

**INTERLOCAL AGREEMENT  
BETWEEN COLLIN COUNTY AND THE TOWN OF PROSPER  
CONCERNING COIT INTERSECTION IMPROVEMENTS  
NEW 2018 BOND PROJECT # RI18027**

**WHEREAS**, the County of Collin, Texas (“County”) and the Town of Prosper Texas (“Town”) desire to enter into this agreement (“Agreement”) concerning the Coit Intersection Improvements Project (“Project”) in Prosper, Collin County, Texas; and

**WHEREAS**, the Interlocal Cooperation Act (Texas Government Code Chapter 791) authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

**WHEREAS**, the Town and County have determined that the improvements may be constructed most economically by implementing this Agreement; and

**NOW, THEREFORE**, this Agreement is made and entered into by the County and the Town upon and for the mutual consideration stated herein.

**WITNESSETH:**

**ARTICLE I.**

The Town shall arrange to design the Project. The Project shall consist of widening of Coit Road at First Street, Prosper Trail, and Frontier Parkway (FM 1461) and the design of Coit Road as a four-lane (ultimate six-lanes) divided major thoroughfare at the intersections of First Street, Prosper Trail, and Frontier Parkway (FM 1461). All improvements shall be designed to meet or exceed the Town’s roadway design standards and criteria and shall be constructed in accordance with the plans and specifications approved by the Town.

**ARTICLE II.**

The Town shall prepare plans and specifications for the improvements, accept bids and award a contract to construct the improvements and administer the construction contract. In all such activities, the Town shall comply with all statutory requirements applicable to a municipal public work project. The Town shall provide the County with a copy of the executed design and construction contract(s) for the Project. Changes to the Project, other than what was submitted for the initial project ranking or which alter the initial funding set forth in Article IV, must be reviewed and approved by Collin County.

**ARTICLE III.**

The Town shall also acquire real property in the vicinity of the improvements for use as right-of-way or easements in connection with the Project.

**ARTICLE IV.**

The Town estimates the total actual cost of the Project to be Four Million Dollars (\$4,000,000) (“Estimated Project Cost”). The County agrees to participate in the Project by allocating Two Million Eight Hundred Thousand (\$2,800,000) (the “County Participation Amount”) to the performance of the Project. The County shall remit fifty percent (50%) of the County Participation Amount to the Town within thirty (30) days after the Town issues a Notice to Proceed to the design engineer and the Town submits a written request for payment to the County. The County shall remit the remaining fifty percent (50%) of the County Participation Amount to the Town (i) within thirty (30) days after the Town receives bids for the construction of the Project and the Town submits a written request for payment to the County. The County Commissioners Court may revise this payment schedule based on the progress of the Project. If the payment schedule is revised and that revision results in the Town facing the potential of incurring an unfunded debt in violation of the Texas Constitution the Town, in its sole discretion, shall

be free from any obligation or commitment to continue working on or complete the Project until the next installment of the County Participation Amount is paid to Town.

If the actual cost to design, acquire right-of-way for, and construct the Project (collectively the “Actual Project Cost”) is less than the Estimated Project Cost, and the County has participated up to seventy percent (70%) of the total Estimated Project Cost for the 2018 Bond funding, then the Town shall reimburse to the County an amount equal to the difference between the Estimated Project Cost and the Actual Project Cost such that the county has only contributed seventy percent (70%) of the Actual Project Cost. The Town shall remit any such reimbursement to the County following Town’s final acceptance of the Project and along with an itemized final accounting of expenditures for the Project. As used herein, the terms “Estimated Project Cost” and “Actual Project Cost” may include land acquisition, engineering, construction, inspection, testing, street lighting, and construction administration costs including contingencies.

#### ARTICLE V.

The County’s participation in the Project shall not exceed Two Million Eight Hundred Thousand (\$2,800,000).

#### ARTICLE VI.

The Town shall install a **project sign** identifying the Project as being partially funded by the Collin County 2018 Bond Program. The Town shall also provide **quarterly progress reports throughout the Project as well as before, during and after photos** during the construction process, in electronic format or via US mail to the Collin County Engineering Department. Following completion of the Project, the Town shall provide an **itemized final accounting of expenditures** for the Project.

#### ARTICLE VII.

The Town and County agree that the party paying for the performance of governmental functions or services shall make those payments only from current revenues legally available to the paying party.

#### ARTICLE VIII.

**INDEMNIFICATION. TO THE EXTENT ALLOWED BY LAW, 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.**

#### ARTICLE IX.

**VENUE.** The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The parties agree that this Agreement is performable in Collin County, Texas and that exclusive venue shall lie in Collin County, Texas.

#### ARTICLE X.

**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 by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

**ARTICLE XI.**

ENTIRE AGREEMENT. This Agreement embodies the entire agreement between the parties and may only be modified in a writing executed by both parties.

**ARTICLE XII.**

SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this Agreement without the written consent of the other party.

**ARTICLE XIII.**

IMMUNITY. It is expressly understood and agreed that, in the execution of this Agreement, neither 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.

**ARTICLE XIV.**

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.

**ARTICLE XV.**

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.

**ARTICLE XVI.**

TERM. This Agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project. This Agreement shall automatically renew annually during this period.

*[Signature page follows.]*

**APPROVED AS TO FORM:**

**COUNTY OF COLLIN, TEXAS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Chris Hill  
Title: County Judge  
Date: \_\_\_\_\_  
Executed on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by the County of Collin,  
pursuant to Commissioners' Court  
Order No. \_\_\_\_\_.

**ATTEST:**

**TOWN OF PROSPER, TEXAS**

By: \_\_\_\_\_  
Name: Michelle Lewis Sirianni  
Title: Town Secretary  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Mario Canizares  
Title: Town Manager  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Terrence S. Welch  
Title: Town Attorney  
Date: \_\_\_\_\_