

**INTERLOCAL AGREEMENT BETWEEN THE  
TOWN OF PROSPER AND CITY OF FRISCO**

*(Installation of Trainfo Equipment)*

This Interlocal Agreement for the installation of Trainfo equipment (“Agreement”) is entered into by and between the City of Frisco, Texas, a home-rule municipality (“Frisco”) and the Town of Prosper, Texas, a home-rule municipality (“Prosper”). Frisco and Prosper are at times each referred to herein as a “party” or collectively as the “parties,” acting by and through their authorized representatives.

**WHEREAS**, it is in the best interest of the citizens of Prosper and Frisco for local governments to cooperate, where possible, in the provision of governmental functions and services where such cooperation will result in a more efficient, higher quality and /or more cost effective provision of such functions, and services that serves the public health and welfare and is of mutual concern to the parties;

**WHEREAS**, Prosper and Frisco are local governmental entities pursuant to the Interlocal Cooperative Act, Chapter 791 of the Texas Government Code and, as such, may contract with one another for the provision of governmental functions of mutual interest;

**WHEREAS**, on or about December 18, 2019, the Regional Transportation Council (RTC) approved approximately \$1.5 million for the 2020 Traffic Incident Management Equipment Purchase Call for Projects (the “Project”);

**WHEREAS**, on July 9, 2020, the RTC approved the funding awards in the Traffic Incident Management Program;

**WHEREAS**, on July 23, 2020, the Executive Board in its capacity as the RTC’s fiduciary agent, authorized North Central Texas Council of Governments (NCTCOG) to enter into agreements with Frisco as part of the Traffic Incident Management Program;

**WHEREAS**, on February 20, 2025, Frisco and NCTCOG entered into an Interlocal Agreement setting forth the terms and conditions under which NCTCOG will reimburse Frisco for Implementation of Traffic Incident Management Program (“NCTCOG ILA”);

**WHEREAS**, as the current Closest To Dispatch (“CTD”) system is unable to account for enhanced features such as railroad crossing blockages, the Project outlined in the NCTCOG ILA proposes to use TRAINFO to enhance the existing CTD system to include three sensor locations in Frisco and one sensor location in Prosper;

**WHEREAS**, Frisco has determined that placing a Trainfo Sensor, traffic pole for Sensor, cell modem, solar panel, battery, and Trainfo camera module (herein defined as “equipment”) at the predetermined location within Prosper as outlined in Exhibit A will enhance how well the CTD system works in Frisco, and will improve the scope of the Project in accordance with the guidelines and mission of the NCTCOG ILA; and

**WHEREAS**, Frisco and Prosper desire to enter into this Agreement setting forth the

terms and conditions under which the equipment will be placed at a location in Prosper.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, Frisco and Prosper hereby agree as follows:

1. Frisco and Prosper agree and acknowledge that procurement of the equipment is pursuant to the NCTCOG ILA, and Frisco must adhere to applicable guidelines and restrictions set forth in the same.

**2. Rights and Duties of Frisco**

**a. Equipment.**

- i. Frisco shall provide and install equipment procured under NCTCOG in Prosper at one (1) agreed location as outlined in NCTCOG ILA. The Scope of this Agreement shall be limited to the one (1) sensor outlined in Exhibit A.
- ii. Frisco reserves the right to inspect such equipment at any time. Should the equipment warrant maintenance, repair, or replacement, Frisco will notify Prosper of the issues that need to be addressed and Frisco shall be responsible for such maintenance, repair, or replacement.
- iii. Prosper agrees to allow Frisco right of access to complete the maintenance, repair, or replacement should the need arise.
- iv. At all times, Frisco retains ownership and control of all equipment subject to this Agreement.

**3. Rights and Duties of Prosper.**

**a. Equipment.**

- i. Prosper shall allow Frisco access to install equipment as required under this Agreement. No permit or any other requirements shall be necessary for Frisco to install the Sensor, maintain, repair, or replace (as needed) the same outlined in this Agreement. Prosper will request the necessary line locates for the installation.
- ii. Prosper shall allow Frisco the right of access to perform all maintenance, repair, or replacement required on any equipment provided under this Agreement.
- iii. Prosper shall allow Frisco the right of access to perform an annual preventative maintenance of all of the equipment including but not limited to the battery, the Trainfo Sensor and the traffic pole for Sensor.
- iv. Prosper shall use reasonable efforts to promptly (but not later than 48 hours) notify Frisco in writing of any lost, stolen, damage or inoperable equipment.
- v. Prosper shall allow Frisco to repair any damaged or inoperable equipment.
- vi. Prosper agrees to allow Frisco right of access to the equipment and the surrounding area so Frisco can ensure that all systems work to fulfill the purpose of this Agreement, NCTCOG ILA, and Trainfo Agreement.
- vii. Should the need arise, Prosper shall agree to allow NCTCOG and/or its designee to perform an audit at NCTCOG's discretion.
- viii. Should the need arise, Prosper shall make at least one Prosper employee available during the installation of the equipment.
- ix. Prosper has right of way in the location where the equipment will be installed as outlined in Exhibit A. If the equipment is no longer in use or upon

termination of this Agreement, Prosper shall allow Frisco access to the equipment to be able to uninstall the equipment.

- x. Prosper shall use reasonable efforts to notify Frisco in writing at least thirty (30) days in advance of disposition of Frisco-provided equipment due to obsolescence, failure, or other planned replacement.

4. **Term.** The term of this Agreement shall commence on effective full execution of the Agreement unless terminated earlier in accordance with this Agreement.

