

STATE OF TEXAS

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**Inter-Local Cooperation Agreement for Participation in
Prosper TIRZ Number Two**

COUNTY OF COLLIN

This Inter-Local Cooperation Agreement for Participation in Town of Prosper TIRZ Number Two (“Agreement”) is made by and between the Town of Prosper, Texas (the “Town”) and Collin County, Texas (the “County”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, on the 22nd day of January, 2013, the Prosper Town Council approved Ordinance No. 13-04 designating Town of Prosper Tax Increment Financing Reinvestment Zone Number Two (“TIRZ Number Two”) with a term of twenty-five (25) years in accordance with the Tax Increment Financing Act, as V.T.C.A., Tax Code, Chapter 311, (the “Act”), to promote development and redevelopment through the use of tax increment financing and designating the TIRZ Number Two pursuant to the Act; and

WHEREAS, the Town, by Ordinance No. 13-04, contributes seventy percent (70%) of the Town's Tax Increment from real property ad valorem taxes in the TIRZ Number Two (excluding “roll back” taxes assessed and collected by the Town; one hundred percent (100%) of the Town “roll back” taxes assessed and collected by the Town; twenty-five percent (25%) of the Town’s annual municipal Sales and Use Tax (hereinafter defined) collections above the Sales and Use Tax Base (hereinafter defined); and fifty percent (50%) of the one-half of one percent (0.5%) sales and use tax imposed pursuant to the Development Corporation Act, Chapters 501-505, Texas Local Government Code, on behalf of the Prosper Economic Development Corporation, to be paid to the Town by the Prosper Economic Development Corporation pursuant to a separate agreement and pledged to the Tax Increment Fund (hereinafter defined) for design, installation, and construction of Infrastructure (hereinafter defined) and other authorized projects for or within TIRZ Number Two; and

WHEREAS, the Town and MSW Prosper 380 LP, a Texas limited partnership (“MSW”) entered into that certain Development and Financing Agreement dated December 31, 2012, for the construction and financing of a certain infrastructure defined therein as “Public Improvements” within TIRZ Two (the “Development and Financing Agreement”); and

WHEREAS, on May 14, 2013, the TIRZ Number Two Board of Directors, and the Town Council by Ordinance adopted the Final Project and Financing Plan for TIRZ Number Two; and

WHEREAS, the County intends to contribute fifty percent (50%) of the Tax Increment for a period of twenty-five (25) years to the Tax Increment Fund for Project Specific Categories (hereinafter defined); and

WHEREAS, the Collin County Commissioners Court finds that the terms of the proposed participation as set forth in this Agreement will meet the Collin County Policy for participation in Tax Increment Financing Zones and that: (i) there will be no substantial adverse effect on the provision of the jurisdiction's service or tax base; and (ii) participation will not substantially adversely affect the County's ability to carry out its long range development plans; and

WHEREAS, the Act authorizes the expenditure of funds derived within a tax increment financing reinvestment zone for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the municipality establishing a reinvestment zone that are listed in the project plan of the reinvestment zone, which expenditures and monetary obligations constitute project costs as defined by the Act.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Act" shall mean the Tax Increment Financing Act, Chapter 311, Tax Code, as amended.

"Board" shall mean the Board of Directors of TIRZ Number Two.

"Captured Appraised Value" shall mean the total taxable value of all real property taxable by a Taxing Unit and located in TIRZ Number Two for the year less the Tax Increment Base of the Taxing Unit.

"County" shall mean Collin County, Texas.

"Effective Date" shall mean the last date of execution hereof.

"Expiration Date" shall mean the earlier of the date of the 25th annual payment of the County Tax Increment to the Tax Increment Fund and the date of termination of TIRZ Number Two.

