

**INTERLOCAL AGREEMENT AMONG THE TOWN OF PROSPER, TEXAS,
THE CITY OF FRISCO, TEXAS, AND THE TOWN OF LITTLE ELM, TEXAS, FOR
ROADWAY ILLUMINATION MAINTENANCE AND IMPROVEMENTS ON US
HIGHWAY 380 FROM 1,300 FEET WEST OF FM 720 TO THE DENTON/COLLIN
COUNTY LINE**

THIS AGREEMENT ("Agreement") is made and entered into by and among the **TOWN OF PROSPER, TEXAS**, a home-rule municipality ("Prosper"); the **CITY OF FRISCO, TEXAS**, a home-rule municipality ("Frisco"); and the **TOWN OF LITTLE ELM, TEXAS**, a home-rule municipality ("Little Elm"). Prosper, Frisco and Little Elm 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 Local 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, Prosper, Frisco and Little Elm 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 Roadway Illumination project (as described herein) (collectively, "Project"); and

WHEREAS, Prosper, Frisco and Little Elm have determined that the Project may be completed and maintained most economically by implementing this Agreement; and

WHEREAS, each of Prosper, Frisco and Little Elm 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, Frisco and Little Elm agree as follows:

**I.
TERM; TERMINATION**

This Agreement is effective upon the execution and delivery by all parties, and shall continue in effect for a period of one (1) year; provided, however, that the initial term of this Agreement will automatically be extended for successive one-year periods thereafter, 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

A. Roadway Illumination and Maintenance

1. Frisco, Little Elm and Prosper mutually agree that it will be beneficial to each for roadway illumination to be installed and maintained along a portion of US Highway 380 referenced in Exhibit 1 (collectively, "Roadway Illumination"). Frisco, Little Elm and Prosper shall provide reasonably adequate staff resources to ensure that the Roadway Illumination project is designed and constructed in a reasonably timely manner.
2. Frisco shall engage a professional engineering firm, hereafter referred to as the "Illumination Consultant," to prepare a design for the Roadway Illumination. Frisco will provide Little Elm and Prosper with a draft scope of services for the Illumination Consultant for each party's approval, such approval not to be unreasonably withheld, conditioned or delayed, prior to retaining the Illumination Consultant. Once retained, the Illumination Consultant will prepare construction documents, specifications and cost estimates suitable for bidding and constructing the Roadway Illumination project. Little Elm and Prosper will receive progress sets upon reasonable request, if desired, for the purpose of providing comments at various milestones outlined in the Illumination Consultant's scope of work.
3. Frisco has agreed to manage the design contract and approval process, and TxDOT shall manage the bidding and construction of the Roadway Illumination. All construction and improvements in connection with the Roadway Illumination project shall be designed to meet or exceed the current TxDOT design standards and shall be constructed in accordance with the plans and specifications approved by the parties.
4. The Roadway Illumination fixtures, poles and other improvements (collectively, the "Illumination Improvements") shall be as mutually approved by Frisco, Little Elm and Prosper, such approval not to be unreasonably withheld, conditioned or delayed. The parties agree that electrical service to the Illumination Improvements shall be placed in a mutually acceptable location and that, due to site conditions, electrical service may be located in any or all three of the cities.
5. Prosper and Frisco agree that Frisco shall provide long-term maintenance of the Illumination Improvements in a reasonably timely manner to ensure that that the Roadway Illumination remains operational on the section of US Highway 380 that borders Frisco within the boundaries of this Agreement. This maintenance shall include but not be limited to trouble shooting outages; replacing bulbs, fixtures or poles; providing on-call services for repairs; and responding to accidents that

cause damage to the Illumination Improvements. At the end of the life-cycle for the fixture or pole components of the Illumination Improvements, Frisco and Prosper agree that Frisco will replace such components with new materials on the section of US Highway 380 that borders Frisco within the boundaries of this Agreement, and Frisco and Prosper agree to split all associated material and labor costs evenly.

6. Prosper and Little Elm agree that Little Elm will provide long-term maintenance of the Illumination Improvements in a reasonably timely manner to ensure that that the illumination remains operational on the section of US Highway 380 that borders Little Elm within the boundaries of this Agreement. This maintenance shall include but not be limited to trouble shooting outages; replacing bulbs, fixtures or poles; providing on-call services for repairs; and responding to accidents that cause damage to the Illumination Improvements. At the end of the life-cycle for the fixture or pole components of the Illumination Improvements, Prosper and Little Elm agree that Little Elm will replace such components with new materials on the section of US Highway 380 that borders Little Elm within the boundaries of this Agreement, and Prosper and Little Elm agree to split all associated material and labor costs evenly.
7. Frisco and Little Elm shall use reasonable efforts to seek reimbursement from the responsible party, if known, and/or the responsible party's insurance for all damages to the Illumination Improvements resulting from an accident occurring in the cities' respective city limits. In the event that Frisco or Little Elm is unable to recover the full cost of replacement or repair from the responsible party and/or the responsible party's insurance, the cost of replacement or repair shall be equally shared by Prosper, on the one hand, and the city in which the accident occurred, on the other.

