

**INTERLOCAL AGREEMENT BETWEEN
THE TOWN OF PROSPER, TEXAS, AND THE CITY OF CELINA, TEXAS,
FOR CONSTRUCTION OF AND IMPROVEMENTS TO COIT ROAD**

THIS INTERLOCAL AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND THE CITY OF CELINA, TEXAS, FOR THE CONSTRUCTION OF IMPROVEMENTS TO COIT ROAD (“Agreement”) is made and entered into by and among 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." Prosper and Celina may from time to time herein be referred to collectively as "Parties" and individually as a "Party." The effective date of this Agreement is the date that the last of the Parties has executed the Agreement, after approval from their respective governing bodies (the “Effective Date”).

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, pursuant to Section 791.032 of the Act, with the approval of the governing body of a municipality, a local government may enter into an interlocal agreement with another municipality to finance the improvement of streets in the municipality; and

WHEREAS, 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 construction of road improvements to Coit Road, the segmented portions which consist of:

- (1) the portion between Prosper Trail and Frontier Parkway and its eastbound lane and belonging within Prosper, Texas (the “Prosper-Frontier Project”); and
- (2) the portion between Frontier Parkway and its corresponding westbound lane and north up to Marigold Lane and belonging within Celina, Texas (the “Celina-Frontier Project”), all of which is present and belonging within Celina, Texas, attached hereto and incorporated herein for all purposes,

and in its entirety to occur on, along, and aside to Coit Road between Prosper Trail within Prosper, Texas and up to Marigold Lane within Celina, Texas (“Entire Project”), and, attached hereto and incorporated herein for all purposes, and depicted in the entire construction plans (“**Exhibit A**”); and

WHEREAS, Prosper and Celina have determined that the projects may be completed most economically by implementing this Agreement; and

WHEREAS, each of the Parties 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, the Parties agree as follows:

I.
TERM; TERMINATION

This Agreement is effective from the Effective Date for a period of two (2) years; however, the initial term of this Agreement will automatically be extended until such time as the projects are 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 (90) 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

Both Parties will assume certain responsibilities either as an individual Party, jointly as Parties, or as apportioned to each Party as detailed below.

2.1. Celina.

- A. Construction documents: Celina shall assume preparation of the construction documents necessary for the construction of the Celina-Frontier Project.
- B. Cost and Payment Terms: Celina shall pay the Town of Prosper for the costs of the construction of the Celina-Frontier Project, upon confirmation and written approval of the Celina Representative designated in section 2.3.A and, plus a ten percent (10%) contingency fee, the fee to be calculated as follows:

$$[[\text{Cost of the Task for the Celina portion of Construction}] * 0.100] = [\text{Result}] \text{ USD}$$

Any rounding error should be resolved by rounding to the nearest penny upward. The actual construction costs shall be determined after the completion of the bidding process to be conducted by Prosper and as detailed below in section 2.2.B.

2.2 Prosper.

- A. Remaining construction documents: Prosper shall assume preparation of the construction documents necessary for the construction of the Prosper-Frontier Project.
- B. Bidding; Timing of Bidding Process; Procedure of Bidding: Prosper shall assume all aspects of the bidding process for the construction of the Entire Project, with the Celina-Frontier Project to be included in the Bid as a separate task. In bidding for the Celina-Frontier Project, Prosper will allow for a line-item breakdown of costs to be assessed for the task and audited by Celina and their respective staff for consideration. Prosper will incorporate mutually agreed and approved construction plans submitted by Celina and incorporate such agreed and approved construction plans into Prosper's bid for the construction of the projects.

Prosper shall begin the bidding process for the Prosper-Frontier Project by December 1, 2025. The Celina-Frontier Project will be included in the Project bid. Time of bid is subject to successful relocation of all utilities.

Prosper shall aggregate and prepare their respective plans for the Prosper-Frontier Project along with Celina's Celina-Frontier Project, the specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, Prosper shall comply with all statutory requirements applicable for competitive bidding. Prosper shall provide Celina with a copy of the executed design and construction contract(s) for the Entire Project. Changes to the Celina-Frontier Project, other than what was submitted for the initial bids, or which alter the initial funding, must be reviewed and approved by Celina prior to continuation.

- C. Prosper shall coordinate with Celina by providing a minimum seven (7) day notice for planned roadway closures to facilitate communication with Celina residents.
- D. Prosper will coordinate with the Texas Department of Transportation regarding any impacts to Frontier Road. Each municipality will fund the cost of any required TXDOT improvements located within its jurisdiction.

