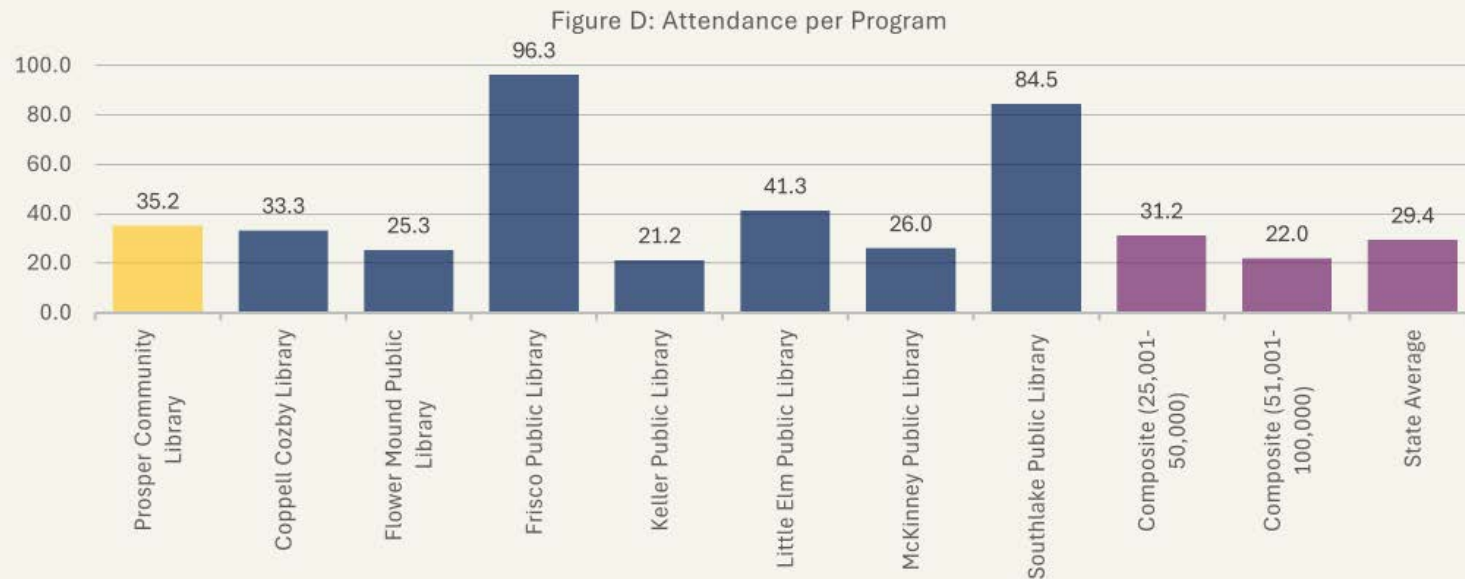
- **Program Reach:** Despite offering fewer programs overall, PCL has strong attendance per program. Asynchronous programs, such as online events and off-site events, also see significant engagement, ranking PCL third among peers.
- **Demand for Growth:** Survey feedback indicates high interest in expanded programming, especially for youth and family events. The library should consider mobile services and expanding outreach to senior centers, day care centers, etc. especially in the short term and plan for additional, flexible program spaces in the long term.

RECOMMENDATIONS

The community input suggests a demand for more and bigger programs.

1. **Expand In-Person Programs:** Increase the frequency and diversity of programs, using larger spaces to accommodate demand and support community engagement.
2. **Build Mobile and Outreach Services:** Consider options like a mobile library to reach underserved areas and populations, including seniors and remote neighborhoods.

▼ **FIGURE D: ATTENDANCE PER PROGRAM**



BENCHMARKING + STANDARDS

TECHNOLOGY: ENHANCING ACCESS AND DIGITAL LITERACY

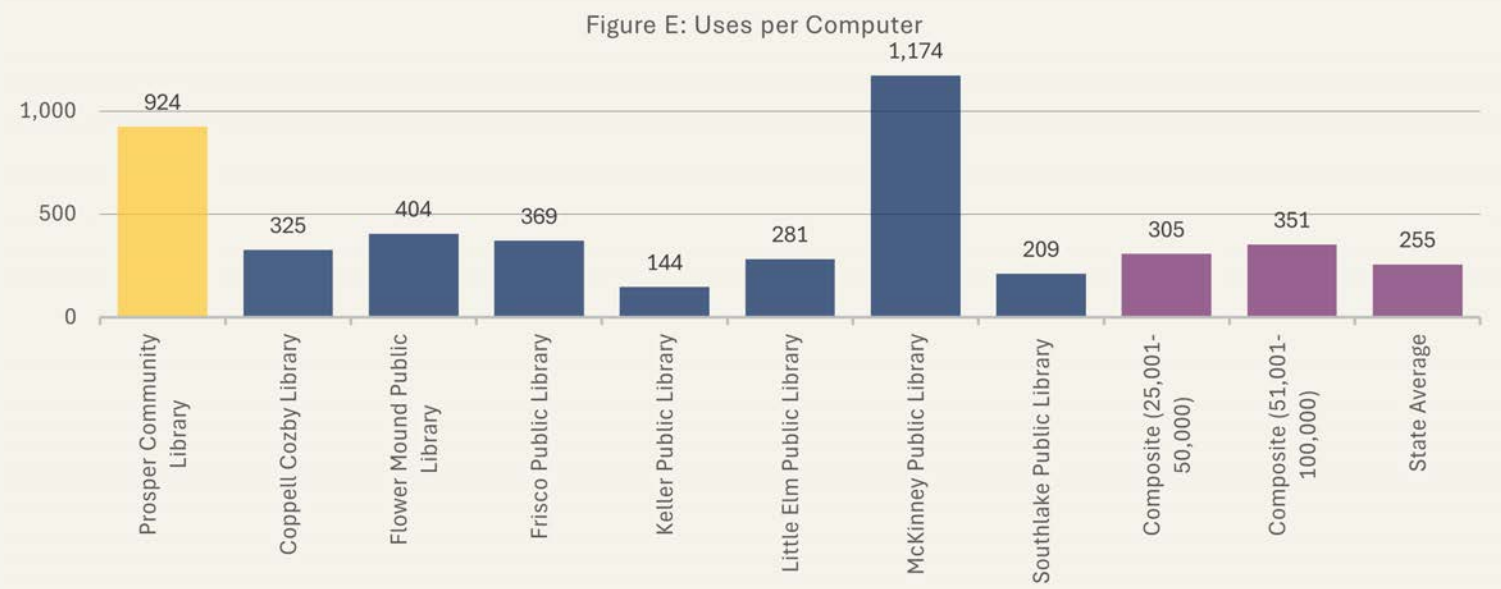
FINDINGS

- **High Demand for Public Computers:** PCL ranks 2nd in computer uses per public computer, demonstrating high demand for on-site technology access.
- **Wi-Fi and Digital Services:** PCL ranks low in Wi-Fi sessions and access points, which may limit remote users’ connectivity or is not being accurately tracked.

RECOMMENDATIONS

1. **Increase Technology Resources:** Add more public computers by providing a laptop vending machine and confirm Wi-Fi tracking methods.
2. **Website Improvement and Digital Outreach:** Invest in website usability improvements to drive digital resource use and streamline access to virtual events and services.
3. **Maker Spaces and Gaming:** The Mayor’s Youth Council suggested programs and spaces around coding, 3D printing, and gaming.

▼ **FIGURE E: USES PER COMPUTER**



BENCHMARKING + STANDARDS

COMMUNITY USE: EXPANDING ACCESS AND BUILDING AWARENESS

FINDINGS

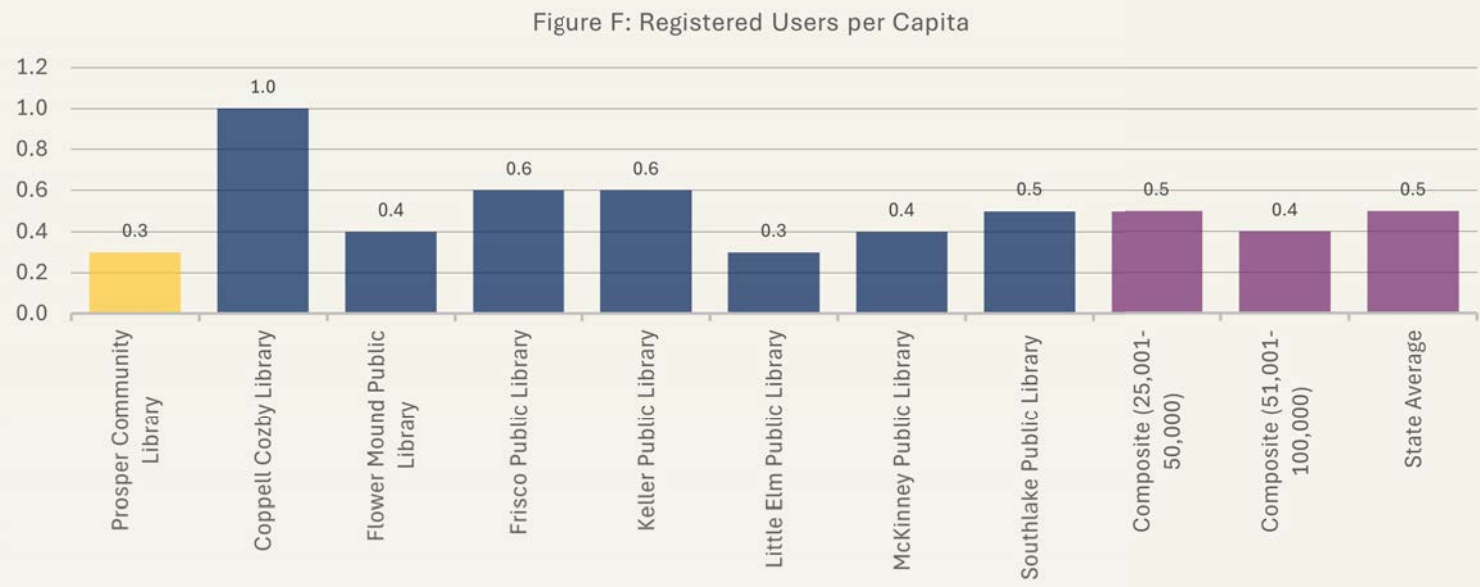
- **Registered Users:** PCL’s registered cardholder base is significantly below the peer average, indicating potential for outreach to increase patronage.
- **Hours of Operation:** At the time of the state report the library was open 40 hours per week, PCL fell short of the Texas Library Association’s recommended 50-hour threshold for populations under 50,000. Since May 2024 the library is now open 51.5 hours per week.

RECOMMENDATIONS

The top two reasons in the online survey for not using the Library are around space but the third reason given by the community is library hours even though the survey was completed after the hours were increased.

1. **Increase Hours of Operation:** As PCL grows, gradually extend hours to meet the 50- to 64-hour range required for larger service populations, aligning with state standards.
2. **Boost Outreach Efforts:** Implement targeted outreach and promotional events to increase awareness, attract new users, and foster community connections.

▼ **FIGURE F: REGISTERED USERS PER CAPITA**



BENCHMARKING + STANDARDS

CONCLUSION

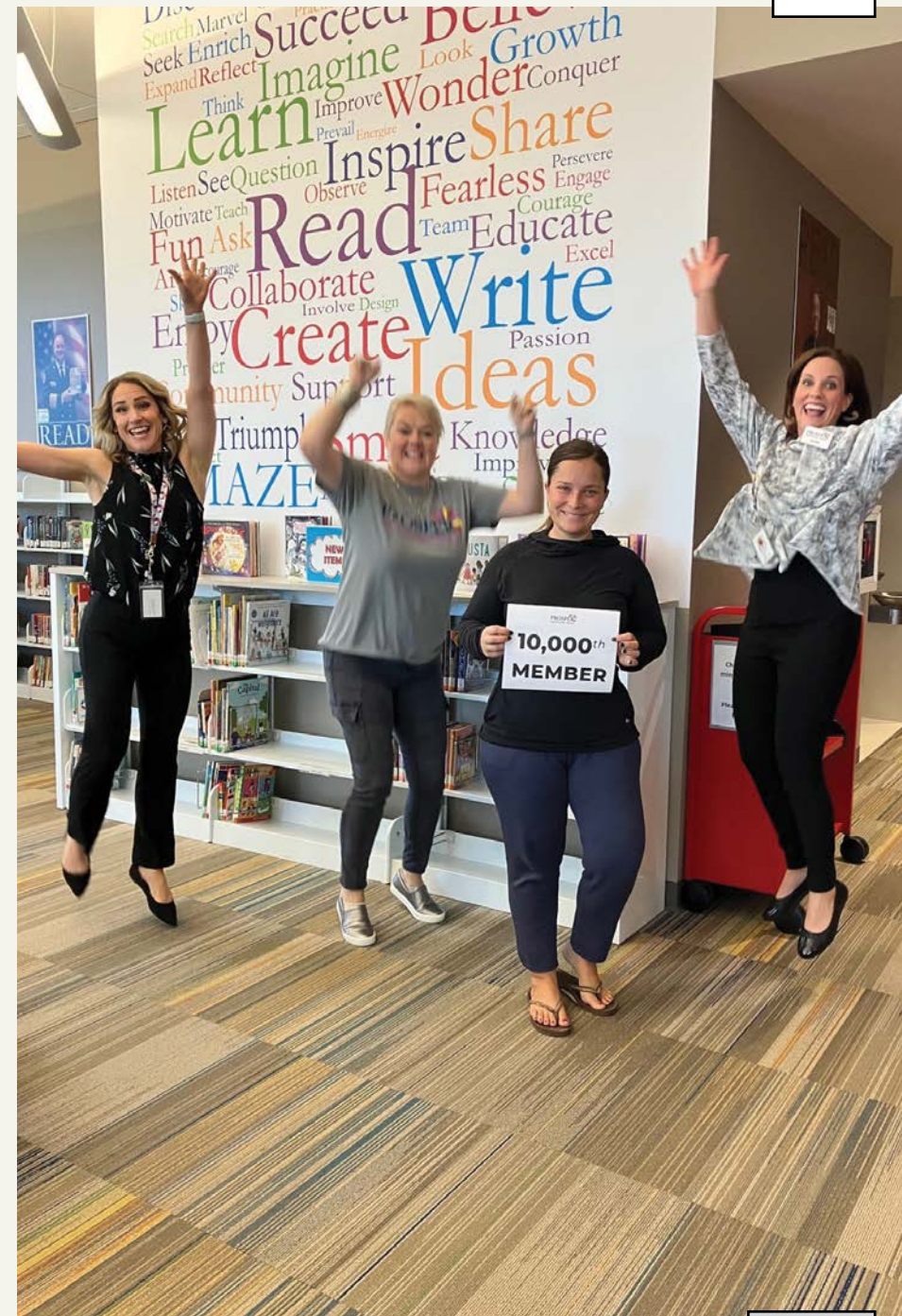
The Prosper Community Library is well-positioned for growth, and strategic investments in facility expansion, staffing, collections, and technology will enable it to meet Prosper's future needs. By prioritizing these areas, PCL can transform into a community hub that supports lifelong learning, digital literacy, and cultural engagement for all Prosper residents.

NEXT STEPS

To move forward:

- **Funding and Advocacy:** Use this data to support funding proposals for a new facility and additional staff.
- **Community Engagement:** Present findings to the community to build awareness and gather feedback.
- **Annual Benchmarking:** Continue annual comparisons to monitor progress toward achieving PCL's strategic objectives and the peer standards.

This summary underscores the value of supporting PCL's growth to ensure that it continues to serve as a vibrant, resource-rich asset for the Prosper community.



BENCHMARKING + STANDARDS

INTRODUCTION TO LIBRARY STANDARDS AT PROSPER COMMUNITY LIBRARY

The Prosper Community Library strives to deliver quality library services to all members of the community by adopting established standards that serve as a foundation for excellence. The State of Texas has created standards that aim to enhance the library's value as a community resource, raise expectations for library services, and provide an authoritative reference for justifying support and funding. By implementing these guidelines, the library can measure its success, grow its offerings, and ensure alignment with state accreditation requirements.

Purpose of Library Standards

The primary objectives of these standards related to library space include:

- **Promote Quality Service:** Ensuring that all patrons, regardless of background or circumstance, have access to high-quality resources and services.
- **Elevate Expectations:** Encouraging the community to expect and engage with exceptional library experiences.
- **Guide Administration and Advocacy:** Providing a framework for library administrators to plan services and for advocates to justify funding, staffing, and space requests.

Philosophy Behind the Standards

The Prosper Community Library, guided by the Joint TSLAC/TLA Task Force on Public Library Standards and Accreditation, embraces the following imperatives:

- **Valuing Libraries:** Recognizing public libraries as essential community resources and reflections of diverse cultural heritage.
- **Celebrating Uniqueness of Each Community:** Respecting the unique needs of communities and the individuality of libraries within the state.
- **Meeting Community Needs:** Responding effectively to the evolving needs of Prosper's residents.
- **Appreciating Library Staff:** Recognizing the expertise and dedication of library staff as essential to delivering outstanding service.

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Customization and Local Application

The following standards are tailored to reflect the population size and service levels set as a goal for the Prosper Community Library.

Levels of Service: Enhanced and Exemplary

The standards outline two advanced levels of service:

- **Enhanced Level:** Building upon the foundational services, focusing on continuous improvement.
- **Exemplary Level:** Representing the highest standard of progressive service development and excellence.

Libraries achieving these levels demonstrate a commitment to proactive growth and innovative service delivery, reflecting the library's dedication to exceeding the expectations of the Prosper community.

The following narrative serves as a roadmap for applying library standards to create a thriving, dynamic, and inclusive environment that supports lifelong learning and community engagement.



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ABOUT STANDARDS

There are a number of different methods for determining whether facilities should expand and when local conditions indicate additional buildings. The various methods of assessing and determining future space requirements include:

- Reference national (Public Library Association, American Library Association) or state (Texas Library Association) standards
- Use benchmark libraries for comparison
- Reference functional element “standards” – formulas for calculating library space needs based on the collection, seating, and staff areas required to meet the community’s needs.

In addition, and perhaps most importantly, library space planning should factor micro-cultural desires based on the unique characteristics and culture of the community. The consultants gathered this data through the online surveys, Town-wide leaders’ interviews, and community input events described in previous sections of this report.

In Texas, we utilize the Texas Public Library Standards 2014 Revision that was developed by the Committee on Public Library Standards in order to “promote the quality of library service to all Texas, raise the expectations of library clientele, and to provide an authorita-

tive document by which library quality may be measured.” However, because libraries have changed dramatically in the last 10 years we use this as a baseline for planning with updates on technology, collections (including eBooks and streaming that were little used in 2014), and the need for the library to serve as a community gathering space as indicated by the PCL community input.

FUNCTIONAL ELEMENT STANDARDS FOR DETERMINING SPACE ADEQUACY

Ultimately, square footage recommendations are most accurately determined by calculating the space required for the collections, seats, technology, and staff space required to offer services at the volume needed to meet the community’s demand for library service.

Functional element standards use formulas to calculate space needs for each aspect of library service (collection, seating, and technology) and for the staff areas required to support public services. These are totaled to determine the overall space requirements to meet the community’s needs.

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The formulas are further informed by establishing the necessary spaces for the primary building components and data from an assessment of the Library's service profile and local library needs determined by community feedback.

The consultants utilized both standards and functional elements to evaluate the needs of the Prosper Community Library.

The American Library Association established a three-tiered standard that included a "standard" service based on 0.6 SF per capita, 0.8 SF per capita based on an "enhanced" level of service, and 1.0 SF per capita to provide "exemplary" service. Early in the master planning process, the library and Town agreed that 0.8 SF per capita is the goal for library space.

Based solely on standards, a new 50,000 SF library will meet the Town's stated goal of providing 0.8 SF per capita of library space through approximately 2033 based on the Comprehensive Plan population projections. To meet the needs through build-out just under 62,000 SF is required and, if Artesia is included in the calculations, a new 68,000 SF library will meet the needs based on standards through build out. **Figure A** illustrates the needs based on standards:

▼ **FIGURE A: SQUARE FEET PER CAPITA PROJECTIONS TO MEET .8 SF PER CAPITA GOAL**

Year	Population	Gross Square Feet	Gross Square Feet Per Capita
2018	28,825	9,627	0.33
2023	38,312	9,627	0.25
2029	59,575	47,660	0.80
2033	63,448	50,758	0.80
2055 Build Out	77,000	61,600	0.80
w/Artesia	85,000	68,000	0.80



BENCHMARKING + STANDARDS

This is an important data point as we look at national standards as well as Texas averages for library square feet per capita:

▼ **FIGURE B: SQUARE FEET PER CAPITA BASED ON STANDARDS AND AVERAGES**

Year	Population	Square Feet @ .52 SF Per Capita (Texas Average)	Square Feet @ 0.6 SF Per Capita (ALA "Standard")	Square Feet @ 0.8 SF Per Capita (ALA "Enhanced")	Square Feet @ 1 SF Per Capita (ALA "Exemplary")
2018	28,825	14,989	17,295	23,060	28,825
2023	38,312	19,922	22,987	30,650	38,312
2029	59,575	30,979	35,745	47,660	59,575
2033	63,448	32,993	38,069	50,758	63,448
2055 Build Out	77,000	40,040	46,200	61,600	77,000
w/Artesia	85,000	44,200	51,000	68,000	85,000

The average Texas Library that serves a population of 25,000 – 49,000 offers .52 SF per capita to its citizens while the American Library Association indicates that the Prosper Community Library should be between 32,993 – 63,448 SF in 2033 to serve the needs of the community.

COLLECTION

Access to the collection was identified as the top priority by those that participated in the online survey, a full page of comments is dedicated to respondents passionate about increasing the size of the collection, and PCL's current collection size is low as noted in the benchmark study. The size and availability of the collection will remain an important component of future library service.

BENCHMARKING + STANDARDS

At the time of this report, the collection size was 71,367 with 28,913 (40%) print items and access to over 42,000 (60%) digital items due to its participation in a digital consortium which equates to 1.89 items per capita. In addition, nearly 2,000 physical items are stored off-site due to space constraints. Wait time for the digital collection has been long in the past. The library has recently supplemented their “Libby” collection with “Cloud Library” and is tracking the accessibility to this collection.

Prosper Community Library’s 1.89 items per capita is below the benchmark libraries’ average and state recommendations of 1.95 - 2.46 items per capita. The library’s stated goal is to grow its physical collection while increasing accessibility to its digital collection in order to better meet demand. The library has set a goal of attaining the “Enhanced” level of collection size at 1.95 items per capita for libraries serving populations between 25,000 and 49,999 over the next four years. Rapid population growth compounds the collection size challenge. In 2028, the town is expected to grow to the next level of collection standards of 2.04 items per capita.

Following is the chart that details the stepped collection requirements for Texas Libraries:

▼ **FIGURE C: COLLECTION REQUIREMENTS FOR TEXAS LIBRARIES**

Population Size	Exemplary Collection/Capita	Enhanced Collection/Capita
25-49,999	2.46	1.95
50-99,999	2.79	2.04

The library staff has indicated that they are accounting for changes in collection formats and they expect, given current purchasing trends, to achieve a purchasing and collection balance of 70% print and 30% digital. Library users trended toward more digital use across the state as a result of pandemic requirements and these trends have continued. Importantly, this is a budget item as digital materials are more expensive to own than print.

Based on the trends and conditions discussed, the chart below formulates the collection to square foot allowances for the future.

BENCHMARKING + STANDARDS

▼ FIGURE D: COLLECTION ANALYSIS AT ENHANCED LEVEL

Population	Current Library Print Collection	Collection Format	Collection Size at Enhanced Level	Space required (66" high shelving @ 8 volumes per SF)*	Notes
2023	71,367 Total	TOTAL	73,739		
37,815	28,913 Physical	70% physical	51,617	6,452	@ enhanced level
	33,029 Digital	30% digital	22,122		
2029		TOTAL	116,171		
59,575		70% physical	81,320	10,165	
		30% digital	34,851		
2033		TOTAL	129,434		
63,448		70% physical	90,604	11,325	
		30% digital	38,830		
2055 Build Out		TOTAL	157,080		
77,000		70% physical	109,956	13,745	@ enhanced level
		30% digital	47,124		
w/Artesia		TOTAL	173,400		
85,000		70% physical	121,380	15,173	@ enhanced level
		30% digital	52,020		

BENCHMARKING + STANDARDS

▼ FIGURE E: COLLECTION ANALYSIS AT EXEMPLARY LEVEL

Population	Current Library Print Collection	Collection Format	Collection Size at Exemplary Level	Space required (66" high shelving @ 8 volumes per SF)*	Notes
2023	71,367 Total	TOTAL	93,025		
37,815	28,913 Physical	70% physical	65,117	8,140	@ exemplary level
	33,029 Digital	30% digital	27,907		
2029		TOTAL	166,214		
59,575		70% physical	116,350	14,544	@ exemplary level
		30% digital	49,864		
2055 Build Out		TOTAL	214,830		
77,000		70% physical	150,381	18,798	@ exemplary level
		30% digital	64,449		
w/Artesia		TOTAL	237,150		
85,000		70% physical	166,005	20,751	@ exemplary level
		30% digital	71,145		

BENCHMARKING + STANDARDS

SEATING

The community indicated in the focus groups that a comfortable place to sit, read, and study is the third highest priority and almost 9% of the online survey participants indicated that the lack of a place to sit was a contributing factor to not using the library.

The consultants are familiar with a wide range of seating to population ratios. The most relevant guidelines are the Texas Public Library Standards (2014 page 41), which establish a guideline of 7-10 seats per 1,000 population and the Whole Building Design Guide from the National Institute of Building Sciences, which establishes 5 seats per 1,000 population standard. The consultants selected the more conservative 5 seats per 1000 as the guideline for the Library. These standards include general, undesignated reader seating and not seats designated for a specific purpose such as meeting rooms, study rooms, and conference rooms.

The seating standards in **Figure F** are based on 5 seats per 1000 population:

▼ **FIGURE F: SEATING AT 5 PER 1000 POPULATION**

Year	Population	Current Reader Seats	5 per 1,000	SF Req
2018	28,825	130	144	4,324
2023	38,312	130	192	5,747
2029	59,575		298	8,936
2033	63,448		317	9,517
2055 Build Out	77,000		385	11,550
w/Artesia	85,000		425	12,750

SF total requirement is based on an average 30 SF per seat and includes space for circulation around the seat. Obviously, this number can vary based on the type of seat (large lounge chair, compact meeting room chair, reader chairs at tables, and technology seats).

TECHNOLOGY SEATING

A high-tech building is the hallmark of a 21st century library. However, the need for library provided desktop computers has seen a dramatic decline post-pandemic. During the pandemic, it was necessary for people to have their own devices for work, school, and maintaining connections. However, while desktop computers aren't required to the degree they were pre-pandemic, they are still needed. It is for this reason that that technology device standards are based on the lower, "enhanced" level of the Texas Standards (page 31):

BENCHMARKING + STANDARDS

▼ **FIGURE G: TECH SEATING AT 1 PER 2000 POPULATION
@ ENHANCED LEVEL**

Year	Population	Current Tech. Seats	1 per 2,000	SF Req
2018	28,825	15	14	555
2023	38,312	15	19	752
2029	59,575		30	1,192
2033	63,448		32	1,269
2055 Build Out	77,000		39	1,540
w/Artesia	85,000		43	1,700

In the evaluation of space, the master plan team will be including a laptop vending machine to meet 50% of the technology device requirements. This will allow library users to check out a laptop for use at any seat in the library while still providing access to a full desktop for those that desire it.

While library provided public computers are declining, the need for places to plug in personal laptops are a vital part of work, study, video conferencing use in libraries resulting in the critical importance of a robust Wi-Fi network and places to plug in at every seat.

Reference **APPENDIX C** for the Technology Programming Report.

STAFF

The standard method for determining staff space needed is to calculate 25% of library's total "functional area" for Administration, Operations, and staff work space. Functional area is defined as the square footage for public services (collections, seating, storage, and technology).

NON-ASSIGNABLE

Industry standards call for a minimum 25% of gross square footage in a building program to be deemed "non assignable." These spaces include restrooms, corridors, wall thickness, vertical circulation, and mechanical and other support spaces. Subsequent design features of the building may increase or decrease the non-assignable ratio to total space.

SUMMARY OF LIBRARY SPACE NEEDS

By all measures, the library is experiencing challenges of space limitations and expanding demand. The collection size has out-paced the capacity of the available shelving while falling short of Texas Library Standards. The public find seating limited, program space is limited in the library, and study space severely limited and inadequate to meet their needs. Study and program rooms are in high demand in every contemporary public library, and the lack of either of these types of spaces, do not meet the needs of Prosper Community Library users and potential users. Staff do not have adequate space to work. The library spaces, already past capacity, are critical issues.

3 | STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

“Growing up the library in my hometown was very welcoming and cozy. They had tons of books and crannies to read, study, and learn. My favorite part was feeling like the library was a maze and you could always find a new table, or chair to discover”

STATEMENT FROM ONLINE SURVEY

“We need a bigger space! A space for kids to play and imagine.” -

STATEMENT FROM ONLINE SURVEY

“We need a big library like Frisco library that would encourage young kids and adults to read and visit library more often. ”

STATEMENT FROM ONLINE SURVEY



STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

DEVELOPING A STRATEGY FOR FUTURE SPACE REQUIREMENTS

Based on data gathered during the Master Plan process, the consultants formed conclusions regarding the current Prosper Community Library and developed recommendations for future library facility needs. The key issues identified were the capacity and capability of the library's current space and facilities, future space and service needs, location, and site parking issues, are throughout this report.

In addition to traditional library amenities, the community indicated that the following types of spaces contribute to what makes the library unique to Town of Prosper:

Flexible spaces for all purposes: Whether it's a business meeting, a community event, a creative workshop, or a tech-focused gathering, a facility that's adaptable to community needs with rooms and open spaces of various sizes.

Support for entrepreneurship and creativity: Coworking spaces, artist studios, makerspaces, recording equipment, and design tools.

A future-focused approach to technology: Cutting-edge tech infrastructure, a facility designed to stay ahead of trends, so the community has reasonable access to emerging technologies

STEM and arts engagement: A hub for science, technology, engineering, math, and the arts, offering hands-on experiences, programs, and access to related tools.

While the study assesses and makes recommendations regarding square footage needs for the growing Town of Prosper, it does not specify the architectural design of the facilities being recommended. Once the basic space criteria contained in this section of the plan have been reviewed, revised, and approved, the next step is the creation of a building program, and eventually architectural documents, detailing the nature, arrangement, and function of the proposed facilities.

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

PHASED IMPLEMENTATION FOR DEVELOPING FUTURE LIBRARY FACILITIES

There is a need for additional library space based on benchmarking, standards, and community input. Analysis of every aspect of library services and collections resulted in this conclusion. The Library has reached its “limit to service” in the current facility. Without expanded facility space, the quality of service provided will begin to suffer.

The idea of a central library and branch or branches was discussed and decided against. A branch library requires the duplication of services, spaces and materials and for that reason, the rule of thumb for when a branch makes fiscal sense is when a municipality reaches a population of 100,000. In addition, the community input supported a single, full-service library that is open the maximum number of hours.

Two scenarios for a new building were explored:



STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

OPTION 1: BUILD NOW FOR 100% OF BUILD OUT

70,000 SF new building that will meets all applicable State of Texas Standards to the enhanced level as well as the community’s full “wish list” for library services and spaces as well as exemplary level seating (5 seats per 1000 population). Based on the population projections from the Town’s Comprehensive Plan, this will meet the needs of the community through buildout, the possibility of the annexation of Artesia and beyond. While the cost of this option is the highest, it is the best value over time as the cost of construction, materials, and furniture will increase over time.

Following is an outline of the space breakdown. The red numbers indicate the ranking from the community on the importance of the space.

Option 1: Estimated costs in 2024-2025 dollars:

Land:	not included
Construction:	\$50.7m
Furniture Fixtures and Equipment:	\$3.9m
Design and Pre-construction fees:	\$5.8m
Owner Direct Costs*:	\$4m
Estimated Total Project Cost:	\$64.4m
Addtl. Cost of Collection Expansion:	\$3.5m

**Owner direct costs include AV, Security, Technology, Testing, Collection and other items required for a functional library.*

Note: Construction costs typically increase by approximately 6% per year.

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

OPTION 1: BUILD NOW FOR 100% OF BUILD OUT 2055 BUILD OUT TOTAL SPACE REQUIRED	COLLECTION ITEMS	MEETING SPACE	PUBLIC SEATING	TECH SEATS	SF
Public/Common Areas, Lobby, Booksale area, restrooms (public, family, comfort)					2,000
Vending café/tutoring #1					1,000
Library Prefunction Area					1,000
20 person Board Rooms - (1)		20			800
6 person Study/Homework/Homeschool Rooms - (4) #2		12			800
2-4 person Study Rooms - (8) #2		32			1,280
Audio/Video Media Lab					400
High Tech Maker Space #5		24			960
Low Tech Craft Space #7		24			960
Quiet Reading Room #3			12		360
Collection - EXEMPLARY	166,005				20,751
Adult Reader/Comfortable Seats/Pods #3			160		4,800
Children's Reader Seats/Niches #6			160		3,200
Children's Arts & Crafts Area		24			480
Children's Interactive Learning #9					200
Teen Reader Seats			33		660
Gaming Space #9			20		800
Technology Seats				43	1,720
Story Time Room		50			2,000
Multi-purpose Meeting / Class rooms		180			3,600
Teaching/learning Kitchen					200
Staff work areas (approximately 25%) includes offices, workstations, storage, conference, amh					11,993
Non-Assignable (approximately 25%) storage, support					11,943
TOTAL	2.04 items per capita 2025	366	385	43	71,906
	enhanced vols	space for meeting	public seats 5/1000	tech seats 1/2000 (2025)	Square Feet

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

OPTION 2: PHASE THE BUILDING AND PLAN FOR EXPANSION IN THE FUTURE

Option 2: 50,000 SF new building that will meets all applicable State of Texas Standards to the enhanced level for the next ten years as well as most of the community’s “wish list” (in a smaller size) for library services and spaces including enhanced level seating (3 seats per 1000 population). The site should still be selected based on the needs for build out and the library planned for expansion. This option allows the Town to phase the project and spread the costs of construction and operations over time. However, as noted above the overall cost will increase based on today’s escalation costs, at approximately 6% per year.

Option 2: Estimated costs in 2024-2025 dollars:

Land:	not included
Construction:	\$39.1m
Furniture Fixtures and Equipment:	\$3.0m
Design and Pre-construction fees:	\$4.2m
Owner Direct Costs*:	\$3.4m
Estimated Total Project Cost:	\$49.9m
Addtl. Cost of Collection Expansion:	\$2.3M

**Owner direct costs include AV, Security, Technology, Testing, Collection and other items required for a functional library.*

Note: Construction costs typically increase by approximately 6% per year.

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

OPTION 2: PHASE THE BUILDING AND PLAN FOR EXPANSION IN THE FUTURE 2033 YEAR TOTAL SPACE REQUIRED	COLLECTION ITEMS	MEETING SPACE	PUBLIC SEATING	TECH SEATS	SF
Public/Common Areas, Lobby, Booksale area, restrooms (public, family, comfort)					2,000
Vending café/tutoring #1					1,000
Library Prefunction Area					1,000
20-person Board Rooms - (1)		20			800
6-person Study/Homework/Homeschool Rooms - (2) #2		2			800
2-4-person Study Rooms - (8) #2		32			1,280
Audio/Video Media Lab					400
High Tech Maker Space #5		20			600
Low Tech Craft Space #7		20			600
Quiet Reading Room #3			16		480
Collection - ENHANCED	90,604				11,326
Adult Reader/Comfortable Seats/Pods #3			100		3,000
Children's Reader Seats/Niches #6			100		2,000
Children's Arts & Crafts Area - Phase 2		20			800
Children's Interactive Learning #9					200
Teen Reader Seats			12		360
Gaming Space #9			6		240
Technology Seats				12	480
Story Time Room		50			2,000
Multi-purpose Meeting / Classrooms		180			3,600
Teaching/learning Pantry					200
Staff work areas (approximately 25%) includes offices, workstations, storage, conference, amh					8,291
Non-Assignable (approximately 25%) storage, support					8,241
TOTAL	2.04 items per capita 2025	344	234	12	49,698
	enhanced vols	space for meeting	public seats 3/1000 (2033)	tech seats 1/2000 (2025)	Square Feet

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

SITE SELECTION CRITERIA:

Once the area requirements for a new library building were understood, site selection criteria were able to be developed to assist Town officials in finding a site for the new library.

The Town's ordinance includes a requirement of 10 parking spaces plus three parking spaces per 1000 square feet. Because of the number of meeting and gathering spaces in a 21st century library the best practices for library parking increases the need for 5 spaces per 1000 square feet. For Option 1 the site should accommodate between 249 – 348 parking spaces dedicated to the library.

The community input saw outdoor spaces as a critical path toward a successful library for the Town of Prosper. Specifically, a programming plaza and connection to a walking trail was ranked #8 in the most desired services. In addition, library staff currently offers many outdoor programs and would like to continue to offer spaces for the community to gather, lawn/performance spaces, study and work porch, bike racks and convenience amenities like a drive-up book return and pick up window.

Finally, the Town will require water retainage/detainage, easements, setbacks, utilities, and open space requirements.

All of this added to the space required for a two- or three-story library building support *an ideal site of approximately 8 acres.*

In discussions with the Parks Master Plan, the consultants learned that the ideal site for a recreation center for the Town of Prosper is approximately 5 acres. There may be some efficiencies in parking and site amenities if a site can be identified that can accommodate co-locating the two buildings.

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS***Cedar Hill (Library in a Park)***

Acreage: 5

Number of Parking spaces: 100+ surface spaces (joint use agreement with adjacent mall)



STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS***Frisco (Library adjacent to Town Square)***

Acreage: 21 acres

Number of parking spaces: 424+ surface spaces

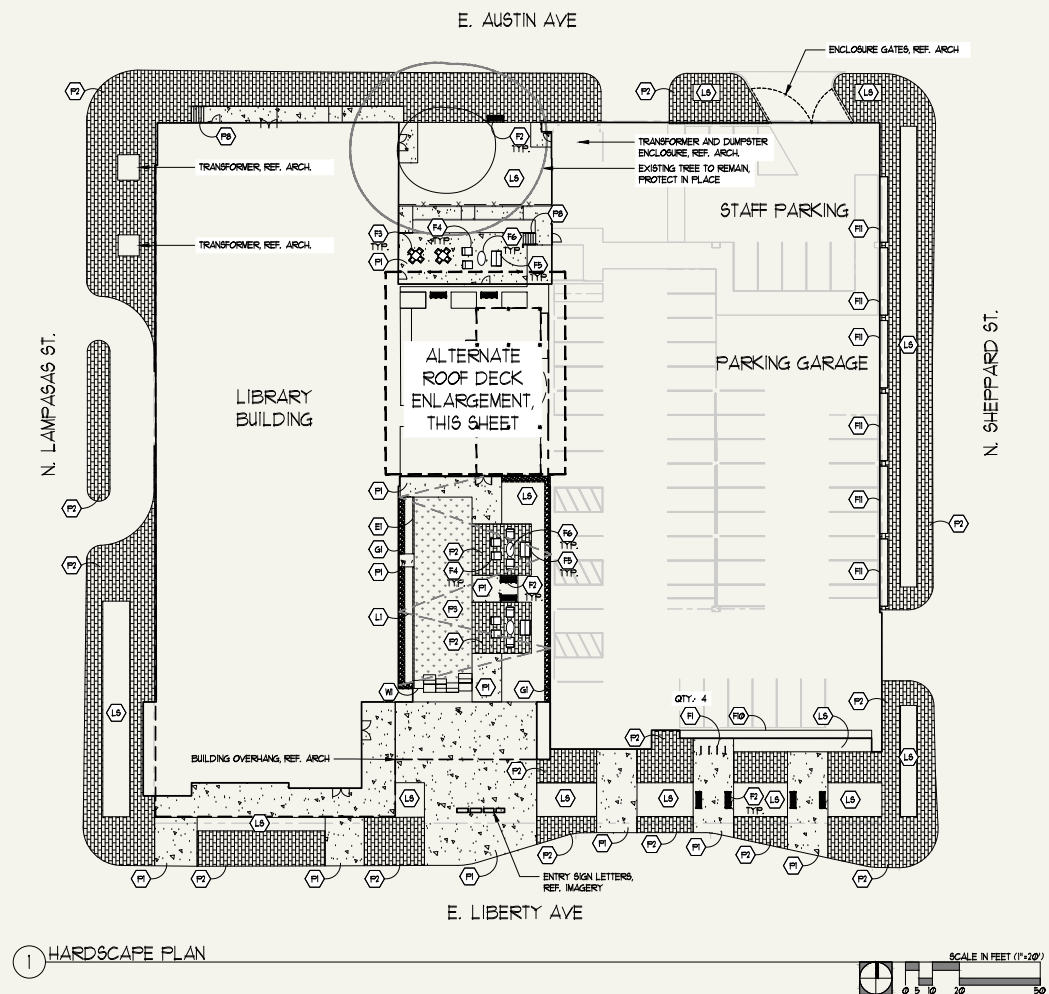


STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

Round Rock (Library in a historic downtown with a parking garage)

Acreage: 2 acres

Number of parking spaces: 300+ space garage



STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

Seguin (Library connected to the TXDot hike and bike trail)

Acreage: 2.5 acres

Number of parking spaces: 175+ surface spaces (plus street parking and adjacent city owned garage)



STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

ACTION ITEMS

The following outlines the next steps for immediate planning and implementation:

- Begin the project of converting the collection to RFID (staff and budget required)
- Explore options for expanded access to digital collections (increased material budget required)
- Begin a 5 year plan to increase the collection size
- Plan to expand hours for additional Friday and Saturday hours.
- Strategize expanding capacity for library programs
- Consider purchasing a Library Outreach Vehicle (staff, garage, and storage required)
- Install Library vending and/or lockers in key locations like outside the current library, in Town Hall, downtown, and other locations where people gather (staff time and delivery service required)
- Provide laptop vending in the library in lieu of stationary PC's to save space and increase individual seating
- Create a Library Foundation
- Strengthen the involvement of the Library Advisory Board.
- Begin planning for staffing development needs for a new library with increased services

“ I would like to see more conference rooms and areas where I can work. I work from home and there are days when I would like to visit and do my work. A small rooms, like a pod area, would be amazing for people like me to visit library and work. ”

- STATEMENT FROM ONLINE SURVEY

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

FACILITY SPACE RECOMMENDATIONS	POPULATION	POPULATION WITH ARTESIA	SF PER CAPITA	EXISTING SQUARE FOOTAGE	NEW TOTAL SQUARE FOOTAGE	TIMELINE
2023-2028						
Master Plan/Concept Design Option 1	77,000		0.91	9,627	70,000	Present-July 2025
	2055	85,000	0.82			
Master Plan/Concept Design Option 2	63,448		0.79	9,627	50,000	Present-July 2025
	2033	85,000	0.59			
Secure Funding						1-Nov-25
Secure Site						1-May-25
Design Process and Release for bid						November 2025 - November 2026
Construction-Complete in 2028	85,000	85,000	0.85		72,000	18 months
NON TRADITIONAL SERVICES						
Expand Mobile Services/ Outreach Vehicle						2025
Identify Locations for Lockers or Library Vending						2025
TOTAL LIBRARY SPACE						

STRATEGY FOR FUTURE SPACE + FACILITY REQUIREMENTS

SERVICE RECOMMENDATIONS	TIMELINE				NEW TOTAL SQUARE FOOTAGE	TIMELINE
SUPPORT ORGANIZATIONS						
Create a Library Foundation						Present
Strengthen the Library Advisory Board						Present
COLLECTIONS						
Increase Collection Size	2025	2026	2027	2028	2029	2030
Physical Collection	33,224 current collection				Increase to 110,000 - 120,000 vols for enhanced collection	Weed and maintain collection
Digital Collection	Review consortium and access					
Convert Collection to RFID	Begin tagging library collection	Purchase new materials pre-tagged	Purchase opening day collection	Install new AMH in new building		
Purchase and In-stall Self Check	After books are tagged					
TECHNOLOGY						
Technology Vending	Remove one desktop station and replace with Laptops Anytime or similar: https://www.laptopsanytime.com/					Present
Meet minimum technology requirements for desktops		Utilize Laptop Vending	Utilize Laptop Vending	Vending + 20 desktops	Vending + 20 desktops	
STAFFING						
Update organizational chart and job descriptions for new services and programs in the new building						On-going
OPERATIONS						
Increase operating budget to allow for an increased physical collection, more accessible digital collection, and increased staff.						On-going

2025 PROSPER COMMUNITY LIBRARY MASTER PLAN

VOLUME 2





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APPENDICES



**APPENDIX A |
DISCOVERY TOUR NOTES**

DISCOVERY TOUR NOTES

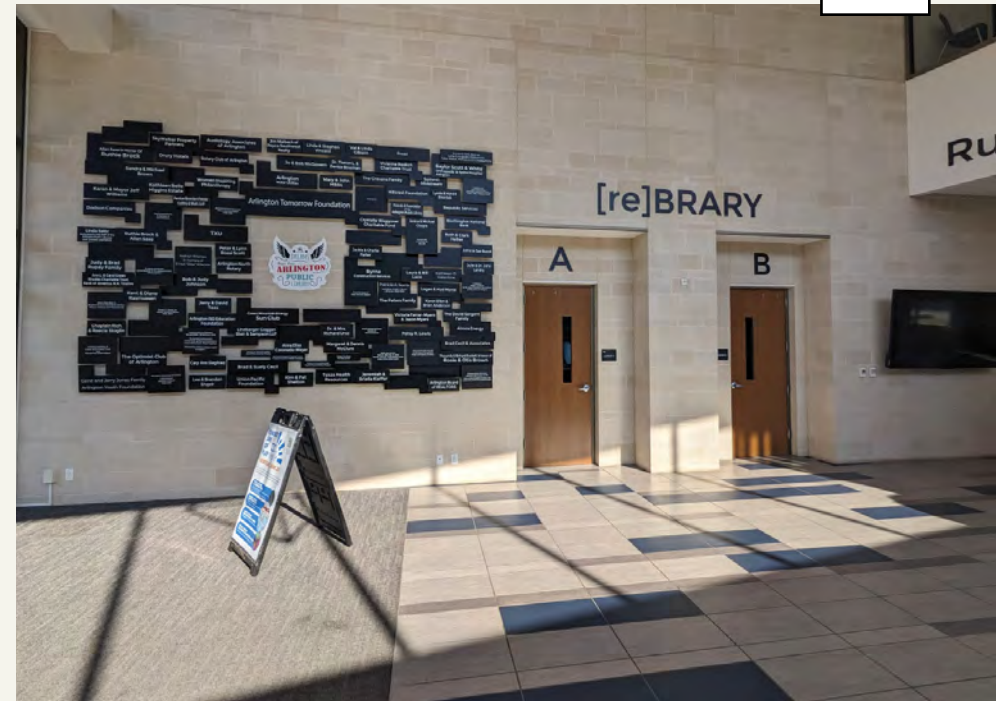
Prior to beginning the master plan process, library and Town staff and consultants toured Texas libraries to evaluate best practices and new services at new and renovated libraries across the region. This information gathering was invaluable to the planning process as staff provided pictures and images of aspirational services, systems, furniture, and layouts to be incorporated into the Prosper Community Library culture. Lessons learned during this process were used to generate images for community input as well as develop a common architectural vocabulary for the consulting team.

Why we chose these libraries

Three (3) tours of Texas Libraries were planned and embarked upon including:

GEORGE W. HAWKES LIBRARY, CITY OF ARLINGTON 3 FLOORS, APPROXIMATELY 60,000 SF

1. \$30 million dollar project, built and opened in 2018
2. \$26 million in bond, \$4 million fundraised primarily for FFE
3. Council chamber was also renovated as part of project with intention that library would use for bigger programs (ex. story-time), capacity is 260
4. [Re]brary Room – Community Multipurpose room
 - Larger room, dividable into two, seats about 70 per side
 - Alcove kitchen adjacent
 - Skyfold partition is expensive but effective in dividing the room and separating sound



DISCOVERY TOUR NOTES

(CON'T) GEORGE W. HAWKES LIBRARY:

- Arlington recommended Power/data in floor for maximum flexibility
 - Hearing loop for hearing and support
 - Rooms are available for rent by community
 - Important to educate community on use of room
5. Arlington does not use the library for voting, too complicated
 6. Shared outdoor plaza used for library events, was fitted with adequate power/data hookups for events
 7. Sustainability shop in lobby was created partnered with Green Mountain Energy, functions as a “friends store” with souvenirs for visitors.
 8. After hours lobby also has a quick access computer and place for kids to play/get out energy before entering the library
 9. First floor includes: reference desk, self checks, business center by elevator, AMH (automatic material sorter) with visibility for kids, flexible shelves so can clear space if needed
 10. Group asked about collection size and circulation? Thousands of check outs, will provide specific numbers if desired.
 11. First floor also includes staff spaces with drive through book drop facing street
 12. Library added a passport office in a spare conference room. Lesson learned: good to have a few spare rooms for miscellaneous service needs that arise / evolve over time
 13. Children’s area: board book bins were specifically sized for



DISCOVERY TOUR NOTES

(CON'T) GEORGE W. HAWKES LIBRARY:

small children, but design needed tweaking for various reasons:

- Signage changed because kids were pulling off the original signs
 - In future will be careful about cubby depth, as were so deep babies were falling into
14. Activity room has a large Burgeon interactive wall, themed to reflect Arlington design
 15. Outside of activity room is an extended playtime zone, so that children waiting for an activity have somewhere to play.
 16. Lessons learned: True rocking chairs are not good in children's areas as they can pinch baby fingers
 17. Dedicated study rooms specifically for kids, can be used for homeschool groups, etc.
 18. Lessons learned: Individual temperature controls for conference rooms would have been ideal, rooms have more temperature fluctuation than is desired and for general occupant comfort
 19. Gaming turned out to be too much trouble, staff removed
 20. Lesson learned: First floor quick access: Adding power to tables drastically improved useability of café seating
 21. Lesson learned: Lights over stairwell have proven to be really difficult to maintain
 22. Lessons learned: Good to have chair rails anywhere furniture



DISCOVERY TOUR NOTES

(CON'T) GEORGE W. HAWKES LIBRARY:

- or traffic may strike
- 23. All lighting is daylight and motion sensitive, required by code
- 24. Second floor:
 - Adult collection, computers, classrooms, teen space, maker spaces
 - Suite of classrooms/ meeting rooms
 - No auto locks on meeting rooms, staff have to manually lock and unlock
- 25. Create room is another multipurpose, was included in the program as a bonus room, and has been good to have the extra program space.
- 26. Teen space has transparent bubble wall for illusion of privacy but with staff visual control
- 27. Maker space has two sides, low tech and high tech, Arlington built up services over time
 - Arlington charges for laser materials
- 28. Staff area is immediately adjacent to collections on all floors
- 29. Adult education suite for trainings includes reception, two classrooms, and staff space
- 30. Level three includes: a board room, more adult collections, genealogy, quiet reading and outdoor roof deck
- 31. Roof deck on level 3 great for special events
- 32. Entire floor has great views from conference rooms, roof deck
- 33. Staff break room is on level 3 as well
- 34. Because building is big and spread out, staff uses walkie talkies for quick communication
- 35. Safety considerations: City provides two designated police officers that circulate between city hall and library
- 36. Arlington has art on display from sister city (Bad Koenighofen in Germany)
- 37. Summary Priorities and Lessons Learned:
 - Elevators will be a lot of work, cleaning, maintenance, etc.
 - Floor boxes are very important in helping anticipate flexibility

DISCOVERY TOUR NOTES

ARLINGTON LIBRARY:

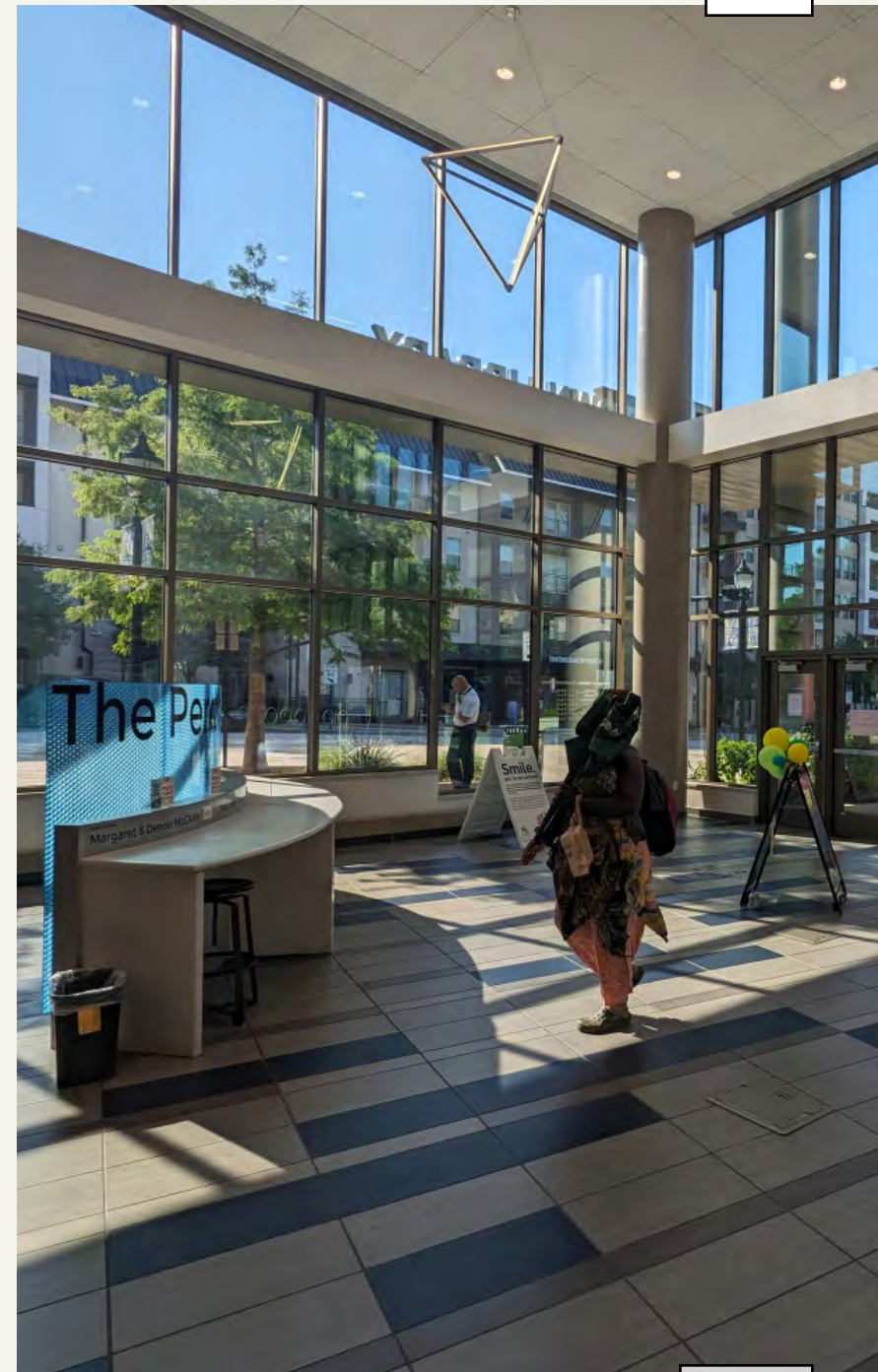
1. Group found the building really interesting, but found that it felt really big for Prosper
2. Were surprised by the DVD collection; Prosper will not need
3. Prosper is maxed out on space and collections, already need more of everything
4. Group asked the question: is the role of the library to provide social services or education? Leslie: Both
5. A libraries Mission is to connect with the public, and address social as well as educational needs
6. Prosper currently has 300-500 visitors per day, doing great compared to even bigger cities like Arlington
7. Prosper utilization of collections is also impressive compared to state averages and peers
8. Council asked why? Leslie: a little bit of everything:
 - Good service, good collections
 - Popular for families, stay at home moms, nannies and babysitters
 - Lots of multigenerational users
9. Group asked what was parking situation for Arlington? 720: Public / private garage
10. After hours lobby was interesting to group, gives access to basic services and separates meeting spaces
11. Prosper has specific policies regarding for-profit tutoring and overall use of community rooms



DISCOVERY TOUR NOTES

(CON'T) ARLINGTON LIBRARY:

12. Group belief is that public buildings shouldn't be about making money, competing with private sector
13. Community Room currently is available for non-commercial events
14. Prosper needs more voting locations, but doesn't necessarily need to be Library. Some churches are becoming voting locations.
15. Prosper is looking at growth to 80,000 people at build out – what is the best way to plan for a building?
 - Can consider a shell space like Euless and Garland or plan building for expansion like JGG
 - Also can look at multiple locations, but PCL Library Director prefers a single centralized location
 - Branches make more sense for police and fire, but not the library in this case
 - Group is wary of creating an east/west rivalry like McKinney
16. Site considerations: Library visitors drive downtown business, will be good to keep Library as close to downtown as possible. Town may have access to some land through a deal negotiated with Bluestar. Will investigate further.