"Infrastructure" shall mean public infrastructure consisting of public streets and roads, storm sewer, drainage, trails, open space and related improvements, within TIRZ Number Two, including: (1) the design, engineering and construction of public streets, roads, streetscape, traffic signals, bridges, and other transportation projects; (2) the design, engineering, construction and installation of drainage and related improvements, storm sewers, detention ponds, retention ponds, drainage pipes, culverts, over-sizing of

facilities, trails, open space, and urban design elements within TIRZ Number Two as identified in the Project Plan.

“Maximum Reimbursement Amount” shall mean an amount of no more than Nine Million Nine Hundred Thirty-Eight Thousand Dollars (\$9,938,000.00) of the County’s Tax Increment which shall be deposited in the Tax Increment Fund during the term of TIRZ Number Two and used for Project Specific Categories.

“Project Plan” shall mean the project and financing plan for TIRZ Number Two approved by the Board and the Town Council for the Town, as amended.

“Project Specific Categories” shall mean Infrastructure elements identified in the Project Plan and as further described in **Exhibit “A,”** towards which the County agrees to contribute its Tax Increment.

“Sales and Use Tax” shall mean the Town’s one percent (1%) sales and use tax imposed pursuant to Chapter 321, Tax Code, on the sale of Taxable Items in the TIRZ Number Two. Sales and Use Tax does not include any additional sales and use tax imposed by the Town for any purpose, including one-half of one percent (0.5%) sales and use tax imposed by the Town pursuant to the Development Corporation Act of 1979, Chapters 501-501, Texas Local Government Code, on behalf of the Prosper Economic Development Corporation, and the one-half of one percent (0.5%) Sales and Use Tax imposed by the Town for property tax reduction.

“Sales Tax Base” shall mean the amount of municipal sales and use taxes attributable to the zone for the year in which the TIRZ Number Two was designated.

“Tax Increment” shall mean the total amount of property taxes by a Taxing Unit for the year on the Captured Appraised Value of real property taxable by a Taxing Unit and located in TIRZ Number Two. Tax Increment includes the Town “rollback” taxes assessed and collected by the Town

“Tax Increment Base” shall mean the total taxable value of all real property taxable by a Taxing Unit and located in the TIRZ Number Two for the year in which TIRZ Number Two was designated (2013).

“Tax Increment Fund” shall mean the funds deposited by the Town and any Taxing Unit in the tax increment fund for TIRZ Number Two.

“Taxable Items” means both “taxable items” and “taxable services” as those terms are defined by Tax Code, Chapter 151, as amended.

“Taxing Unit” shall mean the Town of Prosper, Collin County, Texas and any Taxing Unit that taxes real property within TIRZ Number Two that enters into an agreement with the Town to contribute to the Tax Increment Fund.

“TIRZ Number Two” shall mean Town of Prosper Tax Increment Financing Zone Number Two.

“Town” shall mean the Town of Prosper, Collin County, Texas.

Article II Term

The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

Article III TIRZ Projects

3.1 In consideration of the mutual benefits to be derived from the funding of the TIRZ Number Two Improvements and in consideration of the increased future tax base generated from this development, County shall contribute an amount equal to fifty percent (50%) of its Tax Increment to the Tax Increment Fund pursuant to the Act and as authorized by the Collin County Commissioners’ Court Order No. 2013-417-06-10 dated June 10, 2013 for a period of twenty-five (25) years not to exceed the Maximum Reimbursement Amount. The County shall annually pay its Tax Increment to the Tax Increment Fund beginning with tax year 2014 and continue for a period of twenty-five (25) years during the term of TIRZ Number Two unless sooner terminated as provided herein.