2.3 Both Parties. Prosper and Celina mutually agree to the following for the duration of this Agreement, notwithstanding termination or other terminating measure or event:

- A. Liaison(s): Prosper and Celina shall each designate a respective Project liaison (and respective designee(s), if desired) who will manage their respective Project details and coordinate with the respective designated liaisons during the construction process. Staff representatives shall be as follows:

Celina Representative: Andy Glasgow, Director of Engineering

Prosper Representative: Pete Anaya, Assistant Director of Engineering Services

- B. Testing: Material, stress, load, sheer, chemical, quality, and any other related testing associated with the construction of any respective Project, such testing will utilize a third party (3rd party) tester for any related testing related to their respective Project. Such testing will be provided under a separate contract to be entered into by Prosper, for a single company, firm, or organization to conduct the 3rd party testing on behalf of the Entire Project, and which Celina will pay its respective portion of testing for the Celina-Frontier Project. To create efficiency and potentially save costs and create possible value adds, quality control, and engineering collaboration and consideration, reports may be sent to all representatives identified in the pre-construction meeting. The cost of testing for the Celina-Frontier Project shall be paid by the City of Celina and shall be included in the total payment to the Town of Prosper.
- C. Pre-Construction Meeting and periodic update meetings: A pre-construction meeting will be managed by the Town of Prosper. Additional meetings may be held or hosted by Prosper on a bi-weekly (every two weeks) basis, to be organized by the Town's representative. Such meetings may take place in person or over telephonic or audio/video conferencing platforms. Nothing in this Agreement shall prevent both Parties from meeting spontaneously, as needed, or in addition to the above schedule to discuss other issues, logistics, construction aspects, or other items of importance to the progress and/or completion of the projects.
- D. Inspections: Each Party will be responsible for inspecting their respective Project. If an outside party is required to conduct an inspection, or a series of inspections, such costs will be borne onto the Party requiring those inspections for their respective portion of their Project.

III.

CONSIDERATION

The Parties acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of a Party shall be subject to approval by each Party's governing body. In the event that a Party's governing body does not approve the appropriation of funds required to be paid under this Agreement, this Agreement shall terminate at the end of the fiscal year for which funds were appropriated, and the Parties shall have no further obligations hereunder, but the Party responsible for payment shall be obligated to pay all charges incurred by the Party to whom payment must be made through the end of that fiscal year provided that the Party to whom payment must be made is not in breach of this Agreement.

IV. 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 BY 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.

V. 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.

VI. 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: Robert Ranc
City Manager
142 N Ohio
Celina, TX 75009

Prosper Representative:

Town of Prosper
Attn: Mario Canizares
Town Manager
250 W. First Street
Prosper, TX 75078

**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 _____, 2025.
- Celina has executed this Agreement pursuant to duly authorized action of the Celina City Council on February 11, 2025.

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 an 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 Denton County, Texas, and if legal action is necessary, venue shall lie in Collin County, Texas.

**X.
INTERPRETATION OF AGREEMENT**

This Agreement is a mutually 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. In the event of any disagreement or conflict concerning interpretation of this Agreement, and such disagreement cannot be resolved by the Parties hereto, the Parties agree to submit such disagreement to nonbinding mediation.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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, foreign state-sponsored or other foreign-based group action or activity disruptive in nature, or other domestic civil unrest; actions, embargoes, blockades, or trade restrictions in effect on or after the date of this Agreement; or national, regional, or local emergency, including but not limited to, weather-related events, geological events, or mass pandemics or epidemics (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.

**XV.
MULTIPLE COUNTERPARTS**

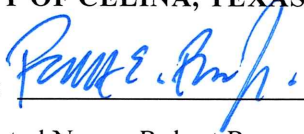
This may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other Party.