DISCOVERY TOUR NOTES

CEDAR HILL PUBLIC LIBRARY, CITY OF CEDAR HILL

1. Fast facts:
 - Project size: 40,000 sf, 2.5 levels
 - Community size: 60,000 population
 - Site: 5 acre site with park partnership
 - Bond was 3 separate initiatives – community wanted joint library and park
 - \$45 million budget for park and library
 - 2 year construction
 - Pandemic meant pricing changed dramatically during course of project
 - First 6 days circulated more than a month in old building
2. Project was a big exercise in listening to the community, the “secret sauce” to the success of the project
3. 4x the size of previous library, “10 lbs of programming in a 5 lb bag”
4. Number one ask was for more space
5. Other community ask was more technology
6. Two significant advocates are recognized:
 - Traphene Hickman was the original founding library director and strong advocate
 - Zula B Wiley donated the previous library land
7. Sustainability was a key component of design:
 - Building is LEED silver certified
 - Utilizes sustainable features such as fritted bird strike



DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

- glass, on-site harvested wood, etc.
- Goals reflected in the lobby art installation “Take Flight”.
Sculptural wood installation: manufactured the wood birds from reclaimed wood from site
- 8. History was important to community, City partnered with the Cedar Hill Museum to give them a storefront space off the main lobby
- 9. Community input reflected on word mural in entry lobby
- 10. Ground floor:
 - Youth services and welcome
 - Height adjustable service desks
 - Business center and tech (on each floor, no cost to use services)
- 11. Furniture approach was for everything to be functional, durable, and timeless
- 12. Youth spaces encourage play as a way to learn, STEM space always busy / popular
- 13. Library has a robust collection of things, such as KultureCity kits – for patrons with sensory/auditory needs
- 14. Library is both a Family Place and KultureCity library
- 15. Selected land with help of Citizen site selection committee, which developed criteria for site selection
- 16. Project has proven to be Catalytic: already spurring development in Midtown
- 17. Parking lot is intentionally small because there is additional

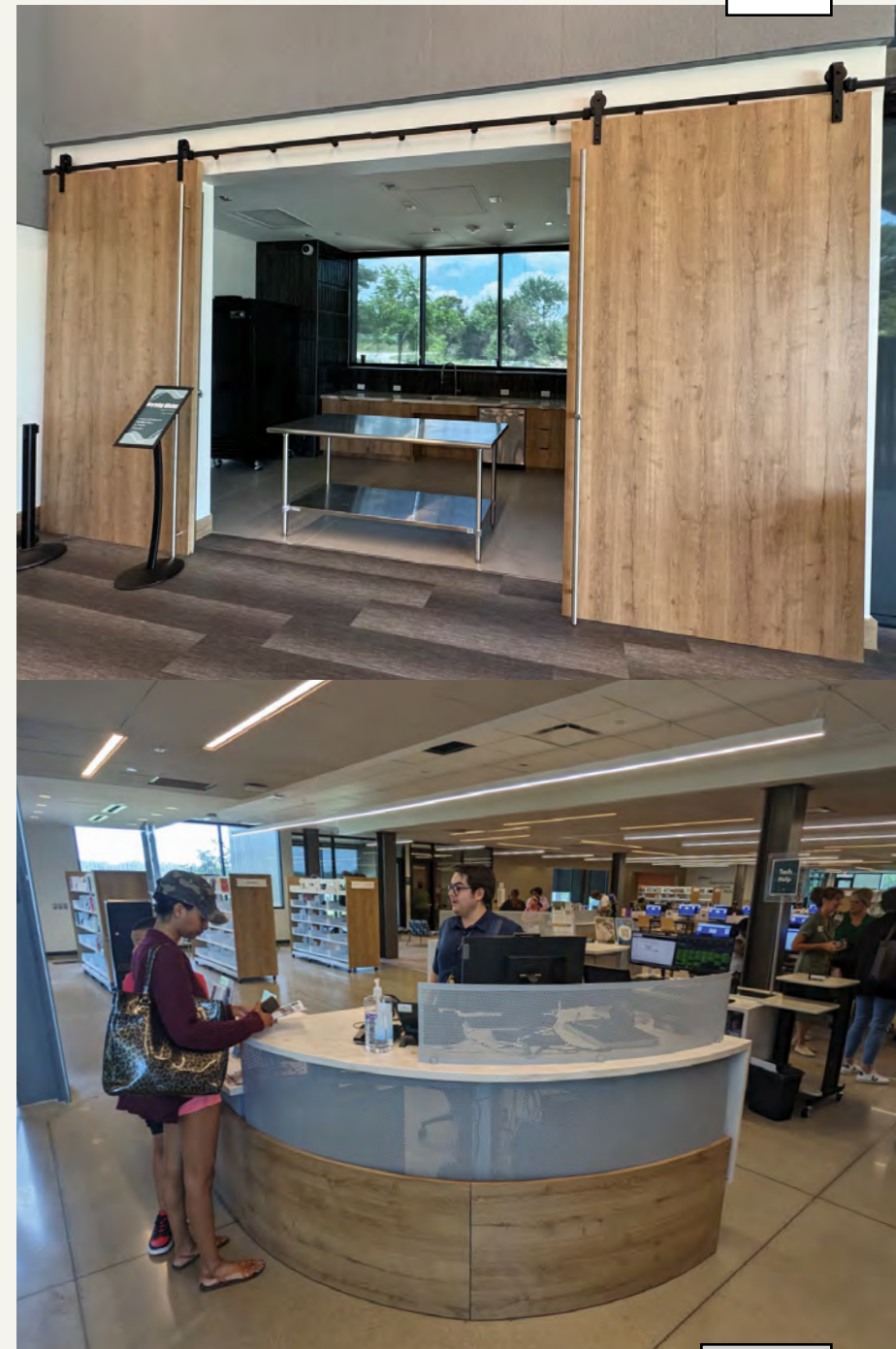


DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

parking nearby: Underparked at 117 total parking spaces

18. Collection was expanded at opening, still have room for growth
19. Staff space notes:
 - Staff area is size of old library
 - All staff cycle through service desks to have connection to community
 - Storage closets much improved
 - AMH has both a pedestrian book drop and drive through
20. Second Floor:
 - Adult reading porch provides beautiful seasonal views
 - Teen space is very popular
 - Digital media/Storytelling suite has been a big hit
 - Maker hasn't been fully fitted out due to budget and time needed to figure out offerings, currently being used more like a classroom
 - Study rooms monitored through reservation system, currently done by staff. CH will give patrons at-home online booking option eventually
 - Big party deck available for rental, spectacular views
 - Quiet study doubles as bridal suite
 - Event spaces: Library separated from event space on all floors
21. Lower level:
 - Social café on lower level, partnership with local coffee vendor



DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

- Social stair serves as a casual and multipurpose hangout spot
 - Multipurpose room is dividable, has warming kitchen with direct outdoor access for deliveries
 - Nana walls from MP room open to park to create an even bigger, more flexible indoor/outdoor space
 - Performers have loved the new space
22. Prosper asked about event logistics:
- Where do rental funds go? Into cities general fund but library contributions are tracked separately
 - Events with alcohol require additional security
23. Security monitoring is more for record, not enough staff to truly monitor
24. Outdoor spaces were envisioned as part of the project ethos as a place of inspiration and connection. Amenities include:
- Hookups and adequate staging area for food trucks
 - Inspirational quotes throughout park
 - Adult friendly play was a consideration (Ping pong tables and swings)
 - Amphitheater for outdoor events
 - Were careful to include power/Wi-Fi for public use throughout park
25. Board room is used only by library and city staff, not accessible to public



DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

CEDAR HILL REFLECTIONS

- Group really liked the building, including key features like the natural light and connection to outdoors
- Staff space was really nice and spacious, tech was impressive
- Group were surprised by how much meeting space there was, asked what percentage of building it was? CH noted roughly 5,500 sf out of the whole 40,000 sf building.
- Library team liked to see the service desk multifunctionality and ergonomics
- Group found the personal touches referencing city/library history were applicable to Prosper
- Group was divided on the drive through – will depend on property location and lot size
- At CH, service window is not open yet, requires dedicated staff person and training, so taking more time to get operational
- Group asked how involved was the CH community during design? CH noted:
 - Community involved primarily on design, not on policy
 - Building committee input group formed from select Board members and community members
 - Board and friends are big advocates for library, have been critical for fundraising, big champions of project
- CH noted staff alignment was really important for project as well:



DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

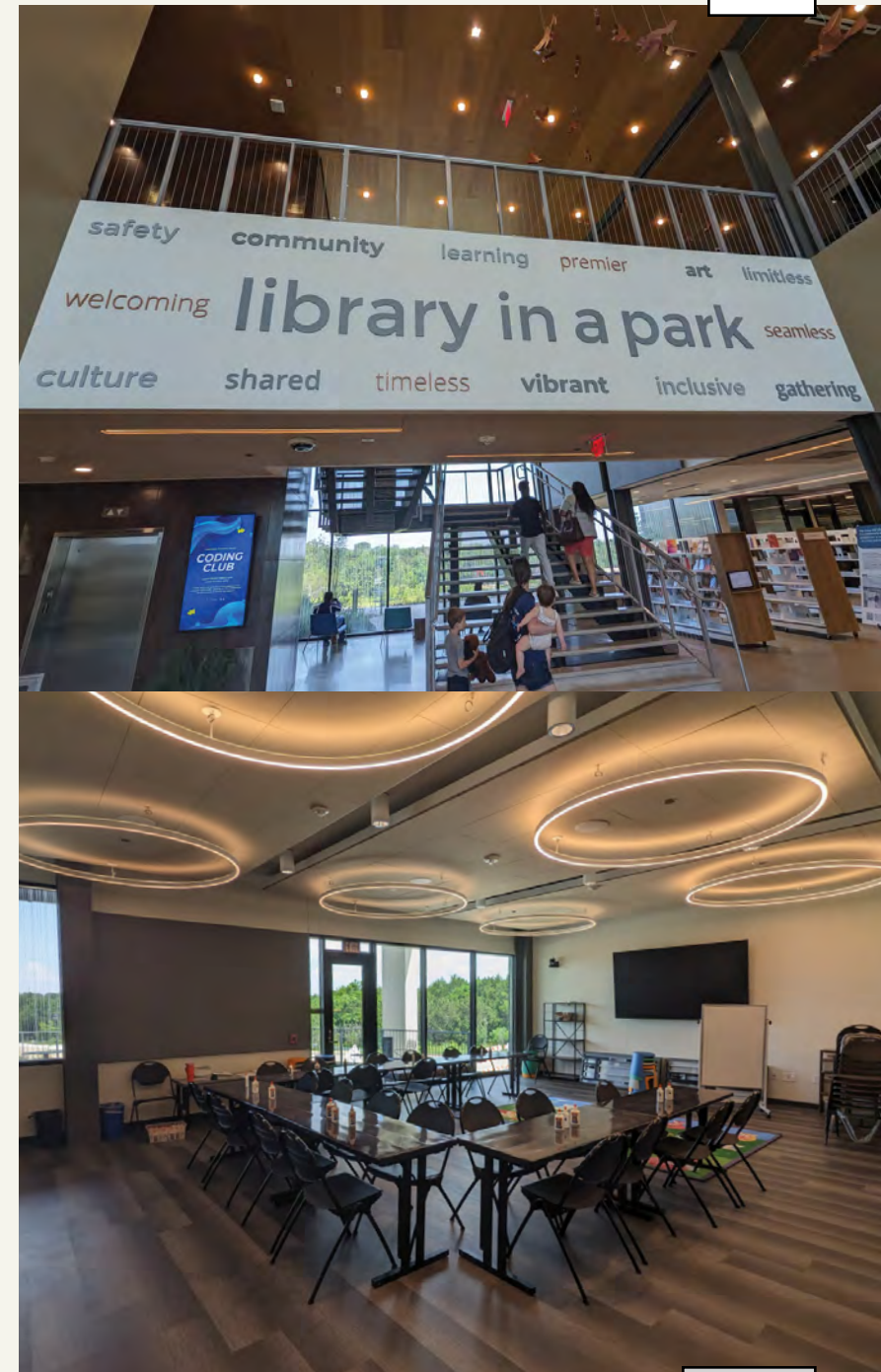
- Held a staff retreat leading up to building opening to explore how everyone could be “champions for change”
- Used Journey mapping to understand what are typical user experiences
- Reconfigured customer service model
- Used the Hedgehog model for “Good to Great” to really understand what CH’s great is:
 - What is the thing we can excel at? Customer services
 - How do we become great? Acknowledging, listening etc.
 - How do we know we are succeeding? Community feedback
- With new building, CH’s O&M budget increased 51%
- Staff grew from 18 to 28, with additions staggered over budget years
- All staff are trained in library essential functions so can step in to help
- CH says Library is still currently understaffed – depend heavily on volunteers to make up gap
- CH has an active friends group, but not a Foundation
- Group asked if there is a plan to expand eventually? Yes, PGAL designed the building with an expansion in mind, building would grow to meet needs of expected population growth (from 50,000 to 80,000)
- Group didn’t care for monetized event spaces



DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

- Cedar Hill felt like it made really good use of space
- Group didn't feel open access was right for Prosper
- How does Prosper prioritize residents: For Prosper taxpayer, shouldn't be crowded out of library use by non-residents
- Prosper has paid members, a gray area for some council members
- What is Prosper teen participation? Good/growing attendance, definitely need own space. Some nuances:
 - Teen boys are unicorns in libraries, need to find ways to bring in
 - There are differences between teens and tweens, may want to look at separate space
- Group liked the Arlington maker space, most robust of examples seen
 - Asked if this is a redundant service to schools? PCL Library Director noted schools aren't open during the summer and evening
- Group asked if there was a rule of thumb for how many study rooms a community needs? 720 noted there is no rule of thumb, and instead is a balance between project budget, area, and collection size
- Group observed that Multipurpose Spaces allow for most efficient use of spaces



DISCOVERY TOUR NOTES

(CON'T) CEDAR HILL PUBLIC LIBRARY:

- Leslie explained Prosper digital collections, including Cloudlibrary and Libby
- 720 asked: What are everyone's aspirations for the library:
 - Exceptional in every way (Town has high taxes, citizens have an expectation of excellence)
 - Beautiful building
 - Multiuse complex
 - Expectations for community: types of space and activities will be most important, ex: innovation and access to maker spaces
 - Community expectations:
 - Leslie: people in Prosper save money by using library services
 - As apartments get built out and more population density, more library users
 - Complaints about nowhere to bring kids, "too many beers"
 - Prosper is not walkable, golf carts are increasingly common
- What is coming for Prosper? Explosive population growth
- Meeting space needs currently:
 - Would be good to have a training space 30 people
 - Community room is used every day, need more meeting space
- A place for voting. Voting is disruptive. For bigger elections, lose program room use for a month.
- Ideal for community rooms to have exterior doors
- What are typical Security considerations for a library?
 - Monitor people when entering/ exiting building, lock down building
 - Garland: opted for more robust features such as bullet proof desks and police desk
 - Low shelving is used for better sight lines
 - Tornado shelters are not typical, although public asks about this
- Group really liked the idea of an adjacent park, depends on finding a good site

DISCOVERY TOUR NOTES

SMITH PUBLIC LIBRARY, CITY OF WYLIE

- Project is a combination municipal complex, slightly older project but on tour
- Entry lobby has space for donor recognition and art/history display
- Conference/ MP meeting located directly off of lobby
- After lobby/entry area, service desk to left and children's spaces to the right
- Children's spaces include themed storytime room with puppet theater
- Quiet reading room is quite traditional, loved by community
- Sustainability and the use of natural and local materials was important to the design
- Teen space was overly themed, design inspiration was "Roy Lichtenstein pop art"
- More flexible maker / lab space
- Pros and cons of being colocated with rec center:
 - Great to double up on programming, but facilities are vastly different in terms of policies, age limits, noise, for profit vs non profit policies.
 - Rec center migrates into the library, not ideal
 - Hours are slightly different, unsupervised kids often find their way from rec center
- Lessons learned: Plan for plugs (power) everywhere! Difficult and costly to retrofit in floors.



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

- Interesting note: Drive through was original to building, but not used much until Covid, now very popular
- 720 noted that while AMHs are expensive, with circulation over 300,000 items they pay off very quickly in staff hours saved
- Outdoor spaces are used for programming, recent example: DSO concert truck held a concert
- Site planning is important, community complains that parking lot is a long walk
- During summer, to supplement programming, Kona Shaved Ice parks outside and serves Sno Cones, makes a donation to the library
- In Lobby, planning to retrofit existing doors to sliding doors, will be much better for ADA and moms with strollers.

Notes from Internal Town Discussion (recapping drive back to Prosper):

- Council member:
 - Sees a need for a 100 person multi-use conf room for Prosper
 - Loved the lighting in the stairwell in Arlington
 - Liked the park combined with library
 - Senior Center and Rec Center would be nice to be



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

- close to library and open park space
- Liked the Cedar Hill design best
- Liked tall ceilings
- Maker space in Arlington was fantastic
- Liked historical element in Arlington & Cedar Hill
- Drive through in Frisco, hidden like it is, preferable
- Liked the combination of park with library
- Gaming in educational sense would be acceptable
- Invest in soundproofing room dividers
- Liked floors in Cedar Hill
- Loved rooftop patio
- Inquired about security elements
- Likes idea of rec center and library close
- Liked historical element in Arlington & Cedar Hill
- Did not like single floor library, much preferred separating adult and children
- Liked the separated lobby and library idea
- Sees our survey not being collection driven but more event and activity requested
- Agrees on the large 100 person conference room need
- Loved rooftop patio



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

- Detests drive through window
- Likes the idea of not dating library with tree like in Wiley or huge Word wall like Arlington
- Felt that Arlington overdid the donation names over rooms, less wordy preferred
- Like donation wall recognition
- Really liked old-school feel of the Wiley circular, well-lit Quiet reading room
- Doesn't want to separate library into east and west, centrally located is better
- Very hesitant to cross municipal with for-profit, regarding meeting spaces
- Rec center like Wiley's doesn't seem appropriate for teens in Prosper
- Balked at estimate for automatic materials handling, Wiley rep said \$250K
- Demographic of 55+ is a large target, not just "senior" space, needs to be more multi-use geared



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

- Summary Discussion:
 - All agreed on the large windows
 - Most liked the lighting on the wall in the Arlington stairway
 - Liked the flexibility that shelving and seating on casters provides
 - Lesson learned: Lighting fixtures need to be selected with ease of cleaning and repair in mind
 - Lesson learned: Maintenance concerns with upkeep also need to be kept in mind

Summary Conversation with 720 Design 06/17/24

- Learned lobby function is not just as an entrance but as an after hours space that can serve multiple functions
- Big question is: What is right proportion of physical collections to community focused space?
- Masterplan data will justify the size of the new library
- Group enjoyed seeing variety of event spaces (especially at Cedar Hill – so beautiful!), including outdoor and reading decks.



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

- Mixed opinions on role of event spaces as place to have social events
 - Need bigger space, at least luncheon for 100 ppl
 - Dividable ideal!
- Prefer for MP spaces to service Town needs and non-profits (NO for-profit partnerships)
- Group loved the mobile walls to the outdoor plaza at Cedar Hill, but concerned about expense, curious how could work for Prosper
- Mixed opinion on including gaming for Teens, ok so long as selective about kinds of games that the library makes available
- Teen room at Wylie did not have good visibility
- Group was particular about lighting
- Project will need to be purposeful in decisions made
- Master Plan process will really highlight how busy libraries are and the value of a large library
- Need to be conscientious about perception that library is for all, of different users and why, and the need for the library to remain free (not monetized)
- Arlington library and individual temperature controls seemed like a nice idea, but how applicable? Be smart about temperature controls
- Mixed opinions on drive through – will need to be beautiful,



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

- careful, and screened well
- Group loved the quiet reading room in Wylie
- Group loved the fireplace at Arlington
- Liked idea of Foundation or Donor Recognition Wall, not so much Sponsorship banners/naming
- Library purpose is books + services + programs + social services (internet and access to tech)
 - Need to listen and respond to needs of community
 - Take advantage of flex spaces to utilize in different ways as community grown
 - Library will mean as many things to as many people
- Makerspace – group was really excited about possibilities:
 - Lean on surveys for what kind of space
 - Plan for flexibility so can adapt to changing technology needs
 - 720 Design wouldn't ask community for specifics more than high tech vs. low tech
- Community room in current building not ideal, need to have a separate entrance
 - In future own dedicated entrance OR after hours lobby with separated access from building
- Variety of furniture for reading / study at Cedar Hill study rooms was good
- Security grille separation for after hours community room use
- Family Place library – Prosper is potentially interested in



DISCOVERY TOUR NOTES

(CON'T) SMITH PUBLIC LIBRARY, CITY OF WYLIE

becoming? Group noted program is about teaching parents about how play and learning are linked

- Kulture City – Group curious to look more into
- Even if don't pursue formal grant programs, family friendly space is desirable, with play areas, family friendly restrooms, etc.
- Library should be inclusive of all abilities
- Catering kitchen – on the bigger side would be preferred, no cooking equipment: counter, fridge, sink, microwave, ice machine
- 720 Design asked if anything from tours change how we approach the survey? Such as use of library for social activities, gaming for teens, etc.
- Survey will be revisited after leadership interviews
- Cedar Hill: Group was intrigued by the historical society presence, could reserve some space for a similar purpose in Prosper but not as much as CH. Prosper's Historical Society is not good at providing the occasional volunteer support, even the occasional booth or exhibit, so maybe more fixed display rather than a more immersive space.
- Rec Center partnership can meet the social needs of the library
- Coffee/café will be desirable to community, but probably not full service – either vending or cart
- Will need to think through policies for food (Wylie: no food or drinks, Cedar Hill: saw a kid with a pizza box)







COMMUNITY INPUT PROCESS + VOTING TABULATIONS

COMMUNITY INPUT PROCESS + VOTING TABULATIONS

LIBRARY VOTING TABULATIONS



720 design

Title	Staff July 9, 2024			Power Users July 11, 2024			Community Leaders July 11, 2024			OVERALL		
	Total Dots	Category Rank	Image Rank	Total Dots	Category Rank	Image Rank	Total Dots	Category Rank	Image Rank	Total Dots	Category Rank	Image Rank
Gathering Spaces	15	#4		13	2		15	2		43	2	
Multi-purpose Room with Dividers (FPL)	4		#8 tie	0			0			4		
Multi-purpose Room with Dividers (APL)	0			2			4		7	6		
Multi-purpose Room Operable ext wall	2			0			2			4		
Warming/Demo Kitchen	2			1			2			5		
Technology/Training Lab	0			0			0			0		
Conference	0			1			0			1		
Study Room	5		5 tie	4		4 tie	6		1 tie	15		#2
Story Time	2			5		2 tie	1			8		
Learning & Interactive Spaces	6	#5		8	3		6	4		20	5	
Interactive Learning	1			4		4 tie	3			8		#9 tie
Reading Niches	5		5 tie	4		4 tie	2			11		#6
Teen Spaces	0			0			1			1		
Community Living Room	16	#3		5	4		10	3		31	3	
Comfortable Seating	2			1			2			5		
Fireplace Lounge	0			0			0			0		
Quiet Reading Room	8		2 tie	0			5		3 tie	13		#3 tie
Study Pods	6		4	4		4 tie	3		8 tie	13		#3 tie
Technology	4	#6		4	5		6	4		14	6	
Gaming/Coding/Entrepreneurship	0			3		9 tie	5		3 tie	8		#9 tie
Video/Audio Recording Spaces	4		#8 tie	1			1			6		
Interactive Technology	0			0			0			0		
Trends	22	#1		24	1		17	1		63	1	
Maker Space - Low Tech	2			6		1	2			10		#7
Maker Space - High Tech	3			3		9 tie	6		1 tie	12		#5
Donation Wall	0			0			2			2		
Sale Area	0			4		4 tie	0			4		
Drive up Return	4		#8 tie	2			0			6		
Drive up Service Window	2			2			1			5		
After Hours Pick up	3			2			1			6		
Vending Café	8		2 tie	5		2 tie	3		8 tie	16		#1
Local History	0			0			2			2		
Outdoor Spaces	17	#2		1	6		3	6		21	4	
Amphitheater	5		5 tie	0			0			5		
Café Seating with Power	0			0			0			0		
Reading Swings	1			0			0			1		
Reading Deck	2			1			3		8 tie	6		
Plaza and Walking Paths	9		1	0			0			9		#8
TOTAL VOTES	80			55			57			192		



ONLINE SURVEY RESULTS



ONLINE COMMUNITY SURVEY

Prosper Community Library

2024.09.12



IVYGROUP.COM

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Background

To gather feedback from many voices, in the summer of 2024 The Ivy Group surveyed the residents of Prosper. The goal of this survey is to define how the larger, reimagined Prosper Community Library can best serve residents.

Research Objectives

The specific objectives of the survey are to:

- ◆ Identify barriers preventing the use of public library services
- ◆ Determine the importance of different indoor and outdoor library spaces
- ◆ Identify the best ways to share information about the library
- ◆ Learn what the library might do or offer to better meet the needs of residents

Research Methodology

Working closely with the library's leadership and 720 Design staff, the consultants developed the questionnaire for the community survey. Upon the library's approval, the team built the questionnaire within the Sogolytics survey platform and made it available via a link and QR code. The library promoted the survey on social and traditional media, and within the library building. Paper versions of the survey were made available.

A total of 565 individuals participated in the survey effort over five weeks (July 30, 2024, through September 3, 2024). Ivy Group tabulated the data and analyzed the findings.

Research Highlights

565 Total Completed Surveys

69 of the 634 survey respondents were excluded for not receiving a Town of Prosper utility bill.

38.8% Non-User Respondents

Respondents who patronized PCL two or fewer times in the past 12 months

61.2% User Respondents

Respondents who patronized the library three or more times in the past 12 months

Visit Frequency

41.6% patronized PCL **7+ times** in the past year

18.9% are “**power patrons**,” having used PCL **20+ times** in the past year

Visit Reason | The top reasons that users cite for patronizing PCL are:

“To check out **physical** books, magazines, movies, hotspots, etc.” **(76.9%)**

“For **entertainment** or hobbies” **(40.2%)**

“To download **digital** materials” **(39.6%)**

Users & Non-Users

Barriers to Use | The top reasons that respondents cite for not using the library or not using it more frequently are:

“The **children’s area** is too small.” **(27.6%)**

“The library **doesn’t** have what I need.” **(24.6%)**

“The library’s **hours** are not convenient for me.” **(17.0%)**

Other Libraries Used

Frisco Public Library (46.5%)	I do not use other libraries. (43.9%)	McKinney Public Library (9.2%)
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Importance of Spaces

Space for books and other physical materials (79.4%)	Space for children (78.8%)	Space for library programs (66.2%)
---	--------------------------------------	---------------------------------------

Preferences for Meeting Spaces

Space for 6-8 people (45.5%)	Space for up to 25 people (42.1%)	Space for 2-5 people (40.7%)
--	---	--

Preferences for Outdoor Spaces

Space for children to play (64.4%)	Access to Wi-Fi (59.6%)	Space for interactive experiences (54.5%)
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Preferences for the Feel of the New Library

Welcoming (82.3%)	Calm (62.2%)	Spacious (59.6%)
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Best Ways for the Library to Communicate

Email (72.0%)	Social media (52.0%)	Library website (49.0%)
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Reimagined Library | In open-ended answers, support for staff and program ideas were frequently mentioned as areas of focus in the reimagined library.

Facility (39.0%)	Collections (28.1%)	Programs (13.0%)
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Survey Findings

About Respondents

Q1. Do You Live in Prosper?

All	Responses
89.1%	Yes, and I receive a Town of Prosper Utility Bill
5.7%	Yes, but I do not receive a Town of Prosper Utility Bill
5.2%	I do not live in Prosper

Those who responded “Yes, but I do not receive a Town of Prosper Utility Bill” or “I do not live in Prosper” exited the survey at this question, bringing the number of completed surveys to 565.

Q11. Age

All	Responses
0.4%	Up to 17
1.2%	18 to 24
30.6%	25 to 39
56.6%	40 to 64
9.6%	65 and up
1.6%	Prefer not to answer

Residents 65 and older are overrepresented in the survey respondents (9.6%) compared to the proportion of Prosper (7.7%) residents 65 and older, according to the latest Census data.

Q12. Household Composition

Percentage total exceeds 100% as respondents could select more than one answer.

All	Responses
56.3%	Family with young children in the household
31.1%	Family with teens in the household
25.1%	Family/adults without children in the household
2.1%	Single person household
0.7%	Prefer not to answer

About Library Usage

Q2. Do You Have a Library Card for Prosper Community Library?

All	Responses
80.5%	Yes
18.1%	No
1.4%	Don't know

Q3. In the Last 12 Months, Approximately How Many Times Have You Visited the Prosper Community Library or Used Its Services?

Includes visits or calls to the building, using a study room, visits to the library's website and catalog, and use of digital services like Libby.

38.8% of survey respondents (219 out of 565) are classified as “non-users” of library services, having patronized the library two times or fewer in the past 12 months.

20.5%	0 times
18.2%	1–2 times

61.2% of survey respondents (346 out of 565) are deemed “library users,” having patronized the library three times or more in the past 12 months.

19.6%	3–6 times
22.7%	7–19 times
18.9%	20+ times

Asked of Users Only

Q4. Reasons for Using the Library

Percentage total exceeds 100% as respondents could select more than one answer.

Users	Responses
76.9%	To check out physical books, magazines, movies, hotspots, etc.
40.2%	For entertainment or hobbies (programs, kits, craft books, etc.)
39.6%	To download digital materials from services like Libby and cloudLibrary
28.9%	To attend a program
27.8%	To attend a storytime
23.4%	To find study or research materials
23.1%	To read, work, or study in a quiet place
11.0%	To use a study room or Collaboration Station
9.3%	To see friends and other people
9.3%	To print/copy/scan/scan-to-email
8.7%	To use online resources such as Mango and LinkedIn Learning
8.4%	To use the library's Wi-Fi
7.8%	To use the library's computers
6.7%	To attend a meeting for a group you belong to
5.2%	To use the 3D printer
4.6%	For one-on-one help from library staff

4.0%	To provide or receive tutoring
3.5%	To take online classes or complete an online certification
1.7%	To search or apply for a job
1.2%	To charge a device
3.5%	Other (Please specify)

The 12 individuals who responded “Other” were given the opportunity to elaborate. The verbatim comments can be found in the appendix. Their responses are sorted by primary theme below:

Comments	“Other” Responses
8	To check out physical books, magazines, movies, hotspots, etc.
2	To read, work, or study in a quiet place
1	To use the bathrooms
1	For socializing

Asked of All Respondents

Q5. Reasons for Not Using the Library, or Not Using It More Frequently

Percentage total exceeds 100% as respondents could select more than one answer.

All	Responses
27.6%	The children's area is too small.
24.6%	The library doesn't have what I need.
17.0%	The library's hours are not convenient for me.
14.7%	It doesn't occur to me to go there.
13.6%	I use the Internet to get information.
12.4%	I don't have time.
11.7%	I have other places to obtain books, DVDs, etc.
8.8%	I can't find a place to sit and read.
8.1%	The programs don't interest me.
5.8%	I can't find a place to study.
5.7%	I don't read a lot.
5.0%	The library's website/app is hard to navigate.
5.0%	The library is too far away.
3.7%	I did not feel welcome when I visited.
0.9%	The library doesn't have enough offerings in Spanish.
0.5%	A health condition prevents me from going.

0.3% I don't have a way to get to the library.

0.2% I owe money for lost or damaged materials.

23.5% Other (Please specify)

The 133 individuals who responded “Other” were given the opportunity to elaborate. The verbatim comments can be found in the appendix. Their responses are sorted by primary theme below:

Comments	“Other” Responses
33	The library doesn't have what I need.
16	I use the library frequently.
11	I recently moved to Prosper.
9	I use another library.
7	The library is too small.
6	I use the digital branch.
6	There are not enough offerings for adults.
5	The library doesn't accommodate children.
5	The library's hours are not convenient for me.
4	It doesn't occur to me to go there.
3	I can't find a place to study.
3	The cost of a library card is too high.
3	I don't have time.
3	I have other places to obtain books, DVDs, etc.

2	I owe money for lost or damaged materials.
1	I just got my library card.
1	The library is often cold.
1	I live out of town.
1	The programs don't interest me.
13	N/A

Q6. Do You Use Other Public Libraries in the Area?

Percentage totals exceed 100% as respondents could select more than one answer.

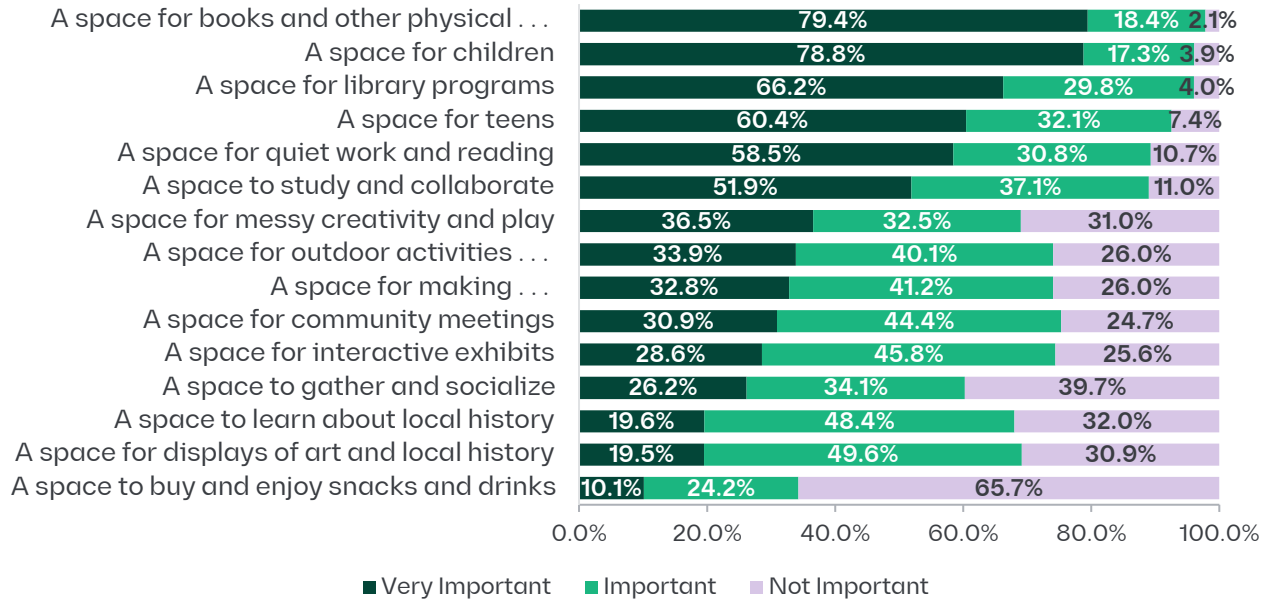
All	Responses
46.5%	Frisco Public Library
43.9%	I do not use other libraries.
9.2%	McKinney Public Library System
3.0%	Celina Public Library
1.9%	Little Elm Public Library
4.6%	Other (Please specify)

The 26 individuals who responded “Other” were given the opportunity to elaborate. Some mentioned more than one library in their answer. The verbatim comments can be found in the appendix. Their responses are sorted by primary location below:

Comments	“Other” Responses
7	Plano Public Library
5	Allen Public Library
5	Houston Public Library
3	School library
1	The Colony Public Library
1	Dallas Public Library
1	Flower Mound Public Library
1	Irving Public Library
1	Other
1	Out of state

Q7. Importance of Spaces in the Library

Respondents were provided a *Don't Know* response option for those attributes with which they were unfamiliar. These responses have been deducted from the question's overall respondent base of 565.



Responses	Number Able to Rate	% Who Responded Very Important
A space for books and other physical materials	559	79.4%
A space for children	561	78.8%
A space for library programs	554	66.2%
A space for teens	551	60.4%
A space for quiet work and reading	561	58.5%
A space to study and collaborate	555	51.9%
A space for messy creativity and play	539	36.5%

A space for outdoor activities (e.g., classroom, amphitheater, story walk)	543	33.9%
A space for making (e.g., 3D printing, cooking, art)	539	32.8%
A space for community meetings	543	30.9%
A space for interactive exhibits	539	28.6%
A space to gather and socialize	546	26.2%
A space to learn about local history	541	19.6%
A space for displays of art and local history	538	19.5%
A space to buy and enjoy snacks and drinks	534	10.1%

Q8. What Would You Like in a Meeting Space?

Percentage total exceeds 100% as respondents could select more than one answer.

All	Responses
45.5%	Space for 6-8 people
42.1%	Space for up to 25 people
40.7%	Space for 2-5 people
34.2%	Access to video conferencing and projection
30.6%	A large conference table
13.5%	A kitchenette
12.7%	Space for 100 people or more

Q9. What Would You Like in an Outdoor Space?

Percentage total exceeds 100% as respondents could select more than one answer.

All	Responses
64.4%	Space for children to play
59.6%	Access to Wi-Fi
54.5%	Space for interactive experiences (e.g., story walk, sensory garden)
52.0%	Space for outdoor programs
48.7%	An amphitheater for events
45.7%	Walking trails
44.1%	Café space or seating
37.5%	Space for informal gatherings
7.8%	No preference
1.8%	Other (Please specify)

The 10 individuals who responded “Other” were given the opportunity to elaborate. The verbatim comments can be found in the appendix. Their responses are sorted by primary theme below:

Comments	“Other” Responses
3	None
2	Café space or seating
2	Space for outdoor programs

1	Collections
1	Learning space
1	Shaded space

Q10. How Would You Like the New Library to Feel?

Percentage total exceeds 100% as respondents could select more than one answer.

All	Responses
82.3%	Welcoming
62.2%	Calm
59.6%	Spacious
55.3%	Light-filled
54.6%	Inspiring
53.3%	Cozy
52.4%	Innovative
37.7%	Colorful
30.6%	Energetic
21.6%	Historical

Q13. Best Ways for the Library to Communicate

Percentage total exceeds 100% as respondents could select more than one answer.

All	Responses
72.0%	Email

52.0%	Social media (Instagram, Facebook, etc.)
49.0%	Library website
39.1%	Text message
39.1%	Digital newsletter
20.0%	Mailings from the library
13.3%	In-library display screen
9.0%	Word of mouth (library staff, friends, neighbors, etc.)
6.9%	Library handouts
6.4%	Local newspapers
0.4%	Other (Please specify)

The 2 individuals who responded “Other” were given the opportunity to elaborate. The verbatim comments can be found below:

- ◆ App
- ◆ None

Q14. Is There Anything Else You Would like to Share with Us as We Plan for the Reimagined Library?

231 respondents (40.9%) took advantage of the opportunity to share how the reimagined library might better meet their needs.

Individual responses often covered multiple attributes. The responses which follow below have been parsed and sorted by the primary theme. Identifying information was redacted, otherwise the verbatim comments can be found in the appendix.

Comments	Responses
90	Facility
65	Collections

30	Programs
11	Support for PCL
7	Staff
5	Reciprocal access
5	Budget
2	Partnerships
1	Access
15	N/A

Appendix

Multiple questions allowed respondents to give open-ended answers, which are reproduced below. These responses have been parsed and sorted by primary theme. Identifying information has been redacted, otherwise the comments are verbatim.

Q4. Primary Reasons for Using the Library

To check out physical books, magazines, movies, hotspots, etc.

- ◆ As a place to take little kids to just explore books :)
- ◆ Borrow kids books
- ◆ Check out physical books
- ◆ Children's books
- ◆ Reading books for my kids
- ◆ rent books for kids
- ◆ To check out Adult Books
- ◆ To find good books to read for kids

To read, work, or study in a quiet place

- ◆ Quiet place where you can also have a cup of coffee
- ◆ Study space

To use the bathrooms

- ◆ To get a break between errands and use bathroom

For socializing

- ◆ To say hi to the staff who are friends of mine

Q5. Primary Reasons for Not Using the Library

The library doesn't have what I need.

- ◆ Book I'm wanting not available
- ◆ Book selection (general fiction) is very limited
- ◆ I would like more books from my favorite authors. Most of them are series mysteries and romantic suspense. The library has only a few of them .
- ◆ just depends on what book I want to check out...and if it's available
- ◆ Lack of classic literature and good books without poor behavior glorified by the author.

- ◆ Limited selection
- ◆ Need more new adult books
- ◆ Not a great selection, kids programs aren't good
- ◆ Not enough books
- ◆ not enough books
- ◆ Not enough books
- ◆ Not enough books
- ◆ Not enough books.
- ◆ Not many books. My kids always come back not getting books that they were looking for .
- ◆ Overall the library's selection and size is small
- ◆ Please expand selections and offerings. More non-fiction books for school research, more fiction books to fun reading, and classic books for summer reading programs
- ◆ Small selection of young adult and adult. Would love an expanded library!
- ◆ So frequently the materials i want to check out simply aren't available. The catalog/inventory is so sparse & seriously lacking!
- ◆ The inventory. Popular books are never available and waitlists are extremely long.
- ◆ The Library does not have enough digital books
- ◆ The library has small space and little book collection. And the open hours are short.
- ◆ The library is on the smaller side. I don't feel the selection available in hard copy is as great.
- ◆ The library probably doesn't have any books in Japanese (my native language).
- ◆ The selection of books for adults in the library (not including digital) is extremely limited.
- ◆ Too few paper books available to browse
- ◆ We need more access to ebooks. I love reading ebooks but every one I want to read are either not available or checked out.
- ◆ We use the library. I do wish it was larger with more books and tables to sit at. We really enjoy the different sitting spaces that is offered at Frisco, Allen and McKinney libraries.
- ◆ We used to attend regularly when the children were in elementary and middle school, mostly for programs and the children's and YA collections. Now that they have grown, our need for this has diminished. I am an avid reader of historical non-fiction, and as such, the Adult collection is a bit too general for my interests. Very much support the library and its role in this community though!
- ◆ We would like more choices in the Adult Fiction & Non-Fiction sections
- ◆ No event passes, no useful digital subscriptions
- ◆ No free library access to Frisco and mckinney libraries
- ◆ No Makerspace/Laser Cutter
- ◆ It is way too out of date with limited resources

I use the library frequently.

- ◆ i DO use the library

- ◆ I do use the library often
- ◆ I go all the time
- ◆ I go for my wife
- ◆ I have no reason. We are in the library almost weekly.
- ◆ My family uses the library frequently.
- ◆ Question doesn't apply. We use it as much as we need to
- ◆ We do use the library
- ◆ We got, we don't know go for any of these reasons
- ◆ We love the library
- ◆ We use it all the time
- ◆ We use the library weekly
- ◆ We use the library, so none of this applies.
- ◆ I use it.
- ◆ I use the library on a regular basis
- ◆ We love the children's programs :)

I recently moved to Prosper.

- ◆ I recently moved to Prosper.
- ◆ Just moved to the area
- ◆ Just moved to the area
- ◆ Moved in last month
- ◆ New prosper resident
- ◆ New to prosper
- ◆ Recently moved to Prosper
- ◆ Recently moved to prosper
- ◆ Recently moved to Prosper
- ◆ Recently moved to prosper and found this library in google search. Yet to visit
- ◆ We are new in town

I use another library.

- ◆ Frisco public library is near and much bigger, newer and has more books, we prefer go to it
- ◆ I go to McKinney Library more genealogical research materials.
- ◆ I take my children to other places that offer more amenities (Frisco library)
- ◆ Prefer the frisco library
- ◆ We go to Frisco's new library
- ◆ We just moved and enjoy the Frisco Library as it's very new and modern.
- ◆ We take our kids to the Frisco Public Library because it is larger, more spacious and has outdoor spaces.
- ◆ We use the Frisco library as it has plenty of space and is very kid friendly.
- ◆ Not real inviting compared to another close library in the next town over

The library is too small.

- ◆ Library is little small compare to Frisco library and less program for kids
- ◆ More space is needed

- ◆ The events are small, so it's tough to get there for events. Like build a Caterpillar could be something more
- ◆ The library is not big enough. The future library should model the Frisco library to be really useful to residents.
- ◆ The prosper library is an embarrassment compared to Frisco. Please invest the many, many tax dollars you receive from us back into the library.
- ◆ Too small and not very inviting.
- ◆ I use the library, but the resources are limited due to the size of the current building.

I use the digital branch.

- ◆ I get what I want from digital materials.
- ◆ I read using the library app
- ◆ I use digital services more often
- ◆ I use the online service to get my books
- ◆ Mobile apps are great I just don't go in
- ◆ The resources I use, such as Libby are available remotely.

There are not enough offerings for adults.

- ◆ Aged out.
- ◆ Does not look like it appeals to adults and is geared towards children.
- ◆ Had a card, need to renew it apparently (just saw 2 yrs max. Makes sense with transience+). Used to LOVE going to the Prosper Library - regularly got books, supported programs, etc. It's become VERY focused on children - and teens - been very little I've seen mentioned for Adults. Would be great to have programs like Allen, Frisco, McKinney. Do go there
- ◆ Need better events and programs. More communication on these for awareness.
- ◆ Programs seem directed at only young families with small kids
- ◆ seems like it's mostly geared for children

The library doesn't accommodate children.

- ◆ Extremely small library, with 3 kids (ages 5 and younger, impossible to keep them quiet), upstairs inconvenient to use computers when I have 3 kids too. Story time /programs requiring a ticket 30min. Before is inconvenient and unnecessary, also telling parents to leave if child is too loud is asking a lot- toddlers are loud.
- ◆ I have a five and two-year-old, who are sometimes loud and every time they raise their voice, we get scolded by the staff. They are just kids and excited about the books, I wish there was more of an open mind around children being present at the library.
- ◆ Library policies are not practical for families with young children
- ◆ The Children's Library is not friendly to normal children's noise. I feel we are always shushed and reprimanded because the adult library is upstairs with no door. Children need to feel welcome as long as the noise they make is normal and they aren't misbehaving.
- ◆ Afraid my kids will be disruptive but I want to bring them!

The library's hours are not convenient for me.

- ◆ It's too small. and i don't like the hours
- ◆ The kids programs run during my kids school times.
- ◆ The program times do not work with our schedule
- ◆ The programs offered take place during school hours- my kids at 7 and 8
- ◆ Wasn't open on Friday

It doesn't occur to me to go there.

- ◆ Didn't know of the location.
- ◆ I didn't know Prosper had a library
- ◆ I didn't know we had one
- ◆ need to find out what they offer. I asked for a library card to get on line option, but never went to pu

I can't find a place to study.

- ◆ I wish there were "booths" (tiny rooms) available to have a quiet phone call or meeting.
- ◆ Lack of adequate quiet space that is free from distractions.
- ◆ Need better break out and work rooms for WFH people.

The cost of a library card is too high.

- ◆ All residents and prosper I'd students should be able to get free cards
- ◆ Even though I like in Prosper, I have to pay for library card for the year. When was told I chose to purchase Frisco Library card instead.
- ◆ I just moved to Prosper and when I looked into getting a library card, it's unclear if I would get it for free or would have to pay annually

I don't have time.

- ◆ Busy
- ◆ Busy schedules.
- ◆ My kids don't go because of school and their schedules. But I visit at least twice monthly.

I have other places to obtain books, DVDs, etc.

- ◆ I get my books from the internet, both digital and hardbacks.
- ◆ I tend to purchase books for my personal library, so I don't think to go.
- ◆ My kids are older now, so we don't go. I listen to books through Audible and podcasts.

I owe money for lost or damaged materials.

- ◆ Due dates are too short. Also exorbitant charges for small damages.
- ◆ We borrowed book from library. My kids love reading. Before person who borrowed book may have glue two pages, my kids when reading separate the page and when we returned book we had fine of \$30. For damaging the book.

While my kids seperated the page someone had glued. So we stop using prosper library. Now we use Frisco.

I just got my library card.

- ◆ i just got my library card

Library is often cold.

- ◆ The library is often cold.

I live out of town.

- ◆ Out of town

The programs don't interest me.

- ◆ I go, but have to force my kids to go.

N/A

- ◆ N/A
- ◆ N/A
- ◆ N/a
- ◆ Na
- ◆ Na
- ◆ NA
- ◆ NA; I visit just the right amount of time
- ◆ None
- ◆ None
- ◆ none
- ◆ Not a relevant question for us
- ◆ This question is N/A for me
- ◆ N/A

Q6. Do You Use Other Public Libraries in the Area?

Plano Public Library

- ◆ PLano
- ◆ Plano
- ◆ Plano
- ◆ Plano
- ◆ plano & houston
- ◆ Plano Public Library
- ◆ Plano Public Library System

Allen Public Library

- ◆ Allen
- ◆ Allen

- ◆ Allen
- ◆ Allen public library
- ◆ Allen, Flower Mound

Houston Public Library

- ◆ Houston
- ◆ Houston
- ◆ Houston Digital Library - Libby
- ◆ Houston Public Library
- ◆ Houston Public Library

School library

- ◆ Cockrell Elementary
- ◆ Collin College Libraries, Plano Libraries
- ◆ University libraries

The Colony Public Library

- ◆ City of The Colony

Dallas Public Library

- ◆ Dallas Public Luvrary

Flower Mound Public Library

- ◆ Flower mound and Lewisville

Irving Public Library

- ◆ Irving Public Library

Other

- ◆ E-books from the area we previously lived in

Out of state

- ◆ Pierce County Library (I still have a card there)

Q9. What Would You Like in an Outdoor Space?

None

- ◆ I don't think there should be an outdoor space. It is a LIBRARY!
- ◆ Not sure its needed, the Town should have it, not the library?
- ◆ the library doesn't need an outdoor space

Café space or seating

- ◆ A comfortable place to read in a garden/outside setting.
- ◆ Outdoor reading area with shade

Space for outdoor programs

- ◆ Space for live music (small stage or in the front lobby area) on Sunday afternoons from the high school music dept, ie string quartet, jazz trio, choral group.
- ◆ More Interactive programs for kids

Collections

- ◆ I would like some more Indian author books. Which are easily available in frisco libraries

Learning space

- ◆ Outdoor learning area and habitat and garden

Shaded space

- ◆ Shaded area

Q14. Is There Anything Else You Would like To Share with Us as We Plan for the Reimagined Library?

The categories have been further parsed by primary subcategory, where applicable.

Facility

Children's area

- ◆ A bigger more spacious library with many weekend activities for kids and an interactive play area for kids.
- ◆ A larger play space with more child friendly activities!
- ◆ Children to be controlled and not run in facility and run into old people. bookmobile. Genealogical information available.
- ◆ I haven't been very often but if it had more space and easier to see kid books to pick out, we would go more often. Also, it would be good to have events and programs at times so working parents could take their kids.
- ◆ More things for children to enjoy and learn. It would be great if this was a regular place for children to enjoy with a lot of focus on their type of activities.
- ◆ My grandson also lives IN Prosper, so some of my "needs" are him to grow with and through the library. He is there almost weekly. Smaller children will try to be quiet, but some noise and a bit of activity should be happily tolerated in the children's area of any public space. Our library is wonderful! Exciting to learn growth is planned, as our town is growing. Thank you!
- ◆ Our family doesn't go to the library often but it is certainly something we want to change. Having young kids (age 2 and 4) I want to instill great reading habits for them and make them excited about books. Would love a place to bring them for that especially being just down the road.

- ◆ Prosper needs more indoor children's play areas. Top does great with outdoor spaces, but with the heat and cold it limits times for younger children to enjoy these spaces. The library should have an interactive children's play area similar to Frisco Library. My family and friends some who even live up in Celina drive the 20 minutes to the Frisco library just for the indoor play area. I think Prosper Library is losing a lot of foot traffic because of this. An indoor children's play area would make the library a great destination for local children to play and parents to socialize.
- ◆ Thank you very much for reimagining the library, many other cities have done similar things in the past and have created an amazing space for the community. The Frisco library can be an example, and we can definitely look for examples in other places. We visited friends in Oklahoma City, and they took us to their library which was really nice, here is a link to the library:
<https://www.metrolibrary.org/branch/northwest-library> At the entrance it had sculptures of dinosaurs and it made it fun for the kids. I am sure our library will be beautiful, and you may want to continue providing surveys to get more ideas from our community. Thank you.
- ◆ We enjoy going to the Frisco library for children. It has activities, play areas, and a community feel.
- ◆ We go to the Frisco library more frequently than the Prosper library because it has a space for kids to play. We actually drive past the Prosper library on our way down there, however our kids know that the Prosper library is not the play library, rather the library to check out books and attend story time. There is nothing wrong with that, but if considering a new and innovative library I would definitely want for it to be inclusive of all ages like the Frisco library has done!
- ◆ We need more space. I've seen the children's programs at max capacity several times. We need an updated space to accommodate all ages.
- ◆ Would love more amenities that I can bring my children and entertain them for longer periods of time, not only just to pick out their books. Sometimes the classes/events don't fit in our schedule so we would still like to have other amenities for entertainment to make our library trip longer and more well rounded.
- ◆ As prosper is rapidly growing, more spaces is needed, especially for a kids area and more programs to offer. Compare to Frisco library, the offering at Prosper library is too limited. I would love to come to prosper library so I don't need to drive 20 min to Frisco library to use their facility and programs
- ◆ If it's possible at all, it'd be helpful to have a secluded toddler space where some noise is allowed. I often find myself stressing to keep my kids quiet in the library and when they have trouble controlling their voice level, I need to leave early even though I wanted to stay longer and browse more. A dedicated space or floor level just for the littles to freely play and read without worrying about being too loud would be wonderful.
- ◆ We need a bigger space! A space for kids to play and imagine. The main reason we go to Frisco is because they have a big place for the kids to play and explore.
- ◆ When my children were young we went to the library several times a month - they loved to read! Now that I have a grandchild, I hope to instill a love of books as she

grows (she's 11 1/2 yrs old). We recently went to the new Frisco library to explore & try a kids reading time (there was nothing scheduled for her age that day at our Prosper library) and I was a bit disappointed at the complete openness of the space, it was very cavernous and seemed more like a play space. Maybe if the play area/computer games would have been more separated from the book section it may have been less overwhelming? And I believe it's important to have a children's area that fosters a love of reading and that is more separated from the adult area. I do wish the questionnaire had a 'somewhat important' option. I believe creative & interactive spaces are somewhat important and they should be separate from the book area. Not sure if historical/art exhibits (again, s/b somewhat important) need their own space, but should be interspersed throughout the library. If trying to engage youngsters, maybe create a scavenger type list to foster a reason for them to seek out the displays. As for an outside area, if you include a play space & walking trails you create a more playground atmosphere. Thanks for the opportunity to engage. I look forward to seeing our future library space!

- ◆ We love visiting the Frisco library with our young kids (4-7 years old) for the interactive and creative play. I doubt prosper has that large of a budget, but something along those lines would be awesome! We've been members of 3 libraries (between moving houses) and have enjoyed story times, STEM, crafts, story on the go, music and movement programming, as well as an area for the kids to use their imagination or play pretend.

Other libraries

- ◆ Compare yourself to frisco library (frisco library is 10/10 perfect)
- ◆ Frisco Library is amazing and I've never seen anything like it. Celina had nice plans for their new Library a couple years ago. Both great Libraries to capture ideas from
- ◆ Frisco Public Library has set a pretty high bar, but I believe Prosper can create a right-sized, right-budgeted library that becomes a destination for residents in Prosper and surrounding areas. Thank you
- ◆ Growing up the library in my home town was very welcoming and cozy. They had tons of books and crannies to read, study, and learn. My favorite part was feeling like the library was a maze and you could always find a new table, or chair to discover.
- ◆ I really like the New Frisco Library. The old one was not used by me much, but I have been to meetings at the new one and love the layout and grand size and all the activities that can be done there.
- ◆ I'm so excited that a new library is in the works! Please make it bigger, better, and more beautiful! We need something big and amazing to match our growing, amazing town!!! Put Prosper on the map for having the best!!!! Frisco's is nice but I believe we can do even better!
- ◆ If possible, build a one better than Frisco library 😊
- ◆ Looking forward to library like Frisco.
- ◆ Love the Frisco library for the warmth and the collection and offerings. Wish we had a similar library in prosper too

- ◆ Please consider Frisco library as an inspiration and build the new plan on similar lines.
- ◆ Please don't turn into Frisco; their library is ridiculously loud and chaotic; I stopped going there because of that
- ◆ Prosper library should take inspiration for ideas from Frisco Public Library. I paid \$50 for Frisco library membership since I'm a resident of Prosper. But it's worth it and I too wish Prosper library grows in size & features to support the growing population.
- ◆ Prosper needs a similar library like Frisco brand new library. Prosper population is growing at record rate, we need a library to be keep pace with population growth and knowledge demand for the new generation- space, programs and materials offering.
- ◆ Step it up, Prosper! We live a few minutes away but always go to Frisco library as they have done it right!
- ◆ We'd love to have a larger one closer to us than driving to Frisco library. Currently we use the Frisco library with our 4 young kids...to read books in comfortable chairs or a kids space area to read. Sometimes use the computers. Then having some picnic areas outside to sit down and bring a packed lunch or use the cafe.
- ◆ While in Fayetteville, I made a trip to their public library. I did not stay long enough to enjoy any programming or other, but I was able to experience the mix of various spaces (both indoor and outdoor). It was inviting as well as calm and soothing and was a great space to spend some time. Coffee shop was an added bonus for the library trip.
- ◆ The Prosper Library is a favorite location of ours on the weekends, due to proximity, since we live in Prosper and want to support our local library. However, McKinney, Frisco, and Plano public libraries have highly developed enrichment activities for kids, families, and adults that Prosper does not come close to. Specifically for kids, I'm thinking events like festival celebrations, live musicians from local orchestras, visits from science museum staff in the area, etc. For adults, it'd be great to have programs that link online learning with discussion/exchange groups that contribute to professional and personal development. For instance, I'm learning Spanish - it'd be great to leverage library resources and a conversation group that meets at the library. Such structure of online learning + in-person discussion could be used for other areas of interest for adults, like photography, coding, public speaking, etc. I do think there's also an element of local history that the Prosper Library has a duty to preserve and display. Our family moved here 2 years ago, but knowing more about the location we're raising our kids in is important to us. Plus, if not the library, who? I would love to see a small section of the library dedicated to Prosper history - along with a Prosper speaker series (that is recorded) so that we have a general understanding of what came before this community of largely newcomers. Additionally, we have the opportunity to have even greater resources than what these other local libraries have. For instance, I lived in Orlando for some time, where the local library had a professional recording studio and maker labs that were very unique.

