

**INTERLOCAL AGREEMENT
BETWEEN
COLLIN COUNTY, THE TOWN OF PROSPER AND THE CITY OF CELINA
RELATED TO CONSTRUCTION INSPECTION SERVICES OF
FRONTIER PARKWAY FROM THE DALLAS NORTH TOLLWAY TO PRESTON ROAD (SH 289)**

THIS AGREEMENT (“Agreement”) is made and entered into by and among **COLLIN COUNTY, TEXAS**, a political subdivision of the State of Texas, hereinafter referred to as ("Collin County"); the **TOWN OF PROSPER, TEXAS**, a home-rule municipal corporation, hereinafter referred to as ("Prosper"); and the **CITY OF CELINA, TEXAS**, a home-rule municipal corporation, hereinafter referred to as ("Celina"). Collin County, Prosper and Celina may from time to time herein be referred to collectively as "Parties" and individually as a "Party".

WHEREAS, the Interlocal Cooperation Act ("Act"), codified at Chapter 791 of the Texas Government Code, authorizes units of local government to contract with one or more units of local government to perform governmental functions and services; and

WHEREAS, Collin County, Prosper and Celina are political subdivisions of the State of Texas and are engaged in the provision of governmental services for the benefit of their citizens and users; and

WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, the Act for the performance of governmental functions and services; specifically, the service of providing construction inspection of Frontier Parkway from the Dallas North Tollway to Preston Road (SH 289) hereinafter referred to as ("Project"); and

WHEREAS, Collin County, Prosper and Celina have determined that the Project may be completed and maintained most economically by implementing this Agreement; and

WHEREAS, each of Collin County, Prosper and Celina has current funds available to satisfy any fees and costs required pursuant to this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Prosper, Celina and Collin County agree as follows:

**I.
TERM; TERMINATION**

This Agreement is effective upon the execution and delivery by all parties, and shall continue in effect until such time as the Project is complete, unless any party gives written notice to the other parties to the contrary not less than ninety (90) days prior to the expiration of the then-current term. Notwithstanding the foregoing, however, this Agreement may be terminated by any party, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Agreement, by giving the other parties at least ninety days' prior written notice of the termination date, in which event this Agreement shall terminate as to all parties as of such termination date.

**II.
ROLES AND RESPONSIBILITIES OF THE PARTIES**

The City of Celina and the Town of Prosper will share primary responsibilities for the construction inspection for the duration of the Project. The duties and responsibilities of the construction inspection have been outlined in Exhibit "A".

For the duration of the Project, all parties agree to the following:

1. Collin County, Prosper and Celina shall each designate a program liaison who will manage program details and coordinate with the respective designated liaisons during the construction inspection services process. Staff representatives shall be as follows:
 Celina Representative: Alan Anderson, Construction Manager
 Town of Prosper Representative: Carlos Quiroz, Construction Superintendent
 Collin County Representative:
2. Material testing will be provided under a separate contract which will be managed by Collin County. Reports will be sent to all representatives identified in the pre-construction meeting.
3. Bridge inspection will be provided under a separate contract which will be managed by Collin County.
4. Pre-construction meeting will be managed by the City of Celina and Town of Prosper Representatives.
5. Monthly Progress Meetings will be managed by the City of Celina and Town of Prosper Representatives.
6. Celina and Prosper agree to fund the construction inspection services from existing funds. No compensation exchange will occur with the construction inspection services.
7. The scope of services for the purpose of construction inspection have been identified in Exhibit "A"

**III.
RELEASE AND HOLD HARMLESS**

TO THE EXTENT ALLOWED BY LAW, AND WITHOUT WAIVING GOVERNMENTAL OR SOVEREIGN IMMUNITY, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

THIS INDEMNIFICATION CLAUSE IS VALID ONLY TO THE EXTENT PERMITTED B'Y THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, PARTICULARLY SECTION 7 OF ARTICLE XI OF THE TEXAS CONSTITUTION, AND WITH THE MUTUAL UNDERSTANDING THAT THE PARTIES ARE POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS AND THAT THIS EXECUTORY INDEMNITY OBLIGATION CANNOT BE PAID FROM CURRENT REVENUES AND THAT NO TAX NOR INTEREST AND SINKING FUND HAS BEEN SET, ADOPTED OR ESTABLISHED FOR THE PAYMENT OF THIS EXECUTORY INDEMNITY OBLIGATION.

**IV.
INDEPENDENT CONTRACTOR**

Each party covenants and agrees that each party is an independent contractor of the other parties and not an officer, agent, servant or employee of any other party and that nothing herein shall be construed as creating a partnership or joint enterprise between or among any party.