**XVI.
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:

CITY OF CELINA, TEXAS

By: 

Printed Name: Robert Ranc

Title: City Manager

Date: 

ATTEST:

By: 

City Secretary



TOWN OF PROSPER, TEXAS

By: _____

Printed Name: Mario Canizares

Title: Town Manager

Date: _____

ATTEST:

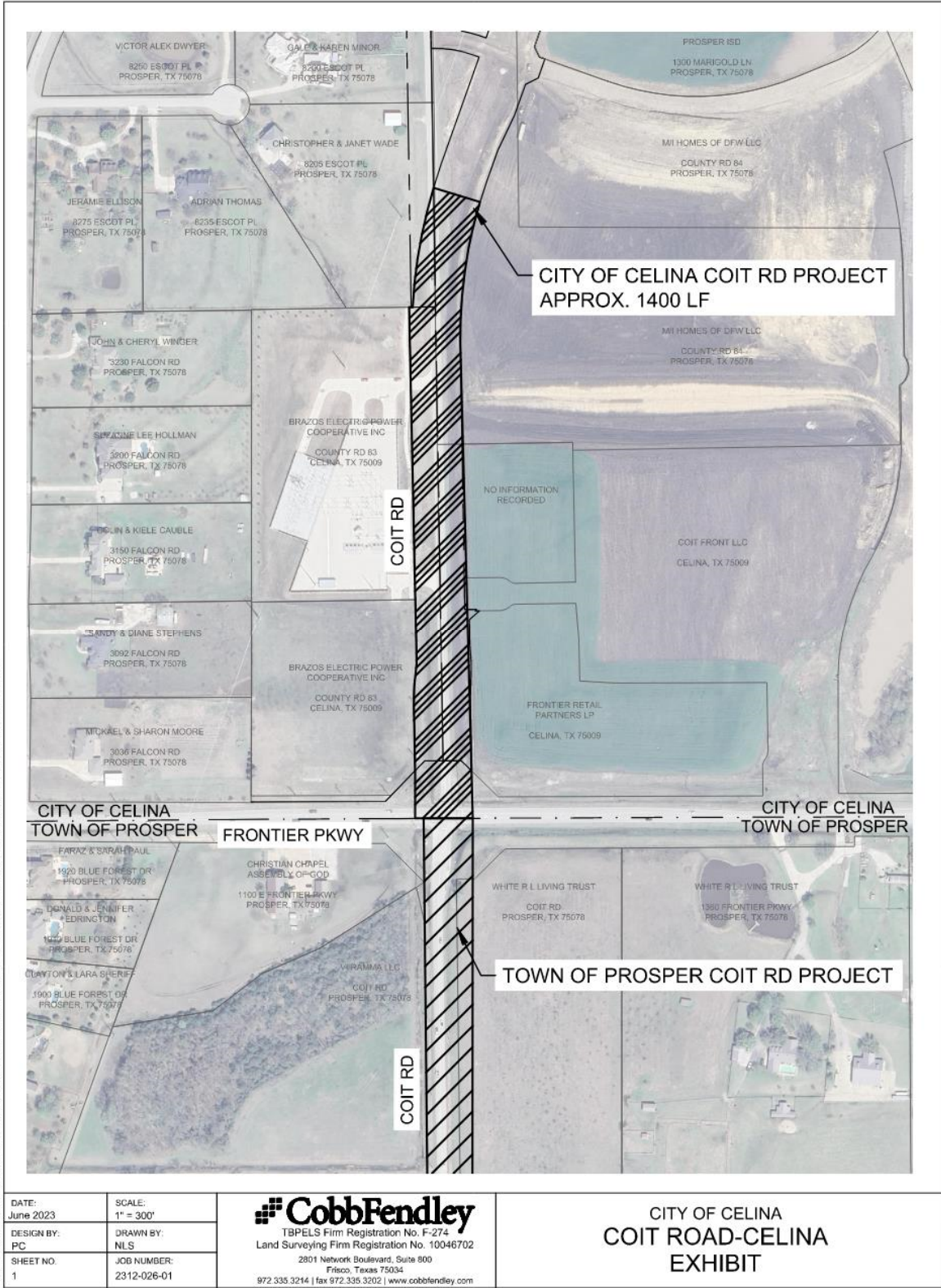
By: _____

Name: Michelle Lewis Sirianni

Title: Town Secretary

Date: _____

Exhibit A



Dwg Info: F:\Projects\2023\12026_City_of_Celina\01_Coit_Road\100_CAD\112_Munit02_Plan_SHEET1231202691_CelinaCoitRD_Embld.dwg - Plotted: 6/30/2023

DATE: June 2023	SCALE: 1" = 300'
DESIGN BY: PC	DRAWN BY: NLS
SHEET NO. 1	JOB NUMBER: 2312-026-01


 TBPELS Firm Registration No. F-274
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CITY OF CELINA
 COIT ROAD-CELINA
 EXHIBIT