- ◆ We love the interactive science aspect of the Frisco library as well as the cozy nooks around the library to sit and read.

Study/work space

- ◆ Having a space for homeschoolers would be great.
- ◆ I hope there would be spaces directed toward adults, that could provide desks/seating to do work. The new Frisco library is great; however, I feel like the openness was counterintuitive to being like a library that has quieter places. Their old library had a nice quiet floor that was more mature with wood and great for adults. Instead of going modern it would be nice to have a design that would be timeless and mature, while incorporating updated technology. Prosper has beautiful classic architecture from government buildings to its school district, it would be nice to carry the neoclassical or classic revival architecture from the exterior to the interior. It has really made our town stand out to provide the best.
- ◆ I would like to see more conference rooms and areas where I can work. I work from home and there are days when I would like to visit and do my work. A small rooms, like a pod area, would be amazing for people like me to visit library and work. Thank you for taking the time and listening to the resident opinions. Looking forward to how these inputs make our library more functional and welcoming for all age groups.
- ◆ Keep the library primary purpose as A space for quiet work and reading. Would like to add more conference rooms with computer, video and conference tables and chairs for adults with glass doors to keep area quiet and monitor teen or children if they occupy. Add more adult programs like the Frisco library. Add free interlibrary access to Frisco, Plano and mckinney libraries to get access to their benefits too. Currently too many children programs that don't benefit adults. An outdoor area to read for adults with walking trails would be nice.
- ◆ Study rooms and meeting spaces will be needed as the town grows. Makerspace rooms will be a big hit as would something like an ESports room. Access to more digital materials via databases. The space you have now is bright and inviting with eye capturing art on the walls. Being able to bring that to an outdoor space would be a great extension to the library!
- ◆ The study space at Plano Public Libraries is very cool
- ◆ There are no small nooks (closed rooms) for an adult to reserve to use for a virtual meeting or independent classes (with speaking volume allowed). It would be great to have that option away from home -- like for a virtual doc appt, or meeting w a lawyer, or to tune into a virtual learning class independently.
- ◆ We absolutely love the prosper library. They always have books that my children were looking for and where they could find something they wanted to read. However, the space is small, especially for our rapidly growing community. I invision a library where kids can come not only to find a book but to explore what kinds of books they enjoy. As elementary school children become teenagers I feel that it is important to have a public library where teenagers can come and gather not only to study and research but also a Safe environment, where they can take a pause from the busy from their busy lives and find calm.

- ◆ We need a modern, spacious, and well-designed library similar to Frisco Library. This space should include areas for coffee, studying, collaboration, and work, featuring large floor-to-ceiling windows to maximize natural light.
- ◆ with wfh , it would be nice to have some kind of single or two person seating to work some days in library and a cafe possibly out side with some basic food options.
- ◆ Cozy and inviting seating areas to study and read would be most welcome. Also, expanded digital library offerings.

Quiet space

- ◆ No play areas! The children are too loud/misbehaved, the parents are inattentive/on their phones. The library should be a library, not a playground.
- ◆ Please provide some sort of divide between adults and children's/ teen area. What happened to libraries being quiet? At least a space for people to work, read, research without constant noise.
- ◆ Replicate Frisco library with tons of quiet reading rooms. And would like a lot of rooms where students can do their homework
- ◆ We are members of the Frisco Public Library and frankly as gorgeous and as large as it is, it is just too loud and feels more like a cafeteria at a school than a library. Children's areas are so very important, but they need their own area where they can be loud without it hindering the adult area. One big open space was not the right move.
- ◆ More sitting space
- ◆ There is not much seating in the Prosper library, a cafe would also be very nice with Wi-Fi!
- ◆ While Frisco library has a great kids area, I do not feel calm there like I do at our prosper library. Frisco library is overcrowded and I feel like I'm at high alert watching my kids there. I like how at our prosper library, it's calm, not overcrowded, I can see my kids at all times since it's a relatively small downstairs area
- ◆ Open but separated spaces to accommodate both the noise of children's programs as well as adult quiet space. Meeting space (for small or larger) is virtually non-existent in our current library (and anywhere in town). Adequate storage for various library materials so they do not clutter up public space; i.e., tables, chairs, displays, etc. Air printing or something similar that would allow users to print directly from their own devices. Call rooms; small rooms that would allow for teleconferencing or taking phone calls. 24-hour holds pick-up area (via secure lockers). Drive-Up service window. Allowing a small percentage of the quiet space/rooms to be used by non-members; i.e., business people who have meetings in the area or nearby residents for whom our library is the most convenient. Still have most space dedicated to members, but have quiet/secluded work space that can be used by non-members so they are not turned away or working/teleconferencing in the open areas disturbing other patrons. Children/Parent "time-out" room that allows parents to take a disruptive child to calm down while they are still in the building so other siblings can continue for a short period of time attending a program, using a computer,

reading in a corner, working on a craft, or something where they are at least visually seen by staff but so the parent doesn't have to round up the entire entourage and leave the building while one is having a melt-down and may need a snack or one-on-one time with their parent to calm back down. This would benefit all; other patrons, other siblings, and the stressed parent and child (and staff, too, I would think). Any outdoor space should have adequate shaded areas and air circulation potential.

Larger building

- ◆ We love frisco library, a spacious library is much needed for Prosper.
- ◆ We love the library and look forward to a larger space with more books 😊 Thank you for growing with the community.
- ◆ We love the library now and all the people that work there, maybe just more space and programs for kids!
- ◆ We need a big library like Frisco library that would encourage young kids and adults to read and visit library more often.
- ◆ Need room and a lot more books
- ◆ Open a new big Library
- ◆ Prosper grown to be 50K community, We need bigger, modern and best in class library. This will boost the image of the town , will be great back bone in shaping kids life and bring meaningful connections and shape them upto be best citizens, it's worth an investment and long due .
- ◆ We have a great library but we have out grown the space.

Makerspace

- ◆ Need to have a Makerspace area for creative activities, including laser cutter and 3-D printer
- ◆ Plano and Frisco have recording spaces for media and podcasts and I think this would be a great addition to Prosper.
- ◆ A MakerSpace. 3-D printer, CNC, Laser, Vinyl Cutter, etc. Frisco's library has done an amazing job in providing the MakerSpace to their community. Their library is very spacious too. Their kids play area/mini town, is great for little ones and families. Try to emulate their already well done, and established, library. Thank you in advance. Sincerely, Going on 17 year resident.
- ◆ Crafting area with CNC machine, 3-d printing, acrylic machine
- ◆ I would like our library to have a Makerspace section with 3D printing and laser cutting. Now I have to go to Little Elm for these activities. Until we can get a Makerspace section of our own, I'd like to at least get access to the Frisco library to shorten the drive.
- ◆ Technology Hub - **Digital Media Labs:** Create spaces equipped for video editing, podcasting, and 3D printing, giving residents access to cutting-edge technology. - **Virtual Reality Stations:** Offer immersive experiences with educational VR programs, allowing users to engage in virtual travel, historical reconstructions, or interactive storytelling. Community Integration - **Outdoor Reading Gardens:** Design Wi-Fi-enabled outdoor spaces with seating and greenery for reading, relaxation, and community events. - **Co-Working

Spaces:** Provide reservable workspaces with meeting rooms, high-speed internet, and collaborative tools, supporting remote work and study. - **Cultural Corners:** Showcase the community's diverse cultures through rotating exhibits, multilingual resources, and cultural programs. Sustainability **Green Roofs and Living Walls:** Incorporate living walls and green roofs to enhance air quality and promote environmental awareness. **Rainwater Harvesting:** Implement systems to collect and use rainwater for landscaping, educating the community on sustainable practices. Flexible Spaces - **Modular Meeting Rooms:** Design reconfigurable spaces for various events, from workshops to community meetings. - **Pop-Up Learning Zones:** Feature temporary installations with rotating educational themes, such as coding, DIY crafts, or culinary arts. Wellness Areas - **Quiet Reflection Zones:** Create peaceful areas for meditation, quiet reading, and mindfulness practices, with comfortable seating and calming decor. - **Health and Wellness Programs:** Partner with local professionals to offer workshops, fitness classes, and wellness screenings. Storytelling and Memory **Oral History Projects:** Establish a space where residents can record and archive their stories, contributing to a living history of the community. - **Interactive Digital Walls:** Install digital walls that display community events, local history, and resident contributions.

Meeting space

- ◆ I haven't visited the library here in Prosper because I have older teens and we don't really do that anymore. But also because the internet is so readily available, instantaneous, and free...its hard to beat the convenience. So I think in order to make sure people visit this new library, you should have a space or spaces where youth groups--besides sport groups--can meet and gather together. For example, I am a leader with Boy Scout Troop 365 in Prosper. The only space we have to meet right now is behind Prosper High School at the lunch tables on Sundays at 3 p.m. Its fine for about half the year, but the other half it is either very hot or very cold or rainy to meet outside. Keep in mind our scouts wear their uniforms while we meet so if its 110 degrees outside, it feels even hotter with a uniform shirt and long pants on. We would love a local air conditioned spot to have our meetings, and if we need to, have easy access to the outdoors if we need to do an outdoor activity. I think the library would be a great space for this. We would also be interested in doing a service project at this new location, even an Eagle Scout project there. Something where our local scouts can feel more connected to the real world around them, rather than just get their instant information fix from the sterile and lonely internet. Thank you!-
- ◆ It would be great to have a meeting space for groups like Girl Scout troops. It's an excellent way to get young people into the library. There could also be some interesting partnerships between the library and Girl Scout troops (volunteer opportunities for community service like reading programs or kid programs).
- ◆ need meeting rooms for boy scouts / girl scouts/ high school project groups / dungeon and dragon playing Need a much larger library with more reading materials for both adults and children . Need more places to sit and read. Need

a story time and a nice childrens section library. Need a place for reading groups or book clubs , programs for 55 and over.

- ◆ PLEASE allow for mixed age meeting rooms. When we were trying to find a place to play DnD we were unable to because we had preteens and teens wanting to play together and we were told that teens were not allowed in the children's meeting rooms and vice versa. Age ranges are arbitrary, especially to neurodiverse children. There's nowhere in the town to hold something like this. Also, more fiction books for adults! You only seem to keep the most recent releases and have no older books. I want to be able to read the classic scifi novels but I've literally read every single scifi book on your shelves.
- ◆ Sound proof rooms for the rooms that will host larger groups/ collaborative spaces. Build enough of these rooms as town population continues to grow. Keep children, teens, adult spaces separate. Host adult classes - arts & crafts, learning ASL, first aid, etc. Not as many windows in reading areas - instead choosing ambient lighting. Different seating options for kids. Bean bags, cozy chairs, carpeted options. Better summer reading program & incentives.

Location

- ◆ I would love for the library to be centrally located.
- ◆ just like Frisco Please bring it closer to Windsong ranch / hollyhock location
- ◆ As a resident with little kids in prosper, we really want to have a master library in prosper. Currently, we need to drive to Frisco/McKinney for libraries, so please make prosper more convenient to residents. Thanks
- ◆ Along with a central library, can we have one small library in west side of Prosper?

Outdoor space

- ◆ An outdoor area for kids would be amazing but it would be actually useful if it was covered and with a cafe for coffee, light snacks. We love the toddler programs/story time and this is one of the reasons she attend the library 2-3 times per week.
- ◆ Create a shaded outdoor space with trees, this town needs more trees, new trees and very old trees are dying and not being replaced. Outdoor space where reading and fresh air can be enjoyed by town residents is important
- ◆ Garden, with vibrant flowers
- ◆ You should consider all age groups in your design and planning, from the very young to the very old as well. I love the idea of having outdoor space as well that can be utilized in a myriad of ways.

Hours

- ◆ I hope to start visiting the library! Also it would be great if the library was open on Sundays. A coworking space with private booths you can do video calls in would be awesome too. Thank you :)
- ◆ The library needs more extensive hours of operation.
- ◆ The staff is great. Our biggest issue over the years has been the limited operating hours on the weekend are very prohibitive to working a trip to the

library into our schedules. Friday they close early, Saturday they close early and they don't open at all on Sunday. I had never in my life heard of a library not open on Sunday! Other area libraries are open 7 days a week and open later each day. I think the M-Th hours are fine but the Fri-Sun hours should be extended. I assume my other two issues with our library are related to timed space. Any time we have tried to sign up for an event or class the kids were interested in they were always already full, eventually we gave up trying. Finally, often when we are looking for a specific book they either don't have it in the collection or it has already been checked out. I feel it happens a lot more at our library that I have ever experienced in the past.

Other

- ◆ A library's primary function should be the betterment of knowledge and greater understanding. Creating a community space that is inviting and encourages the pursuit of knowledge is equitably important. Entertainment, amenities, etc. can be helpful but should all within the boundaries of creating a space where people can go to learn, study, and encourage the next generation of readers.
- ◆ New library needs an automatic check in/ check out system. It really helps me save time and easy for me.
- ◆ Think modern library design
- ◆ I prefer the library be a center for learning and children with large selection of books and activities for kids less as a place for social gathering. Single large open space plenty of light allowing kids to learn and not get distracted.
- ◆ That the adult section be organized in genre. Alphabetical by author.

Collections

Digital

- ◆ A better resource for ebooks would be top of my wishlist. The north Texas library consortium has too few new books and long wait times for new releases.
- ◆ Books collection is low volume. Even the digital content availability on the Library and Libby App is low volume. I pay to the FRISCO library and use their digital content to read books on Kindle through the Libby App. As a quick fix, at least the digital kindle books collection must be significantly introduced. This does not need a new new library or expansion of the existing physical space.
- ◆ Expanded digital selection of books in Libby.
- ◆ Genealogical websites available for home research. Easier to do in comfort of home because it takes hours to look up and scan through resources and documents.
- ◆ I would like to have access to more ebooks. Specifically access to more historical fiction. The wait list is too long for what the library currently has and therefore I have sought other libraries for ebooks in this category.
- ◆ I would love to see more electronic books. It seems that there are few new books with very long wait times, if the library has obtained the book at all. I find that the online catalog is hard to navigate, especially with kids. We love the library so much! I would love to see meeting space for our homeschool group to access. For

either small gatherings or larger (up to 50) I wish there was a larger quiet area to work. Whenever we try to utilize space upstairs, it's always full, so we end up sitting in the teen area. I would love a place to come work that is quiet and more secluded. I also find the hours a bit frustrating. Just last week we tried to go twice and the library was closed. Even one day a week that was open later into the evenings would be helpful.

- ◆ I'd like for more ebook copies and a way to limit online renewals. The Prosper library has amazing books and the service is top notch. Everybody is very helpful!
- ◆ Larger digital collection OR cooperative with other libraries in state. Online renewal of library card every other year. Book club offerings Author visits
- ◆ Love checking out books online and no-contact pickup!
- ◆ More digital book choices please
- ◆ More online access like LinkedIn learning. May be like course era?
- ◆ Please have online magazine subscriptions and enough ebooks! Thank you
- ◆ Please make more books available digitally. I would like to check out more books digitally, but they are often not available from the Prosper Library and I have to go to surrounding Libraries to find them digitally (McKinney, Frisco, Allen, Flower Mound, etc.).
- ◆ Prosper library should have access to Udemy or other sites. LinkedIn learning is not that useful.
- ◆ the digital options are good, but could have more. I would like to be able to donate used books to the library for fund raising or inclusion in the library shelves Local History, and more history in general seems to be the most lacking subject. For the teens, more graphic novels.
- ◆ Trouble logging into the online book apps. Logs me out and says password is invalid
- ◆ Would like to see more new release books available digitally.

Physical

- ◆ A larger section of biblical books (for adults) about God, the solar system (for early learners), more workshops for school age children (elementary). A library big enough so no books will ever have to be kept in storage!
- ◆ Great library, I just feel as if the library has less books, DVDs, and audiobooks as compared to other libraries. I would personally like it if there were a higher volume of books and DVDs, more specifically a little more of niche books and DVDs. Otherwise, it's an amazing library. Love to get dvds there.
- ◆ I hope the library will continue to provide a good selection of paper books. Some of the books are only available in electronic format and it makes my eyes really tired.
- ◆ I pick up books pre-ordered and don't spend a lot of time looking inside. When I have entered, the staff are always warm and friendly. Very helpful. (just wish there were more copies of books available as sometimes I see they only have one book ... and THAT's a bestseller!)
- ◆ It's a very nice library, but I would like to see a bigger selection of new books. I love reading and love being able to check out the new book area.

- ◆ More books, I find so many ebooks, but I only want physical books. Or an easy way to borrow from other libraries. Aspen lida is not the best app.
- ◆ Need to keep more books in library and I don't see more options in book row Books should be organized properly for the subject wise. Overall it's looks good
- ◆ The library should work on acquiring as many old books (pre-1950) as possible. You can make room for them by throwing away any book that supports the woke agenda.
- ◆ We like the Prosper Library, but we feel like there could be more books (new and older classics) in the Adult Fiction & Non-Fiction sections. And, we are referring to physical books, not things available digitally. The children's area used to be pretty small with a limited selection, but it is getting better every month, and we think that it is now in really good shape.

Children's

- ◆ Please consider getting a larger children's book section.
- ◆ The children section has very limited books as compared to other city public libraries I have seen, may be we have more inventory in the children and kids/youth section for reading.
- ◆ As of the now , prosper library has few books. We need to increase the range and wide selections of books. My daughter is an avid book reader and she says library doesn't have enough books that she needs. She is 10y old and read lot of fiction books
- ◆ Homeschool friendly- with books that may be considered "out of date" and possibly curriculums. Please stop buying books that have a liberal agenda. I'm so tired of having to screen all the books my kids read because there are so many(especially graphic novels) with same sex kids making out. It's just inappropriate and not necessary.
- ◆ Please have books cater to all ages for children and in stock Extend the due date as well
- ◆ The Prosper Library is important source of books and learning for young children and teens. We need to strengthen and grow the library with resources to support school age children including fun reading of various interests, research materials for school projects and reports, and classics new and old for important cultural information. In addition, the Prosper Library should be a bastion filled with the history of our town, our region, and Texas history for all to learn including those that are new to the state and area.
- ◆ Prioritize a children's play area where they have access to toys and can make a little noise without it carrying to quieter parts of the library.

Library of Things

- ◆ add library of things section. provides event passes and tickets for occasional use, provide notary service, open more locations, open 24 hours
- ◆ More items for checkout (museum passes, tools, cake pans, instruments, etc.). We've lived in an area where museum passes were available for checkout and it was amazing! (Zoo, Perot, arboretum, etc.)

- ◆ Please please please amplify the overall inventory for physical items available for check out (books, children's materials like Tonie Boxes, Yoto players, other audiobook and song player options, activity kits, and so forth). I just wish there was so much more available for check out for kids. And I wish the digital & physical catalogs had more than 1 copy of things, and had way more variety in options for books. (Ie old books, classics, research books, various topic books like cooking, parenting, state books, and so forth). The inventory is just seriously lacking.

Other

- ◆ Please add more books especially in the field of science for adults . Eg Carl Sagan. Or another scientist.
- ◆ Better collection of books
- ◆ Broader collection Library lending with McKinney & Frisco
- ◆ Collection of book to be more futuristic with career development and skill development, not just fiction and nonfiction or history. High school kids to find motivation and college going teen to have career helping and motivational books
- ◆ Collection of books not adequate. We travel to frisco and pay a membership fee for their library. I want to be able to use the Propser library as I live here.
- ◆ I find frisco library having majority of books for job seeks teens and kids alike. We can take that into count..books are what we all come for library.cimputer space ,3 d space..its the next Gen library space we should aim for".Prosper and it's prosperity a world wer innovation comes to alive."-sj
- ◆ I use the library for access to books (digital only, currently). My opinion about a library is that is should provide access to reading materials and the tools that go with them. Personally, I don't think a library needs to be (essentially) a town center —a gathering place for any or every activity or event. I think the library's collection (whether physical or digital) should be the main focus of any new library planning. To be clear, that collection should only be determined by library science professionals, not random and/or too-vocal and/or righteous individuals.
- ◆ Interested in a larger selection of books and materials across all age ranges. Design to be family oriented.
- ◆ It's all about the books ...learning and study ...reading versus over reliance on social media. Quality and quantity of books is most important. Less focus on making the library a playground. Online check out is a great feature that should be continued.
- ◆ Look at the definition of library. It is not about meeting spaces, displaying art, having interactive sections. It is about having books available for those who would like to read them. How many people on a daily basis use the library. The town of Prosper should not be spending money on a new library that is not widely used anyway. Stop the spending. Our taxes are outrageous as it is.
- ◆ Lot more collection of books
- ◆ Love the Prosper library. Very welcoming. Just needs to have more space and to more books for the growing community.
- ◆ More books and extended return time

- ◆ More books and offerings . Central areas where we can work and have access to wi fi
- ◆ More books please.
- ◆ More books!!!
- ◆ More digital and physical books. 3-6 month waits currently especially for digital. Used book store. Frisco library has done it right.
- ◆ More new releases; more copies of popular books to minimize wait list times
- ◆ More space and more books. Most of the time, the library doesn't have any of the books I need or want.
- ◆ No, but I have some suggestions on choosing audio books-please buy every book in the series. It's aggravating to turn in book #3 and try to check out the next book only to find the next book carried by my library is #12. 🤔
- ◆ Please add more reading materials such as books and magazines
- ◆ Please have a bigger selection of books, we have to go to Frisco library because the selection of books is very limited.
- ◆ Please increase the book collection and seating areas. Ideally, a closer library building to PGA would be great
- ◆ The frisco library is amazing! And they have tons of books with multiple cookies. I find the prosper library small and hard to get the books we want. For example we can't get all of the I survive books on audio book.
- ◆ The library needs more audiobooks. There is a horrifically small selection and I get most of my audiobooks from other places. And if they do have the books the wait is so long I've already received them from other locations.
- ◆ Try to be more considerate like Frisco library. And more collection of books will be helpful. We will love to use a library that's close by.
- ◆ Use money wisely. Don't redo what's working for a flash in the pan. I would really like the Christian fiction writers to be in its own area. I feel like I'm missing out on books because I don't know author names.
- ◆ We would like a higher limit on the books we can check out. Preferably 100 per library card.
- ◆ Would love to have more classical literature and science fiction

Programs

Children's

- ◆ 1. Please add some interactive programs for kids 2. Some more classes for school going kids 3. Programs for every festival. 4. Can you collaborate with Frisco library, because they take \$50 extra for Prosper residents, and Plano, Allen, McKinney people have free access to Frisco library. As Prosper is also neighbor of Frisco library. 5. Can you limit DVD for kids on their cards and encourage them to read, like if kid is allowed to get 20 items then he can take 4 DVD and 16 books or 10 items 2DVD and 8books.
- ◆ An innovative children's program is essential. Frisco library nailed! I take my grand kids weekly!
- ◆ Evening or weekend activities for littles are appreciated. Working parents miss out on so many opportunities as it is that it would be so refreshing and

empowering to be afforded similar opportunities experienced during the week/day even if infrequently.

- ◆ I think a municipal library is an important part of the community! Although my children are now grown (new empty-nester here!), we have loved and used the local libraries everywhere we've lived. I noticed as my children grew, we went together less and less, since they seemed to find their books to read at their school libraries (or had less time for pleasure reading in general). I have found that I often use the library mostly for e-books myself since it's more convenient than making the trip and easier to pack with me on trips. :) So I am always looking and hoping for expanded e-book content in my reading adventures. That being said, I always love and enjoy visiting a library whenever I find the occasion to do so and there is just something about seeing all those books lined up together that lends an air of adventure and possibility. With one new grandchild now and hopefully more in our future, I look forward to returning to the library more often with little ones and enjoying programs geared for their learning and excitement about reading. I guess that has always been the most important part of a library to me! Thank you for all you do to foster a love of reading and learning in our community and for allowing us to share our views as you plan the future of our Prosper Community Library.
- ◆ Limited amount of space for kids event. Must to reserve to get in.
- ◆ More events and robust children's programming. There have been several times throughout the year I went to the library to take my kids to the story time only to find out it was cancelled or not happening that week...it would be nice if there more things to take the kiddos to.
- ◆ Summer programs and a cozy, welcoming place kids want to go and be inspired by books. I love the frisco library and wish we had something of that caliber here!! Would be such an incredible value add to the community and helps reaffirm the important of education and reading
- ◆ The prosper library is very welcoming however, due to the number of children in the area, all of the programming in interested in is very crowded. About 5yrs ago I brought my toddler son regularly to story time. But since then, any time we've tried to attend an event it's been too crowded for comfort.
- ◆ Toddler activities! Weekend mornings :)
- ◆ We absolutely love storytime! We would participate in more children's story time if I didn't have to register an hour beforehand. More offerings and age segregation might help with how popular these sell out. At my old library, there were many storytime offerings and you registered/ signed up for a season (fall, winter, etc) by age group. Storytime was every week, and you got to know other parents and made friends over time. It was really good for community building for new parents!
- ◆ Would love if the kids programs and events were also during school holidays. Ex: the week prior to school starting, when there are no camps, there were not any kids activities. Would love activities during winter break and spring break.
- ◆ I would like to see the story time events for littles be a longer time. I often do not hassle getting my two toddlers out of the house for a 15 minute outing when there is nothing to do or a place to socialize after. I would love to make new friends at

the library but it is hard when you do a 15 minute class and are pushed out the door into a library where you can't socialize.

- ◆ Prosper library has limited times and availability of programs such as story time. We pay to go to Frisco library because the programs, events, play place are things we are looking for in addition to being able to check out books.
- ◆ Consider culture months or other programs which may help children from all walks of life and background welcome and seen in the library.
- ◆ We love chess and aviation day and any safe activities for older elementary age kids
- ◆ We would love to participate in more children based classes and programs but the offerings are prohibitive for working parents. A weekend or evening class would be wonderful!

Adults

- ◆ I am a resident finding my way back to reading. I am also a transplant in search of community oriented social gatherings. What better place to gather than a library. A place to continue to learn and grow even as an adult. A space for book clubs, DIY projects, murder mystery night, local artist/music, dance class, knitting/crochet circle, cooking class etc. I have fond memories of the library when I was child and I would love to create new memories in Prosper. This is such a unique time in Prosper to be able to contribute to the heart and soul of our "small town, big heart" spirit!
- ◆ I would love to see more adult programs!
- ◆ I'd like to see outreach to a broader age range. Elders would enjoy music on an afternoon as they don't drive at night. Stretch into an education of the arts: music, art, drama. With all the school age residents, there is a wealth of entertainers. I can see a coffee shop with a small stage and performers singing and playing instruments. Maybe have a program of music from around the world to engage young and old. Maybe intersect with the Parks and Rec dept for talks on travel or finance for the elders in the community. The outside areas should have plenty of shade and native plants. A monarch garden would be nice. There should be a lot of natural surfaces.
- ◆ It would be nice to have more adult programming, such as book clubs, writers groups, etc. I would also love a larger selection of books and an agreement with Frisco library, so Prosper residents can use their materials and not just their play space.
- ◆ Would love different book club options. Specifically, for top popular books (like Sarah J Maas, Fourth Wing etc). There are so many great programs/social options for kids currently, but not really for adults. I would love to see more social options for adults as well. Maybe a book club club for moms of young kids or a cookbook club etc.

Youth

- ◆ Reading incentive programs for children & teens.
- ◆ Would love more programs for kids and teens. The Frisco library has a night for teens.

- ◆ Offer tutoring
- ◆ Tween and teenager programs please!! I have always enjoyed our library and friendly staff. I would like a Christian collection of books on Libby. Thank you for all you do!!

Other

- ◆ Should have volunteer opportunities.
- ◆ I can teach crochet and knitting if an interest develops.
- ◆ The library was the place that first made us feel at home here in Prosper through the On the Road storytimes. We love and appreciate the library and the library staff. They are hold a very special place in our hearts.
- ◆ Would love more interactive activities and programs with expanded hours more similar to Frisco's library.
- ◆ For bilingual programs - please specify the language, people shouldn't assume it's Spanish and we have many other languages in the area Please make it feel welcoming and cozy, the cold/super quiet feel of the library is not what children need when parents are trying to make them enjoy the library experience and keep them off electronics. Please offer activities for elementary school kids in the afternoons, especially during the summer when it's too hot for outdoor activities Please consider changing hours to full day on Friday (and maybe half day on another weekday). It's nice to have a place to take the kids to get fun books when the school week is over. Please consider visiting Celina Library to observe that welcoming/cozy feeling towards children, the staff helps them with scavenger hunts, etc. And they also have the books for sale at the entrance, my kids are always looking for books there. My kids are well behaved but I'm never at ease at the Prosper Library bc it feels like we are going to be reprimanded for speaking at a normal tone (just the way I feel)

Support for PCL

- ◆ Thank you for all you do...
- ◆ Thank you for the opportunity to provide input. Looking forward to seeing the results.
- ◆ The Prosper Library is our favorite and most used/visited place in Prosper. We are so excited about this journey!!
- ◆ We are looking forward for this new library.
- ◆ Welcome new library
- ◆ A town that tries to appeal to young family needs a high quality library that matches
- ◆ Excited about a stand alone library with spaces to enhance the Prosper community!
- ◆ Get a better one asap
- ◆ Go Big!!!
- ◆ I do not have grandchildren at the moment but. I do know that once I do have them I will be frequenting the Prosper Library.
- ◆ I enjoy the library and use it regularly

Staff

- ◆ Any larger space would be wonderful! My comment is more about some of the staff and children's offerings. [REDACTED] act like they have never had young children. They [REDACTED] comes off extremely judgy and unkind. When children leave their "square" they expect them to sit right back down or the parent needs to remove them from the room. It gives off a "children must be seen and not heard" mentality, which our whole group of friends wants nothing to do with. Please ask [REDACTED] to stop talking to parents like they are 3 year olds. [REDACTED] is extremely monotone and my kids have always been bored when she is leading storytime. Rachel is amazing, we love her. Every other library in the area offers so much for kids year round. It's disappointing that Prosper barely offers anything for the preschool and under kids during the summer. We were very pleased to see there would be story time on Wednesdays through the summer. It was a step in the right direction!! Please, please, get rid of the covid squares. If families come a few minutes late, let them quietly come in and find a space in the back, instead of having their kids miss what should be a wonderful morning. Small tweaks to your library program like those stated above would be a blessing and really make the library feel more welcoming.
- ◆ I really would like the staff to remain kind and willing to help.
- ◆ Love the prosper library staff
- ◆ The current library staff seems uninterested in assisting the community. I am a grandmother who comes with my grandkids and have had several negative interactions while checking out books or trying to access story time. Even basic questions have been met with the attitude that the staff has more important things to do. I'm a life long learner and retired teacher. I know how tough it can be to work with demanding community members, but what I've seen at Prosper library is unacceptable. If more staff is needed to help children feel welcome and valued, I'd gladly vote for more allocations. Something needs to change.
- ◆ While I understand that the town has quickly outgrown the space it is in, the constant taking away of library space (including storage) is disheartening. There are also staff members who are not friendly/welcoming/sincere and it shows. It is also disheartening that more hasn't been said about losing the Head Librarian who did so much to get the Library to where it is today.
- ◆ Yes we need to clone [REDACTED] She has been the heart and soul of the library. Keep the Prosper library the best in North Texas.
- ◆ The library needs to be a stand alone building with a good director, that likes children.

Reciprocal access

- ◆ Would love reciprocal access to other regional libraries.
- ◆ I wish prosper library partnered with Frisco library as it has with other surrounding suburbs
- ◆ PISD students and families outside of the town of Prosper should have free membership. The McKinney library even goes as far as to allow all Collin County residents to have free membership.

- ◆ Please consider allowing Artesia residents free library access. They pay Prosper ISD tax and attend Prosper schools like everyone else and call Prosper their home. It makes them feel excluded and not a part of the Town since they have to pay \$50 a year for a Prosper library card when it's the closest library to them and also their Home library. Just doesn't feel right for my friends who live there, right down the street, and very unfortunate. Thank you for your consideration.
- ◆ Why are Prosper residents not part of the material sharing program with Frisco? The rules and limitations in place at Prosper are not as family friendly as those in place at Frisco (food, unrealistic quiet policies) and the resultant limitations on group meetups (we are part of a growing homeschool community in Prosper) has resulted in us going to the Frisco library more frequently though we would prefer otherwise

Budget

- ◆ Libraries are obsolete. There are much better uses of taxpayers dollars.
- ◆ The prosper library is an embarrassment compared to Frisco. Please invest the many, many tax dollars you receive from us back into the library.
- ◆ Please eliminate as much paper mail as possible, it is clutter and waste of postage. Also, Prosper history is depressingly segregated, and a painful reminder if times not good for many races and women, and the misplaced focus on too many all-white displays feels like a hint of bogoted nostalgia, a warning to stay in your place per old timers. Better if historic photos displayed are nature and buildings and farm gear and animals. Diverse people now in town, lets celebrate that to inspire kids.
- ◆ Prosper resident for decades. Was VERY disheartening to residents when City's commitment of space for a Prosper Historical Society museum was reneged during building the mega Town Hall. AND, then for this very costly building to also have very minimal community mtng space, was very perplexing. What is in that giant bldg taxpayers are going to be funding for years? PLEASE plan wisely and carefully, and, steward our tax dollars. So much could be done to encourage citizen participation and involvement. Praying for you. And, believing with you for the best Library plan possible. You can do it!
- ◆ You just built that library with that fancy city hall. Why is it this city cannot think ahead? Anyone that saw that you put the library in that building knew it would be too small. It's like you all needed a library and built that as a temporary solution. And now want to spend more money and build. Same with that stupid stadium vote. Who is in your planning department? My child could plan better. Hopefully your planner will plan for parking as it seems this city can never plan for parking in anything they build. Thanks

Partnerships

- ◆ Partner with Prosper ISD to communicate the Study/Reading/Learning opportunities for Elementary, Middle, & High School Students.
- ◆ Would like the library to accept used books for donation to organizations in need.

Access

- ◆ Please work on access for all prosper residents

N/A

- ◆ -
- ◆ A
- ◆ N/A
- ◆ Na
- ◆ No
- ◆ No
- ◆ No
- ◆ No
- ◆ No
- ◆ No.
- ◆ None
- ◆ none
- ◆ None
- ◆ None at this time.
- ◆ Moved to Prosper when the library was in high school. Have not visited the new library.

Prosper Community Library (PCL) Online Community Survey

Data tables for full respondent base

Q1. Do you live in Prosper?

Responses	Count	Percentage
Yes, and I receive a Town of Prosper Utility Bill.	565	89.1%
Yes, but I do not receive a Town of Prosper Utility Bill.	36	5.7%
I do not live in Prosper.	33	5.2%
Total	634	

Q2. Do you have a library card for Prosper Community Library?

Responses	Count	Percentage
Yes	455	80.5%
No	102	18.1%
Don't know	8	1.4%
Total	565	

Q3. In the last 12 months, approximately how many times have you visited the Prosper Community Library or used its services? Please include visits or calls to the building, using a study room, visits to the library's website and catalog, and use of digital services like Libby.

Responses	Count	Percentage	non-users	38.8%
0	116	20.5%		
1-2	103	18.2%		
3-6	111	19.6%	users	61.2%
7-19	128	22.7%		
20+	107	18.9%		
Total Responses	565			

Q4. Why do you or members of your household use the library? *Please select all that apply.*

Responses	Count	Percentage
To check out physical books, magazines, movies, hotspots, etc.	266	76.9%
For entertainment or hobbies (programs, kits, craft books, etc.)	139	40.2%
To download digital materials from services like Libby and cloudLibrary	137	39.6%
To attend a program	100	28.9%
To attend a storytime	96	27.8%
To find study or research materials	81	23.4%
To read, work, or study in a quiet place	80	23.1%
To use a study room or Collaboration Station	38	11.0%
To see friends and other people	32	9.3%
To print/copy/scan/scan-to-email	32	9.3%
To use online resources such as Mango and LinkedIn Learning	30	8.7%
To use the library's Wi-Fi	29	8.4%
To use the library's computers	27	7.8%
To attend a meeting for a group you belong to	23	6.7%
To use the 3D printer	18	5.2%
For one-on-one help from library staff	16	4.6%
To provide or receive tutoring	14	4.0%
To take online classes or complete an online certification	12	3.5%
To search or apply for a job	6	1.7%
To charge a device	4	1.2%
Other (Please specify)	12	3.5%
Total Unique Responses	346	
Total Responses	1,192	

Q5. Why do you or members of your household not use the library, or do not use it more frequently? *Please select all that apply.*

Responses	Count	Percentage
The children's area is too small.	156	27.6%
The library doesn't have what I need.	139	24.6%
The library's hours are not convenient for me.	96	17.0%
It doesn't occur to me to go there.	83	14.7%
I use the Internet to get information.	77	13.6%
I don't have time.	70	12.4%
I have other places to obtain books, DVDs, etc.	66	11.7%
I can't find a place to sit and read.	50	8.8%
The programs don't interest me.	46	8.1%
I can't find a place to study.	33	5.8%
I don't read a lot.	32	5.7%
The library's website/app is hard to navigate.	28	5.0%
The library is too far away.	28	5.0%
I did not feel welcome when I visited.	21	3.7%
The library doesn't have enough offerings in Spanish.	5	0.9%
A health condition prevents me from going.	3	0.5%
I don't have a way to get to the library.	2	0.3%
I owe money for lost or damaged materials.	1	0.2%
Other (Please specify)	133	23.5%
Total Unique Responses	565	
Total Responses	1,069	

Q6. Do you use any other public libraries in the area? *Please select all that apply.*

Responses	Count	Percentage
Frisco Public Library	263	46.5%
I do not use other libraries.	248	43.9%
McKinney Public Library System	52	9.2%
Celina Public Library	17	3.0%
Little Elm Public Library	11	1.9%
Other (Please specify)	26	4.6%
Total Unique Responses	565	
Total Responses	617	

Q7. How important to you are these spaces in the library?

Responses	Very Important	Important	Not Important	Total
A space for books and other physical materials	444	103	12	559
	79.4%	18.4%	2.1%	
A space for messy creativity and play	197	175	167	539
	36.5%	32.5%	31.0%	
A space for displays of art and local history	105	267	166	538
	19.5%	49.6%	30.9%	
A space for interactive exhibits	154	247	138	539
	28.6%	45.8%	25.6%	
A space for community meetings	168	241	134	543
	30.9%	44.4%	24.7%	
A space for making (e.g., 3D printing, cooking, art)	177	222	140	539
	32.8%	41.2%	26.0%	
A space for outdoor activities (e.g., classroom, amphitheater, story walk)	184	218	141	543
	33.9%	40.1%	26.0%	
A space for children	442	97	22	561
	78.8%	17.3%	3.9%	
A space for teens	333	177	41	551
	60.4%	32.1%	7.4%	
A space for library programs	367	165	22	554
	66.2%	29.8%	4.0%	
A space to study and collaborate	288	206	61	555
	51.9%	37.1%	11.0%	
A space to gather and socialize	143	186	217	546
	26.2%	34.1%	39.7%	
A space to learn about local history	106	262	173	541
	19.6%	48.4%	32.0%	
A space for quiet work and reading	328	173	60	561
	58.5%	30.8%	10.7%	

A space to buy and enjoy snacks and drinks	54	129	351	534
	10.1%	24.2%	65.7%	

Q8. What would you like in a meeting space? *Please select all that apply.*

Responses	Count	Percentage
Space for 6-8 people	257	45.5%
Space for up to 25 people	238	42.1%
Space for 2-5 people	230	40.7%
Access to video conferencing and projection	193	34.2%
A large conference table	173	30.6%
A kitchenette	76	13.5%
Space for 100 people or more	72	12.7%
Total Unique Responses	565	
Total Responses	1,239	

Q9. What would you like in an outdoor space? *Please select all that apply.*

Responses	Count	Percentage
Space for children to play	364	64.4%
Access to Wi-Fi	337	59.6%
Space for interactive experiences (e.g., story walk, sensory garden)	308	54.5%
Space for outdoor programs	294	52.0%
An amphitheater for events	275	48.7%
Walking trails	258	45.7%
Café space or seating	249	44.1%
Space for informal gatherings	212	37.5%
No preference	44	7.8%
Other (Please specify)	10	1.8%
Total Unique Responses	565	
Total Responses	2,351	

Q10. How would you like the new library to feel? *Please select all that apply.*

Responses	Count	Percentage
Welcoming	457	82.3%
Calm	345	62.2%
Spacious	331	59.6%
Light-filled	307	55.3%
Inspiring	303	54.6%
Cozy	296	53.3%
Innovative	291	52.4%
Colorful	209	37.7%
Energetic	170	30.6%
Historical	120	21.6%
Total Unique Responses	565	
Total Responses	2,829	

Q11. Your age:

Responses	Count	Percentage
Up to 17	2	0.4%
18 to 24	7	1.2%
25 to 39	173	30.6%
40 to 64	320	56.6%
65 and up	54	9.6%
Prefer not to answer	9	1.6%
Total	565	

Q12. Which description best fits your household? *Please select all that apply.*

Responses	Count	Percentage
Family with young children in the household	318	56.3%
Family with teens in the household	176	31.1%
Family/adults without children in the household	142	25.1%
Single person household	12	2.1%
Prefer not to answer	4	0.7%
Total Unique Responses	565	
Total Responses	652	

Q13. What is the best way for the library to communicate with you? *Please select all that apply.*

Responses	Count	Percentage
Email	407	72.0%
Social media (Instagram, Facebook, etc.)	294	52.0%
Library website	277	49.0%
Text message	221	39.1%
Digital newsletter	221	39.1%
Mailings from the library	113	20.0%
In-library display screen	75	13.3%
Word of mouth (library staff, friends, neighbors, etc.)	51	9.0%
Library handouts	39	6.9%
Local newspapers	36	6.4%
Other (Please specify)	2	0.4%
Total Unique Responses	565	
Total Responses	1,736	



TOWN LEADERSHIP INTERVIEW NOTES

MEETING 1

720 Design discussed the library project in Prosper, which began in May with data collection and community engagement, resulting in an almost 600-participant online survey. A town official detailed the town's rapid growth, leadership changes, and financial challenges, including a \$210 million bond program and a \$150 million new bond proposal. The library board emphasized the library's role as a community hub, suggesting integration with senior services and arts, and discussed the potential for a Library Foundation for private-public partnerships. The group also considered site options, including downtown and a large park, and the importance of architectural significance.

Action Items

- ☐ Explore the feasibility of establishing a library foundation.
- ☐ Invite the Prosper Youth Advisory Council to provide input on the library plans.
- ☐ Coordinate with the Parks and Recreation Department to discuss connecting trails and integrating the library with other community spaces.

Here is a summary of the key points from the transcript:

- The meeting discussed the future of the Prosper public library and how it can best serve the growing community.
- The group discussed the importance of the library as a community gathering space and hub, beyond just being a place for books. Ideas included integrating the library with other community amenities like parks, senior services, and arts/cultural spaces.
- There was discussion around finding the right location for the library, weighing options like downtown versus a more western site. Connectivity and walkability were emphasized as important factors.
- The group talked about engaging the youth community, especially the teen advisory board, to get their input on the library's future.
- Funding options were briefly touched on, including the potential to set up a library foundation to facilitate private donations and partnerships.
- Overall, the discussion focused on creating a 21st century library that serves as a central, vibrant community space for Prosper.

MEETING 2

The meeting focused on the Prosper Library's Facilities Master Plan. Key points included community input from 600 survey participants and three sessions with 15-20 people each. Discussions highlighted the need for more space, especially for children's programs, and the potential for a makerspace with 3D printers and other resources. The library's role in providing cultural and educational support, including ESL and GED classes, was emphasized. Suggestions included a historical section, a genealogy area, and a sensory room for special needs. Funding and partnerships with local organizations were also discussed to enhance the library's services and meet community needs.

Action Items

- [] Meet with Prosper ISD to get feedback from students on library needs and offerings.
- [] Explore partnership opportunities with local colleges and community organizations for programming and resource-sharing.
- [] Research grant funding sources that could support specialized library features and services.
- [] Coordinate with the Prosper Historical Society to consolidate and showcase the town's history within the new library.
- [] Investigate the feasibility of incorporating a genealogy research area and resources into the library design.

Here is a summary of the key points from the transcript:

- 720 Design, provided an overview of the work they have done so far, including community input sessions and tours of other libraries in the region.
- The group discussed ways the library can better support the growing Prosper community, such as offering more programming and events, expanding digital/online offerings, creating flexible community spaces, and partnering with local organizations.
- Specific ideas included adding a makerspace, business incubator space, ESL/GED classes, and areas for special needs patrons and local history/genealogy.
- There was discussion about marketing and raising awareness of the library's existing services and resources within the community.
- The group also talked about potential funding sources, including partnerships with the Economic Development Corporation, to support the library's expansion and improvements.

MEETING 3

The transcript from this Prosper Community Library meeting captures a discussion around library planning and community needs as part of the Prosper Library's facility master planning process. Key points from the conversation include:

1. Community Growth and Library Needs:

- The community of Prosper has experienced rapid growth, and the library is seen as a central gathering space for residents. Community leaders discussed the importance of expanding library spaces to meet the needs of a growing population, particularly focusing on families with young children and older adults.

2. Flexible and Collaborative Spaces:

- There was an emphasis on creating flexible spaces that can serve multiple purposes, including meeting rooms of various sizes that can be used for study groups, tutoring, and remote work. Attendees stressed the need for rooms that can accommodate different activities and have features like dividers to adjust room sizes.

3. Teen and Family Engagement:

- The group highlighted the need for dedicated spaces for teens and young adults, noting that there aren't many places for teens to gather in Prosper. Programs and spaces that could support academic study, clubs, and social activities were seen as a priority.

4. Makerspaces and Creative Areas:

- There was strong interest in incorporating technology and creativity into the new library through a Makerspace that includes tools like 3D printers and craft supplies. These spaces would support both individual and group activities, encouraging learning and innovation.

5. Library as a Community Hub:

- The participants envisioned the library as a hub for community interaction, with spaces designed for socializing, hosting events, and informal gatherings. They discussed the importance of the library being easily accessible and located near downtown to help drive economic activity and foster community engagement.

6. Balancing Tradition with Innovation:

- While the library needs to accommodate modern needs and technologies, the group emphasized that the space should still maintain a welcoming, small-town feel. Architectural features such as large windows, outdoor spaces, and comfortable seating areas were suggested to make the space both functional and inviting.

The discussion concluded with an emphasis on continuing to gather community input and ensuring the future library design reflects both current needs and the long-term vision for Prosper's growth.

MEETING 4

This transcript revolves around a focus group discussion on the future development of the Prosper Community Library and its role in supporting the growing community. Key points include:

1. Library as a Community Hub:

- The library was seen as more than a traditional book repository; it was described as a neutral "Switzerland" where people could gather, think critically, and engage in community life. The participants emphasized the library's potential to serve as a meeting space for town events, staff gatherings, and educational opportunities.

2. Multi-Purpose and Makerspace:

- There was significant interest in incorporating diverse spaces for community use, such as meeting rooms, makerspaces, and other creative areas. Maker activities, like 3D printing and classes on sewing, woodworking, and technology, were seen as valuable for both adults and kids. There was also a suggestion to provide training on how to use the equipment in the makerspace.

3. Teen and Adult Programming:

- The group discussed the need to balance programming for children with offerings for teens and adults. While children's programming is currently a focus, there was a call for more creative and fun activities for adults. Programs should be diverse, ranging from creative workshops to civic services like passport assistance.

4. Space for Meetings and Events:

- The participants highlighted a lack of meeting spaces in the town and suggested that the new library should address this need. Rooms for community events, small gatherings, and even outdoor spaces for movies or other events were proposed.

5. Avoiding Duplication with Schools:

- Concerns were raised about duplicating services already offered by local schools, such as vocational training and large-scale performance spaces. However, the group recognized the library's potential to complement these services by offering programs and resources during times when school facilities are unavailable.

6. Library Location and Design:

- The vision for the new library included incorporating elements of Prosper's history, such as windmills or silos, into the design. There was also a desire to locate the library centrally to make it accessible to all residents and encourage community interaction.

7. Partnerships and Shared Resources:

- The group discussed potential partnerships with local organizations like the Economic Development Corporation (EDC) and nearby libraries to provide broader services, such as business incubators or passport services. Sharing resources, like parking, with other facilities was also mentioned as a way to maximize utility.

MEETING 4

The session concluded with a focus on ensuring the library remains flexible, able to grow and adapt with Prosper's needs over time. Meeting rooms were a particularly high priority, with the acknowledgment that they are often fully booked, regardless of how many are provided.

MEETING 5

This transcript of the focus group centers around a discussion on the evolving needs of the Prosper community library as part of its long-term development plans. Key points include:

1. Sense of Community:

- Prosper is highly valued for its close-knit, neighborly atmosphere, where residents feel connected, even outside of their immediate neighborhoods. This sense of community extends into the desire for the library to be a welcoming space that reflects these values.

2. Family and Special Needs:

- A major focus was placed on ensuring the library continues to cater to families and those with special needs. Participants expressed the importance of integrating sensory-friendly design elements into the library, such as quiet rooms and controlled lighting, to accommodate children with sensory sensitivities.

3. Library as a Cultural Hub:

- The library was envisioned as a central, multi-functional hub for the community, providing spaces not only for reading but also for social engagement, creativity, and cultural exchange. Ideas included having spaces for art, music, speakers, and even outdoor movie nights, reflecting the town's cultural richness.

4. Flexible Spaces:

- Participants emphasized the need for the new library to be highly flexible, with various spaces to support different activities, such as study rooms, collaborative work areas, and community meeting spaces. The Frisco Library was frequently cited as a positive example of innovative space design that Prosper could draw from.

5. Technology and Makerspace:

- There was strong interest in incorporating modern technologies, such as a Makerspace for creative projects like 3D printing, along with study areas that would cater to both quiet individual work and collaborative efforts.

6. Central Location and Civic Engagement:

- Keeping the library close to Town Hall was a priority to maintain its role as a civic space, where residents could engage with town leaders and participate in community events. This proximity also ties into the town's vision of making the library an accessible cultural center.

7. Consideration for Future Growth:

- With Prosper's rapid growth, the participants recognized the need for the library to be designed for long-term flexibility to accommodate changing community demographics. This included balancing the current needs of young families with the anticipated needs of an aging population.

MEETING 5

8. Strategic Planning and Funding:

- Discussion touched on the importance of strategic planning, including the potential for a library foundation to support funding needs. The group stressed the importance of building an excellent, thoughtfully designed facility that would serve the community for many years to come.

The session highlighted the participants' strong connection to the community and their desire for the library to evolve into a flexible, inclusive space that reflects Prosper's values while preparing for future growth.

MEETING 6

This transcript focuses on the development of the Prosper Community Library, gathering leadership perspectives on how the library should evolve to serve the growing community. Key points discussed include:

1. Community Growth and Needs:

- As Prosper continues to grow, the library must adapt to meet the needs of various demographic groups, including families with young children, teens, seniors, and a growing diverse population. The leadership discussed the importance of creating spaces that cater to these groups, including study rooms for students, comfortable reading spaces for adults, and accessible areas for children and seniors.

2. Library as a Gathering Space:

- A recurring theme was the idea of the library as a community gathering space. Leaders emphasized the importance of flexible, multi-functional spaces that could serve as study rooms, meeting rooms, and comfortable areas for casual reading or working. Study rooms were particularly highlighted as being in high demand, with participants noting the need for more of these spaces in any future design.

3. Technology and Digital Resources:

- Digital resources, such as e-books and audiobooks, were discussed, though it was noted that Prosper's community has a relatively lower uptake of digital materials compared to other regions. Suggestions were made to explore ways to improve access and use of digital resources, while also recognizing the community's strong preference for physical books. The idea of Makerspaces and high-tech areas, including virtual and augmented reality features, were proposed as potential additions to serve the growing community.

4. Cultural Inclusivity:

- There was strong support for ensuring the library reflects the cultural diversity of Prosper. Suggestions included expanding the collection to include books in various languages and materials that cater to the different cultural backgrounds present in the town. Outreach programs and collaborations with local faith and cultural groups were also encouraged to strengthen the library's role as a community hub.

5. Library Expansion and Location:

- The need for a new or expanded library was discussed in depth, with some debate over whether one large central location or smaller outposts would better serve the community. A balance between providing resources in a central location and improving accessibility, particularly for residents in the western part of town, was considered. Some participants suggested the possibility of alternative solutions, such as book lockers or mobile services, to increase library access.

6. Safety and Security:

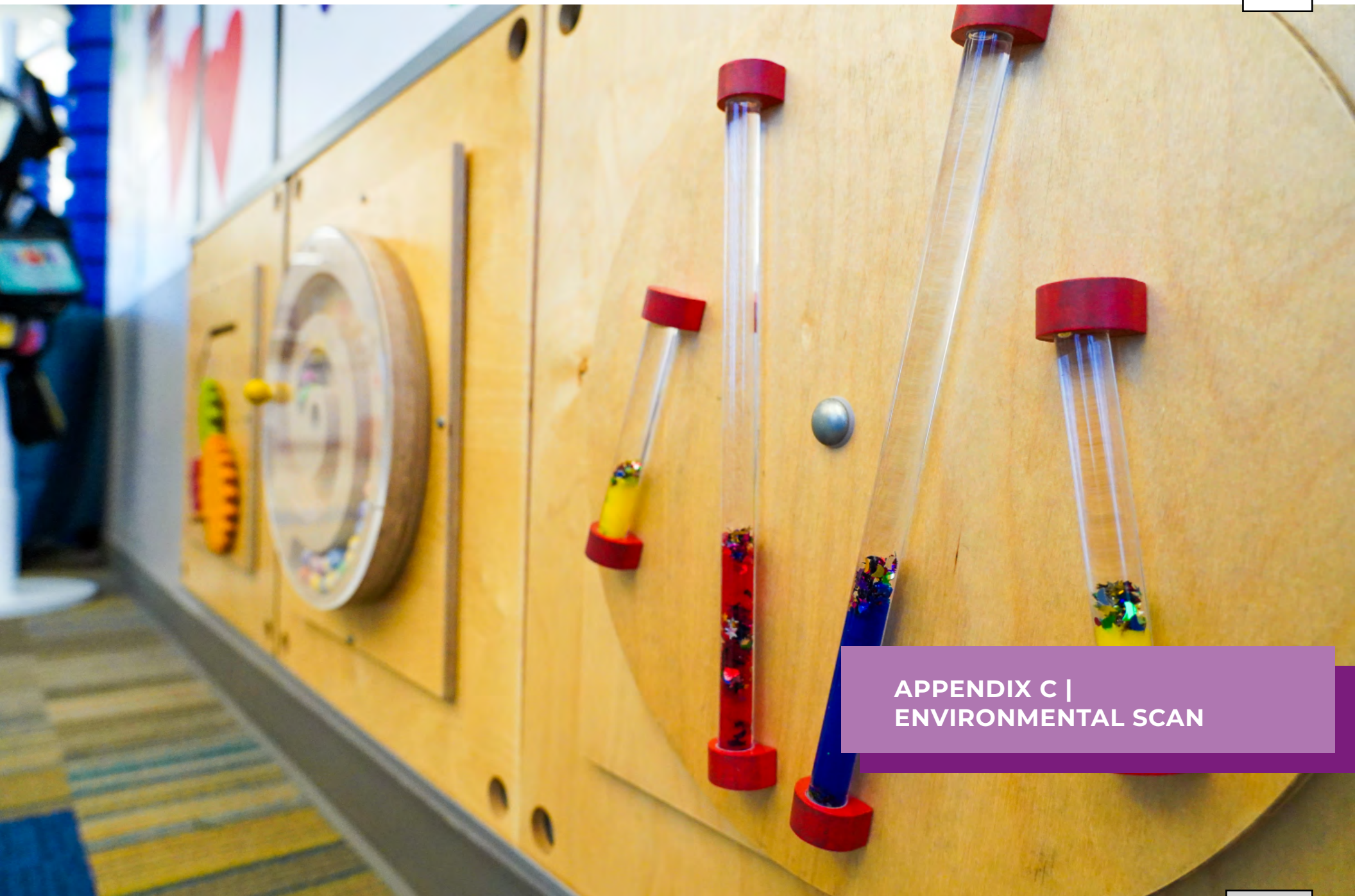
MEETING 6

- Concerns about safety, particularly around children's spaces, were raised. The leadership discussed ways to ensure the library remains a safe, welcoming environment for all users, with potential investments in security measures like cameras and ensuring visibility throughout the building.

7. Long-Term Planning and Excellence:

- Participants stressed the importance of designing a library that meets the long-term needs of Prosper, reflecting the town's focus on excellence in everything it builds. They emphasized the need to think ahead, ensuring the library is designed to serve the community for decades without requiring significant expansions or overhauls in the near future.

The discussion concluded with participants expressing their commitment to creating a library that reflects Prosper's values and demographics, aiming to make it a key cultural and educational hub for the town. The leadership encouraged further input as the planning process continues.