3.2 The County is not obligated to pay the County Tax Increment from any source other than taxes collected on the Captured Appraised Value. Furthermore, the County has no duty or obligation to pay the County Tax Increment from any other County taxes or revenues or until the County Tax Increment in the TIRZ Number Two is actually collected. The obligation to pay the County Tax Increment accrues as taxes representing the County Tax Increment are collected by the County, and payment shall be due on May 1 of each year the County participates in the TIRZ Number Two. No interest or penalty will be charged to the County for any late payment received from the County; provided, however, the penalty and interest received by the County on any delinquent taxes from the County Tax Increment shall be paid to the Tax Increment Fund. Any portion of the taxes representing the County Tax Increment that are paid to the County and subsequently refunded pursuant to a provision of the Texas Tax Code, as amended, shall be offset against future payments to the Tax Increment Fund. Further, the County is not required to pay Tax Increment into the Tax Increment Fund of the TIRZ Number Two after three (3) years from the date the TIRZ Number Two is created unless the following conditions exist or have been met within the three (3) year period: (1) bonds have been issued for the TIRZ Number Two; or (2) the Town has acquired property in the TIRZ Number Two pursuant to the Project Plan; or (3) construction of improvements pursuant to the Project Plan has begun in the TIRZ Number Two; or (4) a development agreement (or agreements) has been approved for Project costs in the TIRZ Number Two.

3.3 The obligation of the County to participate in the TIRZ Number Two is limited to the area described in the Project Plan. The County's participation does not extend to the tax increment on any additional property added to the TIRZ Number Two unless the County specifically agrees to participate in the additional area.

3.4 Notwithstanding anything to the contrary in Town's Ordinance creating the TIRZ Number Two, pursuant to the provisions of Section 311.009(a) of the Texas Tax Code, as amended, the County shall have the right to appoint and thereafter at all times maintain one (1) member on the Board of Directors of the TIRZ Number Two. Failure of the County to appoint a person to the Board of Directors of the TIRZ Number Two shall not be deemed a waiver of the County's right to make an appointment at a later date. The County will make good faith efforts to appoint and maintain a person to serve on the Board.

3.5 The Town agrees to provide the County with any proposed amendments to the Project Plan at least fourteen (14) days prior to their submission to the Town Council for approval.

3.6 Upon termination of the TIRZ Number Two, and after all obligations and bonded indebtedness of the TIRZ Number Two have been paid, the Town and the Board shall pay to the County, within sixty (60) days of said termination, all monies remaining in the Tax Increment Fund that are attributable to the County Tax Increment paid by the County into the Tax Increment Fund.

3.7 The County's Tax Increment contributed to the Tax Increment Fund shall be applied in the following order of priority: (i) amounts pledged or required for payment of outstanding bonds or debt issued for TIRZ Number Two projects, if any; (ii) administrative costs of TIRZ Number Two as approved by the Board and the Town Council for the Town (not to exceed 10% of the County's Tax Increment); (iii) maintenance of a minimum balance of \$25,000.00 in the Tax Increment Fund; and (iv) for Infrastructure as approved by the Board and the Town Council for the Town. The Tax Increment Fund may not be used for projects not included in the Project Plan. The County's tax increment may only be used for Infrastructure costs and related financing as shown in the Project Specific Categories in **Exhibit "A"**.

3.8 No portion of the Tax Increment contributed to the TIRZ Number Two by the County may be paid to the Town for administrative fees.

Article IV Termination

This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the parties;
- (b) upon the Expiration Date;
- (c) by either party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable;

- (d) upon County contribution of the Maximum Reimbursement Amount to the Tax Increment Fund; or
- (e) by the County, in the event at least one of the following has not occurred within three (3) years after the TIRZ Number Two was designated: (1) issuance of bonds for TIRZ Number Two; (2) acquisition of property by the Town in TIRZ Number Two pursuant to the Project Plan; or (3) construction of improvements pursuant to the Project Plan has begun in TIRZ Number Two.

**Article V
Miscellaneous**

5.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement may not be assigned without the consent of either party.

5.2 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.3 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for Town, to:

Attn: Harlan Jefferson
Town Manager
Town of Prosper
P.O. Box 307
Prosper, Texas 75078

With copy to:

Peter G. Smith
Nichols, Jackson, Dillard
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for County, to:

Judge Keith Self
Collin County Administration Building
Suite 4192
2300 Bloomdale Road
McKinney, Texas 75071

5.4 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any exhibits attached hereto.