**V.
NOTICE**

Any notice provided under this Agreement shall be delivered by mail or personal service to the parties named below:

Celina Representative:

City of Celina
Attn: Kimberly Brawner, P.E.
Executive Director of Public Services
142 N Ohio
Celina, TX 75009

Prosper Representative:

Town of Prosper
Attn: Hulon T. Webb, Jr., P.E.
Director of Engineering Services
250 W. First Street
Prosper, TX 75078

Collin County Representative:

Collin County
Attn: Clarence Daugherty, P.E.
Director of Engineering
4690 Community Avenue, Suite 200
McKinney, TX 75071

VII.
AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

- Prosper has executed this Agreement pursuant to duly authorized action of the Prosper Town Council on _____.
- Celina has executed this Agreement pursuant to duly authorized action of the Celina City Council on _____.
- Collin County has executed this Agreement pursuant to duly authorized action of the Collin County Commissioners on _____.

Each of the parties shall provide written documentation evidencing the grant of approval by its respective governing body.

VIII.
SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, any party may terminate this agreement by giving the other parties thirty (30) days written notice.

IX.
VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

X.
INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by Celina, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for or against any party.

**XI.
EXPENSES FOR ENFORCEMENT**

In the event either Party hereto is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing Party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

**XII.
FORCE MAJEURE**

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

**XIII.
REMEDIES**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by any party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

**XIV.
SUCCESSORS AND ASSIGNS**

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other parties to this Agreement. No party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other parties. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of all parties.

**XV.
IMMUNITY**

It is expressly understood and agreed that, in the execution and performance of this Agreement, no party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

**XVI.
MULTIPLE COUNTERPARTS**

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

**XVII.
ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and may only be modified in a writing executed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing below:

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

COLLIN COUNTY, TEXAS

Signed: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Abernathy Roeder Boyd & Hullett P.
City Attorney

TOWN OF PROSPER, TEXAS

Signed: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Brown & Hofmeister, L.L.P.

Town Attorney

CITY OF CELINA, TEXAS

Signed: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Hayes, Berry, and Van Zandt
City Attorney

Exhibit “A”

Project Description:

As part of the expansion for Frontier Parkway from Dallas North Tollway to Preston Road, the City of Celina and the Town of Prosper are proposing to provide the daily construction inspection services for the Project as outlined below.

Storm System Inspection:

The City of Celina and the Town of Prosper will conduct the field inspection for all stormwater infrastructure as detailed in the approved construction plans and specifications.

1. Pipe materials.
2. Pipe embedment.
3. Backfill and compaction.
4. Culverts and headwalls
5. Channel excavation and lining.
6. Manholes, inlets and junction boxes.
7. Outfall structures.
8. Oversee the material testing lab while conducting tests.
9. Inspect proper trench safety in being used and address issues with contractor.

SWPPP Inspection:

The City of Celina and the Town of Prosper will conduct the weekly field inspection for all SWPPP related items as detailed in the approved construction plans and specifications.

1. Inspection of temporary and permanent BMP's.
2. Document and coordinate necessary repairs in weekly report.
3. Address any SWPPP related violations with contractor and correct issues as needed.
4. Revegetation of disturbed areas with sod or seed for final erosion control.

Paving Inspection:

The City of Celina and the Town of Prosper will conduct the field inspection for all paving infrastructure as detailed in the approved construction plans and specifications.

1. Subgrade gradation, depth checks and densities.
2. Verify materials, lift depth and compaction requirements for:
 - a. Moisture treated subbase and flexible base subgrade.
 - b. Bridge embedment drains and embankment materials.
3. Steel inspection.
4. Concrete depth verification.
5. Oversee the material testing lab while conducting tests.
6. Driveway connection and coordinate with affected residents and businesses.

Grading Inspection:

The City of Celina and the Town of Prosper will conduct the field inspection for all associated grading as detailed in the approved construction plans and specifications.

1. Curb and sidewalk backfill.
2. Side slopes and cross slopes outside back of curb.
3. Proper median backfill.
4. Proper slope grading.
5. Ensure proper drainage to avoid ponding.
6. Restoration of disturbed areas.

Other Inspection:

The City of Celina and the Town of Prosper will conduct the following additional inspections.

1. Electrical, lighting and underground conduits (not included in Terracon's scope for bridge and retaining walls).
2. Signs and pavement markings.
3. Permanent railing and traffic barriers.
4. Coordinate with BNSF representatives for construction of temporary at-grade crossing, drainage improvements in BNSF ROW and removal of existing BNSF at-grade crossing.
5. Coordinate with Collin County and Project Engineer regarding field changes and change orders.

Contractor Coordination:

The City of Celina and the Town of Prosper will coordinate with the contractor on a day to day basis to help avoid change orders and time delay.

1. Identify possible conflicts and issues and communicate them to contractor.
2. Communicate testing failures.
3. Attend weekly/biweekly construction meetings.
4. Help coordinate traffic switched and lane closures with stake holders and traveling public.

Payment Verification:

The City of Celina and the Town of Prosper will conduct the field verification of the proposed contractor monthly invoices and discuss any discrepancies with contractor prior to submitting the invoice to the Project Engineer for review and Collin County for payment.

Reports Provided:

The City of Celina and the Town of Prosper will document and maintain daily work logs, photographs, SWPPP reports test result from material testing lab and provide them to Collin County and the Project Engineer on a monthly basis and to all stakeholders at the end of the project or as needed to resolve disputes with contractor.