APPENDIX C | ENVIRONMENTAL SCAN



Environmental Scan

Prosper Community Library

A comparison of Prosper Community Library's performance with similar entities and against recognized standards provides an opportunity to identify areas of excellence, as well as areas of underperformance that may require specific interventions or further study. Benchmarking is an accurate "picture in time" that establishes baselines the library can measure progress toward its goals against.

2024.09.27



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Introduction

This study is an examination of public libraries in the Dallas area. By comparing their output measurements with benchmarking, Prosper Community Library can set goals based on the expected buildout of Prosper and similar library service in the area.

Findings must be viewed within a library's unique context—including its community demographics, facilities, finances, and management structure—and be approached with an open mind and curiosity. They should be used in concert with other tools, such as surveys and customer feedback, to accurately profile institutional performance.

As an example of the importance of context, benchmarking and national rankings tend to show that the majority of high-performing libraries are well-funded, serve highly educated and affluent populations, offer large collections, and operate multiple outlets. Of course, it is possible for a library to excel without any of these elements, but the reasons will vary and are still based on local conditions.

The data available can be overwhelming to gather and process. It's best to "start small" and look at the statistics most important to the planning initiative, vision, concerns, and projects at hand. Above- or below-average performance can be the result of unexpected factors. For example, public libraries in college towns often have below-average reference numbers due to the presence of academic libraries and tech-savvy customers in their service area. Other libraries can have relatively low program attendance if they are in communities with a wealth of cultural and recreational offerings.

Library statistics reflect transactions and outputs, whereas patron outcomes—or the actual changes in user behavior that libraries create—are the most compelling measures of library success. Outcome assessments are more difficult to conduct and are typically applied to specific projects or grants as opposed to overall library operations. For example, a library can collect and benchmark the number of children registered for Summer Reading (output), but the change in reading ability and scores after participation (outcome) requires additional data from schools or parents. Benchmarking does not include outcome measures.

Many statistics have hidden "cause-and-effect" relationships. For example, libraries with short loan periods and automatic or multiple renewal options will tend to have larger circulation numbers than peers with longer loan periods and fewer renewals. Another example is personnel costs, which often reflect the size and number of floors in a building, as well as the hours a facility is open to the public. It is always important to consider and explore the causes of comparative statistics of concern.

Research Objectives

The specific objectives of the study are to:

- ◆ Compare PCL's performance to area libraries serving similar communities
- ◆ Highlight areas of excellence and underperformance that may require further study or attention
- ◆ Set goals for facility use and staffing in the reimagined Prosper Community Library facility
- ◆ Provide concrete and persuasive data for advocacy, reports to elected officials, fundraising, and grant applications

Research Methodology

Peer Set

Prosper Community Library provided a list of eight public libraries throughout the region that serve communities with similar demographics. These peer libraries tend to be larger, with larger budgets, making them aspirational targets as Prosper reaches buildout and the library grows.

Data Set

Data reflects past performance. The study's basis is statistics collected by the Texas State Library and Archives Commission for the Texas Public Libraries Annual Report for 2022, the most current information publicly available at the time this report was prepared. More information about the data set and variables can be found at tsl.texas.gov/ldn/statistics.

Calculations

Data for Prosper Community Library and peer libraries was pulled from the Texas Public Libraries Annual Report for 2022 in May 2024. For each variable, a mean, median, and rank were calculated for comparisons. Calculated variables are noted with an asterisk (*).

The state average is calculated by dividing the sum of each measure by the number of libraries in Texas submitting data for the annual report, regardless of size. The national average is derived in the same manner, but with all libraries reporting data to the Institute of Museum and Library Services' most recent publicly available Public Library Survey (FY21). Some statistics may need to be supplemented with additional information to be meaningful and actionable. For example, the number of holdings alone does not take into account the age, condition, or other attributes that fully describe the quality of the collection.

Composite Libraries

To compare PCL to other libraries that roughly serve both the current population of its service area and the expected build-out population of Prosper, we created two "composite" libraries.

Composite Library 25,001–50,000 represents the averages of all measurements for the 67 Texas libraries that serve between 25,001 and 50,000 residents (Prosper’s current size). Meanwhile, Composite Library 50,001–100,000 represents the 37 Texas libraries that serve between 50,001 and 100,000 residents (Prosper’s projected size). All data comes from the Texas State Library and Archives Commission and represents fiscal year 2022, except where noted.

Peer Set

Benchmarking begins with identifying neighboring peer institutions that serve communities comparable to Prosper's anticipated buildout size. PCL provided the Ivy Group with a self-selected peer group of public libraries near Dallas.

	Total Locations*	Service Area Population	Total Expenditures	Total Facility Sq. Ft.
Prosper Community Library	1	33,356	\$631,895	9,627
Anna Community Library	1	27,501	N/A	32,500**
Celina Public Library	1	25,456	\$313,222	24,000***
Cozby Library and Community Commons	1	42,223	\$2,012,064	32,270
Flower Mound Public Library	1	107,750	\$2,088,779	40,000
Frisco Public Library****	2	219,587	\$6,784,050	158,068
Keller Public Library	1	45,397	\$1,863,368	22,500
Little Elm Public Library	1	71,372	\$631,465	9,760
McKinney Public Library System	2	202,690	\$3,762,159	67,000
Southlake Public Library	1	31,105	\$944,815	12,175
Mean	1.2	80,782	\$2,339,824	40,790
Median	1	43,810	\$1,937,716	28,135
PCL Rank	3	7	7	10

*Total Locations includes central and branch libraries.

** For new facility scheduled to open in 2025

*** For expanded facility scheduled to open in 2026

**** 2023 data

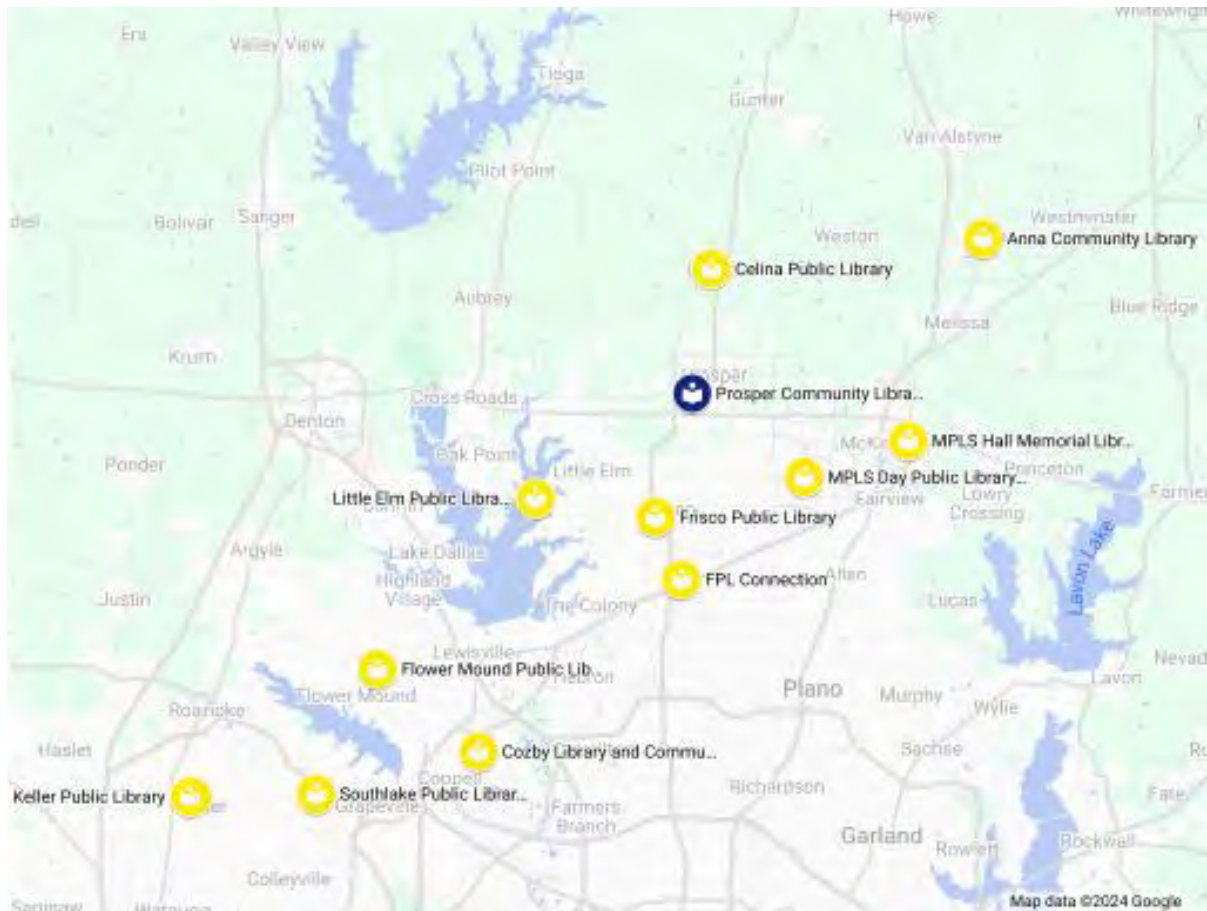
The Celina Public Library is in the midst of an expansion and Anna Community Library is creating its first facility. Because they haven't reported statistics in their new facilities, they are not included elsewhere in this peer set.

The composite libraries, national, and state averages are valuable for comparing PCL to libraries serving similar population sizes but are not considered part of the peer set.

	Total Locations	Service Area Population	Total Expenditures	Main Facility Sq. Ft.
Composite Library 25,001–50,000	1.2	34,782	\$840,375	17,381
Composite Library 50,001–100,000	1.3	67,833	\$1,507,061	29,771
State Average	1.6	51,452	\$1,191,416	16,058
National Average	1.7	31,295	\$1,331,145	–

Peer sets have value beyond this report. Sharing information on a regular basis with peer libraries can be a worthwhile activity, providing more precise and comprehensive benchmarks and facilitating productive discussions about best practices.

Map of Peer Set Locations



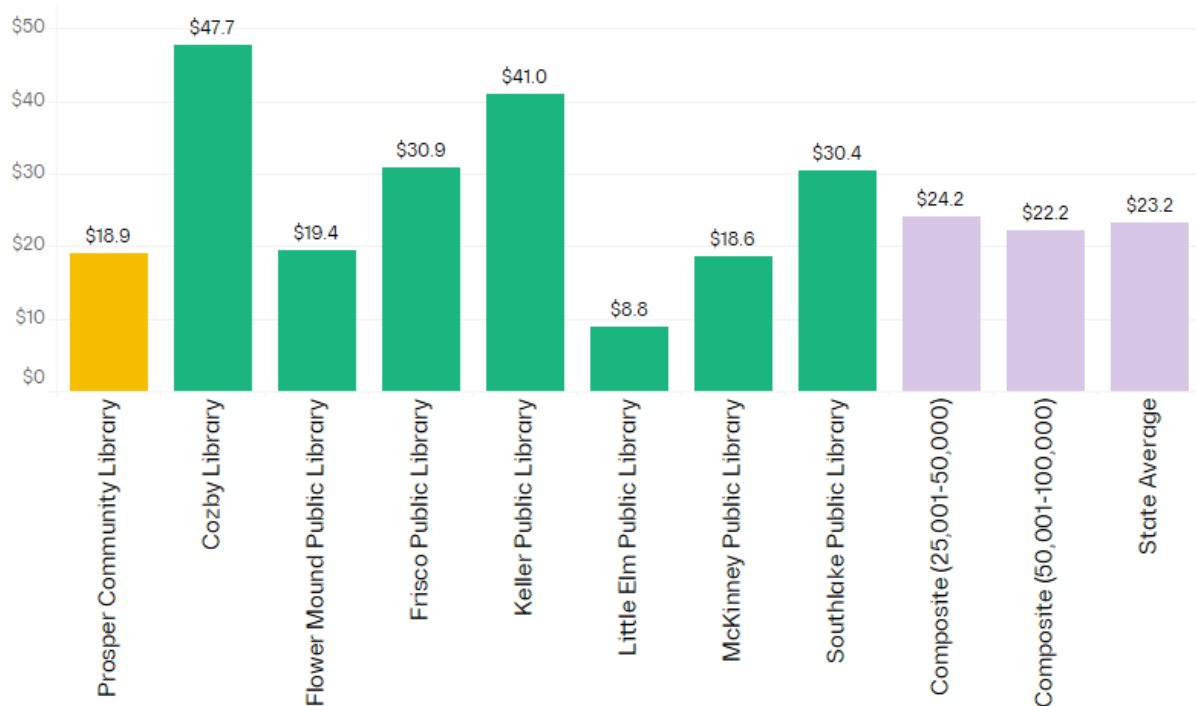
Prosper Community Library is marked blue. Peer set libraries are marked yellow.

Summary of Findings

Within the peer set, Ivy Group calculated the mean and median performance for each measure, as well as the Prosper Community Library's comparative ranking among the selected libraries.

The entire peer set is in line with the state average in total revenue and expenditures per capita. We will explore how the peer set compares to the composite libraries and state averages in performance measurements.

Expenditures per Capita

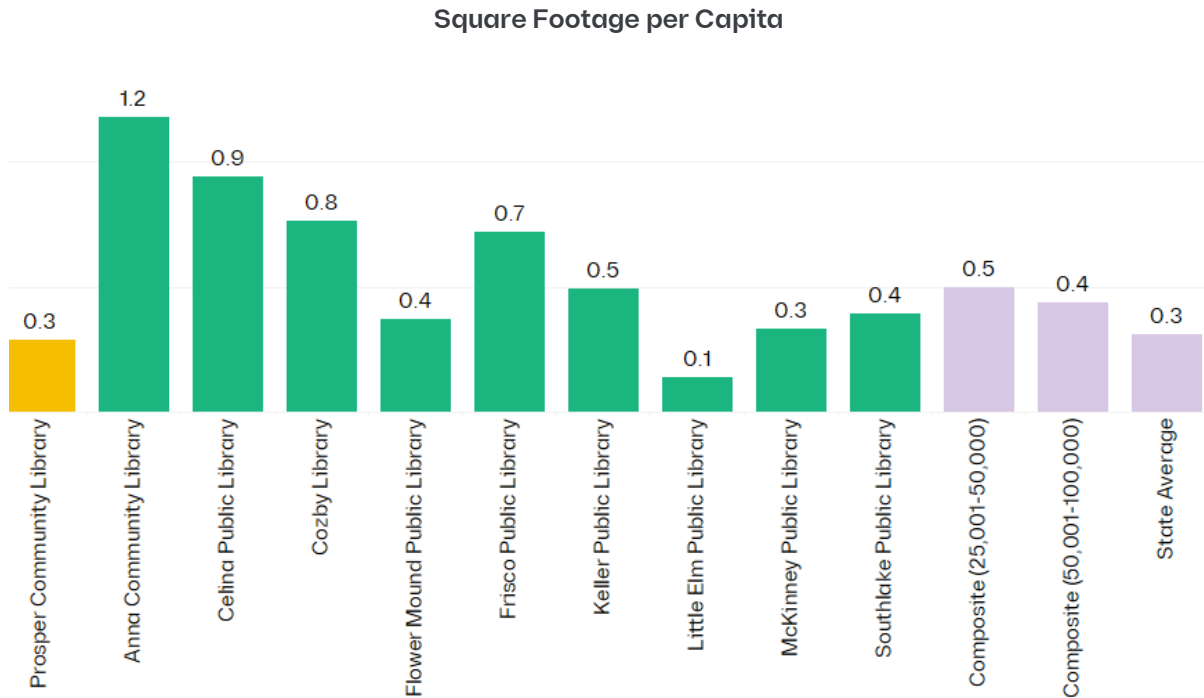


	Total Revenue per Capita	Total Expenditures per Capita
Prosper Community Library	\$19.73	\$18.94
Cozby Library and Community Commons	\$48.09	\$47.65
Flower Mound Public Library	\$20.10	\$19.39
Frisco Public Library	\$30.91	\$30.89
Keller Public Library	\$43.03	\$41.05

Little Elm Public Library	\$9.12	\$8.85
McKinney Public Library System	\$18.56	\$18.56
Southlake Public Library	\$30.38	\$30.38
Mean	\$27.49	\$26.96
Median	\$25.24	\$24.88
PCL Rank	6	6
Composite Library 25,001–50,000	\$27.39	\$24.16
Composite Library 50,001–100,000	\$22.93	\$22.22
State Average	\$24.13	\$23.16
National Average	\$48.16	\$42.54

Facility

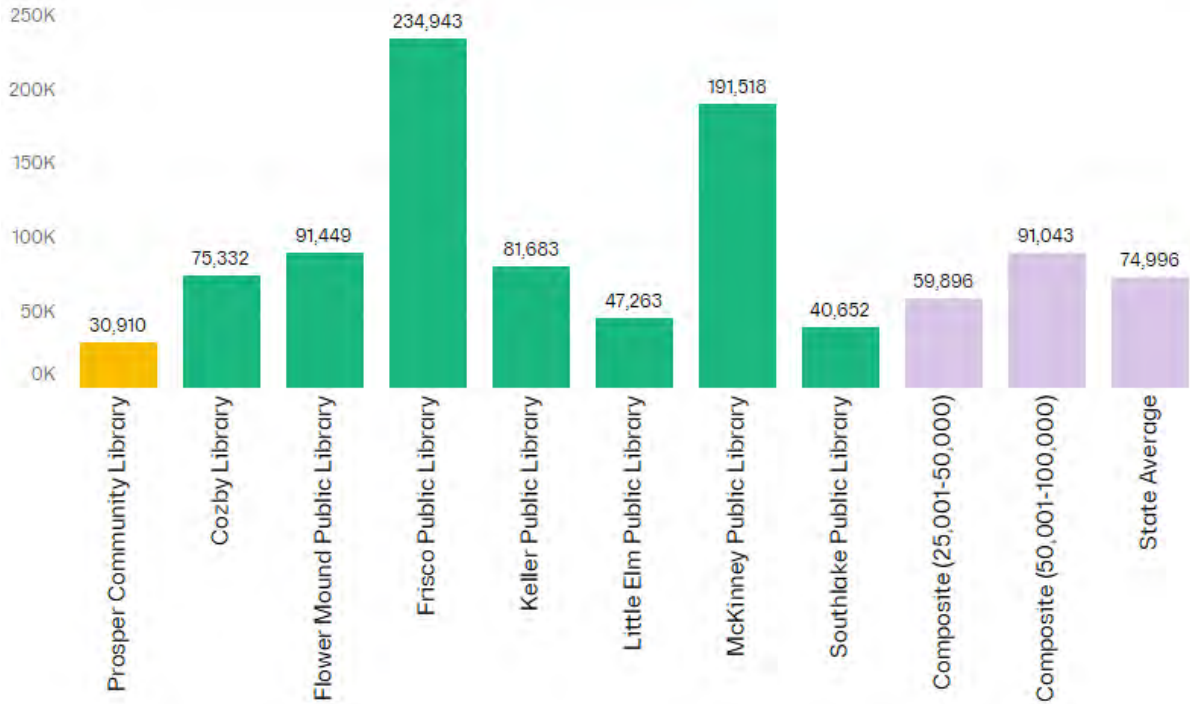
As Prosper Community Library plans for the future, it is helpful to use the data and rankings to set goals for the expanded building based on the larger facility sizes of its peers.



The state recommends that public library facilities offer 0.8 square feet per capita. All of the peers either have larger facilities than Prosper Community Library, or are building larger buildings, but currently only four peers meet or exceed the state guideline.

PCL staff are servicing a facility that is 82% smaller by square footage than the peer set average, necessitating fewer FTE employees in PCL's current building.

Total Physical Items



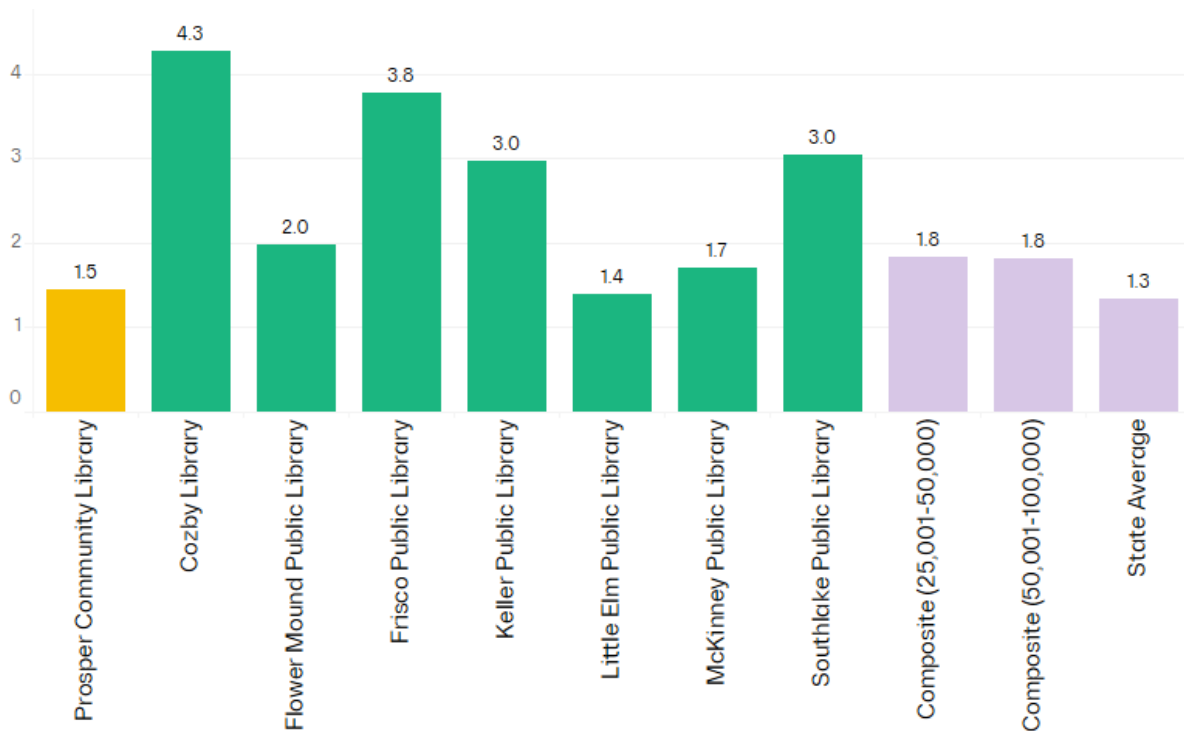
PCL is near the bottom of the peer set for total physical items (8th) and digital units (7th). It also houses fewer physical items than the composite libraries. This is likely correlated with PCL's current facility size. However, PCL also ranks low (5th) in physical books per capita, indicating room for growth, especially in high-demand titles that will not stress limited shelf space.

PCL ranks 10th for facility square footage, suggesting that the other libraries in the peer set have more dedicated space for programs and physical items.

The smaller composite library has 298.5% more Wi-Fi sessions per capita, which may mean similar libraries have more places for people to sit and use their devices.

PCL is 8th for annual visits, with fewer than the peer set average (80.1%), the larger composite libraries (60.8%), and the smaller composite libraries (23.9%).

Visits per Capita



Recommended areas for investigation:

- ◆ As the Library moves into a larger facility, will its staffing levels need to rise as it approaches the peer set average of 54,647 square feet of facility space?
- ◆ How can PCL analyze circulation data to determine which collections to expand in a larger facility?
- ◆ Will increasing dedicated programming space allow PCL to offer more or larger programs to meet community demand?
- ◆ Can seating and study spaces be enhanced to encourage personal device use on the Wi-Fi network?

	Square Footage	Service Area Population	Sq. Ft. per Capita
Prosper Community Library	9,627	33,356	0.3
Anna Community Library	32,500*	27,501	1.2
Celina Public Library	24,000**	25,456	0.9
Cozby Library and Community Commons	32,270	42,223	0.8
Flower Mound Public Library	40,000	107,750	0.4

Frisco Public Library	158,068***	219,587	0.7
Keller Public Library	22,500	45,397	3.5
Little Elm Public Library	9,760	71,372	0.1
McKinney Public Library System	67,000	202,690	0.3
Southlake Public Library	12,175	31,105	0.4
PCL Rank	10	7	9
Composite Library 25,001–50,000	17,381	34,782	0.5
Composite Library 50,001–100,000	29,771	67,833	0.4
State Average	16,058	51,452	0.3

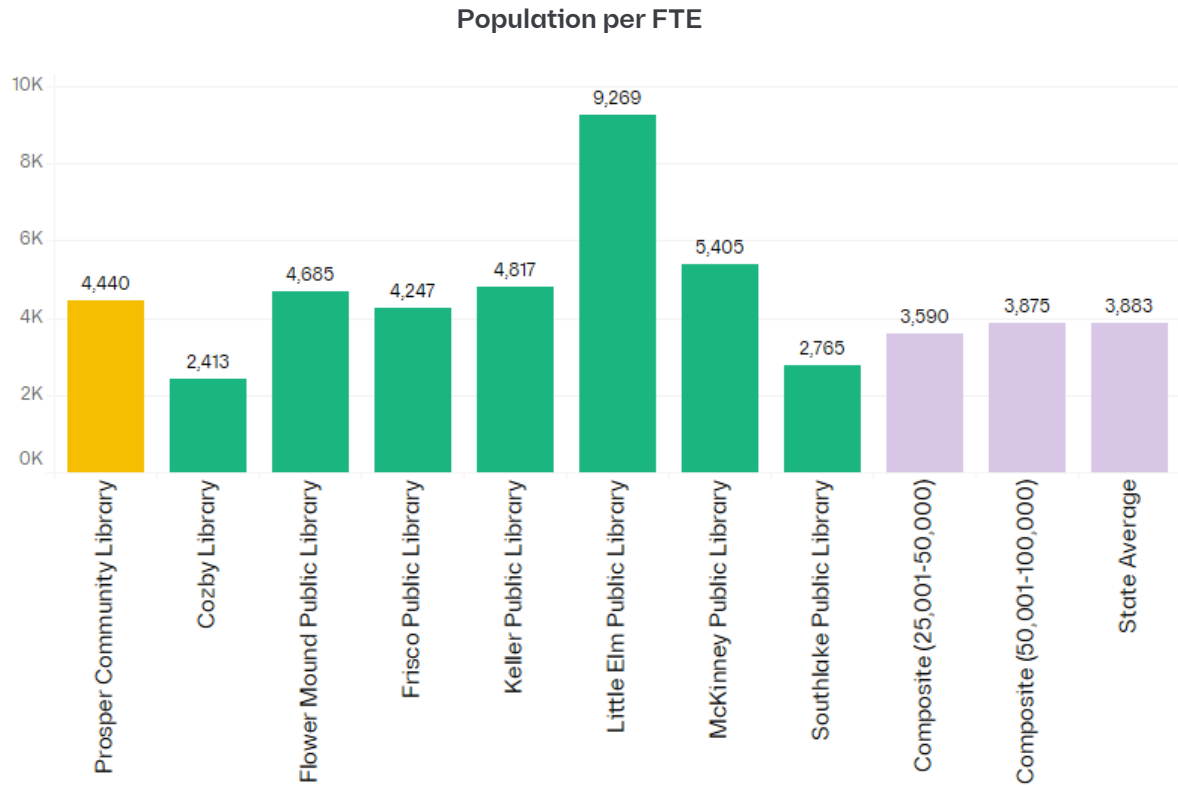
* For new facility scheduled to open in 2025

** For expanded facility scheduled to open in 2026

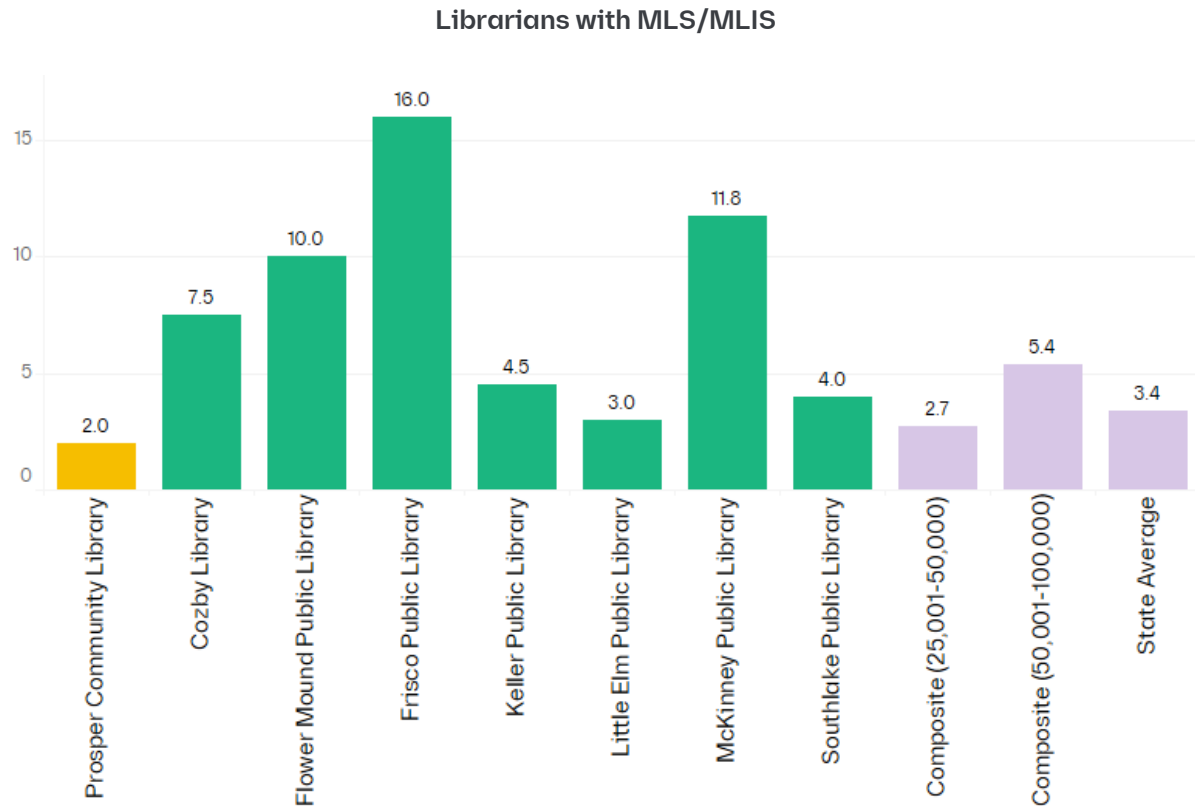
*** 2023 data

Staff

PCL employs fewer librarians with MLS/MLIS degrees from ALA accredited graduate programs and total full-time staff equivalents (FTE) than its peers but its population to staff ratio is in line with the peer set average.



PCL's population per FTE is close to the peer set average, indicating that Prosper residents are receiving one-on-one help when they need it. Ranked 8th for volunteer hours reported, PCL relies on its staff for nearly all aspects of library service.



PCL employs fewer FTE staff with an MLS/MILS degree than the peer set, both composite libraries, and the state and national averages. Prosper Community Library has a lower percentage of staff with an MLS than the libraries under consideration. At 27%, the proportion of librarians to FTE staff is lower than the peer set average of 38%, the composite libraries' 45% (25,001–50,000) and 35% (50,001–100,000), and the state's 61%. This may indicate that the other libraries have larger departments with more MLS librarians as managers and public-facing staff.

In order to recruit and retain staff, PCL should examine the difference in benefits across the peer set. PCL ranks 7th in salaries and 8th in benefits. Benefits can include health care, insurance, scholarships, and loan forgiveness programs. Because the cost of living is increasing in Prosper and the city is drawing from the same labor pool as the peer set, PCL may need both competitive salaries and benefits to attract leading candidates.

PCL ranks 1st in the peer set for staff expenditures as a percentage of total expenditures (82%), which is higher than both composite libraries and the state and national averages. It sits in the middle of the peer set for staff expenditures per capita, indicating that staffing is in line with the current population size, but staff size will need to increase as more residents move into Prosper.

Recommended areas for investigation:

- ◆ Will PCL need to find additional revenue to offer competitive compensation packages and bring staff expenditures in line with the peer set as Prosper approaches buildout?

- ◆ How can the Library leverage volunteers and partnerships to support the work of the staff?

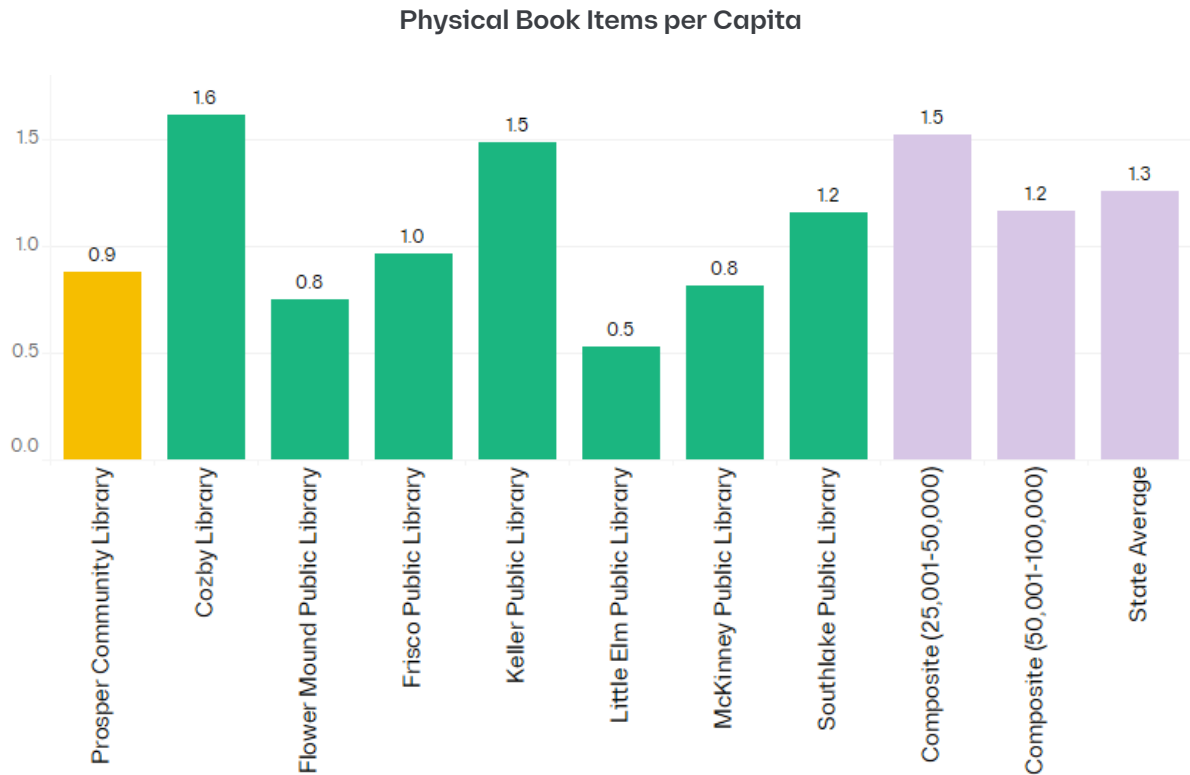
Staffing Data

	Prosper Community Library	Cozby Library and Community Commons	Flower Mound Public Library	Frisco Public Library	Keller Public Library	Little Elm Public Library	McKinney Public Library System	Southlake Public Library	Mean	Median	Rank	Composite Library 25,001- 50,000	Composite Library 50,001- 100,000	State Average	National Average
# LIBRARIANS W/MLS	2	8	10	16	5	3	12	4	7	6	8	3	5	3	4
# LIBRARIANS	0	-	-	-	-	-	2	-	0	-	2	2	1	1	5
SHARE OF LIBRARIANS W/MLS*	99.4%	100.0%	100.0%	100.0%	100.0%	100.0%	85.5%	100.0%	98.1%	100.0%	7	61.4%	89.3%	71.0%	41.0%
# OTHER FTE STAFF	5.5	10.0	13.0	37.7	4.9	4.7	23.8	7.3	13.4	8.6	6	5.3	11.5	8.5	9.2
# TOTAL FTE STAFF	7.5	17.5	23.0	51.7	9.4	7.7	37.5	11.3	20.7	14.4	8	9.7	17.5	13.2	14.3
SHARE OF FTE STAFF = LIBRARIANS*	26.8%	42.9%	43.5%	30.9%	47.7%	39.0%	36.7%	35.6%	37.9%	37.8%	8	45.4%	34.5%	61.2%	61.2%
POPULATION PER FTE STAFF*	4,440	2,413	4,685	4,247	4,817	9,269	5,405	2,765	4,755	4,562	5	3,590	3,875	3,883	2,193
SALARIES FOR ALL STAFF	\$ 409,920	\$ 1,081,788	\$ 1,177,985	\$ 3,494,939	\$ 773,225	\$ 363,217	\$ 2,036,553	\$ 519,619	\$ 1,232,156	\$ 927,507	7	\$ 420,556	\$ 808,981	\$ 574,578	\$ 648,964
BENEFITS FOR ALL STAFF	\$ 108,820	\$ 470,224	\$ 360,666	\$ 1,336,355	\$ 281,867	\$ 119,182	\$ 972,732	\$ 155,324	\$ 475,646	\$ 321,267	8	\$ 150,489	\$ 264,763	\$ 234,406	\$ 262,547
TOTAL STAFF EXPENDITURES	\$ 518,740	\$ 1,552,012	\$ 1,538,651	\$ 4,831,294	\$ 1,055,092	\$ 482,399	\$ 3,009,285	\$ 674,943	\$ 1,707,802	\$ 1,296,872	7	\$ 571,045	\$ 1,073,744	\$ 808,983	\$ 911,514
STAFF EXPENDITURES AS % OF TOTAL EXPENDITURES *	82.1%	77.1%	73.7%	71.2%	56.6%	76.4%	80.0%	71.4%	73.0%	66.9%	1	68.0%	71.2%	67.9%	68.5%
STAFF EXPENDITURES PER CAPITA*	\$ 15.55	\$ 36.76	\$ 14.28	\$ 22.00	\$ 23.24	\$ 6.76	\$ 14.85	\$ 21.70	\$ 21.18	\$ 29.60	5	\$ 16.42	\$ 15.83	\$ 15.72	\$ 29.13
TOTAL VOLUNTEER HOURS	31	1,252	1,588	10,719	1,464	1,463	5,154	4,555	3,278	1,526	8	1,600	2,037	1,222	-

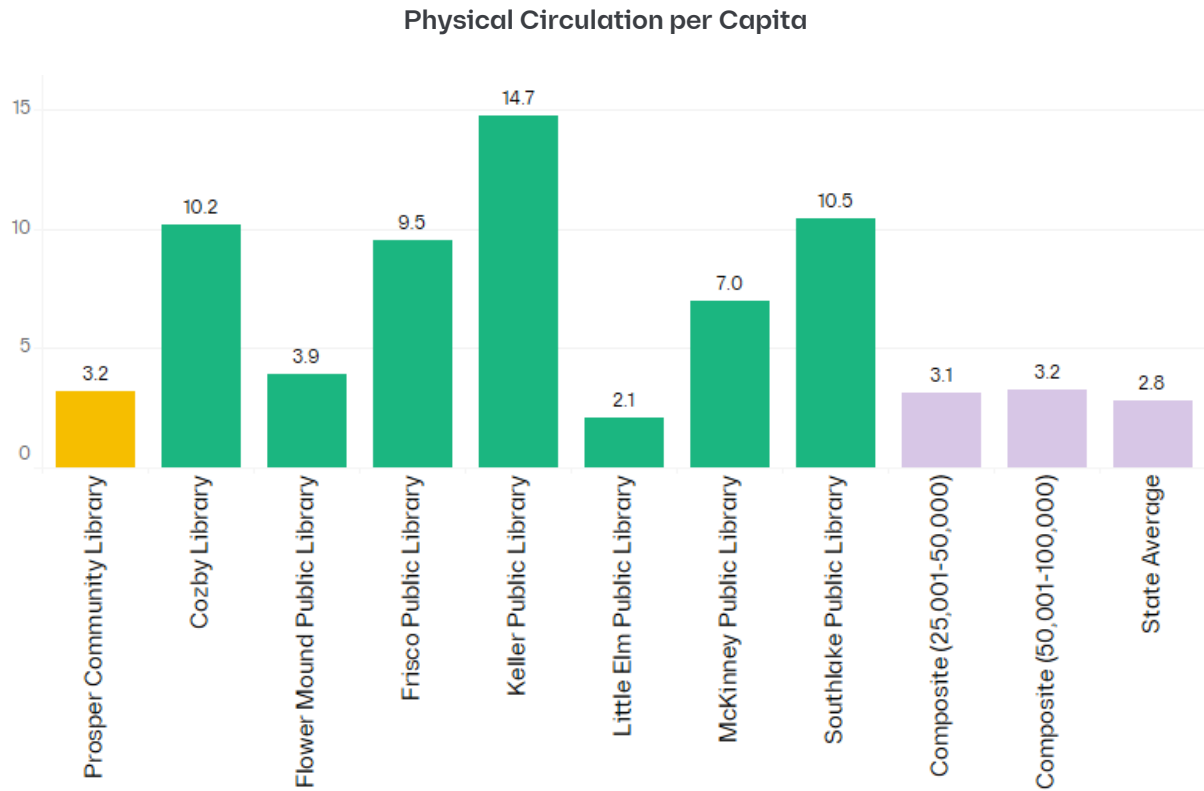


Collections

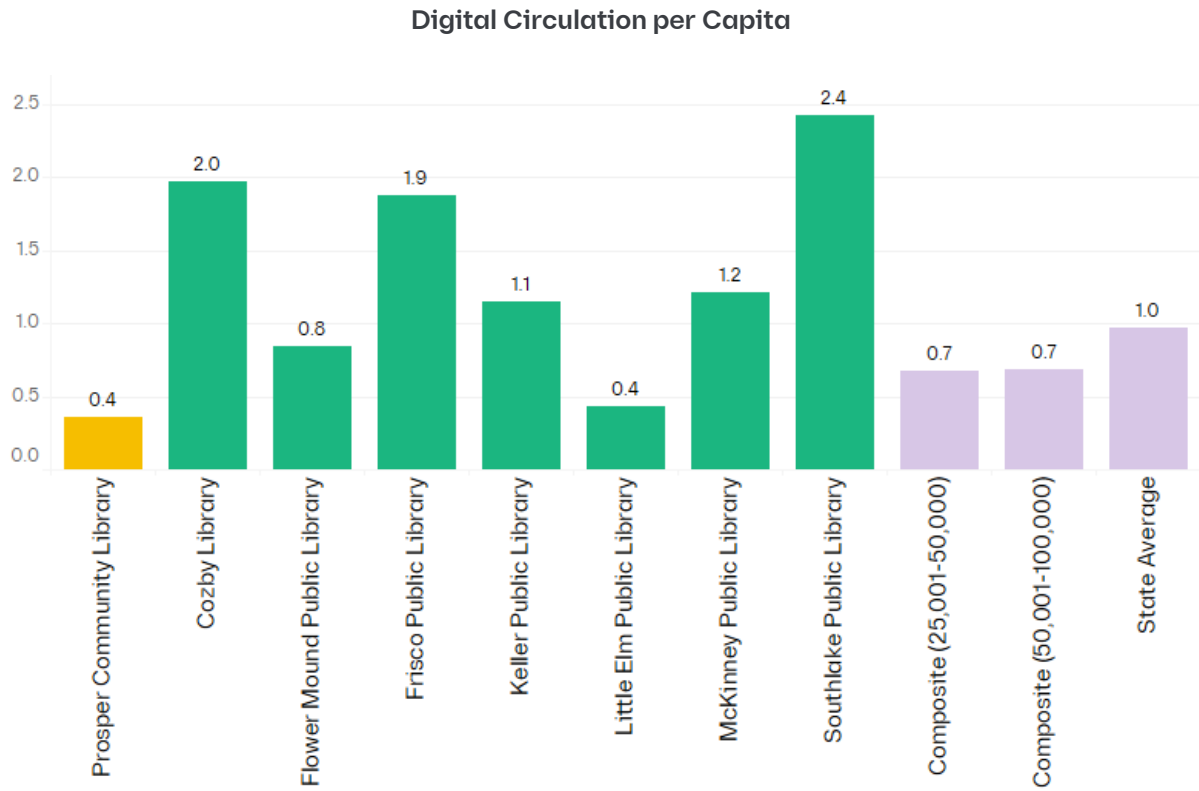
PCL has the opportunity to offer highly relevant, in-demand titles in a larger facility.



Prosper Community Library has a large physical book collection (5th per capita within the peer set). Total physical circulation per capita is lower than both composite libraries and the state average, and PCL ranks 8th within the peer set. 90.1% of PCL's total circulation is driven by its physical collection, which ranks 3rd in the peer set for physical items as percentage of total circulation, and above each composite library's 83% and the state average of 75%.

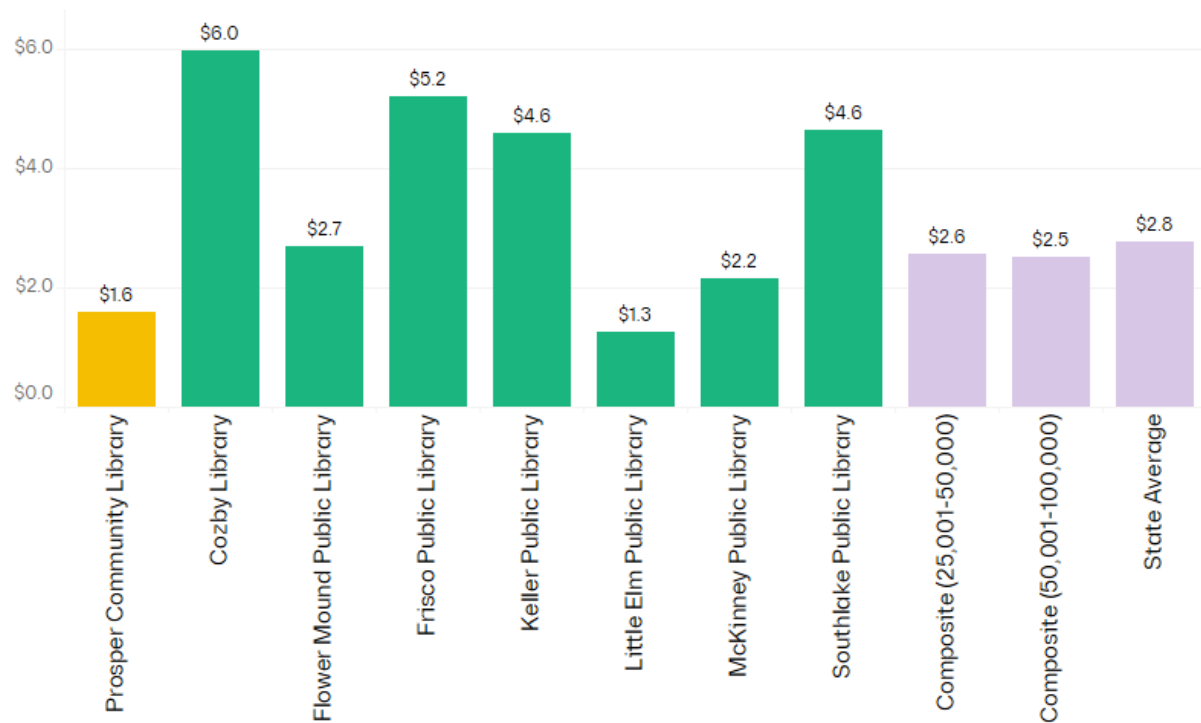


Low physical circulation numbers indicate an opportunity to improve access. PCL ranks 8th in circulation of physical items, circulation of digital units, and total circulation. Conversely, PCL is 4th in total circulation per material, suggesting that the materials on offer are relevant to the community's interests.



The Library's digital collection circulation and digital circulation per capita both rank 8th within the peer set. Increased promotion coupled with expansion of the digital holdings will bring the Library in line with public libraries in the region.

Collection Materials Expenditures per Capita



PCL's expenditures reflect its smaller collection size. It ranks 8th for total collection expenditures and collection expenditures as a percentage of total expenditures. It spends 41% less on collections than Composite Library (25,001–50,000), 69% less than Composite Library (50,001–100,000), and 62.7% less than the state average. Spending is low for the population size, with PCL ranking 7th in collection expenditures per capita.

All libraries in the peer set offer 77 Texshare databases to their communities. PCL offers half as many local-licensed databases as the peer set average. PCL users are less likely to successfully retrieve items from the databases (335 items) than the peer set average (56,988). Databases typically require a library card number or login to use or are hard to discover through a library website or catalog. PCL's low ranking indicates that its databases are harder to find and that more can be done to promote these resources and train patrons on their use. These numbers are affected by Prosper's smaller population than the peer set average.

Recommended areas for investigation:

- ◆ Can PCL explore multi-year funding sources to increase its materials budget and incrementally expand the collection over time?
- ◆ Along with insights from PCL's ILS, what data can the Library leverage to develop its collection according to community interests after the initial opening day collection purchase?
- ◆ What proportion of PCL's current collection is in storage, and how will making those items more accessible in the new facility increase circulation?

- ◆ Can PCL optimize online request forms and other public engagement to identify community priorities in expanding the collection?
- ◆ How do wait times for digital items affect circulation numbers across the peer set?
- ◆ How can the Library better market its existing digital offerings while planning for future expansion?

Collections Data

	Prosper Community Library	Cozby Library and Community Commons	Flower Mound Public Library	Frisco Public Library	Keller Public Library	Little Elm Public Library	McKinney Public Library System	Southlake Public Library	Mean	Median	Rank	Composite Library 25,001- 50,000	Composite Library 50,001- 100,000	State Average	National Average
PHYSICAL BOOK ITEMS	29,405	68,057	81,093	211,430	67,290	37,636	165,313	35,967	87,024	67,674	8	52,808	79,182	64,707	68,240
PHYSICAL BOOK ITEMS PER CAPITA*	0.9	1.6	0.8	1.0	1.5	0.5	0.8	1.2	1.1	1.5	5	1.5	1.2	1.3	2.2
PHYSICAL AUDIO ITEMS	326	1,456	2,913	746	3,567	1,068	7,233	712	2,253	1,262	8	2,161	3,879	2,917	4,037
PHYSICAL AUDIO ITEMS	1,069	5,535	6,332	21,991	10,189	7,045	18,920	3,866	9,368	6,689	8	4,669	7,617	6,400	6,977
PHYSICAL OTHER ITEMS	110	284	1,111	776	637	1,514	52	107	574	461	6.0	258	366	971.8	-
TOTAL PHYSICAL ITEMS*	30,910	75,332	91,449	234,943	81,683	47,263	191,518	40,652	99,219	78,508	8	59,896	91,043	74,996	79,254
EBOOKS	31,740	161,866	187,664	44,038	798,864	129,453	8,447	2,419	170,561	86,746	6	92,805	137,389	55,333	114,172
AUDIO DOWNLOADABLE UNITS	7,737	75,464	95,110	16,101	544,844	116,254	5,760	573	107,730	45,783	6	45,378	60,534	23,308	61,591
VIDEO DOWNLOADABLE UNITS	-	-	1,618	-	25,234	-	-	-	3,357	-	3	3,224	8,968	2,139	5,378
TOTAL DIGITAL UNITS*	39,477	237,330	284,392	60,139	1,368,942	245,707	14,207	2,992	281,648	148,735	6	141,407	206,891	80,780	181,140
LOCAL-LICENSED DATABASES	4	8	10	13	9	16	5	7	9	9	8	4	9	4	10
CONSORTIUM-LICENSED DATABASES	-	-	-	-	2	1	-	1	1	-	4	3	3	2	-
TOTAL NON-STATE DATABASES	4	8	10	13	11	17	5	8	10	9	8	7	10	6	-
TEXSHARE DATABASES	77	77	77	77	77	77	77	77	77	77	1	74	73	68	48
TOTAL CIRCULATING ITEMS*	70,387	312,662	375,841	295,082	1,450,625	292,970	205,725	43,644	380,867	294,026	7	201,303	297,934	155,776	260,394
COLLECTION TOTAL ITEMS	70,281	312,386	374,740	247,292	1,449,999	291,473	205,678	43,545	374,424	269,383	7	201,051	297,581	154,810	260,394
MATERIALS PER CAPITA*	2.1	7.4	3.5	1.1	31.9	4.1	1.0	1.4	4.6	6.1	5	5.8	4.4	3.0	8.3
PRINT MATERIAL EXPENDITURES	\$ 42,271	\$ 155,000	\$ 116,322	\$ 676,614	\$ 100,019	\$ 15,416	\$ 314,731	\$ 101,038	\$ 190,176	\$ 108,680	7	\$ 46,720	\$ 91,491	\$ 65,937	\$ 66,990
ELECTRONIC MATERIAL EXPENDITURES	\$ 9,550	\$ 67,409	\$ 156,389	\$ 458,593	\$ 69,060	\$ 71,954	\$ 100,667	\$ 38,350	\$ 121,497	\$ 70,507	8	\$ 30,767	\$ 64,377	\$ 62,907	\$ 55,995
OTHER MATERIAL EXPENDITURES	\$ 1,227	\$ 30,000	\$ 16,479	\$ 8,764	\$ 39,500	\$ 2,228	\$ 21,765	\$ 4,731	\$ 15,587	\$ 12,622	8	\$ 11,749	\$ 14,737	\$ 13,482	\$ 18,054
LOCAL EXPENDITURES ON COLLECTIONS	\$ 53,048	\$ 243,814	\$ 286,690	\$ 1,143,971	\$ 208,579	\$ 89,598	\$ 437,163	\$ 144,119	\$ 325,873	\$ 226,197	8	\$ 84,497	\$ 169,353	\$ 142,326	-
TOTAL COLLECTION MATERIAL EXPENDITURES	\$ 53,048	\$ 252,409	\$ 289,190	\$ 1,143,971	\$ 208,579	\$ 89,598	\$ 437,163	\$ 144,119	\$ 327,260	\$ 230,494	8	\$ 89,235	\$ 170,605	\$ 142,326	\$ 141,039
COLLECTION AS % OF TOTAL EXPENDITURES*	8.4%	12.5%	13.8%	16.9%	11.2%	14.2%	11.6%	15.3%	13.0%	13.2%	8	10.6%	11.3%	11.9%	11%
COLLECTION MATERIAL EXPENDITURES PER CAPITA*	1.6	6.0	2.7	5.2	4.6	1.3	2.2	4.6	4.1	5.3	7	2.6	2.5	2.8	4.5



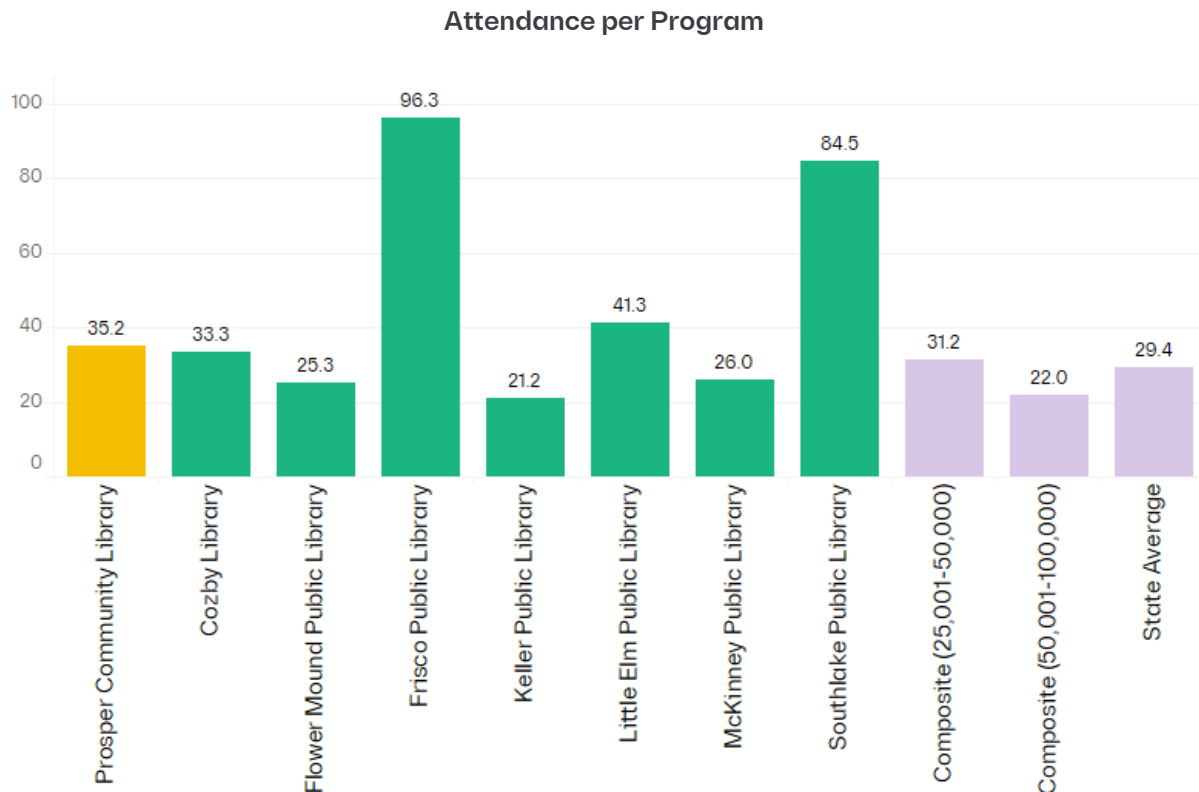
Circulation Data

	Prosper Community Library	Cozby Library and Community Commons	Flower Mound Public Library	Frisco Public Library	Keller Public Library	Little Elm Public Library	McKinney Public Library System	Southlake Public Library	Mean	Median	Rank	Composite Library 25,001- 50,000	Composite Library 50,001- 100,000	State Average	National Average
SUCCESSFUL RETREIVAL OF ELECTRONIC INFORMATION	335	178,519	15,133	90,877	6,185	9,133	92,064	63,660	56,988	39,397	8	17,176	18,502	42,891	44,609
ANNUAL CIRCULATION CHILDRENS PHYSICAL	95,672	289,866	289,888	1,615,629	469,387	103,577	1,032,682	212,407	513,639	289,877	8	61,207	117,549	80,611	54,542
CIRCULATION CHILDRENS PHYSICAL PER CAPITA*	2.9	6.9	2.7	7.4	10.3	1.5	5.1	6.8	6.4	6.6	6	1.8	1.7	1.6	1.7
PHYSICAL CIRCULATION ALL OTHER AGES	10,848	137,586	134,542	466,667	192,367	44,056	378,577	112,500	184,643	136,064	8	46,721	99,297	63,636	-
CIRCULATION OF OTHER PHYSICAL ITEMS	336	3,129	813	11,554	7,073	596	693	815	3,126	814	8	789	2,343	888	-
TOTAL PHYSICAL CIRCULATION*	106,856	430,581	425,243	2,093,850	668,827	148,229	1,411,952	325,722	701,408	427,912	8	108,716	219,188	145,135	164,186
PHYSICAL CIRCULATION PER CAPITA*	3.2	10.2	3.9	9.5	14.7	2.1	7.0	10.5	8.7	9.8	7	3.1	3.2	2.8	5.2
TOTAL PHYSICAL CIRULATION AS % OF TOTAL CIRCULATION	90.1%	84.3%	82.6%	90.4%	93.7%	83.1%	85.3%	81.4%	86.4%	84.8%	3	82.7%	83.2%	74.8%	78.6%
CIRCULATION PER PHYSICAL MATERIAL*	3.5	5.7	4.7	8.9	8.2	3.1	7.4	8.0	6.2	6.5	7	1.8	2.4	1.9	2.1
ANNUAL CIRCULATION CHILDRENS DIGITAL	1,454	21,374	3,245	62,793	11,402	2,648	-	14,026	14,618	7,324	7	4,275	4,750	7,140	-
CIRCULATION CHILDRENS DIGITAL PER CAPITA*	0.0	0.5	0.0	0.3	0.3	0.0	-	0.5	0.2	0.2	5	0.1	0.1	0.1	-
DIGITAL CIRCULATION ALL OTHER AGES	10,634	61,956	87,336	347,816	40,755	27,987	244,366	61,133	110,248	61,545	8	19,218	41,786	42,543	-
TOTAL DIGITAL CIRCULATION*	12,088	83,330	90,581	410,609	52,157	30,635	244,366	75,159	124,866	79,245	8	23,493	46,536	49,683	47,158
DIGITAL CIRCULATION PER CAPITA*	0.4	2.0	0.8	1.9	1.1	0.4	1.2	2.4	1.5	1.8	8	0.7	0.7	1.0	1.5
TOTAL DIGITAL CIRULATION AS % OF TOTAL CIRCULATION	10.2%	16.3%	17.6%	17.7%	7.3%	17.2%	14.8%	18.8%	15.0%	16.7%	7	17.9%	17.7%	25.6%	22.6%
CIRCULATION PER DIGITAL MATERIAL*	0.3	0.4	0.3	6.8	0.0	0.1	17.2	25.1	6.3	0.3	6	0.2	0.2	0.6	0.3
TOTAL CIRCULATION	118,608	510,782	515,011	2,316,975	713,911	178,268	1,655,625	400,066	801,156	512,897	8	131,421	263,382	193,930	208,795
TOTAL CIRCULATION PER MATERIAL*	1.7	1.6	1.4	7.9	0.5	0.6	8.0	9.2	3.9	1.7	4	0.7	0.9	1.2	0.8
ILL RECEIVED	6	2,706	294	2,559	945	1,297	3,831	365	1,500	1,121	8	522	1,288	845	8,564
ILL PROVIDED	17	539	103	347	956	201	600	13	347	274	7	388	1,216	799	9,194

Programming

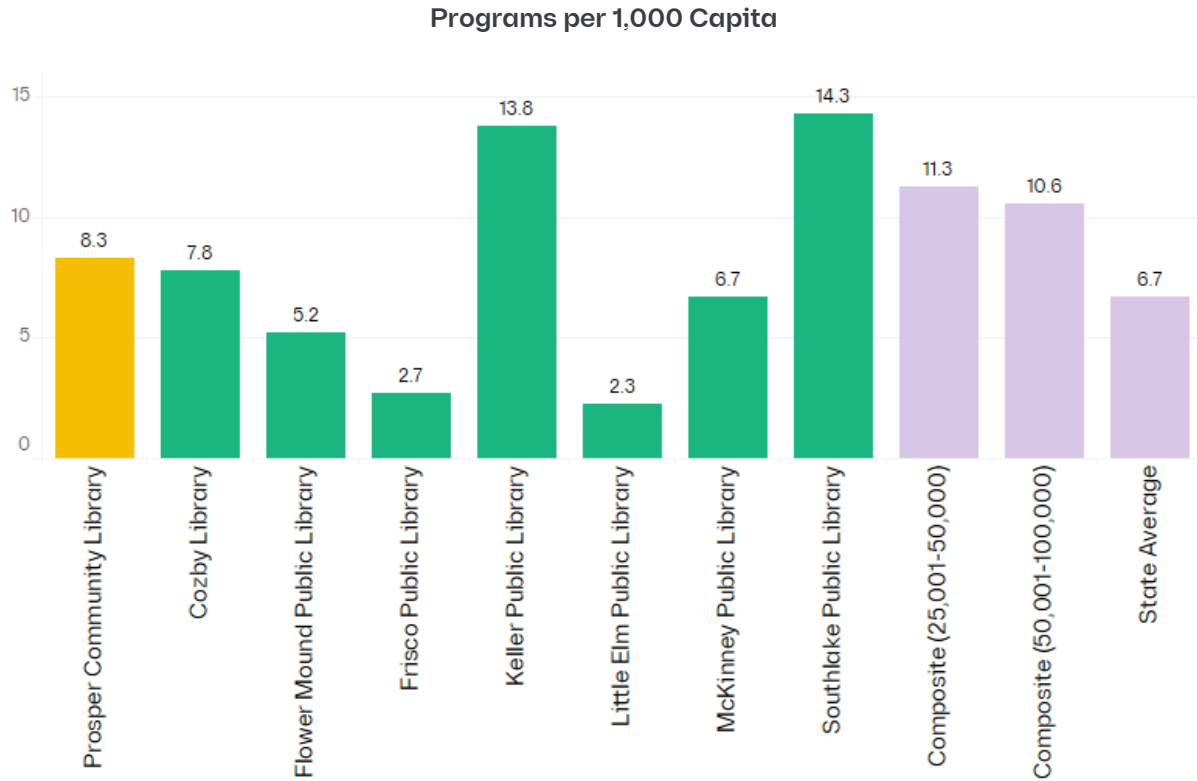
PCL offers fewer programs than the peer set, but attendance per program is high, indicating relevance and pent-up demand.