5.5 Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

5.6 Amendment. This Agreement may be amended by the mutual written agreement of the parties.

5.7 Legal Construction. 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.8 Recitals. The recitals to this Agreement are incorporated herein.

5.9 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.10 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

5.11 Approval of Parties. Whenever this Agreement requires or permits the approval or consent to be given by a party, the parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

5.12 Further Assurances. Each party hereby agrees that it will take all actions and execute all documents necessary to fully carry out the purposes and intent of this Agreement.

5.13 Audits. The County may, at its costs, upon ten (10) days prior written notice to the Town, examine and audit the Town records pertaining to the collection and expenditure of County Tax Increment contributed to the Tax Increment Fund.

(Signature page to follow)

EXECUTED on this 10th day of June, 2013.

TOWN OF PROSPER, TEXAS

By: Ray Smith
Ray Smith, Mayor

APPROVED AS TO FORM:

Peter H Smith
TOWN ATTORNEY

EXECUTED on this 10th day of June, 2013.

COLLIN COUNTY, TEXAS

By: Keith Self
Honorable Keith Self County Judge

Exhibit "A"
Project Specific Categories

County funds will not be used for the highlighted items.

TIRZ Project Cost Items	TIRZ Costs	Non-TIRZ Costs *	Total Costs
STREETS AND DRAINAGE SYSTEMS	\$11,146,567	\$2,001,748	\$13,148,315
STREET ENHANCEMENTS	\$0	\$1,775,577	\$1,775,577
WATER SYSTEM	\$1,367,721	\$1,116,778	\$2,484,499
SANITARY SEWER SYSTEM	\$641,669	\$358,204	\$999,873
OFFSITE SANITARY SEWER SYSTEM	\$1,479,282	\$0	\$1,479,282
DETENTION/RETENTION PONDS & MASS EXCAVATION	\$0	\$2,882,560	\$2,882,560
SITWORK FOR DEVELOPMENT PARCELS	\$0	\$15,750,000	\$15,750,000
PARKING DECKS	\$0	\$73,497,600	\$73,497,600
STREET LIGHTS	\$174,000	\$210,000	\$384,000
TRAFFIC SIGNALS (4 budgeted)	\$1,200,000	\$0	\$1,200,000
LOVERS LANE LOOP OFFSITE - STREET K6	\$1,174,992	\$0	\$1,174,992
PRIMARY ELECTRIC SERVICE LOOP	\$0	\$3,600,000	\$3,600,000
ELECTRIC	\$0	\$640,150	\$640,150
GAS	\$0	\$448,105	\$448,105
STREET N2 - WESTSIDE DNT SERVICE ROAD, LOVERS LN. TO FIRST ST.	\$1,687,005	\$0	\$1,687,005
BRAIDED RAMP AT US 380	\$4,000,000	\$0	\$4,000,000
CIVIL ENGINEERING & SURVEYING (10%)	\$1,887,124	\$10,228,072	\$12,115,196
CONSTRUCTIION STAKING (2%)	\$377,425	\$2,045,614	\$2,423,039
CONSTRUCTINO MANAGEMENT (total = 3%)	\$477,093	\$3,157,466	\$3,634,559
GEOTECHNICAL STUDY (1%)	\$188,712	\$1,022,807	\$1,211,519
LEGAL 1%)	\$188,712	\$1,022,807	\$1,211,519
CONTINGENCY (8%)	\$1,509,699	\$8,182,458	\$9,692,157
Subtotal	\$27,500,000	\$127,939,947	\$155,439,947
TOWN EXPENSE FOR TIRZ ADMINISTRATION	\$1,346,836	\$0	\$1,346,836
Subtotal TIRZ Project Costs Before Finance Expenses	\$28,846,837	\$127,939,947	\$156,786,784

* Non-TIRZ Costs are funded by developer