5. **Termination.** This Agreement may be terminated on the occurrence of any of the following:

- a. Either party may terminate the Agreement by providing the other party written notice of termination at least thirty (30) days prior to the anticipated date of termination; or
- b. By mutual agreement of termination of the Agreement, executed in writing by both parties, without the requisite thirty (30) days prior written notice.
- c. For Prosper's failure to comply with the terms of the Agreement, Frisco shall have the option to terminate the Agreement effective immediately. This subsection shall survive the termination of this Agreement.

6. **Miscellaneous Provisions.**

a. **Consideration.**

This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

b. **Indemnity.** TO THE EXTENT AUTHORIZED BY TEXAS LAW, PROSPER SHALL DEFEND, RELEASE, INDEMNIFY AND HOLD HARMLESS FRISCO, ITS OFFICERS, AGENTS, SERVANTS, REPRESENTATIVES AND/OR EMPLOYEES OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LEGAL PROCEEDINGS, DEMANDS, DAMAGES OR JUDGMENTS, INCLUDING ALL EXPENSES, ATTORNEY FEES, WITNESS FEES, COSTS, AND COSTS AND EXPENSES OF APPEALS THEREFROM, ARISING OUT OF PROSPER'S PERFORMANCE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE INTENTIONAL OR NEGLIGENT ACTS AND/OR OMISSIONS OF PROSPER, ITS OFFICERS, AGENTS, SERVANTS, REPRESENTATIVES AND/OR EMPLOYEES, AND REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF FRISCO, ITS OFFICERS, AGENTS, SERVANTS, REPRESENTATIVES AND/OR EMPLOYEES. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

c. **Notice.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or be delivered the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be



(15) days written notice of its intent to terminate.

- i. Amendments. Frisco and Prosper may amend this Agreement only by an instrument in writing signed by both parties.
- j. 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.
- k. Assignment. This Agreement is not assignable.
- l. Immunity. It is expressly understood and agreed that, in the execution and performance of this Agreement, the parties have not waived, nor shall be deemed hereby to have waived, any immunity, governmental, sovereign and/or official, or defense that would otherwise be available to them 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.
- m. Representations. Each signatory represents that this Agreement has been read by the party for which this Agreement is executed, and that each party has had an opportunity to confer with counsel, on the matters contained herein.
- n. Drafting Provisions. This Agreement shall be deemed to have been drafted equally by all parties hereto. The language of all parts of this Agreement shall be constructed as a whole according to its fair and common meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this Agreement.
- o. Independent Contractor. Except as otherwise expressly provided herein, Prosper and Frisco agree and acknowledge that each entity is not an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work covered under this Agreement.
- p. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- q. Records. By entering into this Agreement, neither party is provided with any contractual right of access to any records or information created, received, or maintained by the other party unless expressly stated herein. Each party is independently responsible for compliance with any requests received pursuant to the Texas Public Information Act, and any third-party seeking information

generated or maintained by a party to this Agreement should submit requests for such information directly to that party.

- r. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- s. Disclaimer and Waiver of Damages.

Prosper agrees the equipment provided by Frisco is provided in an "as is" condition. Prosper agrees that Frisco is not providing any guarantee, representation or warranty, and Frisco hereby disclaims any guarantee, representation or warranty: (1) regarding the condition or suitability of the equipment, in whole or in part; or (2) that the property or equipment of Prosper, its employees, volunteers, agents, or invitees will not be damaged, stolen or in any other way compromised while the same is located in, on, or around the City of Frisco-owned property.

TO THE EXTENT AUTHORIZED BY TEXAS LAW, PROSPER HEREBY AGREES TO RELEASE, ACQUIT, HOLD HARMLESS, PROMISE NOT TO SUE, FOREVER DISCHARGE AND WAIVE ANY AND ALL CLAIMS THAT PROSPER MAY, NOW OR LATER, HAVE AGAINST THE CITY OF FRISCO, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, MEMBERS, HEIRS, LEGATEES, ADMINISTRATORS, EXECUTORS AND ASSIGNS, IN WHOLE OR IN PART, IN BOTH THEIR PRIVATE AND PUBLIC CAPACITIES (COLLECTIVELY, "RELEASEES"). THIS SHALL INCLUDE THE RELEASE OF ANY AND ALL ACTIONS, CAUSES OF ACTIONS, CLAIMS, DEMANDS, DAMAGES, LAWSUITS, COSTS, LOSS OF SERVICES, EXPENSES AND COMPENSATION, WHETHER KNOWN OR UNKNOWN, ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF OR CONNECTED IN ANY MANNER WITH PROSPER'S USE OF THE EQUIPMENT AND/OR USE OF TRAINFO LICENSE INCLUDING, BUT NOT LIMITED TO, LIABILITY, DAMAGES, INJURY (INCLUDING DEATH), PROPERTY DAMAGE, LEGAL FEES AND/OR COSTS CAUSED BY OR RELATED TO ANY NEGLIGENT OR INTENTIONAL ACT OF ANY RELEASEE.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed

by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

**TOWN OF PROSPER, TEXAS**

**CITY OF FRISCO, TEXAS**

\_\_\_\_\_  
Mario Canizares, Town Manager

\_\_\_\_\_  
Wesley S. Pierson, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

**ATTEST:**


\_\_\_\_\_  
Michelle Lewis Sirianni, Town Secretary

\_\_\_\_\_  
Kristi Morrow, City Secretary

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Terrence S. Welch  
Town Attorney

  
\_\_\_\_\_  
Abernathy Roeder Boyd & Hullett, P.C.  
Erika Toledo, City Attorneys

**EXHIBIT "A"**

**Exhibit A:  
At-Grade Railroad Crossing – Prosper, TX**