The IMLS defines a program as “any planned event which introduces the group attending to any of the broad range of library services or activities or which directly provides information to participants.” The data in the Texas Public Libraries Annual Report is reported to IMLS and follows the same definitions. Programs may cover use of the library, library services, or library tours. Programs may also provide cultural, recreational, or educational information, often designed to meet a specific social need. The intention is to gather data on group activities instead of passive programs, such as the distribution of coloring sheets.

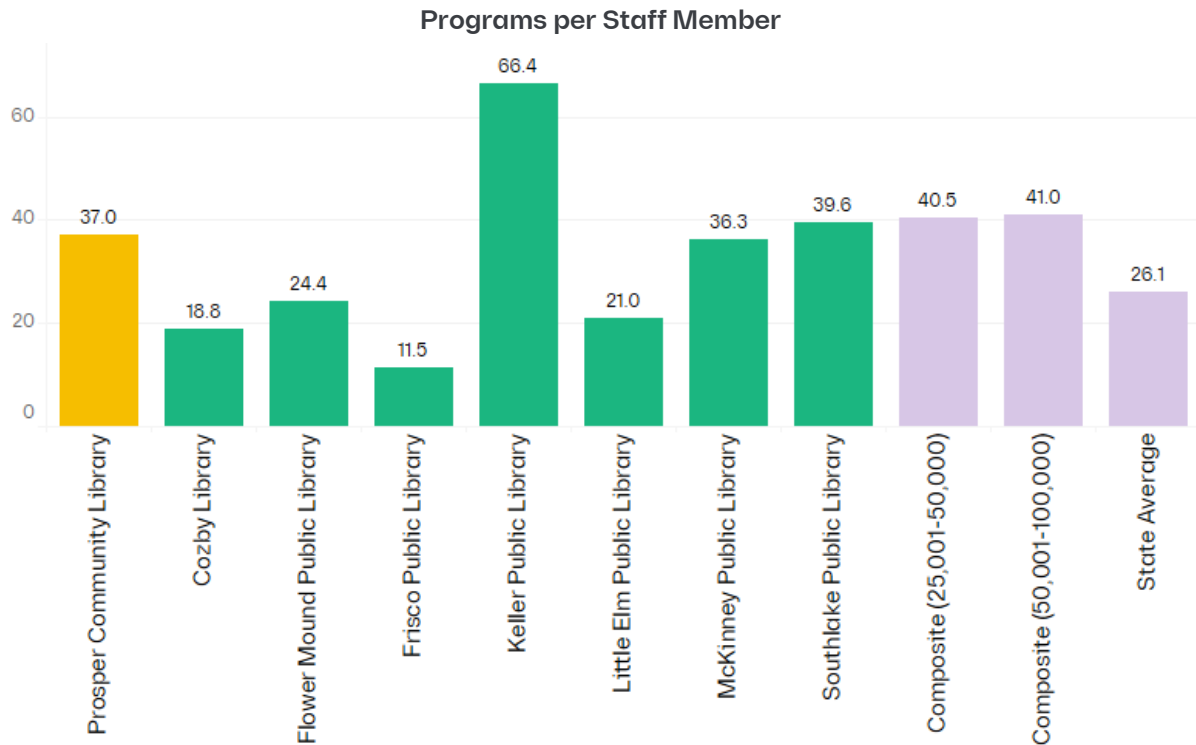


PCL may not offer as many programs as its peers, but its programs are well-received by the community. PCL ranks 7th for total programs and total attendance but is 4th in attendance per program. In particular, it is 4th in attendance per YA program, and 5th in both attendance per general interest program, and attendance per youth (ages 6-11) program. It offers more programs per 1,000 capita (8.3) than the peer set average (7.6) and the state average (6.7) but fewer than offered by each composite library (11.3 and 10.6, respectively). PCL’s staff seems to be in tune with community needs, accommodating of residents’ schedules, and effectively

advertising programs. As PCL experiments with larger events such as author visits, children's entertainers, or Comic-Con style festivals, its overall attendance numbers may grow.



PCL has invested more in asynchronous programs than its peer set, ranking 1st in programs and views. At 3rd for views per program, more could be done to promote asynchronous offerings and highlight its YouTube and Facebook channels. For comparison, the average views per program throughout the state is 201.1, compared to PCL's 17.5.



PCL spends less per program, ranking 6th for staff expenditures per program. It spends 24.6% less than the peer set median but 28% more than the Composite Library (25,001–50,000) and 25% more than Composite Library (50,001–100,000). PCL employees are busy, offering 37.0 programs per staff member. Working with partner agencies and volunteers can shift some programming duties from PCL staff, further driving down the cost per program. These partners can also cross-promote events, potentially increasing attendance.

Recommended areas for investigation:

- ◆ Given the popularity of off-site programs, how will the Library determined which will continue and which will be brought “in-house?”
- ◆ What size of spaces are needed in the new facility to accommodate existing and new in-house programs?
- ◆ How can PCL capitalize on the early interest in asynchronous events and incorporate the needed technology in new programming space?
- ◆ Using Project Outcome and other tools, how will PCL determine the public’s interest in small, personalized workshops or large events like how-to festivals or Comic-Con-style gatherings?

Programming Data

	Prosper Community Library	Cozby Library and Community Commons	Flower Mound Public Library	Frisco Public Library	Keller Public Library	Little Elm Public Library	McKinney Public Library System	Southlake Public Library	Mean	Median	Rank	Composite Library 25,001-50,000	Composite Library 50,001-100,000	State Average	National Average
EARLY CHILDHOOD SYNCHRONOUS PROGRAMS	126	163	353	295	190	94	447	275	243	233	7	140	164	98	-
EARLY CHILDHOOD SYNCHRONOUS ATTENDANCE	3,570	6,047	7,654	31,052	7,940	5,995	12,704	14,391	11,169	7,797	8	3,713	5,534	2,644	-
ATTENDANCE PER EARLY CHILDHOOD SYNCHRONOUS PROGRAM*	28.3	37.1	21.7	105.3	41.8	63.8	28.4	52.3	47.3	39.4	7	26.4	33.7	27.1	-
YOUTH SYNCHRONOUS PROGRAMS	24	37	76	98	22	-	138	108	63	57	6	69	84	72	113
YOUTH SYNCHRONOUS ATTENDANCE	820	1,955	3,944	17,707	427	-	3,298	19,415	5,946	2,627	6	2,896	2,777	2,055	2,481
ATTENDANCE PER YOUTH SYNCHRONOUS PROGRAMS*	34.2	52.8	51.9	180.7	19.4	-	23.9	179.8	77.5	51.9	5	41.8	33.1	28.7	22.0
YA SYNCHRONOUS PROGRAMS	8	38	47	41	100	16	249	6	63	40	7	30	55	33	23
YA SYNCHRONOUS ATTENDANCE	157	463	1,374	887	1,154	203	3,710	248	1,025	675	8	481	708	536	284
ATTENDANCE PER YA SYNCHRONOUS PROGRAMS*	19.6	12.2	29.2	21.6	11.5	12.7	14.9	41.3	20.4	17.3	4	15.8	12.8	16.1	12.3
ADULT SYNCHRONOUS PROGRAMS	17	81	83	124	290	52	304	54	126	82	8	117	225	98	60
ADULT SYNCHRONOUS ATTENDANCE	145	752	1,177	3,346	2,847	498	1,334	3,383	1,685	1,256	8	1,493	3,199	1,478	980
ATTENDANCE PER ADULT SYNCHRONOUS PROGRAMS*	8.5	9.3	14.2	27.0	9.8	9.6	4.4	62.6	18.2	9.7	7	12.8	14.2	15.1	15.3
GENERAL INTEREST SYNCHRONOUS PROGRAMS	84	9	2	21	18	-	224	2	45	14	2	21	178	35	178
GENERAL INTEREST SYNCHRONOUS ATTENDANCE	4,768	1,648	67	4,018	620	-	14,320	185	3,203	1,134	2	2,018	2,069	1,353	11,869
ATTENDANCE PER GENERAL INTEREST SYNCHRONOUS PROGRAMS*	56.8	183.1	33.5	191.3	34.4	-	63.9	92.5	93.7	63.9	5	96.4	11.6	38.5	66.7
TOTAL SYNCHRONOUS PROGRAMS	259	328	561	579	620	162	1,362	445	540	503	7	378	706	335	225
TOTAL SYNCHRONOUS ATTENDANCE	9,460	10,865	14,216	57,010	12,988	6,696	35,366	37,622	23,028	13,602	7	10,601	14,287	8,066	4,607
TOTAL ASYNCHRONOUS PROGRAMS	19	1	-	15	6	-	-	-	5	1	1	15	11	10	117
TOTAL ASYNCHRONOUS VIEWS	332	90	-	203	281	-	-	-	113	45	1	1,666	1,468	2,105	4,745
VIEWS PER ASYNCHRONOUS PROGRAM*	17.5	90.0	-	14	46.8	-	-	-	22.1	-	3	111.3	131.4	201.1	40.6
TOTAL PROGRAMS*	278	329	561	594	626	162	1,362	445	545	503	7	393	717	346	342
TOTAL ATTENDANCE*	9,792	10,955	14,216	57,213	13,269	6,696	35,366	37,622	23,141	13,743	7	12,267	15,755	10,172	9,352
ATTENDANCE PER PROGRAM*	35.2	33.3	25.3	96.3	21.2	41.3	26.0	84.5	45.4	34.3	4	31.2	22.0	29.4	27.3
PROGRAMS PER 1000 CAPITA*	8.3	7.8	5.2	2.7	13.8	2.3	6.7	14.3	7.6	7.3	3	11.3	10.6	6.7	7.2
STAFF EXPENDITURES PER PROGRAM*	\$ 1,865.97	\$ 4,717.36	\$ 2,742.69	\$ 8,133.49	\$ 1,685.45	\$ 2,977.77	\$ 2,209.46	\$ 1,516.73	\$ 3,231.12	\$ 2,476.08	6	\$ 1,454.26	\$ 1,496.60	\$ 2,340.04	\$ 4,042.00
PROGRAMS PER STAFF*	37.0	18.8	24.4	11.5	66.4	21.0	35.3	39.6	31.9	30.4	3	40.5	41.0	26.1	15.8

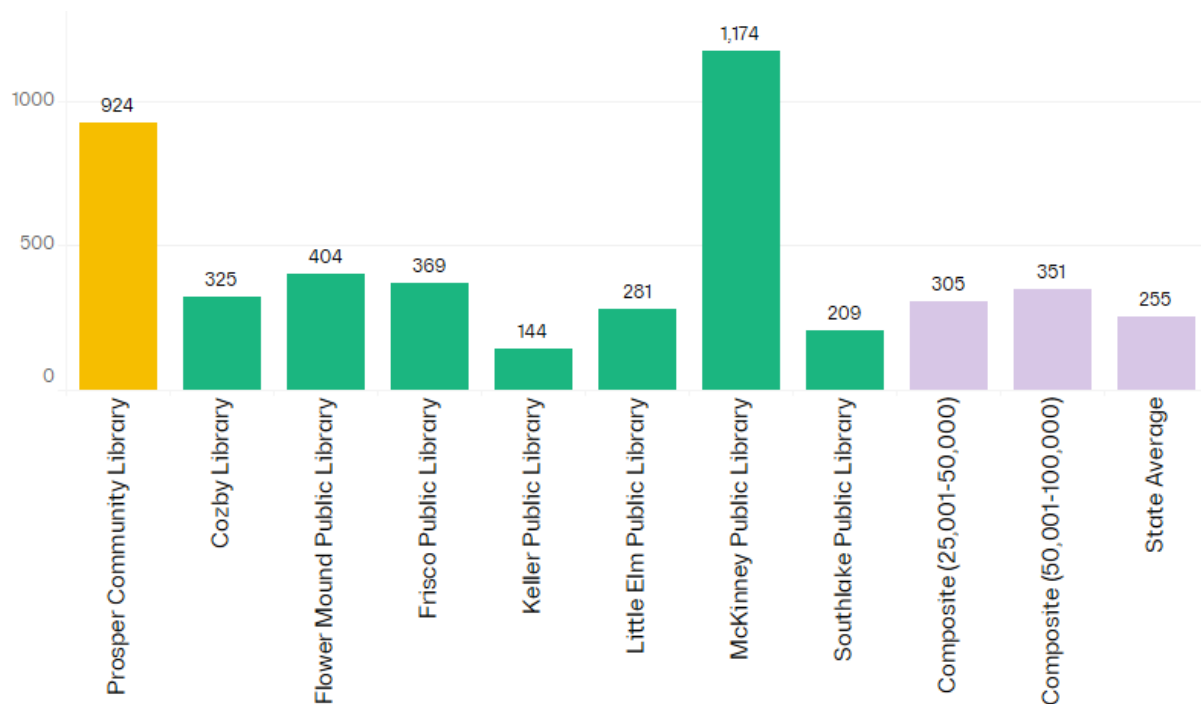


Technology

Public computers and the wireless network are in high demand. PCL's website is a go-to source for information about the Library.

PCL ranks 8th for number of public computers but 2nd for uses per computer and 3rd in computer uses per capita. Peer libraries are on average larger than PCL, with more room for public computers and more spaces for users to charge their own devices while working in the building. PCL's computer uses per capita are similar to the peer set average, the uses per computer are higher than the peer set average and 203% (25,001–50,000) and 163% (50,001–100,000) higher than that of the Composite Libraries. With a high demand per terminal, PCL can consider adding more computers to reduce wait time or lengthen sessions.

Uses per Computer



Four peer libraries did not report any Wi-Fi sessions. Among those who did provide a figure, PCL ranks last for wireless sessions and 3rd of four for wireless session per capita. Peers with more wireless sessions may better advertise their Wi-Fi ability. Other considerations include the strength of the wireless network throughout the building and grounds, and ease of connecting to the network.

PCL ranks 5th for website visits and 3rd for website visits per capita. PCL outperforms Composite Library (25,001–50,000) on website visits by 20.3% but trails Composite Library

(50,001–100,000) by 31%. These measurements indicate that awareness of PCL's digital presence is high.

Recommended areas for investigation:

- ◆ What specialized software and hardware can PCL provide to users that they do not have ready access to at home? How can PCL support local curriculum goals with its technology offerings?
- ◆ Is the wireless network strong enough to meet demand? Will the network be available throughout the new building and outdoor spaces?
- ◆ Does PCL regularly measure user satisfaction with its website? Can improvements to the website drive circulation and program attendance?

Technology Data

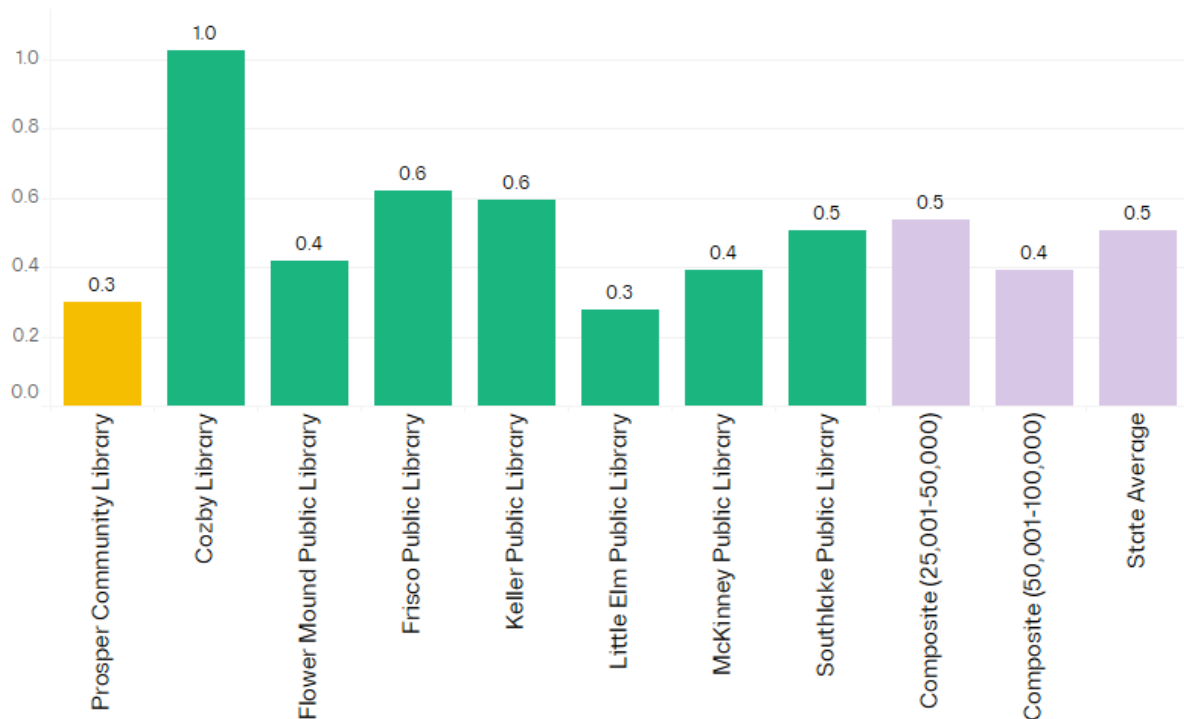
	Prosper Community Library	Cozby Library and Community Commons	Flower Mound Public Library	Frisco Public Library	Keller Public Library	Little Elm Public Library	McKinney Public Library System	Southlake Public Library	Mean	Median	Rank	Composite Library 25,001- 50,000	Composite Library 50,001- 100,000	State Average	National Average
PUBLIC COMPUTERS	6	20	17	114	26	24	35	10	32	22	8	23	33	33	24
PUBLIC COMPUTER USES	5,544	6,492	6,868	42,018	3,747	6,748	41,091	2,085	14,324	6,620	6	6,858	11,498	8,419	5,394
POPULATION PER COMPUTER*	5,559	2,111	6,338	1,926	1,746	2,974	5,791	3,111	3,695	3,042	3	1,545	2,074	1,555	1,304
USES PER COMPUTER*	924	325	404	369	144	281	1,174	209	479	347	2	305	351	255	223
COMPUTERS USES PER CAPITA*	0.2	0.2	0.1	0.2	0.1	0.1	0.2	0.1	0.1	0.1	3	0.2	0.2	0.2	0.2
WIFI SESSIONS	6,930	119,844	-	-	17,403	9,336	-	-	19,189	3,465	4	28,796	17,244	45,632	25,517
WIFI SESSIONS PER CAPITA*	0.2	2.8	-	-	0.4	0.1	-	-	0.4	0.1	3	0.8	0.3	0.9	0.8
WEBSITE VISITS	46,981	33,673	148,282	1,399,245	130,410	34,163	195,888	40,417	253,632	88,696	5	39,059	68,125	118,748	102,884
WEBSITE VISITS PER CAPITA*	1.4	0.8	1.4	6.4	2.9	0.5	1.0	1.3	1.9	1.3	3	1.1	1.0	2.3	3.3

Use

PCL has the opportunity to increase the number of cardholders and visitors.

PCL is near the bottom of the peer set in registered users (8th) and registered users per capita (7th). PCL is behind the peer set average (79% fewer registered users), and each composite library (47% and 62% fewer, respectively) PCL's registered users per capita (0.3) is in line with the peer set average (0.5) and the composite libraries (0.5 and 0.4). It is 2nd in expenditures per visit. As visits normalize after the pandemic, that cost per visit will decrease.

Registered Users per Capita



Even though PCL ranks last in annual hours open, it is only open 26% fewer hours than the peer set average and is closer to both composite libraries (11% and 21%, respectively). This data, primarily from 2022, may reflect oddities in open hours at specific locations due to the COVID-19 pandemic. PCL ranks high in hours open per staff (3rd), indicating that the Library is near capacity at current staffing levels and facility size.

The Texas Library Association updated its Public Library Standards in 2014.

Population size	Enhanced	Exceptional
25,000-49,999	50 hours per week	55 hours per week
50,000-99,999	60 hours per week	64 hours per week

Three of the peers who currently serve populations between 25,000-49,999 meet the “exceptional” standard of 55 hours (Cozby, Little Elm, and Southlake) while Keller exceeds the enhanced standard with 54 hours per week. The three peers currently serving populations between 50,000-99,999 (Flower Mound, Frisco, and McKinney) all meet or exceed the “exceptional” standard. At 40 hours per week, Prosper is below the “enhanced” standard threshold.

Ranked 7th, PCL recorded fewer reference transactions than the peer set, with 85% fewer than the peer set average and 51% (25,001–50,000) and 64% (50,001–100,000) fewer than the composite libraries. PCL should confirm that it is collecting reference data correctly across all departments. Users may not know where or how to ask questions of staff.

Recommended areas for investigation:

- ◆ How can PCL build capacity (staffing, technology, maintenance, volunteers) to achieve the exemplary standard of 64 hours a week for the expected build-out population?
- ◆ How can PCL expand awareness of its relevant, responsive offerings to increase the number of cardholders? What events, displays, and services will attract both users and non-users?
- ◆ Is it easy for users to ask reference questions in person or via chat and text? Are library employees easily identifiable, and is the chat icon easily identifiable on the website? Do all staff record reference transactions correctly and thoroughly?

Use Data

	Prosper Community Library	Cozby Library and Community Commons	Flower Mound Public Library	Frisco Public Library	Keller Public Library	Little Elm Public Library	McKinney Public Library System	Southlake Public Library	Mean	Median	Rank	Composite Library 25,001- 50,000	Composite Library 50,001- 100,000	State Average	National Average
ANNUAL WEEKS OPEN	52	52	52	40	52	52	50	50	50	52	1	51	51	2,061	-
ANNUAL HOURS OPEN	2,125	3,456	3,215	2,702	2,786	2,864	3,162	2,636	2,868	2,825	8	2,392	2,703	50	2,903
UNDUPLICATED HOURS OPEN	40	70	64	73	54	57	64	56	60	61	8	50	57	43	-
WEEKLY HOURS OPEN	40	70	64	72	54	57	64	56	60	61	8	50	57	44	-
SUMMER WEEKLY HOURS	40	70	64	70	54	57	64	56	59	61	8	50	57	43	-
ANNUAL VISITS	48,514	180,657	213,170	890,422	134,804	99,597	347,195	94,573	243,617	157,731	8	63,751	123,679	69,333	46,395
VISITS PER CAPITA*	1.5	4.3	2.0	3.8	3.0	1.4	1.7	3.0	2.6	2.5	7	1.8	1.8	1.3	1.5
VISITS PER HOURS OPEN*	22.8	52.3	66.3	307.3	48.4	34.8	109.8	35.9	84.7	50.3	8	26.7	45.8	1,392.3	16.0
HOURS OPEN PER STAFF*	282.9	197.5	139.8	52.3	295.6	371.9	84.3	234.3	207.3	215.9	3	246.9	154.4	3.8	203.5
EXPENDITURES PER VISIT*	\$ 13.03	\$ 11.14	\$ 9.80	\$ 8.17	\$ 13.82	\$ 6.34	\$ 10.84	\$ 9.99	\$ 9.60	\$ 12.28	2	\$ 13.18	\$ 12.19	\$ 17.18	\$ 28.69
REFERENCE TRANSACTIONS	6,240	24,296	30,994	142,778	17,679	9,731	106,298	920	42,367	20,988	7	12,768	17,434	14,176	11,177
REGISTERED USERS	9,985	43,325	44,965	136,376	26,948	19,683	79,498	15,769	47,069	35,137	8	18,674	26,467	26,079	14,983
REISTERED USERS PER CAPITA*	0.3	1.0	0.4	0.6	0.6	0.3	0.4	0.5	0.5	0	7	0.5	0.4	0.5	0.5





APPENDIX D | TECHNOLOGY REPORT



PROSPER COMMUNITY LIBRARY TECHNOLOGY PROGRAM

PRESENTED TO:
Maureen Arndt
Principal
720 Design

December 12th, 2024

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INTRODUCTION

The Town of Prosper is beginning a project to meet the growing needs of its citizens. The intent is to create a building that stands out in the community with the useful and functional spaces in a timeless, versatile, and adaptable design. Overall, the design shall take advantage of flexibility and functionality while maintaining an intimate and welcoming feel.

NV5 Engineering and Technology, Inc. has been invited to join the design team assembled by 720 Design to design technology systems to ensure they live up to the current and future needs of the Town and the Library's patrons.

The following narrative identifies the preliminary functional requirements for the anticipated technology systems. These recommendations have been developed from our meetings with representatives from the Town and 720 Design and through NV5 Engineering and Technology's experience with other projects of similar size and scope.

This program is meant to be utilized as a decision-making tool for planning purposes and has been prepared to support the Planning Assumptions expressed within. The functional requirements section identifies the key system components only and is not meant to substitute as a complete systems design.

ABOUT THIS PROGRAM

This Technology Program is organized by categories referenced from the architectural program. This section will provide descriptions of the audiovisual functionality for each space type.

At the end of each of the space types is a short listing of "Space Planning" comments which are primarily intended for the design team and "Discussion Points," an interactive component which will require additional input from the Town. Neither listing is intended to be exhaustive. At some point in the planning process, we will need further input on the questions or options raised here.

The bulk of the document is comprised of discussions of the audiovisual systems for specific spaces, followed by recommendations for the Building-Wide Audiovisual Systems, Information Technology, and Security systems. Brief discussions of Design Team and Owner considerations as related to the technology systems are included.

OWNER FEEDBACK AND COMMENTARY

This Technology Program expresses our interpretation of what we gathered from meetings and interviews to date, plus results of prior work by the design team. Where there are no specific directions provided, we will be guided by our experience, focusing on innovative applications which will enrich and strengthen the citizen’s experience.

We will rely on feedback and commentary from the design team and Town of Prosper IT team and Library groups to confirm this document and allow us to move on to the next design phase of the project.

DESIGN PRINCIPLES

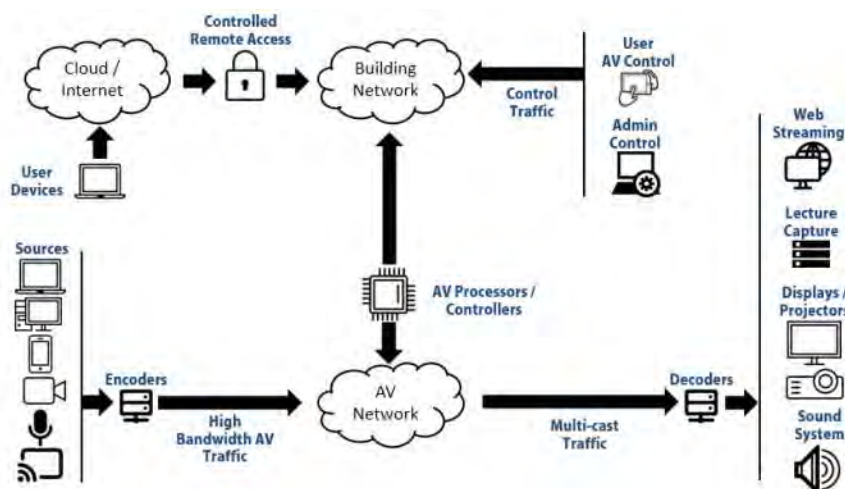
Technology systems for today’s building projects should adhere to basic principles of prudent planning: flexibility, adaptability, scalability, supportability and so forth. In addition, these more unique principles should guide any future planning and design of the systems:

Enterprise Architecture	Technology solutions should be designed from the perspective of an enterprise-wide architecture. With an approach offering scalable centralized management and support.
Ease of Operation	Whenever possible, technology systems should require a minimal amount of training to operate effectively. A “universal” user interface for technology systems control is necessary. This facilitates user training, technical support, and long-term systems evolution.
Cost Effectiveness	The solution will use resources effectively, efficiently, and strategically.
Adaptability	The facility should enable the systems and spaces to adapt over time in response to changes in technologies. We refer to the short-term changes to the systems and spaces as “flexibility” and the long-term changes to the systems and spaces as “adaptability.”
Scalability	The solutions must meet the long-term needs of the library. Since technology integration is integral to the teaching and learning process, the long-term needs of both the staff and the library’s patrons will be increasingly reliant on scalable solutions.
Full Infrastructure	The project should strive to identify and plan for technology systems that meet the full functionality wishes of the users. If a full audiovisual system installation is not feasible it is recommended that the infrastructure to support the full program be included during construction.

OWNER CONSIDERATIONS

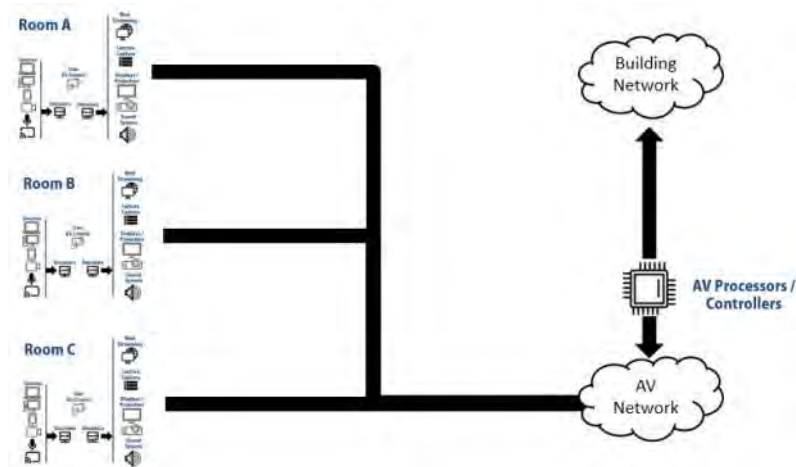
IP-BASED AUDIOVISUAL TRANSPORT

The audiovisual industry has almost completed the transition from the traditional HDBaseT transport of audio and video signal to an IP-Based system. As with HDBaseT, each source and display connect to a wall plate or connection point within the room, but instead of a variety of wire types and the need for multiple pieces of equipment located within the room, behind the connection point is a small encoder and decoder that connects to category cable (typically CAT6A). In this type of system, each source's audio/video signal is converted to an IP Ethernet network stream, which is then decoded at each display. Just like a typical network design, all encoders and decoders connect to Ethernet switches in centralized data rooms. A central controller switches the sources audio/video signals to displays by routing the desired encoder's IP address to the display's decoder IP address.



A major benefit to IP-based transport is its scalability. All processing and switching equipment are centralized and only the encoders and decoders or a smaller amount of equipment are in the rooms. If an extra source is needed, you simply add another encoder and connect it to a switch on the network. Since networks are scalable by design, the system can grow along with changing needs in a way that is very familiar to your Information Technology team.

Another significant benefit to a centralized IP system is it natively allows routing of any source to any display on the entire network – not just routing of the sources and displays to which the individual switch is connected. This allows the ultimate flexibility within the building making it possible to have the source from any room to be seen on any connected display.



AUDIOVISUAL REQUIREMENTS

LOBBY



Free Standing Video Wall

The library lobby serves as the initial gateway for visitors, setting the tone for their entire experience. The Lobby should greet visitors and highlights library programs, activities, and events. There are many ways to accomplish this including the deployment of technology. An interactive digital display is an excellent way to conveying information including library offerings, wayfinding and visitor assistance. Interactivity functions will be planned in a manner that allows easy cleaning and sanitizing. Source device inputs for the display will be a digital signage player and small form factor computer. Simplified control for the system will be available to staff via the web based digital signage interface.

With the open nature of the Lobby, a freestanding showcase display would be a recommended approach. This freestanding display would also allow the Lobby to be an overflow space for event gathering. The display could be a video wall, or a single large interactive display built into architectural elements.

Space Planning:

- ♦ Recess the digital signage flat panel display and mount to meet ADA protrusion requirements and provide a clean installation. Coordinate interactive displays and mounts to meet ADA height and reach requirements.
- ♦ Specialty wall back box and/or floor boxes will be used; general coordination will be required.
- ♦ Control architectural and ambient lighting to minimize glare/reflection onto the display.



Single Interactive Display Built into Architecture

- ♦ Plan for space in central IT location to support source & control equipment.

Discussion Points:

- ♦ Should this be an opportunity for a "Showcase" display like a video wall/large factor direct view LED.
- ♦ Confirm if touch screen capability is needed for interactive applications such as wayfinding for digital signage.
- ♦ Confirm if digital signage media player is wall mounted behind the flat panel display, provided as an open slot computer as part of the flat panel display, of located remotely and connected via network distribution.
- ♦ Confirm that the flat panel displays are to be mounted in landscape or portrait orientation.
- ♦ Coordinate programming and content with other third-party vendors and developers.

MULTIPURPOSE /CLASSROOM



The multipurpose room is planned to provide a meeting space for various meetings and events with multiple seating configuration including Story Time for children.

The audiovisual and lighting systems for this space will be controllable from a room touch panel and adjust and adapt automatically based on the room

configuration and program.

Because these spaces will often be used by the public, the user interface for the audiovisual system should be very simple and intuitive. In-room functionality should be as simple as system on/off controls, volume adjustment, and source selection. More advanced controls will be accessible by library staff only through a separate control interface.

The main presentation display will most likely be a large format direct view LED but projector/screen combo may also be used depending on final architectural approach.

Each room will have multiple floor boxes that have power and technology (data/AV) to support a lectern, simple tech cart or direct connection of a laptop/source.

Source device options will be kept minimal to ease operation with hardwired and wireless video connections in each room. A complement of wired and wireless microphones will be included to support multiple presenters or panel discussions. Program source audio and speech reinforcement will likely be played through speakers located overhead in the ceiling to allow the most flexibility and complete coverage of the seating area. Given the size of the space, the room will also be equipped with a hearing-assist system, in line with the most current ADA standards for accessible design.

Space Planning:

- ♦ Proper lighting for video use will be critical.
- ♦ Coordination of direct view LED locations to optimize viewing angles.
- ♦ Specialty floor and wall boxes will be used; general coordination is required.

STORYTIME ROOM



The Storytime Room will be a highly flexible space that can serve as a story time area, multi-generational activities, and light performance for music and movies. Some events will require presentation capabilities while others will not. As such, the audiovisual system should be able to “go away” when not needed.

The audiovisual system should consist of a ceiling mounted projector with an electronic ceiling mounted projection screen for when large groups are present, or the program dictates the

need. A location to allow either a portable lectern with a computer, a simple laptop, or other portable source equipment to be connected is provided. The sound system can support program audio and voice only is typically installed with the option of more robust audio for either a small musical performance or a movie provided. Provisions either installed or portable to be able to capture and stream story time or other family focused events should be planned

A small, wall mounted touch panel serves as the interface for controlling the audiovisual system and lighting. A room schedule panel or dedicated digital signage directly outside the space can show occupancy and event information. When hearing assistance is required, a portable ADA 2010 compliant system can be utilized.

Additionally, when a Comfort Room, is programmatically connected with this space, a small flat panel screen and ceiling mounted speaker attached to a local volume control could be installed to allow a parent or guardian to retire to this location and still be able to view/hear the event in the Storytime/Activity space.

Space Planning:

- ◆ Proper lighting for video use will be critical.
- ◆ Coordination of projection screen to optimize viewing angles.
- ◆ Specialty floor and wall boxes will be used; general coordination is required.

TEEN GAMING SPACE



The Teen Seating Room is designed to be open and completely flexible in programming. Wall mounted displays or portable huddle/gaming carts can be planned for this space.

These displays/huddle carts allow for simple presentations via a connected laptop. A huddle cart typically has a 65" flat panel display on a mobile stand. Audio is presented via a sound bar with an integrated camera and microphone. This sound bar allows, via web-based applications, a session to not only be recorded or streamed live as the need arise. Additionally, these carts would allow the connection of a gaming stations like PlayStation, X-Box, etc.

When hearing assistance is required, a portable ADA 2010 compliant system will be utilized.



Space Planning:

- ♦ Specialty floor and wall boxes will be used; general coordination is required.
- ♦ Green or other type of chroma screen system available via portable equipment pool.

COMFORT ROOM

This room will be a place a parent/caretaker can take child who needs a few minutes of quiet or tend to other needs in private.

The room will be equipped with a wall mounted flat screen display and receive a feed from broadcast TV or programming in the Children's Activity Room. This feed can be selected by a keypad on the wall. Audio will be provided by the display's built-in speakers.

GROUP STUDY ROOMS/HUDDLE ROOMS



Several rooms will be provided for private or group study, collaboration, or small meetings with rooms for one or two people, and larger rooms for groups of four to six people. These spaces will be present both in public and back of house areas.

The rooms will be equipped with a wall mounted flat screen display and a connectivity plate for connection of laptops and other peripherals.

Audio will be provided by the display's built-in speakers. Control of the display will be simple and could be by either a touch panel or keypad.

Space Planning:

- ◆ Coordination of displays/whiteboards and furniture layout.
- ◆ Specialty wall boxes will be used; general coordination is required.

LARGE CONFERENCE ROOM/BOARD ROOM

The Large Conference Room/Board Room can provide seating for library staff and/or patrons to conduct meetings and conference calls.

The display system will consist of a room appropriately sized flat panel display mounted to the wall. A camera for web-based video conferencing (Zoom, Teams, Skype, etc.) will be mounted near or on the flat panel display and be aimed to capture the entire table area. Conferencing audio will be provided by either overhead ceiling speakers or a soundbar. Participant speech will be picked up by either ceiling mounted or soundbar integrated microphones.

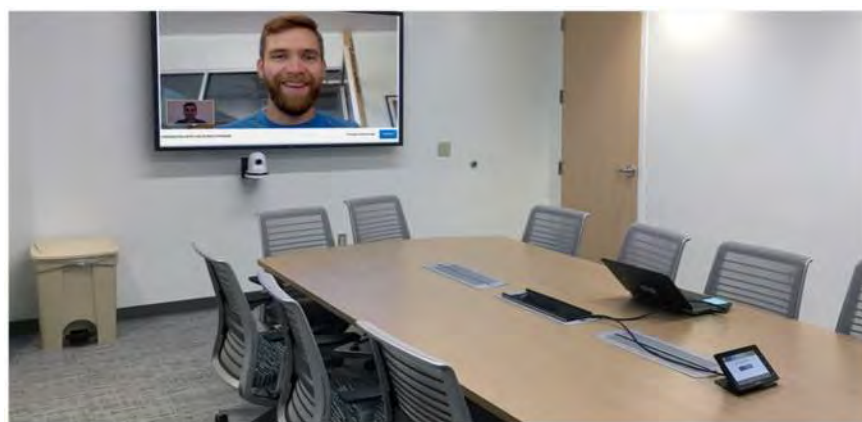
The Conference will be equipped with a dedicated room computer to support more complex conferencing requirements. This is to be determined as further discussions are had. The Board Room will provide a wireless presentation device to allow use of BYOD (Bring Your Own Device) such as personal laptops, tablets, and smartphones.

Control of the audiovisual system will be “pre-set” by library technology staff to eliminate public end-user interface with the systems. Trained library staff may be provided with a tablet or other device for basic control.

A room scheduling panel is planned to show daily events and open time slots. An indicator on the room schedule panel will show occupancy status.

Space Planning:

- ♦ Proper lighting to support both presentation and video camera use will be critical.
- ♦ Coordination of displays/whiteboards and furniture layout.
- ♦ Multiple speakers will be incorporated into the ceiling; general coordination is required.
- ♦ Specialty floor and wall boxes will be used; general coordination is required.



CHILDREN'S INTERACTIVE LEARNING

The Children's Interactive Yout Area will function as a public social gathering space within the library. Technology is meant to be minimal but experience driven. Beyond educational AV, the immersive opportunities in this space are endless. With budget in mind, below are a few options for consideration and also to spur conversation as the design of the project progreses:

- ♦ LED Activated Walls – Reduced technology and refreshing required but activates learning opportunities. .



Art Installation activated with LED

- ♦ LED Activated Painted Glass or Scenery – Reduced Technology and refreshing but activates immersive scenes. Can activate with motion sensors.



Painted glass with LED curtain for activation

♦ Interactive Media

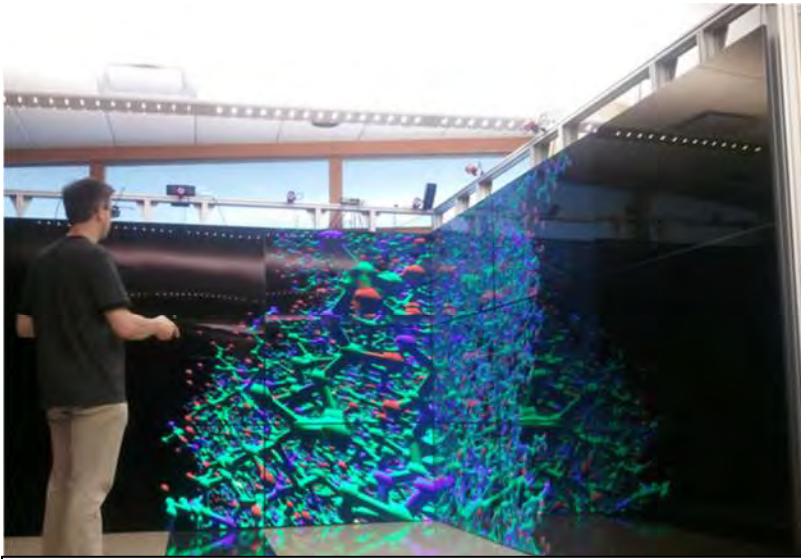


Interactive Game – Wall or Display



Interactive Game – Table or Floor

♦ Immersive Experiences



Augmented Reality/Extend Reality

- ♦ Column Wraps and/or Ribbons – In lieu of larger digital displays, small ribbons and/or column wraps can create a dramatic immersive experience.

Timeline Ribbon Display



MAKERS SPACE

The Maker's space is an open space for varying programs where patrons are able to take part in hands-on learning in creative ways.

This room is planned to be equipped with a simple presentation system. This system may be either permanent in the form of a large flat panel display or projector/screen with wired and wireless connections for laptops or BYOD or could be in the form of a portable flat panel display presentation cart.

Additionally, connection locations where a portable streaming/capture cart that will be part of the portable equipment pool will be provided at various locations in the room. Connections in several locations could provide connectivity to the greater library systems.

When hearing assistance is required, a portable ADA 2010 compliant system will be utilized.

Space Planning:

- ◆ Zoned lighting to support various activities.
- ◆ Multiple speakers could be incorporated into the ceiling; general coordination is required.
- ◆ Specialty floor and wall boxes will be used; general coordination is required.
- ◆ Added sound dampening may be required depending on and adjacency to "quiet" areas in acoustic report/evaluation during SD/DD phase.

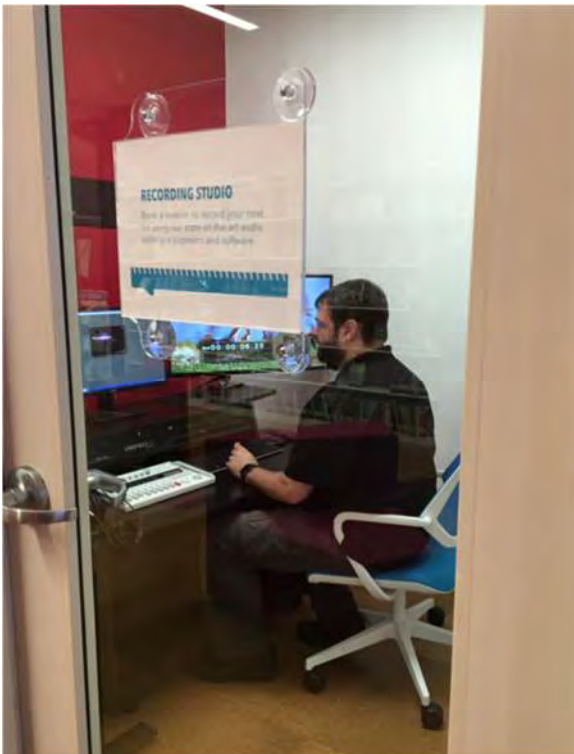


AUDIO/VIDEO MEDIA LAB



The Audio/Video production space is a space that allows patrons to create content or learn to create content in an enclosed space.

This room is planned to be equipped with a simple audio/video capture system. This system may be either permanent in the form of a dedicated computer workstation with table microphone, camera and confidence monitors for presentation content. This system could also be BYOD or could be in the form of a mobile station.



Space Planning:

- ◆ Specialty floor and wall boxes will be used; general coordination is required.
- ◆ Added sound dampening may be required depending on and adjacency to “quiet” areas in acoustic report/evaluation during SD/DD phase.

BUILDING-WIDE AUDIOVISUAL SYSTEMS

Audiovisual Systems Enterprise Management Software/Control Systems

Each room-specific audiovisual system described above will contain a control system with a standard user interface like an easily cleaned and sanitized touch panel or keypad to facilitate ease of use. While this equipment is assigned to each room-specific system, all control system processors will be connected to the building LAN and thus will have Internet Protocol (IP) capabilities. The information carried by the LAN is low-bandwidth control command only and does not include high-bandwidth audio or video signals.

This capability will allow remote management by authorized support staff of technology assets and could even provide email notifications of required service or breaches of security. This approach will enable the use of mobile devices such as Android phones, tablets, iPhones, and iPads to provide alternative control possibilities. Additionally, all push-button and touch panel control functions for each system should be replicated on HTML-based web pages.

The cost of this capability is highly dependent on existing practices and software agreements.

Public Information Display and Digital Signage System

If the library has an established standard for digital signage that is effective, that approach should be followed with this building as well. This will require close coordination as design progresses.

Public displays may display information such as:

- ♦ Digital Bulletin Board: informational digital signage for listing news and events within the library and community
- ♦ Entertainment: broadcast television in lounges, break rooms or lobbies
- ♦ Directory / Interactive way-finding
- ♦ Display Wall: digital storytelling and displaying creative content.
- ♦ Room scheduling displays.
- ♦ Emergency Alert messaging



You may also choose to select certain locations of the Digital Signage system to act as ad-hoc group collaboration. For these locations, the display may default to signage but switch to a local laptop input (either automatically or with the press of a button) when needed for collaborative work. Further discussion of this idea is warranted.

Digital signage may be capable of displaying broadcast television, computer graphics, digital video, and any associated program audio. Content most likely will come from a Web-centric system which is user-friendly and allows the option for library-generated content creation, but may also include custom elements requiring additional, specialized development.

Each display can be individually assignable, so programming can be displayed on any or all the displays independently. Grouping the displays into zones that will share the same content can save on hardware costs and may serve the function well.

The form of these displays can fall into any of the following categories:

- ♦ Non-interactive displays of various sizes
- ♦ Interactive touch screen displays with easy cleaning and sanitization methods

The key to any of the display types is having the resources to create, maintain, update, and deploy content. Therefore, staff will need to be deeply involved in the selection of display types, hardware, and software for content deployment.

As we move into further phases of design, we recommended the following process:

- ♦ Determine the anticipated flow of traffic based on the current floor plans.
- ♦ Define the desired user experience.
- ♦ Identify appropriate locations for signage displays.
- ♦ Determine the intent, content, and interaction of the various displays.
- ♦ Select the content development software solution.
- ♦ Assign ownership responsibilities for the content generation and maintenance.
- ♦ Select hardware solution.
- ♦ Design the architectural integration of the hardware.

Room Scheduling and Display System

A room scheduling system places touch-panel displays outside of various gathering spaces. In addition to displaying information related to when the room is scheduled and for what purpose, the system allows users to reserve the space based on availability, either at the panel, through common scheduling platforms, or from a dedicated kiosk. All touch panel displays will be of the type to be easily cleaned and sanitized.

It has become more common for room scheduling displays to connect directly to a facility scheduling application, but some solutions require connectivity through a server or network appliance running specialized software.



Discussion Points:

- ♦ As the design progresses the facility will need to determine an acceptable solution for reserving rooms for public users.
- ♦ Dependent on the type of scheduling panel selected, users may be able to reserve rooms using the scheduling panel's touch screen interface.

Portable Equipment Pool

A pool of portable equipment to be used for meetings and events: The exact contents of this pool need to be determined through further discussions with library staff as design progresses, but could likely include any of the following:

- ♦ Document Cameras
- ♦ Microphones, microphone mixer, portable loudspeaker system
- ♦ Portable ADA Hearing Assistance Systems

Portable Streaming Station(s)

- ♦ This station will allow the live streaming of any event within the library and consist of a small form factor computer with keyboard and mouse to connect to a streaming appliance and the building network via wi-fi and two portable cameras on tripods.

Portable Digital Editing Station(s)

- ♦ This station will allow patrons to create and edit digital media projects. The station will consist of a mobile workstation to hold a small format computer with wi-fi and a wireless keyboard and mouse. The computer would be loaded with owner furnished audio and video editing and creation software for small digital media projects. A headphone amplifier and a Blu-Tooth repeater will allow the user and two or three friends to listen to the audio via headphones. A small 4k desktop flat panel display will provide video playback. A small custom panel with a connection point for a laptop or other devices and small touch panel to allow selection of source and turn the workstation power on/off.
- ♦ Can turn any Study Room into a Digital Studio

Portable Gaming/Huddle

- ♦ This station will allow users to play various video games of different formats (computer or game station like X-Box, PlayStation, etc.). The Gaming Station will consist of a 65" 4K flat panel on a cart with an integrated locking cabinet with a small AV rack. The station would have a consumer gaming station(s) with wired controllers as well as CPU with wired data connection with wireless keyboard/mouse for online gaming. A Blu-Tooth repeater would be part of the equipment to allow a user to use their own Blu-Tooth controller or headphones. A small custom panel with a connection point for a laptop or other devices and small touch panel to allow selection of source and turn the workstation power on/off.
- ♦ This station can double as a huddle system when not used for gaming with the addition of a soundbar with integrated camera/microphone or with removal of gaming connections described above become a portable huddle/conference system.

INFORMATION TECHNOLOGY

COMMUNICATIONS INFRASTRUCTURE

The information technology systems will be designed in accordance with the Town of Prosper's technology requirements.

Modern communication has evolved to encompass all aspects of our lives from voice to video. Information technology's prime objective is to facilitate communication and collaboration, and the transfer of information. The communication infrastructure envisioned for the Town of Prosper Library project will include:

- ◆ Pathways and Spaces
- ◆ Telecommunication Rooms
- ◆ Structured Cabling throughout building
- ◆ Connection points to the Town-Wide Network.

INCOMING SERVICES

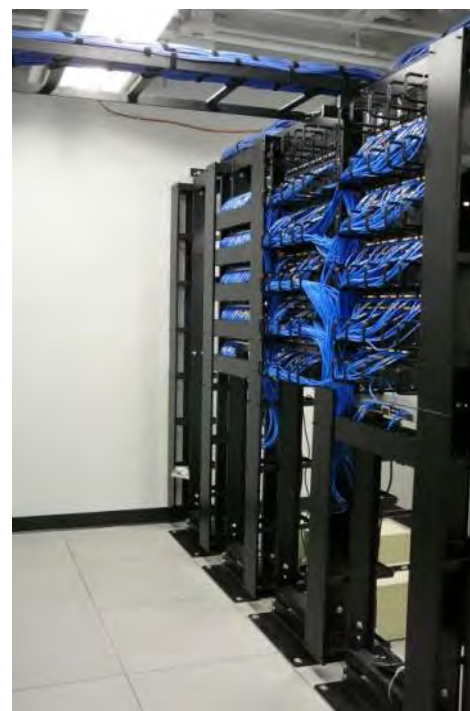
Incoming network services, also known as Outside Plant (OSP), is planned to be supplied by the library current service provider. The fiber will be installed from an outside pull-box to the Main Distribution Frame (MDF). Outside Plant (OSP) conduit infrastructure from library to nearest pull box will be coordinated with Town and Library IT and the project's civil engineer.

PATHWAYS AND SPACES

Information technologies require dedicated rooms on each floor to house equipment racks, network switches, optical fiber terminations, copper cabling patch panels, and so on. These spaces are known as Intermediate Distribution Frame (IDF) Rooms to facilitate organized and logical distribution of low voltage communications signals within a building. All spaces will be designed as per ANSI/TIA/EIA and BICSI standards along with recommendations from the Town of Prosper.

Primary Components

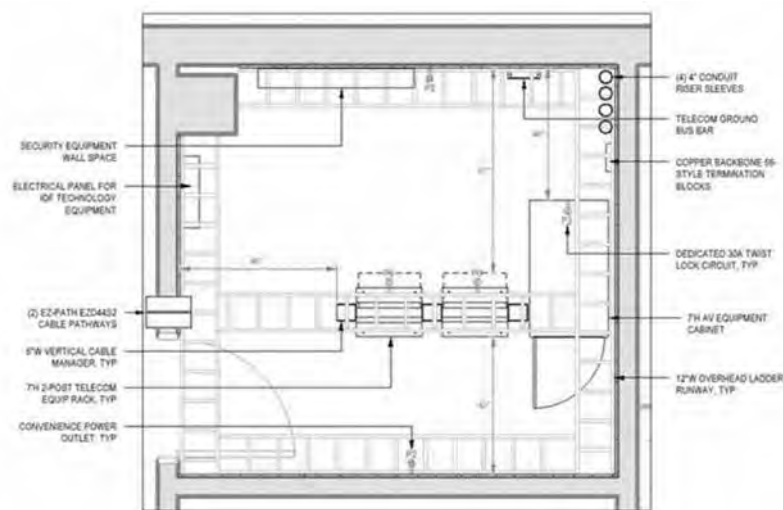
- ◆ Connection to existing Town network within MDF Room.
- ◆ Single model Fiber connections between MDF and each IDF.
- ◆ Floor mounted equipment racks equipped with both vertical and horizontal wire management.
- ◆ Floor mounted AV cabinet (where required) to house Audiovisual Systems equipment.
- ◆ Overhead racking system for management of flexible connection cabling and providing additional structural support for the racks, cabinets, and systems.
- ◆ Patch panels for all horizontal cabling.
- ◆ Adequate floor space and growth potential
- ◆ Independent telecommunications grounding system
- ◆ Dedicated power circuits supported by Town provided UPS units.
- ◆ Dedicated HVAC cooling system 24/7; maintain ambient temperature at 68-77 degrees F.



- ◆ IDF rooms centrally located within floor plate such that horizontal network cabling distances do not exceed 290' to any location within the facility.
 - ◆ Size: MDF - minimum 10'x12', outswing door
 - ◆ Size: IDF - minimum 10'x10', outswing door

Note: * The IDF rooms shall be vertically stacked as per Town of Prosper's Technology Requirements.

* Additional IDF rooms may be required if horizontal cabling distances exceeds 290 feet and the conduit crossing the bridge cannot accommodate the required category cabling.



Sample IDF Room Equipment Layout

- ◆ Audiovisual Systems equipment could be co-located within IDFs as part of the overall AV over IP system. This will require a dedicated AV cabinet within these spaces.

STRUCTURED CABLING SYSTEM

The Structured cabling systems originate in the Telecom Rooms and extend throughout the building from MDF to IDFs (backbone) and from IDFs to the end users (horizontal). The backbone cabling system between Telecom Rooms consists of fiber and connects each IDF via home-run cables to a MDF within the building. The horizontal cabling system will consist of twisted pair Category 6A cables and is visible to the end user in the form of wall faceplates. All horizontal cabling routes to the IDF Rooms will be through cable baskets located in corridors and other approved support systems as required.

The wired building network system uses a common cable that supports all communications needs for various independent systems such as computer networks, voice system, surveillance, video, and building automation system. These diverse systems run on the same cable infrastructure, which offers ultimate flexibility; the same cabling supports all network requirements indifferent of the system.

Backbone Cable

The Prosper Community Library building will be configured with the MDF being connected to IDF's via fiber cables. All fiber cabling is terminated in rack mounted housings to provide complete flexibility for cross-connecting of various networks and equipment and to provide redundancy.

The building backbone will consist of the following:

- ♦ 24-strand single mode (SM) fiber capable of supporting 100 Gbps.

Horizontal Cable

All horizontal cabling should be a minimum of CAT6A dependent on the current industry standards to support expanding Power over Ethernet (POE) capabilities. All areas of the building will follow similar design standards regarding the number of cables per workspace as established by the Town of Prosper along with industry codes, standards, and best practices. This aspect of the horizontal cabling design should be reviewed later in the building design phase.

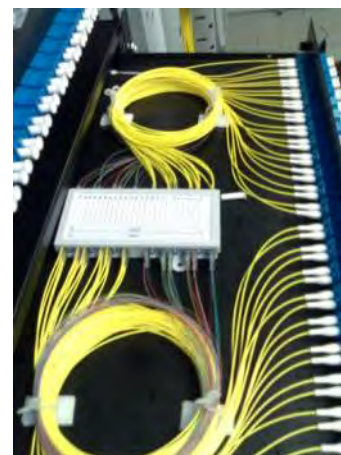
Horizontal cabling is planned to:

- ♦ Utilize CAT6A cabling at a minimum including all cabling, patch panels, patch cables, termination modules, and wiring blocks.
- ♦ Utilize CAT6A cabling for all wireless access points following the current manufacturer recommendations.
- ♦ Terminate on rack-mounted patch panels regardless of the application using the cable – email, phone call, fax, video, etc.
- ♦ Utilize the same cable regardless of the device using the cable – computer, telephone, surveillance camera, etc.
- ♦ 2 drops to each faceplate as minimum.

Patch Cables

Effective patch “flow” is an integral part of the Structured Cabling System design to be planned according to the specific rack and wire management layouts.

- ♦ Patch cable assemblies will be provided and warranted as a part of the Structured Cabling System based upon a quantity twice that of the installed and available horizontal cabling channels plus an additional 5% to provide for varying needs at both cable ends.
- ♦ Patch cables will be color-coded according to the Town of Prosper standards.
- ♦ 2 Patch Cables per CAT-6A.
- ♦ Patch cables will be provided as part of the Structured Cabling package and installed by the Contractor at direction of Town IT staff.



WIRELESS NETWORK

Wireless technologies have been embedded into modern society. Some wireless technologies are used every day such as radios, cellular phones, smart phones, tablet PCs and laptop computers. As such a very robust and dense Wi-Fi network is being planned.

Today's public buildings must accommodate a wide range of user needs and expectations to foster free flowing access to various formats of information. Many libraries struggle with a desire to support the ever-evolving BYOD (Bring Your Own Device) environment that is now expected by patrons and staff.

A building-wide wireless network will be designed into the Town of Prosper Library to augment the traditional wired network. Wireless coverage will be provided throughout all interior areas, and for exterior building adjacencies and commons public areas.



Access points locations will be coordinated with the interior design and will provide full building-wide coverage. The wireless infrastructure design will be based on the latest IEEE-802.11 standard (802.11ac) and can adapt to and supporting future standards such as 802.11s wireless mesh networks, 802.11v with improved wireless network management, and 802.11aa video transport stream.

Power over Ethernet (PoE) technology is deployed to simplify installation and increase system flexibility by centrally locating all power requirements for wireless access points. This design methodology greatly increases the availability of network bandwidth by adding the capability of connecting to the network via multiple frequencies and channels. The ultimate goal of the wireless system design is to allow for wireless coverage for the entire facility, including adjacent exterior areas, utilizing high density and dynamic load balancing wireless network standards.

The Town will be handling procurement of all wireless network equipment. Wireless Access devices will be Town furnished; Contractor installed. Wireless network design and criteria for final locations of wireless access data outlets will be provided by the design team, as coordinated with Town IT staff. Data outlets for wireless access points are typically provisioned with 20' service loop to allow for flexibility during final commissioning and testing.

NETWORK ELECTRONICS

The data network systems provide transport and communications for a multitude of applications. Ideally, there should be a single, common data network system for all applications as opposed to individual data network systems that are single application based. A common data network allows for cost savings of equipment and supporting infrastructure (space, power, cooling, etc.) while also providing better utilization of network equipment. By using network protocols such as virtual local area networks (VLANs), applications such as voice can share a common network switch with applications such as email or video surveillance yet still ensure proper quality of service (QoS).

The structured cabling systems described in the previous section make up the passive components of the data network systems. The active data network electronics will include the following:

- ♦ All switches will support Power over Ethernet (PoE) for all ports supporting the latest PoE standards.
- ♦ Common network switches across all departments and applications utilizing VLANs for QoS and security

The Town of Prosper will be handling procurement and installation of all network electronics and associated equipment.

TELEPHONE SYSTEM AND HANDSETS

The Library will deploy the latest Voice over Internet Protocol (VoIP) technology type telephony system. VoIP systems utilize the same cabling and switching equipment as the data network and offers the following advantages:

- ♦ Reduced Operational Costs
- ♦ Common cabling – data and voice networks use the same type of cable.
- ♦ Flexibility – every network cable can be voice, data, or both.
- ♦ Portability – phone number moves with the phone, not the location.
- ♦ Handset not always required – phones can be software on a computer.
- ♦ Unified Communications – users can access email from the phone and voicemail from the computer.



The Town of Prosper will be handling procurement and installation of the VoIP system server, telephone handsets, and associated VoIP equipment.

Some devices and equipment may require traditional telephone connectivity, often referred to as “Plain Old Telephone Service” or POTS. These systems will be supplied with the same CAT6A cabling as the rest of the network infrastructure with simple break-out cables allowing connectivity to a standard RJ-11 (phone) connector.

PHYSICAL SECURITY

The safety and security of the inhabitants and assets of the Town of Prosper Library requires special consideration in light of the following key design issues:

- ♦ The Library is a public facility and may include special events afterhours.
- ♦ The main building will have multiple entrance and/or exit points.
- ♦ Financial transactions may occur in several locations within the building.
- ♦ The library will include expensive and desirable items such as laptops, computers, projectors, and other audiovisual equipment.

We will coordinate with the appropriate Town and library entities as required throughout the programming and design phases of the project to confirm the planned security systems coordinate with any Town standards or integrated systems.

In general, building security systems are intended to control or monitor pedestrian flow throughout the building based on certain flexible criteria. Themes such as individual pass card holder permissions and time of day access control are key to the design. Access system and cards will be per Town standard.

Video Surveillance devices in the form of networked security cameras will augment the access control system by linking door events with video footage. To complete the design, devices such as duress alarms, door sensors, and motion detectors will provide duress and intrusion alarm monitoring for the facility.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

The design team will be utilizing an approach to security that provides for both real and “perceived” boundaries, as well as a “full scope” security approach which includes the concepts of CPTED.

CPTED is defined as a multidisciplinary approach to deterring criminal behavior through environmental design. CPTED strategies rely on the ability to influence offender decisions that precede criminal acts by affecting the built, social, and administrative environment. The basic CPTED strategies are Natural Surveillance, Natural Access Control, and Natural Territorial Enforcement.

Natural Surveillance

Natural Surveillance is the design principle, which calls for creating an environment where the occupant has an enhanced ability to observe the surrounding environment and the potential offender will have a heightened perception of their increased risk of being observed. The design principles involved include creating good sight lines and minimizing visual obstacles so that from a given location the occupant has a high degree of visual control. People will always feel safer when they can easily see and be seen.

From the perspective of Natural Surveillance, these items are ideal in that they offer no real hiding places. They provide a level of deterrence but little to no visual obstruction, which raises the probability of detection for the potential intruder.

Proper lighting will also create an effective deterrent to crime, because good lighting (no areas of glare from lights and no dark areas) discourages criminal activity, improves visibility, and reduces fear. Visibility in design can also be enhanced by including windows that look directly out on public sidewalks and parking.

Sidewalks, plazas, and other pedestrian areas should be evenly lit by pole mounted lighting, providing no shadowed hiding places for a would-be criminal to use to their advantage. Sufficient lighting levels will also enhance the capture and storage of evidentiary quality video, enabling recognition of perpetrators in covered areas. Steadily increasing lighting levels as one approaches the building will improve the sense of safety and the video quality at the appropriate locations. Additionally, the observable presence of video surveillance cameras will in and of itself have some deterrent capability, as potential offenders are less likely to act if they know they will be observed and recorded.

Natural Access Control

Natural Access Control limits the opportunity for crime by clearly differentiating between public and private spaces. Location and design of entrances and exits, which tend to guide people in the appropriate direction, will provide Natural Access Control. Natural Access Control recommends that the facility have only one primary, clearly identifiable entry point, or at a minimum utilize the architectural design to route people to a central security location before they have access to stairwells and elevators.

Natural Territorial Reinforcement

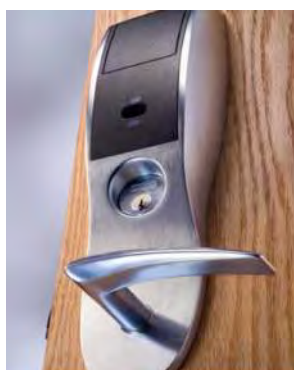
Natural Territorial Reinforcement utilizes architectural design to increase the sense of ownership, which increases the likelihood that intruders will be challenged and reported. It creates an environment where strangers or intruders stand out and are more easily identified.



ACCESS CONTROL SYSTEM

An Access Control system will provide card access for designated non-public entry points of the building or departmental perimeters or at any other space deemed a priority by the Library and project stakeholders. Ideally, traditional keys would be only utilized and issued to staff for their individual offices, storage rooms, and other unique spaces that are under their control.

The Library would incorporate the Town of Prosper standard for the Security Management / Access Control system unless directed otherwise during the subsequent design phases. It is anticipated the Library access control system will likely communicate with a centralized Town server. The Library security and access system will then be connected to the building LAN/WAN infrastructure and communicate over a Town configured Security VLAN.



The typical security door configuration will include provisions for a reader, interface to the electric locks, door position switches, and request to exit components. In addition, each door configuration will include a pull box located above the door on the secure side for the interconnection of the various door control and signaling components. Multi-technology card readers will be incorporated to allow for use with existing standard 125kHz cards, more secure 13.56MHz smart cards, and compatibility with mobile (virtual) credentials. Card readers may incorporate keypads for dual authentication utilizing card + PIN. The potential use of biometric identification access devices for the Library is yet to be determined and will be reviewed based on Town standards.

Operation of the system will be such that time of day features may be utilized. Some doors may be unlocked by the system during regular business hours or for special events while others remain as pass card access only. Doors may go into an alarm state when opened immediately, such as in an emergency exit, or when a perimeter door is held open for an extended period of time.

In general, the access control system will seal off the building perimeter and restrict access to certain spaces at certain times. There may be a need to control access to elevators and stairwells based on occupants' requirements and work schedules. Additional features of the system include holiday schedules, visitor credentialing, access groups, and database segmentation to name a few.

The access control system and the video surveillance system will either be a single unified platform or a fully integrated solution. This will allow for timestamp management of video records tied to security system alarms and entry/exit access events.

The manufacturer and model numbers outlined in the Town of Prosper's technology requirements will be reviewed again during the design stages to ensure that the most current equipment is procured at the time of project completion.

VIDEO SURVEILLANCE SYSTEM

A system of fully integrated digital security cameras will monitor exterior building adjacencies, interior public areas, entry/exit points, commons areas, high traffic and transition areas, and other critical spaces as deemed necessary by the Town and project stakeholders. The networked IP security cameras will communicate to the video surveillance system via the Library LAN infrastructure. Each camera will require a Category network cable, installed to the nearest IDF room.



Security camera types will be standardized on high-definition IP PoE type cameras. The cameras may also implement technologies such as megapixel, 180 or 360-degree multi-sensor panoramic view, pan-tilt-zoom (PTZ), and integration of video motion or analytics alarms. Camera housings will be primarily domes with other housings provided based on environment, architectural goals, or space limitations. The camera products and manufacturers shall be consistent with Town security standards. The video system and IP cameras may incorporate motion sensing software to activate recording only when certain conditions are met such as human movement. Analytic software is also available to trigger alarms and for people counting.

The video surveillance system cameras and devices will likely communicate with centralized Town video management system server and recording devices. The video system will also likely be connected to the building LAN/WAN infrastructure and communicate over a Town configured Security VLAN.

The video surveillance system will be integrated with the access control, intrusion detection, and emergency call station systems. This will provide optimal situational awareness for security operators with respect to incident response, to provide more effective safety and security within and around the Library and can, if desired, could allow the Town of Prosper Police Department to have the ability to remotely access and view security cameras from the Library.

ASSET PROTECTION

The Library will require Radio Frequency Identification Devices (RFID) Book Security Gates at main entry/exit locations. The Security Gates will be furnished by the Town and installed by the general contractor. Necessary power and data infrastructure will be provided by the project to support the Town supplied RFID gate equipment. It is understood the Town and project stakeholders desire a more aesthetically appealing solution than traditional book security gates. The preference would be to evaluate new technology and integrate the RFID equipment into the adjacent walls if possible.

The RFID alarm system may be employed to tag and protect other building assets such as computers, flat panel displays, projectors, etc. These devices communicate wirelessly with the equipment placed at the exit points. Like the book system, when the RFID tag passes through the RFID gate system, an alarm will be triggered.

PRODUCTS

The manufacturer and model numbers outlined in the Town of Prosper's technology requirements will be reviewed again during the design stages to ensure that the most current equipment is procured at the time of project completion.

Prepared by: **NV5 Engineering and Technology, Inc.**



Master Plan Presentation

January 2025





Agenda

- 01 Methodology & Community Input
- 02 Benchmarking & Standards
- 03 Strategy for Future Space & Facility Requirements
- 04 Next Steps
- 05 Questions

01 METHODOLOGY & COMMUNITY INPUT



01 Goals & Criteria for Success

- From Long Range Plan: **Build a Library for the Future**
- Undertake analysis to begin the development of a Master Plan which would establish:
 - **Goals and Priorities** for a new facility
 - **Build Community Awareness** of, and excitement about, a new library
 - **Craft a Longer-Term Strategy** which considers future community growth and library facility needs
 - Consider the potential feasibility of **establishing a foundation** or other separate entity
 - Mechanism to assist in **supporting future library-related projects or plans**

01 Introduction: Local Context

Goals for the Master Plan

- **Integrated into the Town of Prosper's Core Values:**
 - Teamwork
 - Heart
 - Respect
 - Integrity
 - Vision
 - Excellence
 - Service
- **Strategic Visioning Priorities:**
 - Accelerate infrastructure growth to match Prosper's rapid expansion
 - Develop downtown Prosper
 - Provide excellent Municipal Services
 - Identify Synergies with Parks Plan



01 Introduction: Current Context

Existing Conditions

- Built in 2018
- 9,600 Square Feet
- Off-Site Storage needed to meet State accreditation criteria



01 Methodology: Discovery Tours

Arlington George W. Hawkes Central Library

Item 9.



01 Methodology: Discovery Tours

Item 9.

Traphene Hickman Public Library in a Park, Cedar Hill



01 Methodology: Discovery Tours

Wylie Public Library

Item 9.

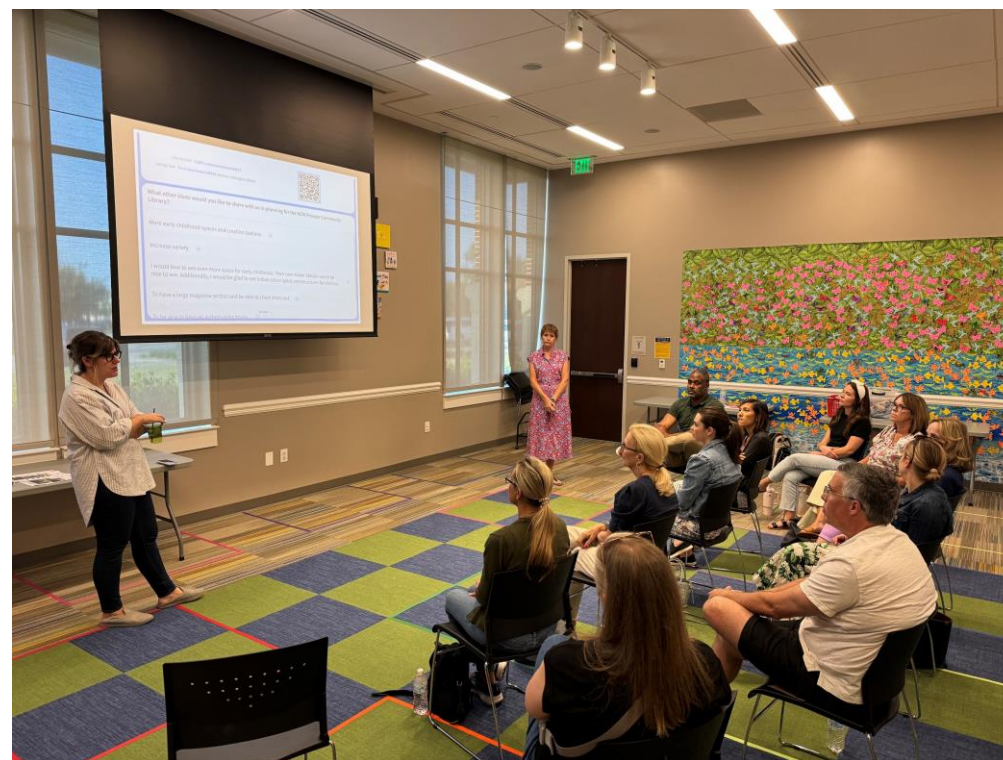


01 Methodology: Community Input

Focus Groups

Item 9.

- Nearly 50 attendees
- (4) Four in-person
 - Library Staff
 - Library Power Users
 - Prosper Historical Society
 - PISD Library Director and Board Member
 - Homeowners Association
 - CEC
 - Citizen's Academy
 - Homeschool Representatives
- (1) Mayor's Youth Advisory virtual



Community's Top Ten



#1 Café Vending



#2 Study Rooms



#3 (tie) Quiet Reading



#3 (tie) Study Pods

Community's Top Ten

Item 9.



#5 High Tech Maker Space



#6 Reading Niches



#7 Low Tech Maker Space



#8 Plaza and Walking Paths

Community's Top Ten

Item 9.



#9 (tie) Interactive Learning



#9 (tie) Gaming/Coding/Entrepreneurship

01 Methodology: Community Input

Online Survey – 565 Responses!

Item 9.

BARRIERS TO LIBRARY USE:

- Half of respondents noted lack of space as the biggest reason they did not use the library:
 - Overcrowded
 - Limited seating
 - No quiet space for study
- Another 42% indicated the size of the collection is too small – also related to space.
- 36% suggested that operating hours do not meet their needs (Library is working on this now!)



01 Methodology: Community Input

Online Survey – 565 Responses!

Item 9.

FREQUENCY OF USE:

- 61% used the library 3 or more times in the last year
- 39% used the library less than three times or not at all

Q12. Which description best fits your household?

Responses	Count	Percentage
Family with young children in the household	318	56.3%
Family with teens in the household	176	31.1%
Family/adults without children in the household	142	25.1%
Single person household	12	2.1%
Prefer not to answer	4	0.7%
Total Unique Responses	565	
Total Responses	652	



01 Methodology: Community Input

Online Survey – 565 Responses!

Item 9.

TOP REQUESTED SPACES:

- 60%: Expand the collection
- 54%: Need for designated teen and children's spaces
- 47%: Flexible programming and event areas
- 45%: Technology and Maker Spaces
- 40%: Outdoor reading areas and reading decks



01 Methodology: Community Input

Leadership Interviews

Item 9.

- Community Hub
- Flexible Multi-use Spaces
- Focus on Technology and Digital Literacy
- Inclusivity and Accessibility
- Safety and Security
- Youth engagement
- Outdoor Spaces and Sustainable Design



Amazing Community Participation!

Item 9.

- Nearly **50** people came to the library focus groups sessions
- **565** participated in the online survey
- Nearly **20** community leaders gave input and advice
- Over **630** Prosper residents provided input!



02 BENCHMARKS & STANDARDS



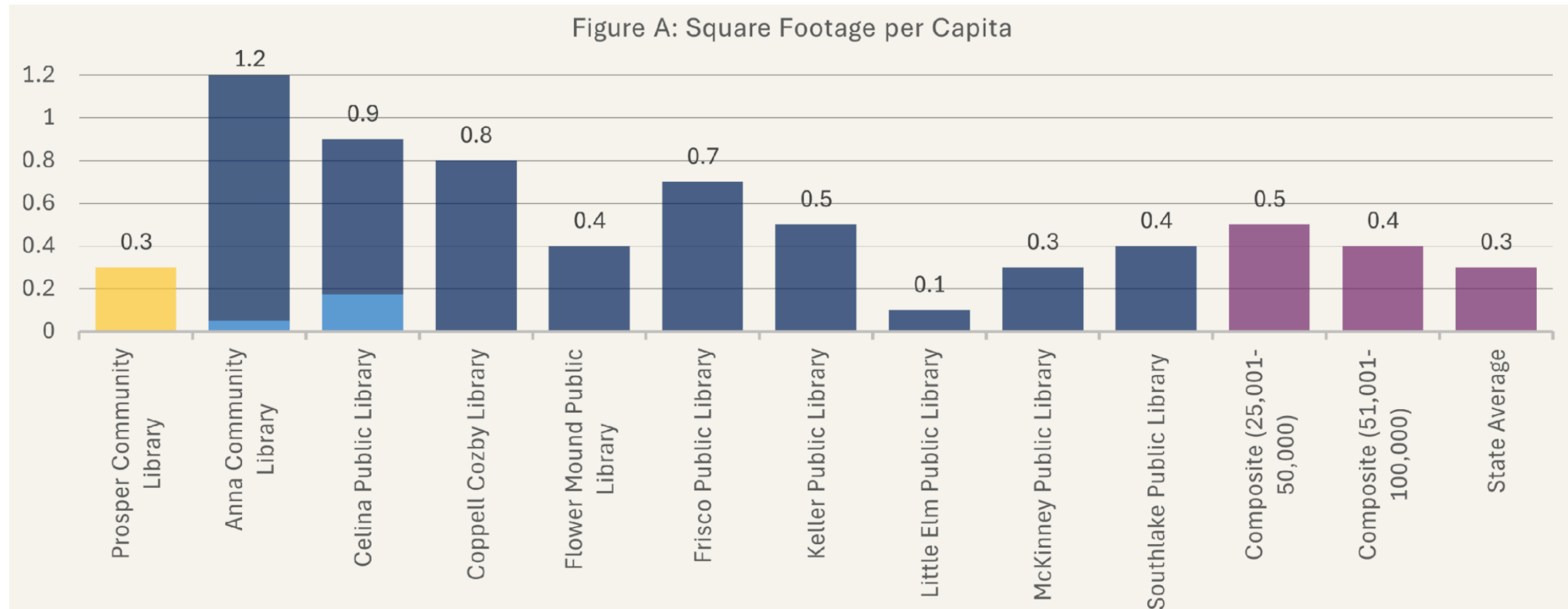
02 Identifying Benchmark Cities

- Who are your benchmark cities?
 - Who does the town typically compare itself to?
 - Libraries with single location
 - Rapidly growing populations
 - Composite

LIBRARIES
MCKINNEY PUBLIC LIBRARY SYSTEM (TEXAS)
ANNA COMMUNITY LIBRARY (TEXAS)
CELINA (TEXAS)
COZBY LIBRARY & COMMUNITY COMMONS, COPPELL (TEXAS)
FLOWER MOUND PUBLIC LIBRARY (TEXAS)
FRISCO (TEXAS)
KELLER PUBLIC LIBRARY (TEXAS)
LITTLE ELM PUBLIC LIBRARY (TEXAS)
SOUTHLAKE PUBLIC LIBRARY (TEXAS)

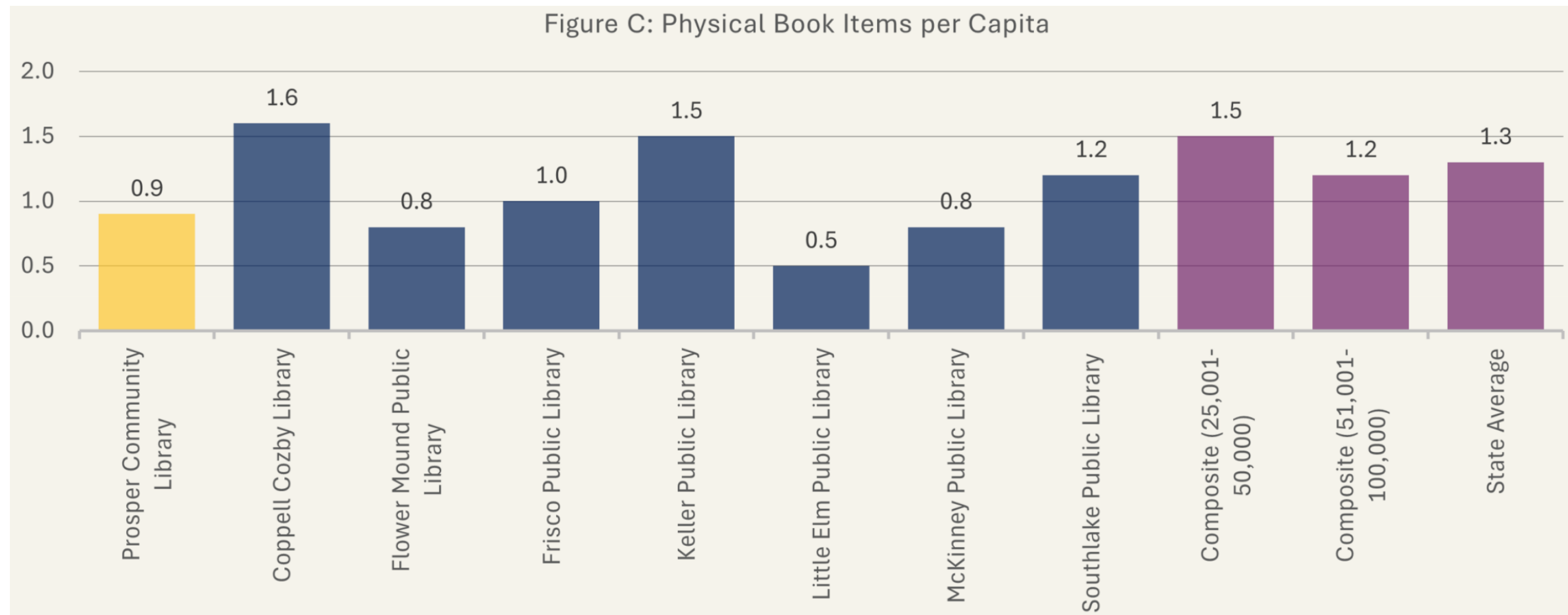
02 Service Population and SF/Capita

- 2023 State Determined Service Population: **37,746**



- Celina and Anna include “planned” SF under construction

02 Collection



- Off-site storage for Prosper consists of less-circulated physical items

02 Collection

A closer look at the collection:

Two Levels of Standards recognized by the State of Texas: **Exemplary** (highest) and **Enhanced** (minimum).

Current collection: 71,367

Artesia (MUD) is a significant user of the Prosper Community Library.

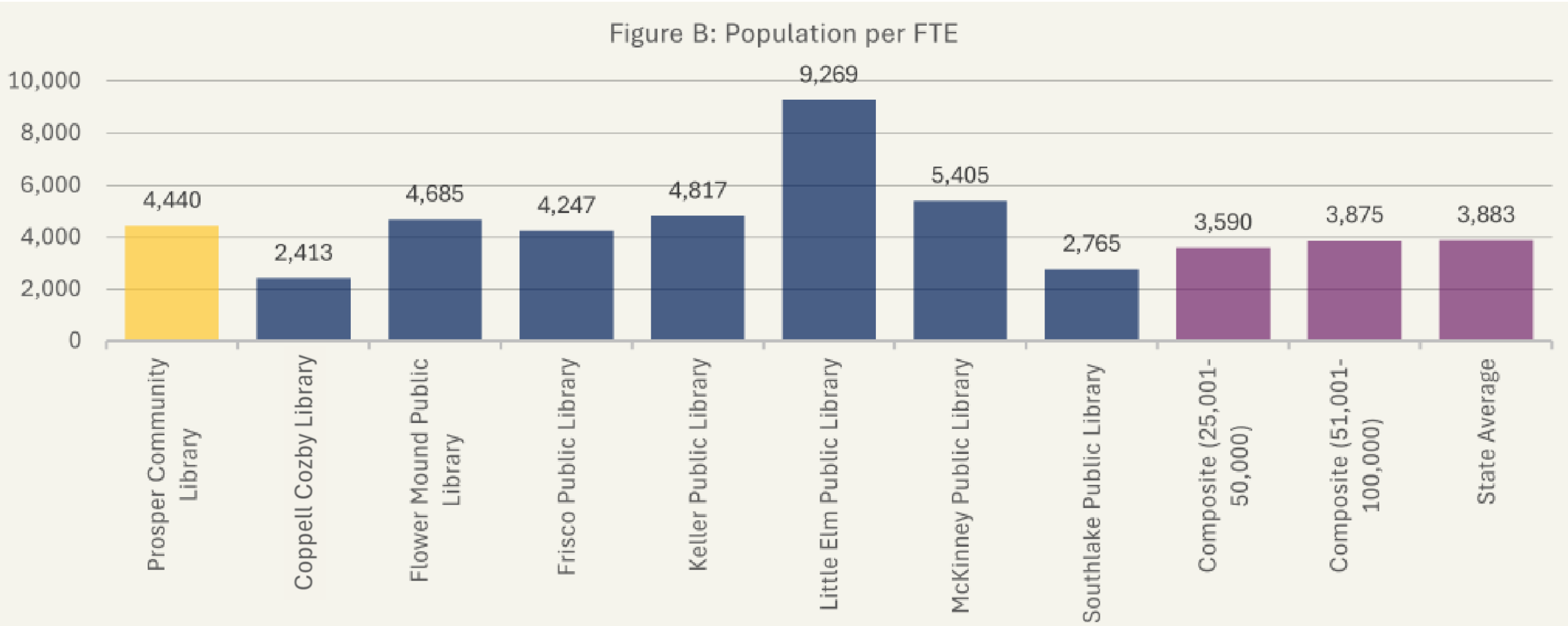
COLLECTION REQUIREMENTS FOR TEXAS LIBRARIES

Population Size	Exemplary Collection/Capita	Enhanced Collection/Capita
25-49,999	2.46	1.95
50-99,999	2.79	2.04

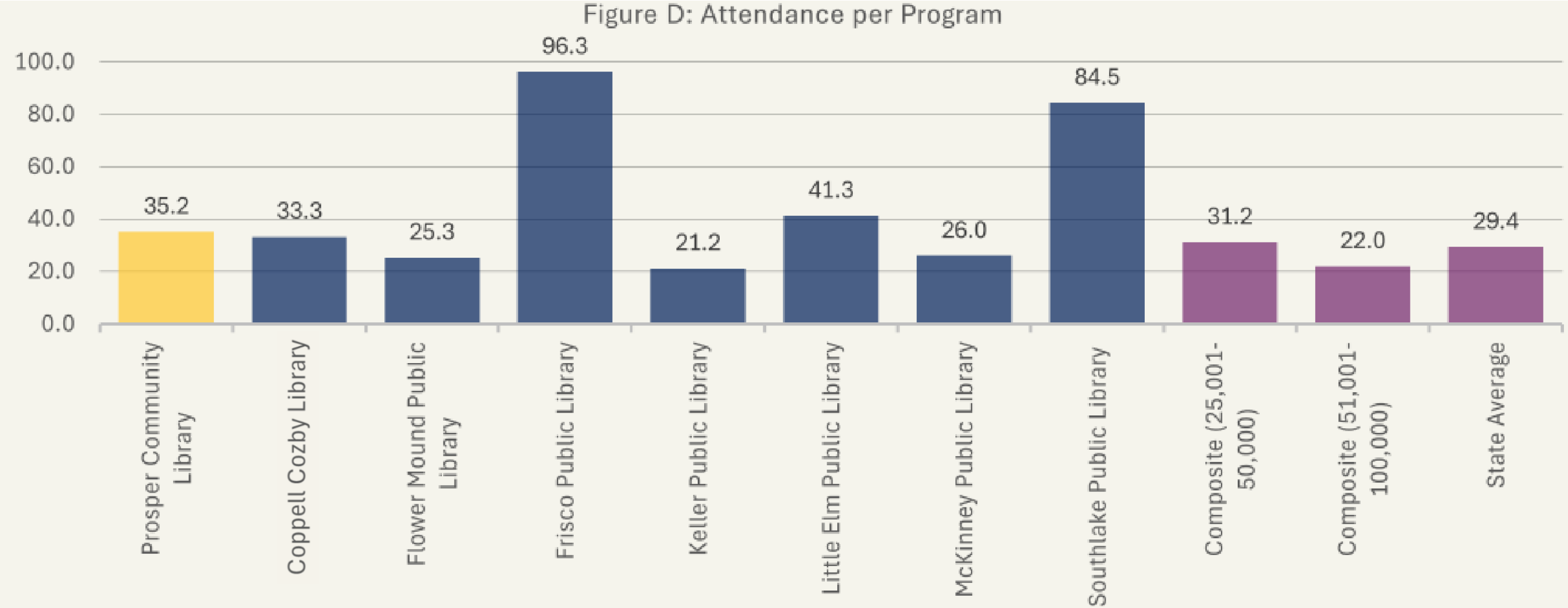
STANDARDS: COLLECTION ANALYSIS AT ENHANCED LEVEL

Population	Current Library Print Collection	Collection Format	Collection Size at Enhanced Level	Space required (66" high shelving @ 8 volumes per SF)*	Notes
2023	71,367 Total	TOTAL	73,739		
37,815	28,913 Physical	70% physical	51,617	6,452	@ enhanced level
	33,029 Digital	30% digital	22,122		
2029		TOTAL	116,171		
59,575		70% physical	81,320	10,165	
		30% digital	34,851		
2033		TOTAL	129,434		
63,448		70% physical	90,604	11,325	
		30% digital	38,830		
2055 Build Out		TOTAL	157,080		
77,000		70% physical	109,956	13,745	@ enhanced level
		30% digital	47,124		
w/Artesia		TOTAL	173,400		
85,000		70% physical	121,380	15,173	@ enhanced level
		30% digital	52,020		

02 Staffing



02 Programs

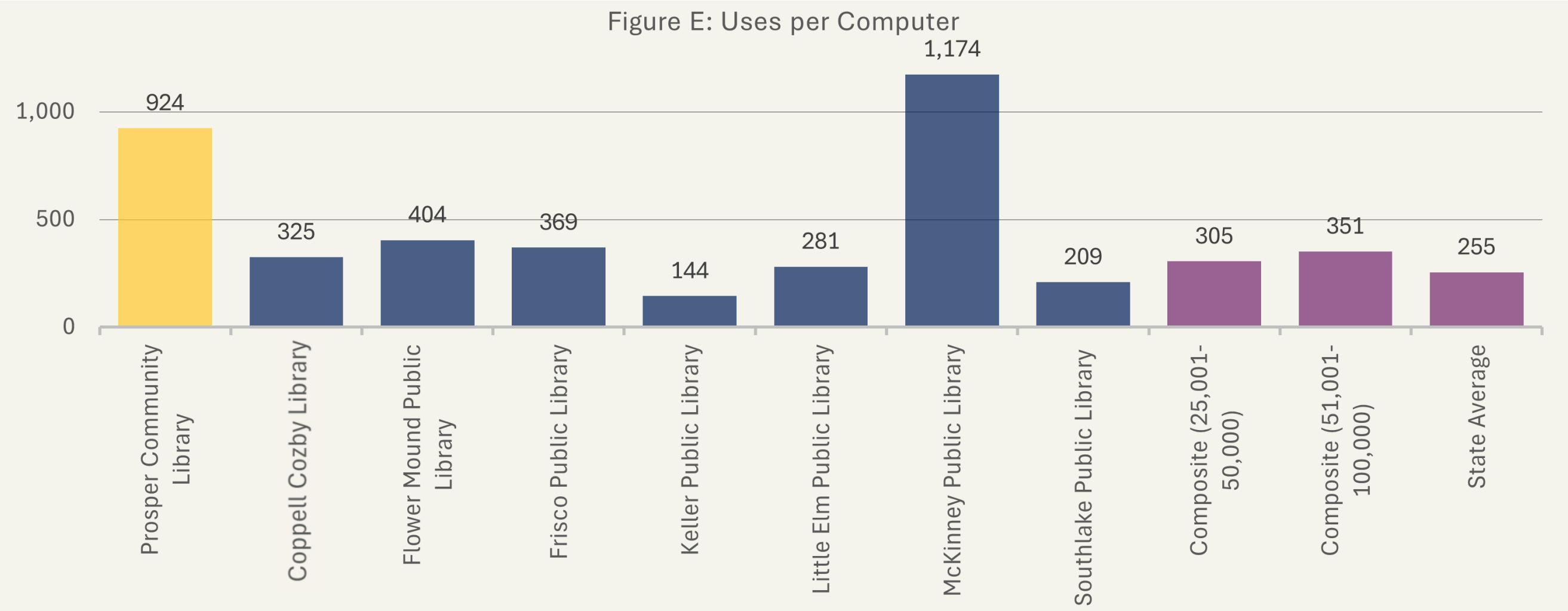


02 Seating

TECH SEATING AT 1 PER 2000 POPULATION AT ENHANCED LEVEL

Item 9.

Year	Population	Current Tech. Seats	1 per 2,000	SF Req
2018	28,825	15	14	555
2023	38,312	15	19	752
2029	59,575		30	1,192
2033	63,448		32	1,269
2055 Build Out	77,000		39	1,540
w/Artesia	85,000		43	1,700



02 Seating

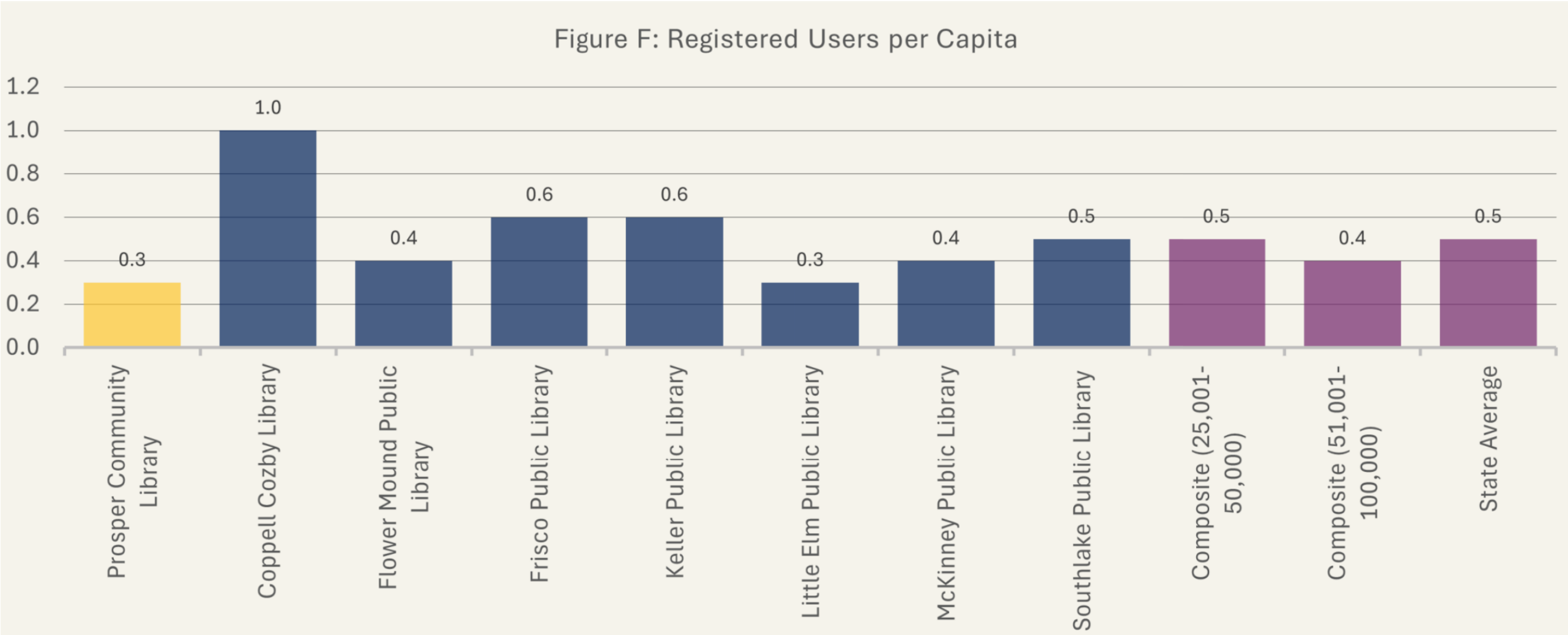
Reader Seats: **SEATING AT 5 PER 1000 POPULATION**

Year	Population	Current Reader Seats	5 per 1,000	SF Req
2018	28,825	130	144	4,324
2023	38,312	130	192	5,747
2029	59,575		298	8,936
2033	63,448		317	9,517
2055 Build Out	77,000		385	11,550
w/Artesia	85,000		425	12,750



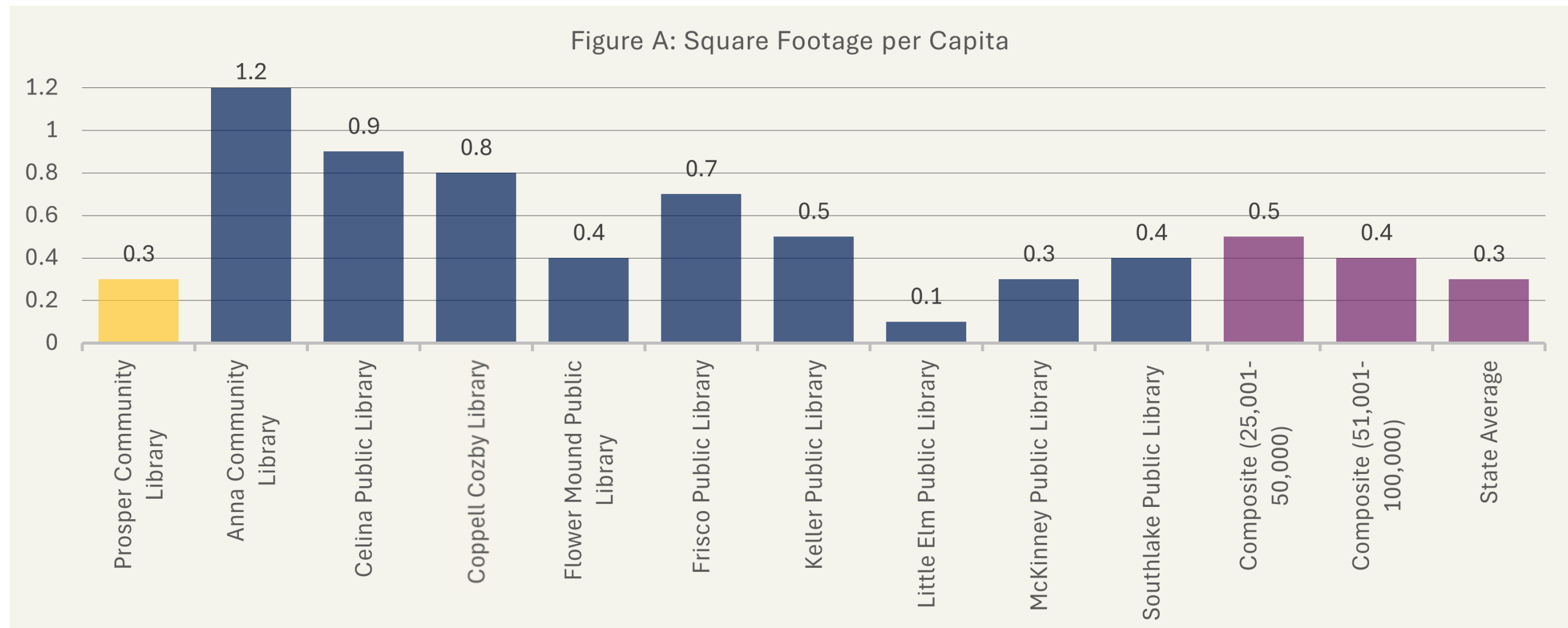
02 Users

Untapped Potential!



02 SF Per Capita

SF per Capita Looking at Today's Population



02 SF Per Capita

SF per Capita Looking Forward to 2033 and Beyond

Year	Population	Square Feet @.52 SF Per Capita (Texas Average)	Square Feet @ 0.6 SF Per Capita (ALA "Standard")	Square Feet @ 0.8 SF Per Capita (ALA "Enhanced")	Square Feet @ 1 SF Per Capita (ALA "Exemplary")
2018	28,825	14,989	17,295	23,060	28,825
2023	38,312	19,922	22,987	30,650	38,312
2029	59,575	30,979	35,745	47,660	59,575
2033	63,448	32,993	38,069	50,758	63,448
2055 Build Out	77,000	40,040	46,200	61,600	77,000
w/Artesia	85,000	44,200	51,000	68,000	85,000

03 STRATEGY FOR FUTURE SPACE & FACILITY REQUIREMENTS



03 Recommendations: Space, Service, And Collections

SHORT TERM ACTIONS:

- **Form a Foundation**
- **Expand Access and Programming**
 - Collection size and digital holdings
 - Mobile outreach
 - Extend library hours
- **Upgrade Technology**
 - Laptop vending
- **Operational Enhancements**
 - Self Check
 - Holds Locker



03 Recommendations: Space, Service, And Collections



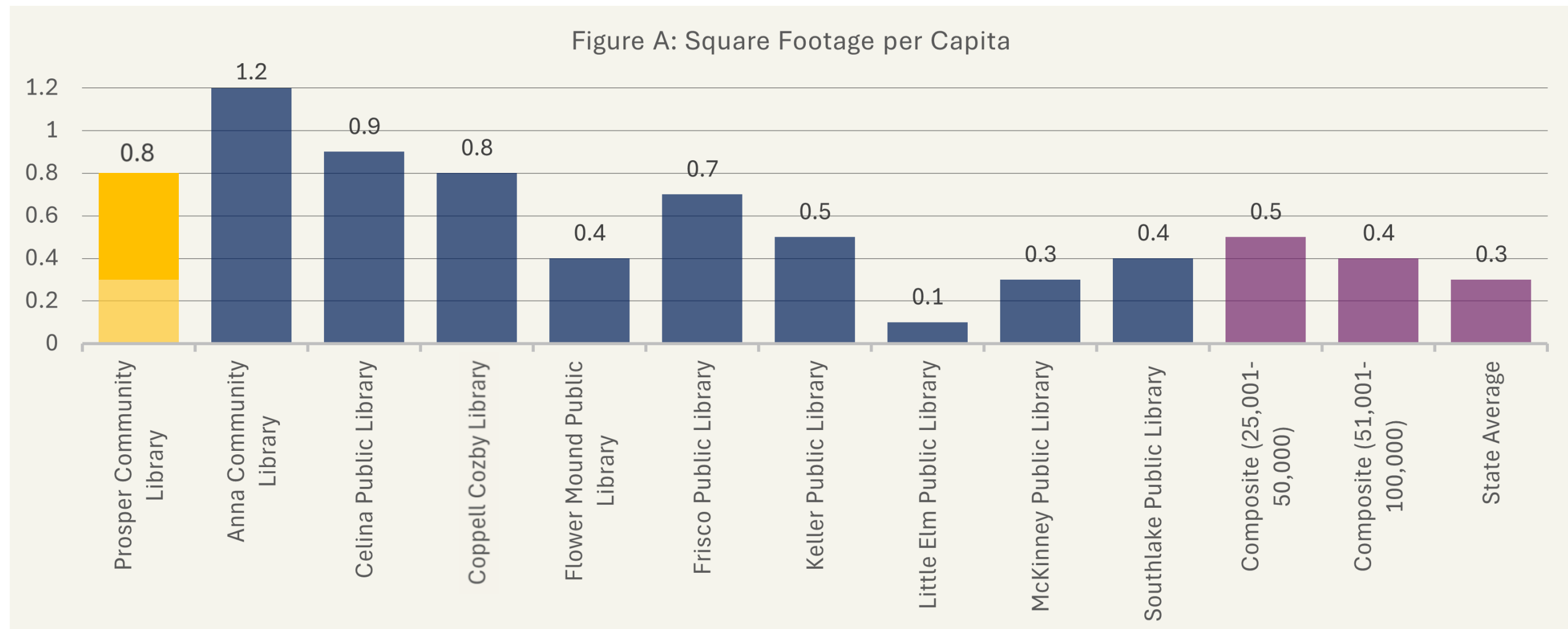
LONG TERM PLANS:

- **Facility Expansion**
 - **Option 1**: 72,000 sf facility for full build out at .8 sf/capita
 - **Option 2**: 50,000 sf facility at .8 sf/capita with phased expansion to 2033
- **Site Selection**
- **Flexibility for Future**

03 Recommendations: Space, Service, And Collections

Option 1 maintains .8 sf/capita to build out

Option 2 provides .8 sf/capita to 2033 (future phased expansion will be needed)



03 Recommendations: Space, Service, And Collections

OPTION 1: BUILD NOW FOR 100% OF BUILD OUT 2055 BUILD OUT TOTAL SPACE REQUIRED	COLLECTION ITEMS	MEETING SPACE	PUBLIC SEATING	TECH SEATS	SF
Public/Common Areas, Lobby, Booksale area, restrooms (public, family, comfort)					2,000
Vending café/tutoring #1					1,000
Library Prefunction Area					1,000
20 person Board Rooms - (1)		20			800
6 person Study/Homework/Homeschool Rooms - (4) #2		12			800
2-4 person Study Rooms - (8) #2		32			1,280
Audio/Video Media Lab					400
High Tech Maker Space #5		24			960
Low Tech Craft Space #7		24			960
Quiet Reading Room #3			12		360
Collection - EXEMPLARY	166,005				20,751
Adult Reader/Comfortable Seats/Pods #3			160		4,800
Children's Reader Seats/Niches #6			160		3,200
Children's Arts & Crafts Area		24			480
Children's Interactive Learning #9					200
Teen Reader Seats			33		660
Gaming Space #9			20		800
Technology Seats				43	1,720
Story Time Room		50			2,000
Multi-purpose Meeting / Class rooms		180			3,600
Teaching/learning Kitchen					200
Staff work areas (approximately 25%) includes offices, workstations, storage, conference, amh					11,993
Non-Assignable (approximately 25%) storage, support					11,943
TOTAL	2.04 items per capita 2025	366	385	43	71,906
	enhanced vols	space for meeting	public seats 5/1000	tech seats 1/2000 (2025)	Square Feet

03 Recommendations: Space, Service, And Collections

OPTION 2: PHASE THE BUILDING AND PLAN FOR EXPANSION IN THE FUTURE 2033 YEAR TOTAL SPACE REQUIRED	COLLECTION ITEMS	MEETING SPACE	PUBLIC SEATING	TECH SEATS	SF
Public/Common Areas, Lobby, Booksale area, restrooms (public, family, comfort)					2,000
Vending café/tutoring #1					1,000
Library Prefunction Area					1,000
20-person Board Rooms - (1)		20			800
6-person Study/Homework/Homeschool Rooms - (2) #2		2			800
2–4-person Study Rooms - (8) #2		32			1,280
Audio/Video Media Lab					400
High Tech Maker Space #5		20			600
Low Tech Craft Space #7		20			600
Quiet Reading Room #3			16		480
Collection - ENHANCED	90,604				11,326
Adult Reader/Comfortable Seats/Pods #3			100		3,000
Children's Reader Seats/Niches #6			100		2,000
Children's Arts & Crafts Area - Phase 2		20			800
Children's Interactive Learning #9					200
Teen Reader Seats			12		360
Gaming Space #9			6		240
Technology Seats				12	480
Story Time Room		50			2,000
Multi-purpose Meeting / Classrooms		180			3,600
Teaching/learning Pantry					200
Staff work areas (approximately 25%) includes offices, workstations, storage, conference, amh					8,291
Non-Assignable (approximately 25%) storage, support					8,241
TOTAL	2.04 items per capita 2025	344	234	12	49,698
	enhanced vols	space for meeting	public seats 3/1000 (2033)	tech seats 1/2000 (2025)	Square Feet

03 Cost Estimate: \$/SF and Comparative Costs

Comparative Construction Costs

Prosper (<i>Proposed</i>):	~\$714/sf - \$782/sf
Anna*:	\$508/sf*
Dripping Springs:	\$789/sf
Cedar Hill*:	\$620/sf*
Seguin**:	\$462/sf
Cedar Park*:	\$757/sf*

*Site work and parking were a separate budget

**Escalated to 2025 costs assuming 6% increase per year

Variations reflect differences in project scope, quality of materials, etc.

03

Cost Estimate: Option 1 & 2
Total Project Cost

Option 1: Estimated costs in 2024-2025 dollars:

Land:	not included
Construction:	\$50.7m
Furniture Fixtures and Equipment:	\$3.9m
Design and Pre-construction fees:	\$5.8m
Owner Direct Costs*:	\$4m
Estimated Total Project Cost:	\$64.4m
Addtl. Cost of Collection Expansion:	\$3.5m

**Owner direct costs include AV, Security, Technology, Testing, Collection and other items required for a functional library.*

Note: Construction costs typically increase by approximately 6% per year.

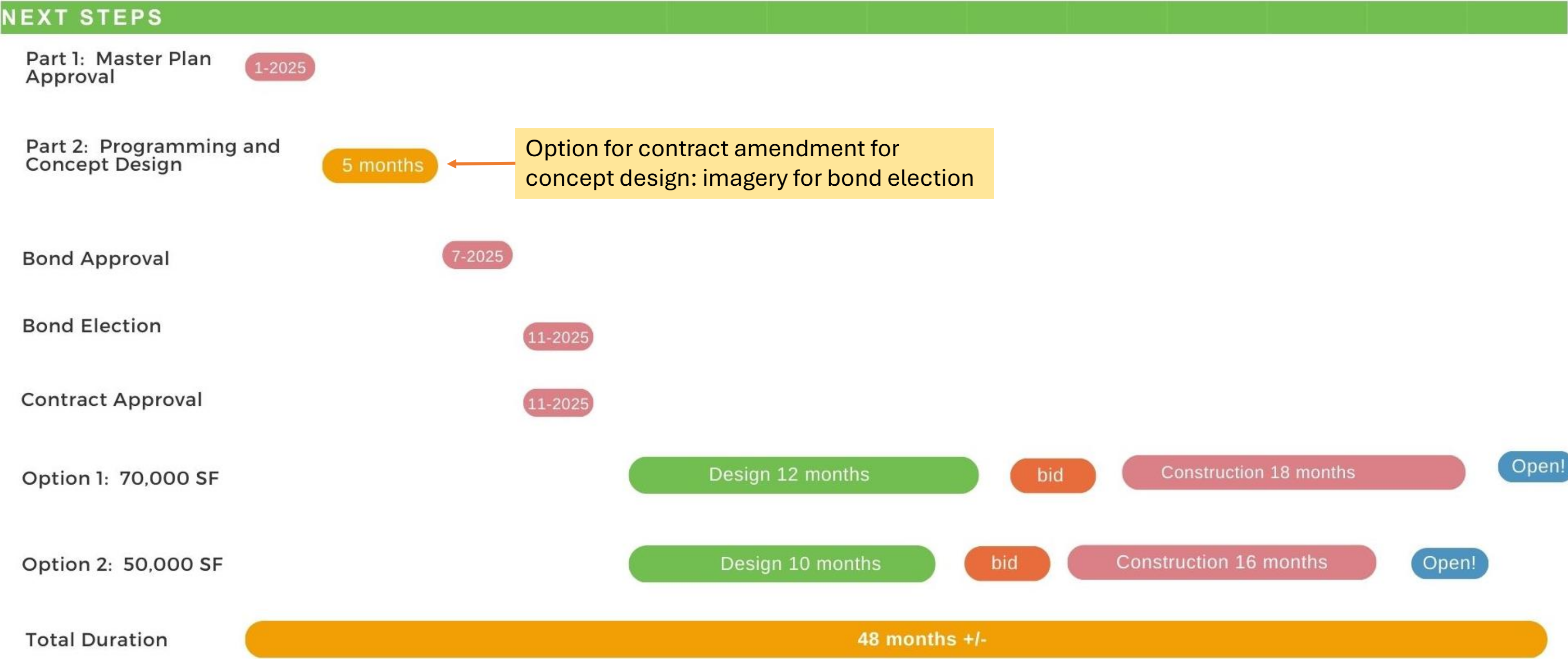
Option 2: Estimated costs in 2024-2025 dollars:

Land:	not included
Construction:	\$39.1m
Furniture Fixtures and Equipment:	\$3.0m
Design and Pre-construction fees:	\$4.2m
Owner Direct Costs*:	\$3.4m
Estimated Total Project Cost:	\$49.9m
Addtl. Cost of Collection Expansion:	\$2.3M

**Owner direct costs include AV, Security, Technology, Testing, Collection and other items required for a functional library.*

Note: Construction costs typically increase by approximately 6% per year.

04 NEXT STEPS



If Option 2, Start Designing Addition

05 QUESTIONS?





PUBLIC WORKS

To: Mayor and Town Council

From: Carrie Jones, Director of Public Works

**Through: Mario Canizares, Town Manager
Chuck Ewings, Assistant Town Manager**

Re: Construction Manager-At-Risk for Parks and Public Works Service Center

Town Council Meeting – December 10, 2024

Strategic Visioning Priority: 4. Provide Excellent Municipal Services

Agenda Item:

Consider and act upon awarding RFP 2025-02-B Construction Manager-At-Risk for the Public Works and Parks Service Center to Byrne Construction Group for \$1,204,986; and authorizing the Town Manager to execute documents for the same.

Description of Agenda Item:

On May 28, 2024, the Town Council approved an agreement with Quorum Architects, Inc. (Quorum) for the architectural and engineering design services for the Public Works and Parks Service Center. Quorum requested that the Town select a Construction Manager-At-Risk (CMAR) no later than December 2024, to maximize the benefits of pre-construction services early in the design process.

On November 7, 2024, eight proposals were received for the CMAR for the Public Works and Parks Service Center. The project was advertised using the CMAR alternative construction method to award the project to the contractor that offers the best value proposal based on the following criteria:

- Overall ability to meet Town's Objectives (10%)
- Experience with Similar Facility Construction (20%)
- Qualifications of Project Personnel (20%)
- References (10%)
- Cost Proposal (40%)

Utilizing the construction budget of \$15,000,000 for evaluation purposes, the cost proposals ranged between \$1,204,986.00 and \$2,243,231.25. The Pre-Construction Services fee and the General Conditions Cost fee are hard costs. The CMAR fee is a percentage of the construction cost, so the actual amount is unknown until design is complete, the CMAR bids out the trades, and a Guaranteed Maximum Price is negotiated.

The evaluation committee was comprised of four members representing Public Works, Facility Maintenance and Facility Construction. Quorum was given the information for review but was not a voting committee member. Upon completion of the evaluation, Byrne Construction Group was the top ranked contractor.

Budget Impact:

The entire project budget is \$15,000,000.00. The professional services budget for this project is estimated at \$1,204,986.00 and includes the Pre-Construction Services fee of \$15,000.00. These charges will be funded from FC202123-DESGN-PROFS and WA202123-DESGN-PROFS.

The construction budget for this project is \$15,000,000.00. The General Conditions Cost fee is \$814,986.00 and the CMAR Fee is 2.50% of the construction costs. These fees will be included as part of the Guaranteed Maximum Price Amendment funded from Construction Account No. FC202123-CONST-CONST and WA202123-CONST-CONST.

Legal Obligations and Review:

Terrence Welch of Brown & Hofmeister, L.L.P., has approved the attached documents as to form and legality.

Attached Documents:

1. Evaluation Matrix
2. As-Read Bid Document
3. AIA Document A133-2019
4. Addendum to AIA Document A133-2019
5. AIA Document A201-2017
6. Addendum to AIA Document A201-2017

Town Staff Recommendation:

Town Staff recommends awarding RFP No. 2025-02-B Construction Manager-At-Risk for the Public Works and Parks Service Center to Byrne Construction Group for \$1,204,986; and authorize the Town Manager to execute documents for the same.

Proposed Motion:

I move to award RFP No. 2025-02-B Construction Manager-At-Risk for the Public Works and Parks Service Center to Byrne Construction Group for \$1,204,986; and authorize the Town Manager to execute documents for the same.



TOWN OF PROSPER PROPOSAL TABULATION SUMMARY

Solicitation Number	RFP No. 2025-02-B
Solicitation Title	Construction Manager-At-Risk for Town of Prosper Public Works and Parks Service Center
Close Date	11/07/2024 2:00PM

Responding Contractor	Pre-Construction Services Fee	Construction Services Fee	General Conditions	Total Proposal
MDI Inc	\$ 10,000.00	3.00%	\$ 808,901.00	\$ 1,268,901.00
Byrne Construction	\$ 15,000.00	2.50%	\$ 814,986.00	\$ 1,204,986.00
Crossland Construction	\$ 15,000.00	2.25%	\$ 888,559.00	\$ 1,241,059.00
Fransen Pittman Construction	\$ 12,000.00	2.20%	\$ 905,022.36	\$ 1,247,022.36
McCownGordon Construction	\$ 10,000.00	2.75%	\$ 986,285.00	\$ 1,408,785.00
Muckleroy & Falls	\$ 25,000.00	3.00%	\$ 1,248,382.00	\$ 1,723,382.00
Authers Building Group	\$ 30,000.00	6%	\$ 1,313,231.25	\$ 2,243,231.25
Core Construction	\$ 10,000.00	3%	\$ 1,676,683.73	\$ 2,136,683.73

****All bids/proposals submitted for the designated project are reflected on this tabulation sheet. However, the listing of the bid/proposal on this tabulation sheet shall not be construed as a comment on the responsiveness of such bid/proposal or as any indication that the agency accepts such bid/proposal as being responsive. The agency will make a determination as to the responsiveness of the vendor responses submitted based upon compliance with all applicable laws, purchasing guidelines and project documents, including but not limited to the project specifications and contract documents. The agency will notify the successful vendor upon award of the contract and, as according to the law, all bid/proposal responses received will be available for inspection at that time.**

Certified by:	Jay Carter, NIGP-CPP, CPPB, C.P.M. Purchasing Manager Town of Prosper, Texas	Certified On:	November 7, 2024
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RFP NO. 2025-02-B
Construction Manager-At-Risk for Town of Prosper Public
Works and Parks Service Center

EVALUATION MATRIX		Authers Building Group		Byrne Construction Group		CORE Construction Services		Crossland Construction Company		Fransen Pittman Construction		McCownGordon Construction		MDI, Inc		Muckleroy & Falls	
EVALUATION CRITERIA	WEIGHTING	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE	POINTS	WEIGHTED SCORE
Cost Proposal	40%	5.37	2.15	10.00	4.00	5.64	2.26	9.71	3.88	9.66	3.87	8.55	3.42	9.50	3.80	6.99	2.80
Ability to Meet Town's Needs	10%	7.75	0.78	7.75	0.78	9.50	0.95	7.00	0.70	6.00	0.60	6.50	0.65	5.50	0.55	7.00	0.70
Experience with Similar Facility Construction	20%	5.25	1.05	8.00	1.60	8.50	1.70	8.25	1.65	6.50	1.30	8.13	1.63	2.50	0.50	6.75	1.35
Qualifications of Project Personnel	20%	6.50	1.30	7.75	1.55	7.00	1.40	7.00	1.40	5.50	1.10	7.38	1.48	5.00	1.00	4.25	0.85
References	10%	10.00	1.00	10.00	1.00	7.00	0.70	9.50	0.95	7.00	0.70	10.00	1.00	9.00	0.90	10.00	1.00
TOTAL	100%		6.27		8.93		7.01		8.58		7.57		8.17		6.75		6.70



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 10th day of December in the year 2024
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Town of Prosper
250 W. First Street
Prosper, Texas 75078

and the Construction Manager:
(Name, legal status, address, and other information)

Thos. S. Byrne, Inc., dba Byrne Construction Services
551 E. Berry St.
Fort Worth, Texas 76110

for the following Project:
(Name, location, and detailed description)

Public Works and Parks Service Center
RFP No. 2025-02-B

The Architect:
(Name, legal status, address, and other information)

Quorum Architects
825 W. Vickery Blvd. #100
Fort Worth, Texas 76104

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**EXHIBIT B INSURANCE AND BONDS****ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Init.

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

Init.

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant

or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The

written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

Init.

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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety-Five percent (95 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager;

or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA

Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017

Init.

/

[] Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will

terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

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§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:
(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Matthew Avila, Chief Executive Officer

(Printed name and title)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Public Works and Parks Service Center
RFP No. 2025-02-B

THE OWNER:

(Name, legal status and address)

Town of Prosper
250 W. First Street
Prosper, Texas 75078

THE ARCHITECT:

(Name, legal status and address)

Quorum Architects
825 W. Vickery Blvd. #100
Fort Worth, Texas 76104

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

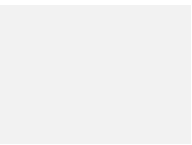
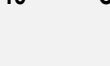
For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

**ADDENDUM to
The Standard Form of Agreement Between
Owner and Construction Manager as Constructor
Where the Basis of Payment is the Cost of the Work
Plus a Fee with a Guaranteed Maximum Price
AIA Document A133-2019**

This Addendum to the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2019 ("Addendum") is entered into this 10th day of December, 2024, by and between Thos. S. Byrne, Inc. dba Byrne Construction Services, (the "Construction Manager") and the Town of Prosper, Texas, (the "Owner"). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2019 (the "Agreement"), as set forth herein below.

WITNESSETH:

WHEREAS, the Owner and Construction Manager desire to enter into the Agreement for the construction of the Town of Prosper Public Works & Parks Service Center, RFP No. 2025-02-B; and

WHEREAS, the Owner and Construction Manager desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

WHEREAS, the Owner and Construction Manager would not enter into the Agreement save and except for the clarifications and revisions contained herein;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

I.

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. Section 1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1 The Owner's Initial Information on which this Agreement is based is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

2. Section 1.1.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.1 The Owner's program for the Project is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.1, and modified and defined by and through the process set out in Section 4.1.1.

3. Section 1.1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.2 The Project's physical characteristics are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings, and may be further explained in this Section 1.1.2.

4. Section 1.1.3 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's budget for the Guaranteed Maximum Price may be restated and/or further detailed in this Section 1.1.3 and may be further modified and updated by and through the processes set out in the Contract Documents.

5. Section 1.1.4 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.4 The Owner's anticipated design and construction milestone dates are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if

any, and the Owner's Specifications and Drawings. The Owner's anticipated design and construction milestone dates may be restated and/or further detailed in this Section 1.1.4 and may be further modified and updated by and through the processes set out in the Contract Documents.

6. Section 1.1.5 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's requirements for accelerated or fast-track scheduling, or phased construction, if any, may be restated and/or further detailed in this Section 1.1.5, and may be further modified and updated by and through the processes set out in the Contract Documents.

7. Section 1.1.6 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project, if any, is generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. The Owner's anticipated Sustainable Objective for the Project, if any, may be restated and/or further detailed in this Section 1.1.6, and may be further modified and updated by and through the processes set out in the Contract Documents.

8. Section 1.1.6.1 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager will complete such other and additional documents as may be agreed to be necessary for a full and complete set of Contract Documents.

9. Section 1.1.7 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.7 Intentionally omitted.

10. Section 1.1.8 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.8 The Owner identifies the following person to initially represent the Town in accordance with Section 4.2, it being understood that such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority and that the Owner reserves the right to replace and/or designate, in writing, one or more persons to represent the Owner.

Bryan Ausenbaugh
Fire Marshal
Town of Prosper, Texas
bausenbaugh@prospertx.gov
(972) 346-9469 (office)
(972) 832-5830 (mobile)

11. Section 1.1.9 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.9 Intentionally omitted.

12. Section 1.1.10 and subsections .1, .2 and .3 are hereby amended by deleting said provisions in their entirety and replacing such provisions with the following provision:

§ 1.1.10 The Owner shall retain such consultants and contractors as the Owner deems necessary, which consultants or contractors may include one or more of the following:

13. Section 1.1.13 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

14. Section 1.1.14 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work is generally set forth in, or can be determined by the Construction Manager based on, the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings.

15. Section 1.1.15 is hereby amended by deleting said provision in its entirety.
16. Section 1.2 is hereby amended by deleting said provision in its entirety and replacing such provision with the following provision:

§ 1.2 The Owner and Construction Manager may generally rely on the Initial Information contained in the Owner's Request for Proposals together with any addenda thereto, if any, and the Owner's Specifications and Drawings. Both parties, however, recognize that such information may materially change during the development of the Guaranteed Maximum Price.

17. Section 2.1 is hereby amended by deleting the last two sentences of this section.
18. Section 2.3 is hereby amended by deleting Sections 2.3, 2.3.1 and 2.3.2 in their entirety and replacing such provisions with a new Section 2.3, a new Section 2.3.1, and a new Section 2.3.2 to read as follows:

§ 2.3 General Conditions

The General Conditions of the Agreement shall be as set forth in AIA Document A201™-2017, *General Conditions of the Contract for Construction*, as modified by the Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (referred to collectively as the "A201-2017 Documents"), which A201-2017 Documents are incorporated herein by reference. Whenever the Agreement or this Addendum refers to AIA Document A201-2017 such reference shall also mean and include the Owner's Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017. The term "Contractor" as used in the A201-2017 Documents shall mean the Construction Manager.

§ 2.3.1 Professional Services

Section 3.12.10 of the A201-2017 Documents shall apply to both the Preconstruction and Construction Phases.

§ 2.3.2 Hazardous Materials

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), lead paint, or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the project site but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

19. The opening paragraph of Article 3, "Construction Manager's Responsibilities," is hereby amended by amending the first sentence to read as follows:

The Construction Manager's Preconstruction Phase responsibilities are generally set forth in the Owner's Request for Proposals together with any addenda thereto, if any, the Owner's Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents.

20. Section 3.1.1 is hereby amended in part by adding the following language to the end of that section:

The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form that is acceptable to the Owner and Architect.

21. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.4 to read as follows:

§ 3.1.3.4 During the Preconstruction Phase the Construction Manager shall review the Contract Documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference

with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing.

22. Section 3.1.3 is hereby amended in part by adding a new section 3.1.3.5 to read as follows:

§ 3.1.3.5 Notwithstanding any provision of this Agreement or the A201-2017 Documents to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence and the Owner and Architect were not informed of such conflicts as required by Section 3.1.3.4. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

23. Section 3.1.4 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.4 When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall coordinate with the Project schedule already developed by the Architect. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; the occupancy requirements of the Owner; and the proposed dates of Substantial Completion and Final Completion. Updates shall be provided with each estimate of the Cost of the Work required by Section 3.1.6, below, and whenever changes in the proposed Work or conditions may materially alter the latest schedule.

24. Section 3.1.6.2 is hereby amended in part by adding the phrase “until such time as the Owner and the Construction Manager agree on a Guaranteed Maximum Price for the Work” at the end of the first sentence of that section.
25. Section 3.1.6.2 is hereby further amended in part by adding the phrase “to reduce the cost and/or maintain the budget” at the end of the final sentence of that section.
26. Section 3.1.11.2 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

§ 3.1.11.2 The Construction Manager shall seek to develop subcontractor and supplier interest in the Project. All subcontracts shall be awarded pursuant to the procedures set forth in Section 9.1.

27. Section 3.1.14 is hereby amended by deleting said provision in its entirety and replacing said provision with the following provision:

The Construction Manager’s Preconstruction Phase responsibilities are generally set forth in the Owner’s Request for Proposals together with any addenda thereto, if any, the Owner’s Specifications and Drawings, Sections 3.1 and 3.2 of this Agreement, and in the applicable provisions of the A201-2017 Documents. Notwithstanding the foregoing, such Preconstruction Phase responsibilities may be modified by and through an amendment or change order to this Agreement and/or the Contract Documents.

28. Section 3.2.1 is hereby amended by deleting section 3.2.1 in its entirety and replacing it with a new section 3.2.1 to read as follows:

§ 3.2.1 When the Construction Drawings and Specifications are one hundred percent (100%) complete, or as otherwise agreed by the Owner and Construction Manager, the Construction Manager shall propose a Guaranteed Maximum Price, including contingencies as described in Section 3.2.4, which shall be the sum of the estimated Cost of the Work and the Construction Manager’s fee. The Guaranteed Maximum Price shall be proposed no later than 30 days after approval of the Construction Drawings and Specifications by the Owner. The Guaranteed Maximum Price shall be submitted on form AIA A133-2019, Exhibit A, unless otherwise directed by the Owner.

29. Section 3.2.2 is hereby amended by deleting section 3.2.2 in its entirety and replacing it with a new section 3.2.2 to read as follows:

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development by the Architect, the Construction Manager shall provide in, the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

30. Subsection .2 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .2 to read as follows:

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal;

31. Subsection .3 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .3 to read as follows:

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

32. Subsection .4 of section 3.2.3 is hereby amended by deleting the word "and" immediately following the semi-colon.

33. Subsection .5 of section 3.2.3 is hereby amended by deleting said subsection in its entirety and replacing it with a new subsection .5 to read as follows:

.5 A date by which the Owner must accept the Guaranteed Maximum Price, but in any event not less than sixty (60) days after submission of the Guaranteed Maximum Price; and

34. Section 3.2.3 is hereby amended by adding a new subsection .6 to read as follows:

.6 A statement that the proposed Guaranteed Maximum Price is not based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis; and

35. Section 3.2.3 is hereby amended by adding a new subsection .7 to read as follows:

.7 If Owner requests, Construction Manager shall make available for inspection the background documents and information that form the basis of the Construction Manager's Guaranteed Maximum Price proposal.

36. Section 3.2.4 is hereby amended by deleting section 3.2.4 in its entirety and replacing it with a new section 3.2.4 to read as follows:

In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order (the "Construction Manager's Contingency").

37. Section 3.2.5 is hereby amended by adding the following sentence at the end of section 3.2.5 to read as follows:

The Owner shall be allowed not less than sixty (60) days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price proposal.

38. Section 3.2.9 is hereby amended by deleting section 3.2.9 in its entirety and replacing it with a new Section 3.2.9 to read as follows:

§ 3.2.9 The Guaranteed Maximum Price shall include no amount for sales or use taxes for which Texas municipal corporations are exempt and for which the Owner has timely provided to the Construction Manager an appropriate tax exemption certificate or other required verification of the Owner's tax-exempt status. Such taxes shall not be reimbursable costs under Article 7.

39. Section 3.2 is hereby amended by adding a new Section 3.2.10, a new Section 3.2.11, and a new Section 3.2.12 to read as follows:

§ 3.2.10 Except with the Owner's prior written consent, the Construction Manager shall not include any allowances in its proposed Guaranteed Maximum Price.

§ 3.2.11 By its submission of a Guaranteed Maximum Price proposal, the Construction Manager agrees that any applicable buy-out savings, discounts, rebates, refunds,

unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings shall be returned to the Owner without sharing with the Construction Manager, unless the Owner specifically agrees otherwise in writing. Savings ~~shall be identified and submitted with each application for payment submitted by Construction Manager and~~ shall be fully reconciled with the Construction Manager's submission of the final payment application.

§ 3.2.12 The Construction Manager is discouraged from seeking bidder's interest or entering into a transaction with a "related party," as that term is defined by Section 7.8.1, below. If the Construction Manager, nonetheless, concludes that it may be in the Owner's best interest to seek bidder's interest or enter into a transaction with a related party, then the Construction Manager shall comply with Section 7.8.2, below, before seeking bidder's interest or entering into a transaction with a related party.

40. Section 3.3.1.1 is hereby amended by deleting section 3.3.1.1 in its entirety and replacing it with a new section 3.3.1.1 to read as follows:

§ 3.3.1.1 The Construction Phase shall commence upon the issuance to the Construction Manager of the Notice to Proceed for all or a portion of the Work.

41. Section 3.3.1.2 is hereby amended by deleting section 3.3.1.2 in its entirety and replacing it with a new section 3.3.1.2 to read as follows:

§ 3.3.1.2 The Contract Time shall be measured from the date of commencement of the Construction Phase.

42. Section 3.3.1 is hereby amended by adding a new section 3.3.1.3 and a new section 3.3.1.4 to read as follows:

§ 3.3.1.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Agreement, subject to adjustment of this Contract Time as provided in the Contract Documents.

§ 3.3.1.4 The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: One Thousand and No/One Hundredths Dollars

(\$1,000.00) per day or part of a day pursuant to and in accordance section 6.1.6, below.

43. Section 3.3.2.2 is hereby amended by deleting section 3.3.2.2 in its entirety and replacing it with a new section 3.3.2.2 to read as follows:

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of the A201-2017 Documents.

44. Article 3, "Construction Manager's Responsibilities," is hereby amended by adding a new section 3.4 to read as follows:

§ 3.4 The Construction Manager shall be responsible for all construction surveys and staking. Dimensions of Work shall not be determined by scale or rule but figured dimensions shall be followed at all times. The Construction Manager shall compare all drawings and verify all dimensions and shall take any and all measurements necessary to verify the Drawing dimensions in relation to conditions already established at the Project site before laying out the Work. Any discrepancy will be immediately called to the attention of the Architect and Owner by the Construction Manager. The Construction Manager will be held responsible for subsequent errors which could have been avoided.

45. Section 4.1.2 is hereby amended by deleting section 4.1.2 in its entirety and replacing it with a new section 4.1.2 to read as follows:

§ 4.1.2 This Project is a public project governed by Chapter 2253 of the Texas Government Code. Prior to the Owner's execution of the Guaranteed Maximum Price Amendment, the Owner acting by and through the Town Council of the Town of Prosper, Texas, approved the Owner's execution of the Guaranteed Maximum Price Amendment and authorized the expenditure of funds up to, and set aside funds in an amount not to exceed the full amount of the Guaranteed Maximum Price Amendment for the Construction Manager's full and complete performance of the Project in strict accordance with the Contract Documents.

46. Section 4.1.3 is hereby deleted in its entirety.

47. Section 4.1.6 is hereby deleted in its entirety.

48. Section 4.2 is hereby amended by deleting section 4.2 in its entirety and replacing it with a new section 4.2 to read as follows:

§ 4.2 Owner's Designated Representative

The Owner is the Town of Prosper, Texas, acting by and through its Town Council, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

49. Section 4.2.1 is hereby deleted in its entirety.

50. Section 4.3 is hereby amended by deleting section 4.3 in its entirety and replacing it with a new section 4.3 to read as follows:

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Architect retained by the Owner. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

51. Article 4, "Owner's Responsibilities," is hereby amended by adding a new section 4.4 to read as follows:

§ 4.4 Inspection and Testing

The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by the Owner. Notwithstanding the foregoing, the Construction Manager shall be responsible for the performance of all energy inspections.

52. Section 5.1.1 is hereby amended by inserting the following language in the space, provided for such purpose, following the parenthetical at the end of section 5.1.1:

Compensation for the pre-construction services described in Sections 3.1 and 3.2 is separate from and in addition to the compensation described in Section 6.1, provided however, if

the Construction Phase does not commence for any reason, the Construction Manager's compensation for the services described in Sections 3.1 and 3.2 shall be a total amount not to exceed Fifteen Thousand and No/One Hundredths Dollars (\$ 15,000.00).

53. Section 5.1.2 is hereby deleted in its entirety.
54. Section 5.1.2.1 is hereby deleted in its entirety.
55. Section 5.1.3 is hereby amended by inserting the following phrase in the corresponding spaces provided for such purpose between the phrase "extend beyond" and the phrase "months of" in section 5.1.3:

"Six (6) calendar"

56. Section 5.2.2 is hereby amended by deleting section 5.2.2 in its entirety and replacing it with a new section 5.2.2 to read as follows:

§ 5.2.2 Payments are due and payable 30 days from the date the Construction Manager's application for payment, approved by the Architect, is received by the Owner. Past due payments shall bear interest in accordance with the Texas Prompt Payment Act. No interest shall ever be due on any disputed amounts.

57. Section 6.1.1 is hereby amended by deleting section 6.1.1 in its entirety and replacing it with a new section 6.1.1 to read as follows:

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

58. Section 6.1.2 is hereby amended by deleting section 6.1.2 in its entirety and replacing it with a new section 6.1.2 to read as follows:

The Construction Manager's fee shall be based on two (2) and One-Half Hundredths percent (2.50%) of the actual Cost of the Work as defined in Article 7 and less any applicable buy-out savings, discounts, rebates, refunds, unused allowances, other amounts received from the sale of surplus materials and equipment, and other cost savings.

59. Section 6.1.3 is hereby amended by deleting section 6.1.3 in its entirety and replacing it with a new section 6.1.3 to read as follows:

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work shall be by formal written Change Order approved by the Owner.

60. Section 6.1.4 is hereby amended by deleting section 6.1.4 in its entirety and replacing it with a new section 6.1.4 to read as follows:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work shall be no more than ten percent (10%) of the subcontractor's cost, for overhead, and shall be no more than five percent (5%) of the subcontractor's cost, for profit:

- ~~61. Section 6.1.5 is hereby amended by deleting section 6.1.5 in its entirety and replacing it with a new section 6.1.5 to read as follows:~~

~~§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00).~~

62. Section 6.1.6 is hereby amended by deleting Section 6.1.6 in its entirety and replacing it with a new Section 6.1.6 to read as follows:

§ 6.1.6 Liquidated Damages for Failure to Complete on Time.

~~North Central Texas Council of Governments Standard Specifications for Public Works Construction Standards ("NCTCOG Specifications") Item 108.8, Delays; Extension of Time; Liquidated Damages shall apply, except to the extent it is conflict with, or is otherwise amended by, this Section 6.1.6.~~ The Construction Manager understands and agrees that time is of the essence in performing and completing the Work. The Owner and Construction Manager acknowledge that the actual damages the Owner may sustain if the Construction Manager fails to complete the Work on time are uncertain and will be difficult to ascertain. Consequently, the Construction Manager agrees to pay to the Owner the sum of One Thousand and No/One Hundredths Dollars (\$ 1,000.00) for each calendar day or part of a calendar day that completion of any Work required under the Contract Documents is overdue. This amount is payable as reasonable and just compensation for failure to complete the Work on time. This

amount is payable as liquidated damages and not as a penalty.

63. Section 6.1.7 is hereby amended by deleting Section 6.1.7 in its entirety and replacing it with a new Section 6.1.7 to read as follows:

§ 6.1.7 Delays: Extension of Time: Liquidated Damages

~~In addition to the requirements of NCTCOG Specifications Item 108.8 Delays; Extension of Time; Liquidated Damages, the following provisions shall be applied to Item 108.8 and be incorporated in to the NCTCOG Specifications as Item 108.8.2:~~

~~"108.8.2 Unforeseeable Cause~~

The term "unforeseeable cause" ~~as it is used in Item 108.8~~ shall mean:

1. An act of God in the form of unusually severe weather conditions, including storms, flood, fire, or similar event, that could not have been anticipated or guarded against and which materially affects the Work site, including access or egress thereto;
2. A riot or war situation actually involving the site or actually preventing the Construction Manager from working on the site, but not including any situation involving suppliers off site other than those essential suppliers as supplied to OWNER;* or
3. An epidemic, pandemic, or quarantine restrictions that actually involves the site and actually prevents the Construction Manager and the Construction Manager's employees and subcontractors from physically working on the site, but not including any situation involving Construction Manager's employees, subcontractors, and suppliers off site other than those essential suppliers as supplied to OWNER,* and then only to the extent that:
 - a. Construction Manager promptly reports the epidemic, pandemic, or quarantine restrictions to the Owner in writing within five (5) business

days after the epidemic, pandemic, or quarantine restrictions first impact the site;

- b. Construction Manager identifies and tracks the work that was prevented from being performed in accordance with the Construction Manager's Gantt Chart for each day lost together with the number of Construction Manager's employees and subcontractors assigned to the performance of such work that were prevented from physically working on the site as a direct result of the epidemic, pandemic, or quarantine restrictions; and
 - c. The Construction Manager uses its best efforts to identify and hire employees and subcontractors to continue the performance of the Work and fully documents such efforts to perform the work to the extent reasonably practicable given the limitations imposed by the epidemic, pandemic, or quarantine restrictions that impact the site.
4. An unanticipated strike involving the forces actually working on the Project or involving the employees of those essential suppliers,* but no other labor stoppage.

* The Construction Manager must identify its essential suppliers in writing within five (5) business days of the Notice to Proceed. Any supplier that is not so identified shall not be considered an essential supplier justifying an extension of time for a delay caused by an Unforeseeable Cause.

No event shall be deemed an Unforeseeable Cause for the purposes of this Agreement unless it actually and directly necessitates a delay in the Work which could not be otherwise remedied by taking reasonably prudent steps, and the Construction Manager could not reasonably adjust the schedule of the remaining Work to deal with, make up for, or otherwise work around the delays resulting from the Unforeseeable Cause(s)."

64. Section 6.1 is hereby amended by adding a new Section 6.1.8 to read as follows:

§ 6.1.8 Claims for Additional Time.

The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. ~~The Construction Manager shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions.~~ Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical average cumulative number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service (Dallas / Fort Worth, TX Weather Forecast Office):

Average Weather Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
3	2	3	2	4	3	3	2	3	3	2	2

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner and no later than fourteen (14) days after the event(s) giving rise to such claim. The notice shall, in writing, specify the nature and duration of

the delays or disruptions and the anticipated effect such weather days will have on the Construction Manager's abilities to perform its obligations along with a plan to deal with the effects of such weather days and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, or abnormal or adverse weather conditions that exceed the average weather days per month listed above but only for adverse weather days that exceed 30 days in the aggregate have been claimed ~~whether such hindrances or delays be avoidable or unavoidable~~, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any ~~such~~ other delays other than those specified herein."

65. Section 6.3.3 is hereby amended by deleting section 6.3.3 in its entirety and replacing it with a new section 6.3.3 to read as follows:

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "costs" and "fee" as used in Article 7 of the AIA A201-2017 Documents shall have the meanings assigned to them in the AIA A201-2017 Documents and shall not be modified by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner.

66. Section 6.3.5 is hereby amended by deleting Section 6.3.5 in its entirety and replacing it with a new Section 6.3.5 to read as follows:

§ 6.3.5 In the case of changes in the Work, the fee will be adjusted as provided for in Section 6.1, if both parties agree that the scope of services has changed significantly. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

67. Section 7.2.4 is hereby amended by deleting Section 7.2.4 in its entirety and replacing it with a new Section 7.2.4 to read as follows:

§ 7.2.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, and provided that such costs are directly attributable to work performed on this Project only and percentages of such wages and salaries as set forth in the staff rate sheet provided by Construction Manager for each employee of Construction Manager working on the Project.

68. Section 7.3 is hereby amended by deleting the last four (4) words “subcontracts and this Agreement” and replacing that phrase with the phrase “Guaranteed Maximum Price Amendment.”
69. Section 7.4.2 is hereby amended by deleting Section 7.4.2 in its entirety and replacing it with a new Section 7.4.2 to read as follows:

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for

reasonable waste and spoilage. Unused excess materials, if any, shall become the Construction Manager's property at the completion of the Work and the actual cost of such excess materials as was originally billed to Owner shall be credited to the Owner as a deduction from the Cost of the Work.

70. Section 7.5 is hereby amended by deleting Section 7.5.6 in its entirety. ~~Sections 7.5.4, 7.5.5 and 7.5.6 in their entirety, and replacing Section 7.5.4 with a new Section 7.5.4 to read as follows:~~

~~§ 7.5.4 Costs of document reproductions; facsimile transmissions to the extent only that information being transmitted via facsimile cannot be transmitted via email or some Internet protocol; long distance telephone calls with third parties unrelated to CMAR; postage and parcel delivery charges for bulky items that cannot be transmitted electronically via email or some Internet protocol; one hard-wired (or "landline") telephone at the site, if necessary, and a pro rata portion of wireless telephone service expenses to the extent only that such wireless telephones are required for use on this Work Site and then only to the extent actually used for the Project; and, reasonable petty cash expenses of the site office subject to Owner's approval of the basis or justification for any and all expenses having a cumulative total in excess of \$100.00 in any month.~~

71. Sections 7.6.1.1 and 7.6.1.2 are hereby deleted in their entirety.
72. Section 7.6.2 is hereby amended by deleting Section 7.6.2 in its entirety and replacing it with a new Section 7.6.2 to read as follows:

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work, for which the Construction Manager is liable, and that are not permanently installed in the Work.

73. Section 7.6.4 is hereby amended by deleting Section 7.6.4 in its entirety and replacing it with a new Section 7.6.4 to read as follows:

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201-2017 or by other provisions of the Contract Documents.

74. Sections 7.6.5 and Sections 7.6.9 through 7.6.11 are hereby deleted in their entirety.

75. Section 7.7.1 is hereby amended by deleting Section 7.7.1 in its entirety and replacing it with a new Section 7.7.1 to read as follows:

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

~~76. Sections 7.7.3 and 7.7.4 are hereby deleted in their entirety.~~

77. Section 7.8.2 is hereby amended by adding the following sentence to the end of that Section: "Transactions with a related party based on any method of compensation other than a lump sum are prohibited."

78. Section 7.9.1 is hereby amended by deleting the phrase "The Cost of the Work shall not include the items listed below" and replacing it with the phrase "The Cost of the Work shall exclude items including, but not limited to, those items listed below."

79. Section 7.9.1 is hereby amended, in part, by deleting Section 7.9.1.6 in its entirety and replacing it with a new Section 7.9.1.6 to read as follows:

§ 7.9.1.6 Costs due to the negligence of the Construction Manager, the Construction Manager's Subcontractors or suppliers, or the failure of the Construction Manager or the Construction Manager's Subcontractors or suppliers to fulfill a specific responsibility to the Owner set forth in this Agreement.

80. Section 8.1 is hereby amended by deleting the first sentence in its entirety.

81. Article 8, "Discounts, Rebates and Refunds," is hereby amended, in part, by inserting the following provision as a new Section 8.3:

§ 8.3 Costs of inspections and testing of work ordered by the Contractor where the work was not performed or completed in accordance with the scheduling of such inspections and testing and the inspection or testing lab is not notified shall be credited to the Owner as a deduction from the Cost of the Work.

82. Section 9.1 is hereby amended by deleting section 9.1 in its entirety and replacing it with a new section 9.1 to read as follows:

§ 9.1 All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including the Construction Manager, who have been selected using competitive bids or competitive sealed proposals. With the Owner's approval, the Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful bidder's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and,
- .3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.

Nothing herein shall prevent the Construction Manager from including other notices required or allowed by law. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors', subcontractors' and Construction Manager's bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefore is completed. All bids or proposals shall be made public within seven (7) days after the date of final selection.

83. ~~Section 9.1.1 is hereby amended by deleting section 9.1.1 in its entirety and replacing it with a new section 9.1.1 to read as follows:~~

~~§ 9.1.1 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended~~

~~to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) offers the best value to the Owner, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

84. Section 9.2 is hereby amended by deleting Section 9.2 in its entirety and replacing it with a new section 9.2 to read as follows:

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, any adjustments to such a subcontract shall be calculated in accordance with the terms of those subcontracts subject to the written approval of the Owner. In addition, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights regarding the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

85. Section 11.1.3 is hereby amended by deleting Section 11.1.3 in its entirety and replacing it with a new Section 11.1.3 to read as follows:

§ 11.1.3 The Owner will pay an approved Application for Payment within thirty (30) days after the date such approved Application for Payment is received by the Owner from the Architect. Notwithstanding the foregoing the Owner shall not be required to pay any disputed amounts that the Owner believes were erroneously approved by the Architect. Past due payments and any disputed amounts shall bear interest in accordance with the Texas Prompt Payment Act.

86. Section 11.1.4 is hereby amended by adding the following sentence at the end of Section 11.1.4 to read as follows:

Each Application for Payment shall be accompanied by a release of claims and liens in the form acceptable to the Owner.

87. Section 11.1.5 is hereby amended by deleting Section 11.1.5 in its entirety and replacing it with a new Section 11.1.5 to read as follows:

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. The Construction Manager's Contingency and the Construction Manager's Fee shall be shown as separate individual items. Construction Manager shall use AIA Document G702 for Application and Certificate for Payments and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.

88. Section 11.1.5.1 is hereby amended in part by deleting the second sentence and replacing said sentence with a new sentence to read as follows:

The schedule of values, once approved by the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

89. Section 11.1.5.3 is hereby amended by deleting Section 11.1.5.3 in its entirety and replacing it with a new Section 11.1.5.3 to read as follows:

§ 11.1.5.3 When the Construction Manager allocates costs from the Construction Manager's Contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner. Similarly, when the Construction Manager shifts costs from one line item to one or more different line items in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner.

90. ~~Section 11.1.7.1.3 is hereby deleted in its entirety.~~

91. Section 11.1.7.2.2 is hereby amended by deleting Section 11.1.7.2.2 in its entirety and replacing it with a new Section 11.1.7.2.2 to read as follows:

§ 11.1.7.2.2 The amount, if any, for Work that remains uncorrected and for which the Owner or Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;

92. Section 11.1.7.2.4 is hereby amended by deleting Section 11.1.7.2.4 in its entirety and replacing it with a new Section 11.1.7.2.4 to read as follows:

§ 11.1.7.2.4 For Work performed or defects discovered since the last payment application, any amount for which the Owner or Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;

93. Section 11.1.8 is hereby amended by inserting the following phrase in the corresponding spaces, provided for such purpose, immediately after the phrase “as retainage, from the payment otherwise due”:

“Retainage shall be five percent (5%).”

94. Section 11.1.8.2 is hereby deleted in its entirety.

- ~~95. Section 11.1.7.7 is hereby amended by deleting Section 11.1.7.7 in its entirety and replacing it with a new Section 11.1.7.7 to read as follows:~~

~~§ 11.1.7.7 The Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate of Payment as provided in Section 9.5 of the A201-2017 Documents;~~

- ~~96. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new section 11.1.11 to read as follows:~~

~~§ 11.1.11 In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, §9.3.3 and §9.10.2 of the A201-2017 Documents.~~

97. Section 11.2.1.1 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents.”

- ~~98. Section 11.2.2 is hereby amended by deleting the phrase “AIA Document A201-2017” and replacing it with the phrase “A201-2017 Documents” in both the second and third sentences of said section.~~

99. ~~Section 11.2.3 is hereby amended by deleting the phrase “A201-2017” at the end of the first sentence and replacing it with the phrase “A201-2017 Documents.”~~

100. Article 11, “Payments for Construction Phase Services,” is hereby amended by adding a new Section 11.2.5 to read as follows:

§ 11.2.5 The Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:

- .1 provision of record or as-built drawings executed or complete in both “.dwg” and “.tiff” formats;
- .2 provision of executed or complete certificates of documents evidencing warranties and owner-operators manuals;
- .3 provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.

101. Article 12, entitled “Dispute Resolution,” including all Sections thereof is hereby deleted in its entirety and replaced with a new Article 12 also entitled “Dispute Resolution” to read as follows:

§ 12.1 All disputes arising out of this Agreement shall be resolved in accordance with the provisions of Article 15 of the A201-2017 Documents.

102. Article 13, entitled “Termination or Suspension,” including all Sections and Subsections thereof is hereby deleted in its entirety and replaced with a new Article 13 also entitled “Termination or Suspension” to read as follows:

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Prior to execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this agreement, with or without cause, at any time upon twenty-four hours’ notice. In the event such termination is for the convenience of the Owner, the Construction Manager shall be

compensated for all Preconstruction Phase services actually performed prior to receipt of notice of termination, not to exceed the compensation set forth in Section 4.1.1.

§ 13.2 Following execution by both parties of the Guaranteed Maximum Price Amendment, the Owner may terminate this agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

§ 13.3 Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Construction Manager may not terminate this agreement.

§ 13.4 The Owner or the Construction Manager may terminate this agreement for cause as provided in Article 14 of the A201-2017 Documents.

103. Section 14.2, "Successors and Assigns," is hereby deleted in its entirety and replaced with a new Section 14.2, "Successors and Assigns," to read as follows:

§ 14.2 Successors and Assigns

The parties' rights with respect to assignment of this Agreement shall be in accordance with Article 13.2 of the General Conditions, AIA A-201-2017.

104. Section 14.3, entitled "Insurance and Bonds," is hereby deleted in its entirety and replaced with a new Section 14.3 also entitled "Insurance and Bonds" to read as follows:

§ 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager shall purchase and maintain insurance and shall provide bonds in accordance with the Contract Documents and the Request for Proposals.

105. Section 14.4 is hereby deleted in its entirety and replaced with a new Section 14.4, "Conflict of Interest," to read as follows:

§ 14.4 Conflict of Interest

§ 14.4.1 Construction Manager covenants and agrees that Construction Manager and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Construction Manager pursuant to this Agreement will be conducted by employees, associates or subcontractors of Construction Manager.

§ 14.4.2 In addition, to the extent that this Agreement (a) must be approved by the Town's governing body before it may be signed or (b) has a value of \$1,000,000, or more, Construction Manager shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time Construction Manager submits this signed Agreement to Owner, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The Construction Manager must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the Construction Manager must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the Owner.

The Owner must notify the Commission, using the Commission's filing application, of the receipt of the filed Form

1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the Owner.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

<https://www.ethics.state.tx.us/filinginfo/1295/>

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

106. Section 14.5 is hereby deleted in its entirety and replaced with a new Section 14.5, "Prohibition on Contracts with Companies Boycotting Israel," to read as follows:

§ 14.5 Prohibition on Contracts with Companies Boycotting Israel.

In accordance with Chapter 2270, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.

Chapter 2270 does not apply to: (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2270 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

107. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.6, "Prohibition on Contracts with Companies Boycotting Energy Companies," to read as follows:

§ 14.6 Prohibition on Contracts with Companies Boycotting Energy Companies.

In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

108. Article 14, entitled "Miscellaneous Provisions," is hereby further amended by adding a new Section 14.7, "Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association," to read as follows:

§ 14.7 Prohibition on Contracts with Companies Boycotting any Firearm Entity or Firearm Trade Association.

In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). In addition, this provision does not apply to:

(1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the Construction Manager is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Construction Manager verifies by its signature on this Agreement that the Construction Manager does not boycott any firearm entity or firearm trade association and will not boycott any firearm entity or firearm trade association during the term of this Agreement.

109. Article 15, entitled "Scope of the Agreement," including all Sections and Subsections thereof is hereby deleted in its entirety.

II.

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

III.

This Addendum, when combined with the Agreement contains the entire agreement between Owner and Construction Manager with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions were incorporated therein word for word.

IV.

This Addendum and the Agreement are entered into subject to the Prosper Town Charter and ordinances of Town, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Construction Manager will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Construction Manager's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

V.

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

VI.

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

VII.

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Construction Manager) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Construction Manager or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Construction Manager.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

OWNER:

TOWN OF PROSPER, TEXAS

By: _____
Mario Canizares, Town Manager

Date Signed: _____

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM:

Terrence S. Welch, Town Attorney

CONSTRUCTION MANAGER:

BYRNE CONSTRUCTION SERVICES

By: 

Date Signed: December 5, 2024

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Mario Canizares, Town Manager of the **TOWN OF PROSPER**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the Town's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____
DAY OF _____, 2024.

Notary Public Denton County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 2024, by **NAME**, in his capacity as President/Chief Executive Officer of **BYNRE CONSTRUCTION GROUP**, a Texas Limited Liability Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____
DAY OF _____, 2024.

Notary Public _____ County, _____
My commission expires _____

**ADDENDUM to
The General Conditions of the Contract for Construction
AIA Document A201-2017**

This Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (“Addendum”), is entered into this 10th day of December, 2024, by and between Thos. S. Byrne, Inc. dba Byrne Construction Services (the “Construction Manager”) and the Town of Prosper, Texas, (the “Owner”). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (the “Agreement”), as set forth herein below.

W I T N E S S E T H:

WHEREAS, the Owner and Construction Manager desire to enter into the Agreement for the construction of the Town of Prosper Parks and Public Works Service Center, RFP No. 2025-02-B; and

WHEREAS, the Owner and Construction Manager desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

WHEREAS, the Owner and Construction Manager would not enter into the Agreement save and except for the clarifications and revisions contained herein;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

I.

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. Section 1.1.2 is hereby amended by deleting the third sentence of such provision and replacing it with the following sentence:

After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification signed by the parties.

2. Section 1.1.8 is hereby amended by deleting the second sentence of such provision in its entirety.

3. Section 1.1 is hereby amended by adding a new Section 1.1.9 to read as follows:

§ 1.1.9 General Reference Notes

§ 1.1.9.1 Where the term “Contractor” is used throughout the Agreement and this Addendum it shall be replaced with the phrase “Construction Manager at Risk (“CMAR”).”

§ 1.1.9.2 Where the phrase “total bid price” is used throughout the Agreement and this Addendum it shall be replaced with the phrase “Guaranteed Maximum Price.”

4. Section 1.2.3 is hereby amended by deleting Section 1.2.3 in its entirety and replacing it with a new Section 1.2.3 to read as follows:

§ 1.2.3 Technical terms not specifically defined in the Contract Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms", July 1982 edition. Technical terms not defined as above and used to describe items of the Work and which so applied have a well-known technical or trade meaning, shall be held to have such recognized meaning.

5. Section 1.2 is hereby amended by adding a new Section 1.2.4 to read as follows:

§ 1.2.4 Precedence of the Contract Documents

The Contract Documents shall consist of the following documents:

- .1 Contract Modifications signed by CMAR and Owner.
- .2 *General Conditions of the Contract for Construction*, AIA A201-2017, as modified by the Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017.
- .3 As applicable:
 - .1 *Standard Form of Agreement Between Owner and Architect*, AIA Document B101-2017, as modified by the Addendum to the *Standard Form of Agreement*

Between Owner and Architect, AIA Document B101 – 2017; or

- .2 *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2009, as modified by the Addendum to the *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, AIA Document A133-2009; or
- .3 *Standard Form of Agreement Between Owner and Design-Builder*, AIA Document A141-2014, as modified by the Addendum to the *Standard Form of Agreement Between Owner and Design-Builder*, AIA Document A141-2014; or
- .4 *Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor*, AIA Document A121 CMc-2003 and AGC Document 565, as modified by the Addendum to the *Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor*, AIA Document A121 CMc-2003 and AGC Document 565.
- .4 Addenda to construction documents, with those of later date having precedence over those of earlier date.
- .5 Specifications.
- .6 Drawings.

These Contract Documents are incorporated by reference into this Addendum and the Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above, with the most recently issued document taking precedence over previous issues of the same document.

6. Section 1.2 is hereby amended by adding a new Section 1.2.5 to read as follows:

§ 1.2.5 Relation of Specifications and Drawings

To be equivalent in authority and priority. If there exists a conflict or inconsistency between the Specifications and the Drawings it shall be the CMAR's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the CMAR fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the CMAR shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project. In the event of the above-mentioned conflict or inconsistency, the resolution shall be determined by the Initial Decision Maker.

7. Section 1.2 is hereby amended by adding a new Section 1.2.6 to read as follows:

§ 1.2.6 Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect and the Owner.

8. Section 1.2 is hereby amended by adding a new Section 1.2.7 to read as follows:

§ 1.2.7 When the work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the edition thereof officially adopted by the Town of Prosper, Texas, together with any officially adopted local amendments thereto as of the Agreement date shall apply. If the Town of Prosper, Texas, has not officially adopted a specific edition of a particular standard, building code, manufacturer's instruction, or other document that governs the work the then current edition as of the Agreement date together with any local amendments officially adopted thereto by the Town of Prosper, Texas, shall apply unless otherwise specified in the Contract Documents.

9. Section 1.2 is hereby amended by adding a new Section 1.2.8 to read as follows:

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

10. Section 1.5.1 is hereby amended by deleting the first sentence of such provision and replacing it with the following sentence:

The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights as against the CMAR, Subcontractors, Sub-subcontractors, and material or equipment suppliers.

11. Section 1.5 is hereby amended by adding a new Section 1.5.3 to read as follows:

§ 1.5.3 The Owner and CMAR agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Guaranteed Maximum Price proposal by the CMAR is a representation that the CMAR has thoroughly reviewed and become familiar with the Contract Documents and that the CMAR is not then aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the CMAR in the performance of the Contract Work. Any claims for damages or increase in the Contract Amount asserted by the CMAR due to delays or disruptions to the Work arising out of any errors, inconsistencies or omissions impacting the completeness or accuracy of the Contract Documents shall be subject to the provisions of Sections 3.2.2, 8.3.1, and 8.3.3 of the Agreement as said sections have been amended and modified by this Addendum. This limitation on damages is further subject to the limitations set forth in the Contract Documents.

12. Section 1.6 and Subsections 1.6.1 and 1.6.2 are hereby amended by deleting Section 1.6 and Subsection 1.6.1 and 1.6.2 in their entirety and replacing Section 1.6 with a new Section 1.6 to read as follows:

§ 1.6 Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice. Notice will be effective upon physical delivery of the notice in person or by courier service providing proof of delivery; or, four (4) business days after the date of mailing by certified mail, return receipt requested.

In addition, or in the alternative, delivery of such written notice may be made by electronic mail transmission ("Email") to the Email address of the party to which such notice is being given. Any notice delivered by Email shall request a receipt thereof confirmed by Email or in writing by the recipient and followed by personal or mail delivery of such correspondence and any attachments as may be requested by the recipient. The effective date of written notice by Email shall be the date of receipt, provided such receipt has been confirmed by the Email recipient. If no Email reply has been received by the sender within one (1) business day from Emailing the notice, the written notice is deemed incomplete, and sender must send written notice in person or by messenger or certified mail, return receipt requested.

13. Section 1.7 is hereby amended by deleting Section 1.7 in its entirety and replacing Section 1.7 with a new Section 1.7 to read as follows:

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the development, use, transmission, and exchange of Instruments of Service or any other information or documentation in digital form, unless otherwise already provided in the Agreement or the Contract Documents.

14. Section 1.8 is hereby amended by deleting Section 1.8 in its entirety and replacing Section 1.8 with a new Section 1.8 to read as follows:

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement regarding protocols

governing the use of, and reliance on, the information contained in the model and without having those protocols shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

15. Section 2.1.1 is hereby amended by deleting Section 2.1.1 in its entirety and replacing it with a new Section 2.1.1 to read as follows:

§ 2.1.1 The Owner is the Town of Prosper, Texas, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall no implied authority. beyond the scope of authority expressly set forth herein. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner in any regard.

16. Section 2.1.2 is hereby amended by deleting Section 2.1.2 in its entirety and replacing it with a new Section 2.1.2 to read as follows:

§ 2.1.2 CMAR acknowledges that no lien rights exist with respect to public property.

17. Section 2.2 and Subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 are hereby amended by deleting Section 2.2 and Subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 in their entirety and replacing Section 2.2 with a new Section 2.2 to read as follows:

§ 2.2 Evidence of the Owner's Financial Arrangements

This Project is a public project governed by Chapter 2253 of the Texas Government Code. Prior to the Owner's execution of the Guaranteed Maximum Price Amendment, the Owner acting by and through the Town Council of the Town of Prosper, Texas, approved the Owner's execution of the Guaranteed Maximum Price Amendment and authorized the expenditure of funds up to, and set aside funds in an amount not to exceed the full amount of the Guaranteed Maximum Price Amendment for the Construction Manager's full and complete performance of the Project in strict accordance with the Contract Documents.

18. Section 2.3.3 is hereby amended by deleting Section 2.3.3 in its entirety and replacing it with a new Section 2.3.3 to read as follows:

§ 2.3.3 If the employment of the Architect is terminated, the Owner shall employ a replacement Architect who shall assume the status of "Architect" under the Contract Documents.

19. ~~Section 2.3.4 is hereby amended by deleting the last sentence of Section 2.3.4 in its entirety.~~

20. Section 2.3.5 is hereby amended by deleting Section 2.3.5 in its entirety and replacing it with a new Section 2.3.5 to read as follows:

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents and such other information or services that are within the Owner's control and relevant to CMAR's performance of the Work within a reasonable time following actual receipt of a written request for such information or services.

21. Section 2.3.6 is hereby amended by deleting Section 2.3.6 in its entirety and replacing it with a new Section 2.3.6 to read as follows:

§ 2.3.6 The Owner shall furnish one copy of the Contract Documents, including the Drawings and Project Manuals, free of charge. The CMAR will be responsible for the cost of any additional copies it needs or desires for the Project.

22. Section 2.3 is hereby amended by adding a new Section 2.3.7 to read as follows:

§ 2.3.7 Owner's personnel may be, but are not required to be, present at the construction site during progress of the Work to: assist the Architect in the performance of his duties; and, to verify the CMAR's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of CMAR's Applications for Payment.

23. Section 2.4 is hereby amended by deleting Section 2.4 in its entirety and replacing it with a new Section 2.4 to read as follows:

§ 2.4 If the CMAR fails to correct nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by the Contract Documents or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the CMAR to stop the

Work or any portion thereof, until the cause for such order has been eliminated. However, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the CMAR or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under paragraph 12.2.

24. Section 2.5 is hereby amended by deleting Section 2.5 in its entirety and replacing it with a new Section 2.5 to read as follows:

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If CMAR defaults or neglects to carry out the Work in accordance with Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies.

§ 2.5.2 If the CMAR fails to complete the Work in accordance with the time limit stipulated in the Certificate of Substantial Completion, then Owner may take over the completion of Work without advance notice to CMAR and without prejudice to any other remedy that Owner may have.

§ 2.5.3 In such cases as described in Sections 2.5.1 and 2.5.2, an appropriate modification will be issued deducting from the Contract Sum the reasonable cost of correcting such deficiencies or completing such Work, regardless of whether Owner actually undertakes completing such Work, in which case the deduction shall be based on the Architect's estimate in accordance with Section 7.3.4, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. Such action by the Owner and amounts charged to CMAR are both subject to prior approval of the Architect. If the unpaid balance of the Contract Sum is not sufficient to cover such amounts, the CMAR shall pay the difference to the Owner.

§ 2.5.4 In the case of a Contract Sum based upon a Guaranteed Maximum Price that includes a GMP Contingency, the unused GMP Contingency shall not be included in the calculation required by Section 2.5.3 of unpaid balance of the Contract Sum, and the reduction in the Contract Sum shall not be applied to the GMP Contingency.

25. Section 3.1.2 is hereby amended by deleting Section 3.1.2 in its entirety and replacing it with a new Section 3.1.2 to read as follows:

§ 3.1.2 The CMAR shall perform the Work in a good and workmanlike manner in accordance with the Contract Documents save and except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which event the CMAR shall perform the Work to such higher degree of finish or workmanship.

26. Section 3.1 is hereby further amended by adding a new Section 3.1.4 to read as follows:

§ 3.1.4 It is understood and agreed that the relationship of CMAR to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make CMAR the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and CMAR. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect CMAR's independent contractor status as described herein.

27. Section 3.1 is also hereby amended by adding a new Section 3.1.5 to read as follows:

§ 3.1.5 Representations and Warranties

§ 3.1.5 The CMAR represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- .4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- .5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.

28. Section 3.2.1 is hereby amended by adding the following sentence to the end of Section 3.2.1 to read as follows:

Signing any one of the Contract Documents shall be considered as signing all of the Contract Documents.

~~29. Section 3.2.2 is hereby amended by deleting the second sentence of such provision and replacing it with the following sentence:~~

~~Any errors, omissions, or inconsistencies discovered by the CMAR shall be reported promptly to the Architect as a request for information in such form as the Architect may require.~~

30. Section 3.2.2 is hereby further amended by adding the following sentence to the end of Section 3.2.2:

CMAR shall not perform construction activity when CMAR knows, in exercise of reasonable diligence, that the activity involves error, inconsistency, or omission in Contract Documents.

31. Section 3.2.2 is hereby further amended by adding the following clauses to the end of Section 3.2.2 to read as follows:

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner.
- .2 The CMAR shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, CMAR shall verify at the site all dimensions relating

to such existing or other work. Any errors due to the CMAR's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the CMAR.

- .3 CMAR shall not be entitled to any additional time or compensation for any additional work caused by or arising out of the CMAR's failure to carefully study and compare the Contract Documents prior to execution of the Work.

32. Section 3.2.4 is hereby amended by deleting the second and third sentences of such provision and replacing them with the following sentences:

If the CMAR fails to perform the obligations of Sections 3.2.2 or 3.2.3, with reasonable diligence, the CMAR shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations with reasonable diligence. If the CMAR performs the obligations of Sections 3.2.2 or 3.2.3, with reasonable diligence the CMAR shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

33. Section 3.2 is hereby further amended by adding a new Section 3.2.5 to read as follows:

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, CMAR is responsible for contacting all private and public utilities to determine the location of existing facilities and compliance with the State of Texas' "call before you dig" program mandated by Texas Utility Code Chapter 251 prior to any digging or excavation. CMAR shall notify Owner in the event that one or more private and public utilities fails or refuses to respond to CMAR prior to any digging or excavation to allow the Owner an opportunity to assist in persuading the utility to identify the location of their existing facilities. CMAR shall use reasonable efforts to perform all work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. CMAR shall be responsible for, and shall repair at CMAR's own expense, any damage done to lines, cables, pipes, and

pipelines by CMAR that are identified by such entities through this coordination by CMAR.

34. Section 3.3.1 is hereby amended by deleting the fourth, fifth and sixth sentences of such provision and replacing them with the following sentences

If the CMAR determines that such means, methods, techniques, sequences or procedures may not be safe, the CMAR shall give timely written notice to the Owner and Architect, and shall not proceed with that portion of the Work without further written instructions from the Architect. The CMAR shall propose to Architect and Owner alternate means, methods, techniques, sequences or procedures that the Architect shall review the proposed alternate for conformance with the design intent for the completed Work. If the CMAR is then instructed in writing by the Architect to proceed with the required construction means, methods, techniques, sequences or procedures set out in the Construction Documents without acceptance of the changes proposed by the CMAR, the Architect shall be responsible for any loss or damage arising solely from those required means, methods, techniques, sequences or procedures. All such construction directives will be submitted to the Owner for Owner's concurrence and written approval prior to CMAR's performance of that portion of the Work so questioned.

35. Section 3.3 is hereby further amended by adding a new Section 3.3.4 to read as follows:

§ 3.3.4 CMAR shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, *et seq.*

36. Section 3.3 is hereby further amended by adding a new Section 3.3.5 to read as follows:

§ 3.3.5 Trench safety systems shall be provided by the CMAR in accordance with the applicable subpart related to Excavation, Trenching, and Shoring of the OSHA Standards as published in Federal Register, Volume 54, No. 209 dated October 31, 1989, and revised effective January 2, 1990. These standards describe safety and health regulations as administered by the U.S. Department of Labor Occupational Safety and health Administration (OSHA). The standards

specified by the OSHA Regulations shall be the minimum allowed on this Project. It shall be the responsibility of the CMAR to provide a design and install adequate trench safety systems for all trenches excavated on this Project.

37. Section 3.3 is also hereby amended by adding a new Section 3.3.6 to read as follows:

§ 3.3.6 The CMAR shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the CMAR's duties shall not relieve any subcontractor(s) or any other person or entity (e.g., a supplier) including any person or entity with whom the CMAR does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this paragraph are not intended to impose upon the CMAR any additional obligations that the CMAR would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

38. Section 3.4.1 is hereby amended by adding a new Section 3.4.1.1 to read as follows:

§ 3.4.1.1 Prevailing Wages. Attention is called to the Texas Government Code Chapter 2258, entitled Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the CMAR and upon any Subcontractor under the CMAR to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract.

39. Section 3.4.1 is hereby amended by adding a new Section 3.4.1.2 to read as follows:

§ 3.4.1.2 In accordance with Texas Government Code Chapter 2258, the Owner has established a scale of prevailing wages which is incorporated in the Project Manual, and not less than this established scale must be paid on the Project.

Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

40. Section 3.4.1 is also hereby amended by adding a new Section 3.4.1.3 to read as follows:

§ 3.4.1.3 A CMAR or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty and No/100 Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

41. Section 3.4.2 is hereby amended by deleting Section 3.4.2 in its entirety and replacing it with a new Section 3.4.2 to read as follows:

§ 3.4.2 Specified materials, equipment, and systems are essential elements of the Contract. If CMAR desires to use another material, equipment, or system in lieu thereof, the CMAR may make substitutions only under the following circumstances:

- .1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the CMAR; and, (iii) in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.
- .2 The CMAR must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum related to the substitution; (iv) the adjustment, if any, in the time of completion of the Contract and the construction

schedule related to the substitution; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the CMAR accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect.

- .3 Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the CMAR's submittal of complete substantiating data and information as stated hereinbefore.
- .4 Whether or not any proposed substitution is accepted by the Owner or the Architect, the CMAR shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute except for substitutions made necessary by the unavailability or unsuitableness of items specified in the Contract Documents.
- .5 No substitution shall be made without approval in writing from the Architect. Owner will be the final judge of acceptability of any proposed substitution.

42. Section 3.4.3 is hereby amended by adding the following provisions to the end of Section 3.4.3 to read as follows:

The CMAR shall be responsible for the actions of CMAR's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The CMAR recognizes that the Project Site is public municipal property, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the CMAR's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the CMAR or employees or invitees of the Owner by employees of the CMAR is strictly forbidden. Any employee of the CMAR who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the CMAR, including removal from the job site.

43. Section 3.4 is hereby amended by adding a new Section 3.4.4 to read as follows:

§ 3.4.4 The CMAR shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

44. Section 3.5 is hereby amended by deleting Section 3.5 in its entirety and replacing it with a new Section 3.5 to read as follows:

§ 3.5 WARRANTY

§ 3.5.1 The CMAR warrants to the Owner and Architect that the materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CMAR further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions that are not properly approved and authorized, may be considered defective. The CMAR's warranty excludes remedy for damage or defect caused by abuse attributable to Owner; alterations or modifications to the Work not performed by CMAR; improper or insufficient maintenance and/or improper operation attributable to Owner; or, normal wear and tear and normal usage. If required by the Architect, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The CMAR agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.5.3 CMAR's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.4 The warranty provided in Section 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require CMAR to replace defective materials and equipment and re-execute defective Work which is disclosed to the CMAR by the Owner within a

period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.5 The CMAR shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.1 and 3.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Owner acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion. CMAR shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. CMAR agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, CMAR shall accompany the Owner and Architect on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, *i.e.*, roofing, compressors, mechanical equipment, Owner will notify the CMAR of deficiencies and CMAR shall start remedying these defects within three (3) days of initial notification from Owner. CMAR shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If CMAR fails to provide notice of the expiration of the one-year warranty period at least one (1) month prior to the expiration date, CMAR's warranty obligations described in this

paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.7 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

45. Section 3.6 is hereby amended by deleting Section 3.6 in its entirety and replacing it with a new Section 3.6 to read as follows:

§ 3.6 TAXES

Owner is a governmental entity, to-wit: a Texas municipal corporation, which is exempted from paying sales and use taxes pursuant to Texas Tax Code Section 151.309(5). CMAR will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes from which the Owner is exempt by and through Texas Tax Code Section 151.309(5). Owner will provide the CMAR with a Texas Sales and Use Tax Resale Certificate or other documentation necessary to establish the Owner's exemption from such taxes.

46. Section 3.7.1 is hereby amended by deleting Section 3.7.1 in its entirety and replacing it with a new Section 3.7.1 to read as follows:

§ 3.7.1 Unless otherwise specifically provided to the contrary in the Contract Documents, it shall be the full responsibility of the CMAR to acquire and comply with any and all permits as may be required to avoid delay of the Project, and which permits, fees, licenses and inspections are necessary for the proper execution, performance and completion of the Work. No separate payment will be made for this item and it will be considered subsidiary to the other items bid.

47. Section 3.7.2 is hereby amended by adding the following provisions to the end of Section 3.7.2 to read as follows:

The CMAR shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work including, but not limited to, the work eligibility of individuals performing the Work.* This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

*As it relates to the work eligibility of individuals performing the Work, the CMAR shall comply with the Employment Eligibility Verification (I-9) Form requirements outlined by U.S. Citizenship and Immigration Services ("USCIS") or the E-Verify process for each individual (including both citizens and noncitizens) after the individual has been hired for employment in the United States. In this regard the USCIS indicates that the employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and to relate to the employee, and record the document information on the Form I-9 or the E-Verify process. For additional guidance, please feel free to refer to USCIS website at <https://www.uscis.gov/i-9> and the U.S. Equal Employment Opportunity Commission ("EEOC") website at <https://www.eeoc.gov/pre-employment-inquiries-and-citizenship>.

48. ~~Section 3.7.4 is hereby amended by deleting the first sentence of such provision and replacing it with the following sentence:~~

~~If the CMAR encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in the Contract Documents, excavations and other subsurface construction activity shall be considered unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructure, or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the CMAR shall promptly provide notice to the Owner and the Architect before disturbing such conditions and/or continuing activities that~~

~~could lead to a claim for additional cost, and in no event later than fourteen (14) days after first observance of the conditions.~~

49. Section 3.7 is hereby amended by adding a new Section 3.7.6 to read as follows:

§ 3.7.6 The CMAR shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System ("NPDES") regulations administered by the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ") and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. CMAR's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by CMAR during the construction process which require the issuance of a permit shall be at CMAR's sole cost.

50. Section 3.9.1 is hereby amended by adding the following provisions to the end of Section 3.9.1 to read as follows:

The superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications, and thoroughly experienced in the type of Work being performed. The superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required.

Such superintendent shall be furnished irrespective of the amount of Work subcontracted. The superintendent and the CMAR shall be responsible for all work performed by the Subcontractor at all times during construction.

51. Section 3.9.2 is hereby amended by deleting the last sentence of Section 3.9.2 and replacing it with the following provision to read as follows:

Failure of the Architect to reply within the 14-day period shall constitute notice that the Architect and Owner have no known objection to the proposed superintendent. Failure to reply or affirmative consent by the Architect to the proposed superintendent shall not be deemed to waive or otherwise deprive the Owner and Architect of the right to thereafter complain to the CMAR regarding or otherwise object to the

continued assignment of the superintendent to the Work if a reasonable objection to the superintendent arises during the course of the Work.

52. Section 3.9.3 is hereby amended by deleting the last sentence of that provision and replacing it with the following provision to read as follows:

The CMAR shall not replace the superintendent prior to final completion of the Work unless (1) the superintendent shall cease to be employed by the CMAR or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The superintendent may not be employed on any other project prior to final completion of the Work.

53. Section 3.9 is hereby amended by adding a new Section 3.9.4 to read as follows:

§ 3.9.4 The CMAR shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors, Sub-subcontractors and material and equipment suppliers involved in construction of the Work. The Architect shall provide such information to the Owner.

§ 3.9.4.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the CMAR, Subcontractor or Sub-subcontractor involved in the project.

§ 3.9.4.2 CMAR shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require CMAR to dismiss from the work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Town's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

54. Section 3.10.1 is hereby amended by deleting Section 3.10.1 in its entirety and replacing it with a new Section 3.10.1 to read as follows:

§ 3.10.1 The CMAR, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a CMAR's initial construction schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

- .1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the CMAR, Owner, and Architect. Each schedule shall also include cash flow projections for the use of and review by the CMAR, Owner and Architect.
- .2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.
- .3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .4 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the CMAR shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the CMAR's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the CMAR asserts that the failure of the Owner or the Architect to provide information to the CMAR is the reason for anticipated delay in completion, the CMAR shall also specify what information is required from the Owner or Architect.
- .5 Neither the Owner or the CMAR shall have exclusive ownership of float time in the schedule. All float time shall inure to the benefit of the Project. The CMAR agrees to

use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

- .6 Submission of any schedule under this Contract constitutes a representation by the CMAR that: (1) the schedule represents the sequence in which the CMAR intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed work; (3) that to the best of its knowledge and belief the CMAR is able to complete the remaining Work in the sequence and time indicated; and, (4) that the CMAR intends to complete the remaining work in the sequence and time indicated.

55. Section 3.10 is hereby amended by adding a new Section 3.10.4 to read as follows:

§ 3.10.4 The construction schedule shall be in a detailed precedence - style critical path method ("CPM") format for each major item of work and the time frame for the initiation, progress and completion of such major item of work satisfactory to the Owner and the Architect. The construction schedule shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit A. If not accepted, the construction schedule shall be promptly revised by the CMAR in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The CMAR shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the CMAR shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or

the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

56. Section 3.10 is hereby further amended by adding a new Section 3.10.5 to read as follows:

§ 3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the CMAR to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the CMAR's compliance with the construction schedule.

- .1 The CMAR shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the CMAR's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

57. Section 3.10 is also hereby amended by adding a new Section 3.10.6 to read as follows:

§ 3.10.6 If reasonably required by Owner, CMAR shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

58. Section 3.10 is also hereby amended by adding a new Section 3.10.7 to read as follows:

§ 3.10.7 The CMAR shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the CMAR. Upon the Owner's acceptance of the CMAR's Cost of the Work plus a fee with a Guaranteed Maximum Price, all contracts previously entered into by Owner shall be assigned by Owner to the CMAR who shall accept responsibility for such contracts as if it had initially entered into such contracts. CMAR shall expedite the delivery of long-lead time items.

59. Section 3.11 is hereby amended by numbering the paragraph immediately following the line "**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**" as Section 3.11.1.

60. Section 3.11 is also hereby amended by adding a new Section 3.11.2 and a new Section 3.11.3 to read as follows:

§ 3.11.2 CMAR shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project at the site. CMAR shall make such reports and records available to inspection by the Owner, Architect, or their respective agents, within five (5) working days of request by Owner, Architect, or their respective agents.

§ 3.11.3 CMAR shall at all times have access, from the site, to all applicable building codes, reference standards, installation instructions and other documents referenced by the Contract Documents or otherwise applicable and/or necessary to the performance of the Work. In addition, current drawings, specifications, and submittals (including installation and warranty documents) shall be available to the Owner, Architect, or their respective agents during any site visits and construction meetings.

61. Section 3.12.6 is hereby amended by adding the following sentence to the end of Section 3.12.6:

§ 3.12.6 If a portion of the Work that is demonstrated by a submittal deviates from the requirements of the Contract Documents, the CMAR shall specifically identify the deviation and its difference in cost as part of the submittal.

62. Section 3.13 is hereby amended by numbering the paragraph immediately following the line “**§ 3.13 USE OF SITE**” as Section 3.13.1.

63. Section 3.13 is also hereby amended by adding a new Section 3.13.2 to read as follows:

§ 3.13.2 The CMAR will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, parking of vehicles and entry into adjacent facilities owned by Owner.

64. Section 3.15.1 is hereby amended by adding the following provisions to the end of Section 3.15.1 to read as follows:

CMAR shall thoroughly wash and clean all glass and mirror surfaces, and shall leave the Work neat and clean. The CMAR shall, not less than two times each week, clean up after his operation, by removing rubbish, including old and surplus materials.

65. Section 3.15.2 is hereby amended by deleting Section 3.15.2 in its entirety and replacing it with a new Section 3.15.2 to read as follows:

§ 3.15.2 If the CMAR fails to clean up as required by the Contract Documents, the Owner may do so and the cost thereof shall be charged to the CMAR.

66. Section 3.15 is hereby amended by adding a new Section 3.15.3 to read as follows:

§ 3.15.3 The CMAR shall be responsible for any damaged or broken items, and at completion of the Work, shall replace such damaged or broken items.

67. Section 3.18.1 is hereby amended by deleting Section 3.18.1 in its entirety and replacing it with a new Section 3.18.1 to read as follows:

§ 3.18.1 TO THE FULLEST EXTENT ALLOWED BY LAW, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), CMAR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN OF PROSPER (OWNER) AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION

INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY THE WRONGFUL INTENTIONAL ACT, ERROR, OMISSION, OR NEGLIGENT ACT OF CMAR, HIS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUB-SUBCONTRACTORS, INVITEES OR ANY OTHER PERSONS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CMAR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT TOWN OF PROSPER (OWNER) FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

TO THE FULLEST EXTENT ALLOWED BY LAW, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), CMAR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS TOWN OF PROSPER (OWNER) AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEYS FEES FOR INJURY OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGES TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT. SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE TOWN OF PROSPER (OWNER), ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CMAR TO INDEMNIFY AND PROTECT TOWN OF PROSPER (OWNER) FROM THE CONSEQUENCES OF TOWN OF PROSPER'S (OWNER'S) OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

68. Section 3.18.2 is hereby amended by deleting Section 3.18.2 in its entirety and replacing it with a new Section 3.18.2 to read as follows:

§ 3.18.2 IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED UNDER THIS SECTION 3.18 BY ANY EMPLOYEE OF THE CMAR, ANY SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR

INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CMAR, ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR UNDER WORKMEN'S COMPENSATION OR ANY OTHER DISABILITY BENEFITS ACT OR EMPLOYEE BENEFIT ACTS.

69. Section 3.18 is hereby further amended by adding a new Section 3.18.3 to read as follows:

§ 3.18.3 CMAR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CMAR'S OR ITS SUBCONTRACTOR'S OR ITS SUB-SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CMAR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CMAR AND OWNER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH AS TO CMAR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY CMAR TO INDEMNIFY AND PROTECT OWNER, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CMAR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE

AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CMAR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CMAR ARE ALL PARTIES.

70. Section 3.18 is also hereby amended by adding a new Section 3.18.4 to read as follows:

§ 3.18.4 INDEMNIFICATION HEREUNDER SHALL INCLUDE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LIABILITY WHICH COULD ARISE TO THE OWNER, ITS AGENTS, CONSULTANTS, AND REPRESENTATIVES PURSUANT TO STATE STATUTES FOR THE SAFETY OF WORKMEN AND IN ADDITION, ALL FEDERAL STATUTES AND RULES EXISTING THEREUNDER FOR PROTECTION, OCCUPATIONAL SAFETY AND HEALTH TO WORKMEN, IT BEING AGREED THAT THE PRIMARY OBLIGATION OF THE CMAR IS TO COMPLY WITH SAID STATUTES IN PERFORMANCE OF THE WORK BY CMAR AND THAT THE OBLIGATIONS OF THE OWNER, ITS AGENTS, CONSULTANTS, AND REPRESENTATIVES UNDER SAID STATUTES ARE SECONDARY TO THAT OF THE CMAR.

71. Section 3.19 is hereby created by adopting and adding the following Section 3.19 to read as follows:

§ 3.19 BUSINESS STANDARDS.

CMAR, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. CMAR shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of CMAR's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

72. Section 4.2.2 is hereby amended by adding the phrase “, except as provided in Section 3.1.1” to the end of said Section 4.2.2.

73. Section 4.2.4 is hereby amended by adding the phrase “endeavor to” between the words “shall”: and “include” in the first line of Section 4.2.4.

74. Section 4.2.6 is hereby amended by changing all references to the term “Architect” throughout Section 4.2.6 from “Architect” to “Architect or Owner.”

75. Section 4.2.7 is hereby amended by deleting the phrase “, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents” from the first sentence of Section 4.2.7.

76. Section 4.2.7 is hereby further amended by inserting the phrase “unless otherwise specifically stated by the Architect” at the end of the next to last sentence of said Section 4.2.7.

77. Section 4.2.9 is hereby amended by deleting Section 4.2.9 in its entirety and replacing it with a new Section 4.2.9 to read as follows:

§ 4.2.9 The Architect and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect will receive and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the CMAR, and will issue a final Certificate for Payment upon full compliance with the requirements of the Contract Documents.

78. Section 4.2.11 is hereby amended by deleting the first sentence of Section 4.2.11 in its entirety and replacing it with a new sentence to read as follows:

Upon written request of the Owner or CMAR the Architect will issue its interpretation regarding performance under and the requirements of the Contract Documents.

79. Section 4.2.12 is hereby amended by deleting the second sentence of Section 4.2.12 in its entirety.

80. Section 4.2.13 is hereby amended by deleting Section 4.2.13 in its entirety and replacing it with a new Section 4.2.13 to read as follows:

§ 4.2.13 The Architect’s decision on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

81. Section 5.2.1 is hereby amended by deleting the last sentence of Section 5.2.1 and replacing it with the following provision to read as follows:

Failure of the Architect to reply within the 14-day period shall constitute notice that the Architect and Owner have no known objection to the proposed persons and entities. Failure to reply or affirmative consent by the Architect to the proposed persons and entities shall not be deemed to waive or otherwise deprive the Owner and Architect of the right to thereafter complain to the CMAR regarding or otherwise object to the continued performance of the persons and entities on the Work if a reasonable objection to the persons and entities arises during the course of the Work.

82. Section 5.4.1 is hereby amended by deleting Subsection 5.4.1.1 in its entirety and replacing it with a new Subsection 5.4.1.1 to read as follows:

.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

83. Section 5.4.2 is hereby amended by deleting Section 5.4.2 in its entirety and replacing it with a new Section 5.4.2 to read as follows:

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

84. Section 6.1.1 is hereby amended by replacing the phrase "including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation" with the phrase "Contract Documents" in the second sentence of Section 6.1.1.

85. Section 6.1.4 is hereby amended by deleting Section 6.1.4 in its entirety and replacing it with a new Section 6.1.4 to read as follows:

§ 6.1.4 Owner will not perform construction or operations related to the Project with Owner's own forces or any forces other than CMAR during the term of this Agreement save and except only to the extent specifically called for to the contrary by the Contract Documents or upon CMAR's default and termination as provided in the Contract Documents.

86. Section 6.2.2 is hereby amended by deleting the last sentence of Section 6.2.2 in its entirety and replacing it with a new sentence to read as follows:

The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable.

87. Section 7.2 is hereby amended by adding a new Section 7.2.2 to read as follows:

§ 7.2.2 Acceptance of a Change Order by the CMAR shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

88. Section 7.3.8 is hereby amended by deleting the first sentence of Section 7.3.8 and replacing it with the following provision to read as follows:

The amount of credit to be allowed by the CMAR to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the CMAR's allocated percent for profit and overhead as confirmed by the Architect, subject to equitable adjustment recommended by the Architect and approved by the Owner.

89. Section 8.1.3 is hereby amended by deleting the phrase "Architect" and replacing it with the phrase "Architect and Owner."

90. Section 8.3.1 is hereby amended by deleting Section 8.3.1 in its entirety and replacing it with a new Section 8.3.1 to read as follows:

§ 8.3.1 The Owner and Architect, except as provided for in this Section 8.3.1, shall not be liable to the CMAR for delay to the CMAR's work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's and/or Architect's control. Should the Owner or Architect delay the CMAR in the work, CMAR shall receive an extension of time for completion equal to the delay if a written claim is made within seven (7) days ~~forty-eight (48) hours of~~ the beginning of such delay, ~~and under no circumstances shall the Owner and Architect be liable to pay the CMAR any compensation for such Owner/Architect-caused delays of less than seven (7) consecutive business days in duration.~~ If a written claim is timely submitted for an Owner/Architect-caused delay ~~of seven (7) consecutive business days or~~

~~longer~~, Owner will in addition to providing CMAR an extension of time for completion equal to the delay reimburse to CMAR the actual costs directly incurred by CMAR as a direct and proximate result of such Owner/Architect-caused delay plus CMAR's prescribed fee on the Cost of the Work to the extent only that such actual costs and/or fee is not otherwise covered by insurance. It is specifically agreed and understood that, save and except as specifically provided in the immediately preceding sentence, CMAR shall have no other claim or cause of action for any Owner/Architect-caused delay.

91. Section 8.3.3 is hereby amended by deleting Section 8.3.3 in its entirety and replacing it with a new Section 8.3.3 to read as follows:

§ 8.3.3 Except as specifically provided in Paragraph 8.3.1, as amended herein-above and Paragraph 6.1.8 as amended by the Addendum to the AIA Document A133-2019, this Agreement does not permit the recovery of damages by the CMAR for delay, disruption or acceleration. CMAR agrees that CMAR shall be fully compensated for all delays solely in accordance with Paragraph 8.3.1, as amended herein-above and Paragraph 6.1.8 as amended by the Addendum to the AIA Document A133-2019.

92. Section 9.3.2 is hereby amended by deleting the phrase "and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site" from the last sentence of Section 9.3.2.

93. Section 9.3.2 is hereby further amended by adding the following sentence to the end of Section 9.3.2 to read as follows:

The CMAR shall be solely responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site save and except only to the extent that (a) Owner determines in its sole discretion that off-site storage of materials and equipment constitutes a benefit to the Project and (b) Owner agrees in advance in writing through a formal written change order to the payment of costs associated with insurance, storage and transportation to the site for specified materials and equipment stored off the site.

94. Section 9.3.3 is hereby amended by adding the following sentence to the end of Section 9.3.3 to read as follows:

CMAR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CMAR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CMAR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CMAR.

95. Section 9.3 is hereby amended by adding a new Section 9.3.4 to read as follows:

§ 9.3.4 In each Request for Payment, CMAR shall certify that there are no known mechanics' or materialmen's' liens outstanding at the date of the requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's' liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to CMAR.

96. Section 9.5.3 is hereby amended by adding the following sentence to the end of Section 9.5.3 to read as follows:

The Owner shall not be deemed in default by reason of withholding payment as provided for in this Section 9.5.

97. Section 9.6.2 is hereby amended by deleting Section 9.6.2 in its entirety and replacing it with a new Section 9.6.2 to read as follows:

§ 9.6.2 The CMAR shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. CMAR's failure to make payments within such time shall constitute a material breach of this Contract. CMAR shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the CMAR hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the CMAR has failed to make

payment promptly to the CMAR's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the CMAR, the Owner shall be entitled to withhold payment to the CMAR in part or in whole to the extent necessary to protect the Owner.

98. Section 9.6.7 is hereby amended by deleting Section 9.6.7 in its entirety and replacing it with a new Section 9.6.7 to read as follows:

§ 9.6.7 The CMAR shall, as a condition precedent to any obligation of the Owner under this agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

99. Section 9.6.8 is hereby amended by deleting and intentionally omitting Section 9.6.8 in its entirety.

100. Section 9.7 is hereby amended by deleting the phrase "or awarded by binding dispute resolution" from the first sentence of Section 9.7.

101. Section 9.8.1 is hereby amended by adding the following provision to the end of Section 9.8.1 to read as follows:

In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to CMAR any or all liquidated damages due Owner in accordance with the Contract Documents.

102. Section 9.8.3 is hereby amended by changing all references to the term "Architect" throughout Section 9.8.3 from "Architect" to "Architect or Owner."

103. Section 9.8.4 is hereby amended by changing all references to the term "Architect" throughout Section 9.8.4 from "Architect" to "Architect or Owner."

104. Section 9.8.5 is hereby amended by deleting the second and third sentences of Section 9.8.5 in their entirety.

105. Section 9.8 is hereby amended by adding a new Section 9.8.6 to read as follows:

§ 9.8.6 Retainage is not due to the CMAR until 30 days after final completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon

acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

106. Section 9.9.3 is hereby amended by deleting Section 9.9.3 in its entirety and replacing it with a new Section 9.9.3 to read as follows:

§ 9.9.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

107. Section 9.10.1 is hereby amended by deleting Section 9.10.1 in its entirety and replacing it with a new Section 9.10.1 to read as follows:

§ 9.10.1 When all of the Work is finally completed and the CMAR is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the CMAR is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the CMAR shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the CMAR's final payment.

108. Section 9.10.2 is hereby amended by deleting Section 9.10.2 in its entirety and replacing it with a new Section 9.10.2 to read as follows:

§ 9.10.2 The CMAR shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the CMAR and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the CMAR shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

109. Section 9.10.4 is hereby amended by deleting Section 9.10.4 in its entirety and replacing it with a new Section 9.10.4 to read as follows:

§ 9.10.4 The Owner shall make final payment of all sums due the CMAR not more than thirty (30) days after the Architect's execution of a final Certificate for Payment.

110. Article 9 is hereby amended by adopting and adding the following Section 9.11 to read as follows:

§ 9.11 AUDIT.

CMAR agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. CMAR agrees to retain all such books, payrolls and records (including data stored in computers) for a period of not less than three (3) years after completion of the Work. At all reasonable times during the performance of the Work, Owner and its duly authorized representatives shall have access to all personnel of CMAR and all such books, payrolls and records, and shall have the right to audit same. After completion of the Work, Owner shall continue to have the right to audit all such books, payrolls and records upon providing CMAR at least three (3) days written notice of Owner's intent to perform such an audit.

111. Article 9 is hereby amended by adopting and adding the following Section 9.12 to read as follows:

§ 9.12 In addition to any liquidated damages payable to the Owner by the CMAR, if: (a) the Architect is required to make more than one (1) inspection for Substantial Completion; (b) the Architect is required to make more than one (1) inspection for Final Completion; or (c) the Work is not substantially complete within sixty (60) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

112. Section 10.1 is hereby amended by numbering the paragraph immediately following the line "**§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**" as Section 10.1.1.

113. Section 10.1 is also hereby amended by adding a new Section 10.1.2 to read as follows:

§ 10.1.2 CMAR's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. CMAR, its employees, agents, Subcontractors and Sub-subcontractors, and their respective employees and agents shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. CMAR, its employees, agents, Subcontractors and Sub-subcontractors, and their respective employees and agents shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

CMAR has adopted or will adopt its own policy to assure a drug- and alcohol-free work place while performing the Work.

CMAR will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require CMAR to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, CMAR's employees may only be considered for return to work after the CMAR certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this Contract. CMAR will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

CMAR will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

114. Section 10.2.5 is hereby amended by deleting Section 10.2.5 in its entirety and replacing it with a new Section 10.2.5 to read as follows:

§ 10.2.5 CMAR SHALL BE RESPONSIBLE FOR AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS

FROM AND AGAINST ANY AND ALL LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN SECTION 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER'S OR OWNER'S OFFICERS', CONSULTANT'S, AGENT'S OR EMPLOYEES' NEGLIGENCE. AS TO PROPERTY REFERRED TO IN SECTION 10.2.1.3, CMAR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CMAR, ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OR OWNER'S OFFICERS', CONSULTANT'S, AGENT'S OR EMPLOYEES'. THE FOREGOING OBLIGATIONS OF THE CMAR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; AND, ARE SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B).

115. Section 10.2.8 is hereby amended by deleting Section 10.2.8 in its entirety and replacing it with a new Section 10.2.8 to read as follows:

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be provided to the other party in writing within a reasonable time not exceeding 21 days after discovery. The written notice shall provide sufficient detail to enable the other party to investigate the matter.

116. Section 10.3.1 is hereby amended by deleting Section 10.3.1 in its entirety and replacing it with a new Section 10.3.1 to read as follows:

§ 10.3.1 The CMAR is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the CMAR encounters

a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CMAR, the CMAR shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect in writing of the condition.

117. Section 10.3.2 is hereby amended by deleting Section 10.3.2 in its entirety and replacing it with a new Section 10.3.2 to read as follows:

§ 10.3.2 Upon receipt of the CMAR's written notice, the Owner shall obtain the services of a licensed laboratory, sanitarian or other professional to verify the presence or absence of the suspected hazardous material or substance reported by the CMAR. In the event a hazardous material or substance is found to be present the Owner may (1) terminate the Work without any penalty or liability to CMAR or (2) suspend the Work for such time period as may be required to retain and contract with one or more third-party consultants and contractors to develop a plan to address and perform all work necessary to contain, encase, remove or remediate the hazardous material or substance as may be appropriate and recommended by a licensed laboratory, sanitarian or other professional in conformity with state and federal law. When the hazardous material or substance has been contained, encased, removed or remediated in conformity with state and federal law, Work in the suspect area shall resume upon written agreement of the Owner and CMAR. By Change Order, the Contract Time shall be extended appropriately. The Contract Sum may be adjusted upon agreement of the parties to address CMAR's actual costs of shut-down and start-up ~~provided that the Work is stopped or abated for more than twenty-one (21) business days.~~

If Owner terminates the Work as a result of finding a hazardous material or substance as provided herein-above, CMAR will be entitled to receive payment for Work completed and approved as being performed in accordance with the Contract Documents until the date of such termination. CMAR will also be entitled to receive payment for costs incurred by CMAR by reason of such termination excluding overhead and profit on Work not executed and/or approved as being performed in accordance with the Contract Documents. Any

payment under this paragraph will be conditioned upon submission and processing of a payment application in strict compliance with the Contract Documents, and the submission of any and all documentation in CMAR's possession or control as might be required for the closing out of the Project upon its final completion such as manuals, warranties, as-builts, releases, and any other similar documentation, which might allow Owner to solicit proposals or bids for the completion of the Project at some date in the future upon the final remediation of any such hazardous material or substance.

118. Section 10.3.3 is hereby deleted in its entirety.

119. Section 10.3.4 is hereby amended by deleting Section 10.3.4 in its entirety and replacing it with a new Section 10.3.4 to read as follows:

§ 10.3.4 Notwithstanding anything to the contrary set forth in this Section 10.3, the Owner shall not be liable for potentially hazardous or hazardous materials or substances the CMAR brings to the site. In addition, the Owner shall not be liable for the CMAR's storage, use or handling of potentially hazardous or hazardous materials or substances.

120. Section 10.3.5 is hereby amended by deleting Section 10.3.5 in its entirety and replacing it with a new Section 10.3.5 to read as follows:

§ 10.3.5 THE CMAR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A HAZARDOUS MATERIAL OR SUBSTANCE THE CMAR BRINGS TO THE SITE AND WRONGFULLY OR NEGLIGENTLY STORES, USES OR HANDLES, (2) FOR REMEDIATION OF A HAZARDOUS MATERIAL OR SUBSTANCE THE CMAR WRONGFULLY OR NEGLIGENTLY RELEASES INTO THE ENVIRONMENT, (3) WHERE THE CMAR FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, (4) FOR THE COST OF ANY CITATIONS, COURT COSTS, ATTORNEY'S FEES AND EXPERT WITNESS FEES ARISING OUT OF ANY CLAIMS OR LITIGATION INVOLVING ANY SUCH HAZARDOUS MATERIAL OR SUBSTANCE, AND (5) FOR ANY CONTINUING COSTS ASSOCIATED WITH MONITORING AND REPORTING REQUIRED BY THE ENVIRONMENTAL POLLUTION AGENCY, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND/OR THE TEXAS STATE DEPARTMENT OF HEALTH.

121. Section 10.3.6 is hereby amended by deleting Section 10.3.6 in its entirety.

122. Section 10.4 is hereby amended by deleting Section 10.4 in its entirety and replacing it with a new Section 10.4 to read as follows:

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the CMAR shall act, at the CMAR's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the CMAR on account of an emergency may be considered as provided in Article 15 and Article 7. It is specifically understood and agreed that Owner shall have no liability or responsibility for any emergency caused, in whole or in part, by any act or omission of CMAR and/or CMAR's contractors, suppliers, and/or any other person(s) or party(ies) for whom CMAR or its contractors or suppliers may be legally responsible.

123. Section 11.1.1 is hereby amended by deleting Section 11.1.1 in its entirety and replacing it with a new Section 11.1.1 to read as follows:

§ 11.1.1 Before commencing work, the CMAR shall, at its own expense, procure, pay for and maintain the following insurance coverage written by companies approved by the State of Texas and acceptable to the Town of Prosper. In the event of a conflict between the insurance requirements contained in this Article 11 and any other provision contained in the Contract Documents or the applicable request for bids or sealed proposals the more stringent requirements and higher policy limits shall control.

- .1 Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

- .2 Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
- .3 Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
- .4 Umbrella or Excess Liability insurance with minimum limits of \$5,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage in subparagraphs 1, 2 and 3. The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The Contractor may maintain reasonable deductibles, subject to approval by the Owner.
- .5 Builder's Risk Insurance is required. It shall provide All-Risk coverage including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft in an amount equal to one hundred percent (100%) of the completed value of the project in question. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner. The policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. The policy shall be written jointly in the names of the Owner, CMAR, Subcontractors and Sub-subcontractors as their interests may appear. The policy shall have endorsements as follows:
 - .1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

- .2 Loss, if any, shall be adjusted with and made payable to the Owner on behalf of all insureds as their interests may appear.

124. Section 11.1.2 is hereby amended by deleting Section 11.1.2 in its entirety and replacing it with a new Section 11.1.2 to read as follows:

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in the Contract Documents or as required by law, whichever coverage is greater. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. In the event that any of the coverages contained in Section 11.1.1 conflict with the insurance provisions contained in any other of the Contract Documents the more stringent of such provisions with respect to each type of required coverage shall control. All coverages required for this work shall be written on an occurrence basis and NOT a claims-made basis.

Coverages required by this Section 11.1 shall be maintained without interruption from the date of commencement of the Work through the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the CMAR's completed operations coverage until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Notwithstanding the foregoing, the Builder's Risk Insurance coverage required by Section 11.1.1.5 shall be maintained by the CMAR without interruption from the date of commencement of the Work through the date Owner (a) issues a Certificate of Substantial Completion for the Work and (b) is able to take possession of and occupy the Work for its intended use.

The policy or policies so issued in the name of CMAR shall also name ~~Subcontractors, Sub-subcontractors~~ and the Owner as additional insureds, as their respective interests may appear. The insurance coverage provided under this Section 11.1 shall be primary coverage. If the coverages provided under this Section 11.1 are written with stipulated amounts deductible under the terms of the policy, the CMAR shall pay the difference attributable to deductions in any

payment made by the insurance carrier on claims paid by and through such coverages.

If the Owner is damaged by the failure of the CMAR to maintain such insurance and to so notify the Owner then the CMAR shall bear all reasonable costs properly attributable thereto. Nothing contained herein shall limit or waive CMAR's legal or contractual responsibilities to Owner or others.

125. Section 11.1.3 is hereby amended by deleting Section 11.1.3 in its entirety and replacing it with a new Section 11.1.3 to read as follows:

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to Owner's execution of the Agreement and thereafter upon renewal or replacement of each required policy of insurance. Certificate(s) of insurance provided to attest to coverage shall specifically cite each element of coverage and not less than limits set forth in Section 11.1.2, as confirmation of complete coverage, and shall identify Contractor, Producer, Insurance Carrier, Project, and certificate holder, and state Producer's notice requirements as set forth in Section 11.1.4. The term "Commercial General Liability" shall mean all of the coverage listed in Section 11.1.1.1 unless specifically noted otherwise in the certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. The CMAR shall furnish such certificates of insurance, executed by the insurer or its authorized agent, to the Town of Prosper Purchasing Manager. The certificates of insurance shall state the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

<Project Name and Project Number>
Town of Prosper
Attn: Purchasing Agent
P.O. Box 307
Prosper, Texas 75078

CMAR shall permit Owner to examine the insurance policies, or at Owner's option, CMAR shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1. Failure to provide or maintain any of the coverages required by Section 11.1 shall be deemed a material breach of the Agreement and shall result in termination unless immediately cured by CMAR.

126. Section 11.1.4 is hereby amended by deleting Section 11.1.4 in its entirety and replacing it with a new Section 11.1.4 to read as follows:

§ 11.1.4 With reference to the foregoing required insurance, the CMAR shall also endorse applicable insurance policies as follows:

- .1 A waiver of subrogation in favor of the Town of Prosper, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
- .2 The Town of Prosper, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
- .3 All insurance policies shall be endorsed to the effect that Town of Prosper will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination, or material change of the policies.

127. Section 11.1 is hereby amended by adding a new Section 11.1.5 to read as follows:

§ 11.1.5 CMAR and its subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of CMAR and its Subcontractors and Sub-subcontractors are in force and the necessary certificates and statements required by Section 11.1 have been received by Owner and the Architect has issued a written notice to proceed.

128. Section 11.1 is hereby further amended by adding a new Section 11.1.6 to read as follows:

§ 11.1.6. With respect to Workers' Compensation insurance, the CMAR agrees to comply with all applicable provisions of 28 Tex. Admin Code § 110.110, "Reporting Requirements for Building or Construction Projects for Governmental Entities," as such provision may be amended, and as follows:

Workers' Compensation Insurance Coverage

1. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CMAR's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in § 406.096) - includes all persons or entities performing all or part of the services the CMAR has undertaken to perform on the project, regardless of whether that person contracted directly with the CMAR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The CMAR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CMAR providing services on the project, for the duration of the project.

3. The CMAR must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the CMAR's current certificate of coverage ends during the duration of the project, the CMAR must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
5. The CMAR shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (b) no later than seven days after receipt by the CMAR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The CMAR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
7. The CMAR shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the CMAR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
8. The CMAR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
9. The CMAR shall contractually require each person with whom it contracts to provide services on a project, to:
 - (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of

any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

- (b) provide to the CMAR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (c) provide the CMAR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (d) obtain from each other person with whom it contracts, and provide to the CMAR:
 - (1) a certificate of coverage, prior to the other person beginning work on the project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (g) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

10. By signing this contract or providing or causing to be provided a certificate of coverage, the CMAR is representing to the governmental entity that all employees

of the CMAR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CMAR to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11. The CMAR's failure to comply with any of these provisions is a breach of contract by the CMAR which entitles the governmental entity to declare the contract void if the CMAR does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

129. Section 11.2, including all Subsections thereto, is hereby deleted in its entirety.

130. Section 11.3, including all Subsections thereto, is hereby deleted in its entirety.

131. Section 11.4 is hereby deleted in its entirety and a new Section 11.4 is hereby adopted to read as follows:

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The CMAR shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The performance and payment bonds shall be issued in the form attached to this Addendum as Exhibits A and B. Other performance and payment bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the one-year warranty period after acceptance as described in the Contract Documents. In the event of a conflict between the bonding requirements contained in this Article 11 and any other provision contained in the Contract Documents or the applicable request for bids or sealed proposals the more stringent requirements and higher limits shall control.

§ 11.4.2 The performance, payment and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Owner, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the CMAR shall supply capital

and surplus information concerning the surety and reinsurance information concerning the performance, payment and maintenance bonds and proof to establish adequate financial capacity for this Project upon Owner's request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars (\$100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

§ 11.4.3 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that the amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the Agreement. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 11.4.5 All bonds shall be originals. The CMAR shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.4.6 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the CMAR shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the CMAR's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the CMAR shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the CMAR may be suspended, and all payment or money due to the CMAR withheld.

132. Section 11.5 together with Subsections 11.5.1 and 11.5.2 are hereby deleted in their entirety

133. ~~Section 12.2.2 is hereby amended by deleting any reference to "one year" and replacing it with "two years."~~

134. Section 12.2.2.3 in its entirety and replacing it with a new Section 12.2.2.3 to read as follows:

§ 12.2.2.3 The one-year~~two-year~~ period for correction of Work shall be extended by corrective Work performed by the CMAR pursuant to this Section 12.2.

135. Section 12.2 is hereby amended by adding a new Section 12.2.6 to read as follows:

§ 12.2.6 CMAR shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1)~~two (2)~~ years from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or defects in the Work.

136. Section 12.2 is hereby further amended by adding a new Section 12.2.7 to read as follows:

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by subcontractors of the CMAR as well as work done directly by employees of the CMAR. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate CMAR of Owner (unless CMAR is acting in such capacities). The cost to CMAR of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by CMAR.

137. Section 12.2 is also hereby amended by adding a new Section 12.2.8 to read as follows:

§ 12.2.8 If, however, Owner and CMAR deem it inexpedient to require the correction of work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum and the Guaranteed Maximum Price shall be made by agreement between CMAR and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due CMAR. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

138. Section 12.2 is hereby further amended by adding a new Section 12.2.9 to read as follows:

§ 12.2.9 CMAR's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

139. Section 13.1 is hereby amended by deleting Section 13.1 in its entirety and replacing it with a new Section 13.1 to read as follows:

§ 13.1 The Contract Documents shall be governed by the laws of the State of Texas. The Contract is deemed performable entirely in Collin County, Texas. Any litigation to enforce or interpret any terms of the Contract Documents or any other litigation arising out of or as a result of the Work shall be brought in the State courts of Collin County, Texas.

140. Section 13.4.1 is hereby amended by deleting Section 13.4.1 in its entirety and replacing it with a new Section 13.4.1 to read as follows:

§ 13.4.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. The CMAR shall use only materials in the Work, which meet the requirements of the Specifications. The Owner will contract for, independently of the CMAR, such inspection services, testing of construction materials engineering, and verification testing services necessary for the acceptance of the Work by the Owner. The CMAR shall give timely notice to the Architect and such other persons or entities selected by the Owner of the need for such services. The CMAR shall furnish, at his own expense, all necessary specimens for testing of the materials and when requested, shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that are to be used in the Work. THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE CMAR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. All materials not conforming to the requirements of the Specifications will be rejected. Repeating any of the foregoing procedures after failure to pass any such test, inspection or approval shall be at the sole cost and expense of the CMAR as provided in Section 13.4.2.

141. Section 13.4.2 is hereby amended by deleting Section 13.4.2 in its entirety and replacing it with a new Section 13.4.2 to read as follows:

§ 13.4.2 Owner shall pay for the initial testing performed by the engineering testing laboratory retained by the Owner on materials furnished and Work performed by CMAR. Retesting after failure to pass any test shall be at the sole expense of the CMAR. Payment for any and all Retests may be deducted and permanently withheld from the CMAR's total compensation unless the CMAR pays for such Retests within 20 days of the receipt of an invoice for such Retest.

Owner shall not be liable for or responsible to pay for tests or Retests performed by any person or entity other than the engineering testing laboratory retained by Owner for that purpose.

142. Section 13.5 is hereby amended by deleting Section 13.5 in its entirety and replacing it with a new Section 13.5 to read as follows:

§ 13.5 Payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

143. Article 13 is hereby amended by adding a new Section 13.6 to read as follows:

§ 13.6 CMAR'S RECORDS

CMAR agrees to furnish Owner such information as may be available in CMAR's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

144. Article 13 is hereby amended by adding a new Section 13.7 to read as follows:

§ 13.7 The CMAR shall certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The CMAR shall provide this written certification as part of submittals under the Section in the Contract Documents related to closing out the Project.

145. Article 13 is hereby amended by adding a new Section 13.8 to read as follows:

§ 13.8 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the CMAR in interpreting the Contract Documents; however, such assistance shall not relieve the CMAR from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed work not in accordance with the Contract Documents to be performed shall not prevent the Architect from insisting that the faulty work be corrected to conform to the Contract Documents and the CMAR shall correct same. If, however, Architect or Architect's Representative interprets the Contract Documents incorrectly and specifically directs CMAR to perform work in a manner that is not in accordance with the Contract Documents

any corrective work required to cure the faulty work will require the preparation and approval of a Change Order.

146. Section 14.1.1 is hereby amended by deleting Section 14.1.1 in its entirety and replacing it with a new Section 14.1.1 to read as follows:

§ 14.1.1 The CMAR may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the CMAR, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work for or on behalf of the CMAR, for any of the following reasons:

147. Section 14.1.1.2 is hereby amended by inserting the word “or” at the end of the current line.

148. Section 14.1.1.3 is hereby amended by deleting “: or” at the end of the current line and inserting a period (.).

149. Section 14.1.1.4 is hereby deleted in its entirety.

150. Section 14.1.2 is hereby amended by deleting Section 14.1.2 in its entirety and replacing it with a new Section 14.1.2 to read as follows:

§ 14.1.2 The CMAR may terminate the Contract if, through no act or fault of the CMAR, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work for or on behalf of the CMAR, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

151. Section 14.1.3 is hereby amended by deleting Section 14.1.3 in its entirety and replacing it with a new Section 14.1.3 to read as follows:

§ 14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the CMAR may, upon 7 days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner’s convenience.

152. Section 14.1.4 is hereby amended by deleting Section 14.1.4 in its entirety and replacing it with a new Section 14.1.4 to read as follows:

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the CMAR, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work for or on behalf of the CMAR, because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the CMAR may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

153. Section 14.2.2 is hereby amended by deleting Section 14.2.2 in its entirety and replacing it with a new Section 14.2.2 to read as follows:

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist the Owner may without prejudice to any other rights or remedies of the Owner and after giving the CMAR and the CMAR's Surety, if any, seven (7) days' written notice, terminate employment of the CMAR and may, subject to any prior rights of Surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the CMAR.
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4.
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

154. Section 14.4.3 is hereby amended by deleting Section 14.4.3 in its entirety and replacing it with a new Section 14.4.3 to read as follows:

§ 14.4.3 In the case of such termination for the Owner's convenience, the CMAR shall be entitled to receive payment for Work executed, for profits only on that portion of the Work executed, and for reasonable costs of demobilization.

155. Section 15.1.2 is hereby deleted in its entirety.

156. Section 15.1.3.1 is hereby amended by deleting Section 15.1.3.1 in its entirety and replacing it with a new Section 15.1.3.1 to read as follows:

§ 15.1.3.1 Claims by the CMAR must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the CMAR must be initiated by written notice to the Owner and Initial Decision Maker with a copy to the Architect if the Architect is not serving as the Initial Decision Maker.

157. Section 15.1.3.2 is hereby deleted in its entirety.

158. Section 15.1.4.1 is hereby amended by deleting Section 15.1.4.1 in its entirety and replacing it with a new Section 15.1.4.1 to read as follows:

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the CMAR shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare change orders and issue certificates for payment in accordance with the decision of the Initial Decision Maker and subject to the consent and agreement of the Owner.

1589 Section 15.1.5 is hereby amended by deleting Section 15.1.5 in its entirety and replacing it with a new Section 15.1.5 to read as follows:

§ 15.1.5 If the CMAR wishes to make a Claim for an increase in the Contract Sum, written notice as required by the Contract Documents shall be given to the Owner by the CMAR, and written notice received by the CMAR from Owner acknowledging the claim and authorizing construction activity to proceed, before the CMAR shall proceed to execute the construction activity giving rise to the claim; thence, the claim shall be addressed under the provisions of Section 15.2. Documentation of claims shall conform to the requirements of Article 7.

160. Section 15.1.6.2 is hereby amended by adding the following provision to the end of Section 15.1.6.2 to read as follows:

The CMAR shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth in this Section. ~~The CMAR shall bear the entire economic risk of all weather~~

~~delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions.~~

Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical cumulative average number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service (Dallas / Fort Worth, TX Weather Forecast Office):

Average Rain Days per Month

Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
3	2	3	2	4	3	3	2	3	3	2	2

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner and no later than fourteen (14) days after the event(s) giving rise to such claim. The notice shall, in writing, specify the nature and duration of the delays or disruptions and the anticipated effect such weather days will have on the Construction Manager's abilities to perform its obligations along with a plan to deal with the effects of such weather days and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall

be made to the Guaranteed Maximum Price, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, or abnormal or adverse weather conditions that exceed the average weather days per month listed above but only for adverse weather days that exceed 30 days in the aggregate have been claimed ~~whether such hindrances or delays be avoidable or unavoidable~~, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any ~~such~~ other delays other than those specified herein.”

161. Section 15.2.1 is hereby amended by deleting Section 15.2.1 in its entirety and replacing it with a new Section 15.2.1 to read as follows:

§ 15.2.1 Claims by the CMAR against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred initially to the Initial Decision Maker for consideration and recommendation to the Owner. An initial recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or litigation of all Claims by the CMAR arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no recommendation having been rendered by the Initial Decision Maker. The Architect shall serve as the Initial Decision Maker, unless otherwise indicated in the Contract Documents.

162. Section 15.2.2 is hereby amended by deleting Section 15.2.2 in its entirety and replacing it with a new Section 15.2.2 to read as follows:

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the CMAR; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Initial

Decision Maker is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

163. Section 15.2.4 is hereby amended by deleting the last sentence of Section 15.2.4 and replacing it with a new sentence to read as follows:

Upon receipt of the response or supporting data, if any, the Initial Decision Maker shall make a recommendation to the Owner regarding the claim or any part of the claim.

164. Section 15.2.5 is hereby amended by deleting Section 15.2.5 in its entirety and replacing it with a new Section 15.2.5 to read as follows:

§ 15.2.5 The Initial Decision Maker will render an initial recommendation regarding the claim, or indicating that the Initial Decision Maker is unable to make a recommendation. This initial recommendation shall (1) be in writing; (2) state the reasons therefore; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both. Following receipt of the Initial Decision Maker's initial recommendation regarding a claim, the Owner and CMAR shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Section 15.3.

165. Section 15.2.6 is hereby deleted in its entirety.

166. Section 15.2.6.1 is hereby deleted in its entirety.

167. Section 15.2.7 is hereby deleted in its entirety.

168. Section 15.2.8 is hereby deleted in its entirety.

169. Section 15.2 is hereby amended by adding a new Section 15.2.9 to read as follows:

§ 15.2.9 Waiver of Lien. It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

170. Section 15.3 and all of its Subsections, including Sections 15.3.1 through 15.3.4, are hereby amended by deleting such Sections in their entirety and replacing such Sections with new Sections 15.3, 15.3.1, 15.3.2, 15.3.3 and 15.3.4 to read as follows:

§ 15.3 MEDIATION

§ 15.3.1 In the event that the Owner or the CMAR shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 15.3.3 In the event the Owner and the CMAR are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

§ 15.3.4 Venue for any mediation or lawsuit arising under this contract shall be in Collin County, Texas.

171. Section 15.3 is hereby further amended by adding new Section 15.3.5 to read as follows:

§ 15.3.5 The parties shall share the mediator's fee equally. The mediation shall be held in Collin County unless another location is mutually agreed upon by and between the parties. Agreements reached in or through mediation shall be enforceable in the state courts of Collin County, Texas.

172. Section 15.4 is hereby amended by deleting the entirety of Section 15.4 together with all of Sections 15.4.1, 15.4.1.1, 15.4.2, and 15.4.3 in their entirety.

173. Section 15.4.4 is hereby amended by deleting the entirety of Section 15.4.4.1 together with all of Sections 15.4.4.2, 15.4.4.3 in their entirety.

174. The *General Conditions of the Contract for Construction*, AIA Document A201-2017 is hereby further amended by deleting all references to arbitration from the Index and all other Sections, Subsections, paragraphs, provisions and/or phrases of such document.

II.

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

III.

This Addendum, when combined with the Agreement contains the entire agreement between Owner and Construction Manager with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions were incorporated therein word for word.

IV.

This Addendum and the Agreement are entered into subject to the Prosper Town Charter and ordinances of Town, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Construction Manager will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Construction Manager's income. Situs of this Contract is agreed to be Collin County, Texas, for all purposes, including performance and execution.

V.

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

VI.

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

VII.

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Construction Manager) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Construction Manager or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Construction Manager.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

OWNER:

TOWN OF PROSPER, TEXAS

By: _____
Mario Canizares, Town Manager

Date Signed: _____

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM:

Terrence S. Welch, Town Attorney

CONSTRUCTION MANAGER:

BYRNE CONSTRUCTION SERVICES

a Texas for Profit Corporation,

By: 
NAME

Date Signed: December 5, 2024

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Mario Canizares, Town Manager of the **TOWN OF PROSPER**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the Town's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____
DAY OF _____, 2024.

Notary Public Denton County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 2024, by NAME, in his capacity as President/Chief Executive Officer of **BYNRE CONSTRUCTION GROUP**, a Texas Limited Liability Company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____
DAY OF _____, 2024.

Notary Public _____ County, _____
My commission expires _____