III. CONSIDERATION

A. Roadway Illumination Construction and Maintenance

1. In consideration for Frisco procuring the Illumination Consultant services as specified in Exhibit 1 and Section II(A) above, Prosper shall pay to Frisco the lesser of: (i) one-half of all reasonable costs incurred by Frisco in connection with procuring such Illumination Consultant services; or (ii) Forty-Nine Thousand Three Hundred Thirty-Seven and 40/100 Dollars (\$49,337.40). Frisco shall submit to Prosper monthly itemized invoices of all expenses incurred by Frisco during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.
2. In consideration for Frisco procuring the Illumination Consultant services as specified in Exhibit 1 and Section II(A) above, Little Elm shall pay to Frisco the lesser of: (i) one-half of all reasonable costs incurred by Frisco in connection with

procuring such Illumination Consultant services; or (ii) One Hundred Forty-Five Thousand Six Hundred Sixty-Two and 80/100 Dollars (\$145,662.80). Frisco shall submit to Little Elm monthly itemized invoices of all expenses incurred by Frisco during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.

3. In consideration for Frisco providing the Roadway Illumination maintenance services described in Section II(A) above and electrical service to the Illumination Improvements, Prosper shall pay to Frisco on an annual basis one-half of all reasonable costs incurred by Frisco in connection with providing the Roadway Illumination maintenance services and electrical service to the Illumination Improvements. Frisco shall submit to Prosper monthly itemized invoices of all expenses incurred and paid by Frisco during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.
4. In consideration for Little Elm providing the Roadway Illumination maintenance services described in Section II(A) above and electrical service to the Illumination Improvements, Prosper shall pay to Little Elm on an annual basis one-half of all reasonable costs incurred by Little Elm in connection with providing the Roadway Illumination maintenance services and electrical service to the Illumination Improvements. Little Elm shall submit to Prosper monthly itemized invoices of all expenses incurred and paid by Little Elm during the prior thirty (30) day period. Payments are due within thirty (30) days after receipt.

B. Roadway Illumination Removal

1. Frisco and Prosper agree that, in the event TxDOT requires some or all of the Illumination Improvements to be removed along US Highway 380 shown in Exhibit 1, Frisco shall remove and take possession of such Illumination Improvements.
2. Frisco and Little Elm agree that, in the event TxDOT requires some or all of the Illumination Improvements to be removed along US Highway 380 shown in Exhibit 1, Little Elm shall remove and take possession of such Illumination Improvements.

All costs incurred by any party as a result of its obligations under this Agreement shall be paid only from current revenues legally available to the paying party. The obligation of a party to pay an invoice within thirty (30) days of receipt of each invoice shall apply, unless supporting receipts or other supporting documentation have been requested by a party to whom an invoice is submitted, in which case the party to whom an invoice is submitted shall pay the invoice as soon after receiving the supporting receipts or documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case the party to whom an invoice is submitted shall pay the undisputed amount of the invoice within thirty (30) days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable.

Notwithstanding anything to the contrary herein, a party to whom an invoice is submitted shall not be required to pay any invoice submitted by the party submitting the invoice if the party submitting the invoice is in breach of this Agreement.

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:

Frisco Representative:

City of Frisco
Attn: _____
6101 Frisco Square Blvd.
Frisco, Texas 75034

Prosper Representative:

Town of Prosper
Attn: _____

Little Elm Representative:

Town of Little Elm
Attn: _____

**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 _____. Frisco has executed this Agreement pursuant to duly authorized action of the Frisco City Council on _____. Little Elm has executed this Agreement pursuant to duly authorized action of the Little Elm Town Council 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 Prosper, 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 any party.

XI. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any 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.
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.

**XV.
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.

[Signature page follows.]

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

CITY OF FRISCO, TEXAS

By: _____
Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Abernathy Roeder Boyd & Hullett P.C.
Ryan D. Pittman, City Attorneys

TOWN OF PROSPER, TEXAS

By: _____
Harlan Jefferson, City Manager
Date: _____

APPROVED AS TO FORM:

Terrence Welch, Town Attorney

TOWN OF LITTLE ELM, TEXAS

By: _____
Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Robert F. Brown, Town Attorney

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on this the ____ day of _____, 2021 by _____, of the **TOWN OF PROSPER.**

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on this the ____ day of _____, 2021 by _____, of the **CITY OF FRISCO.**

Notary Public, State of Texas

STATE OF TEXAS §

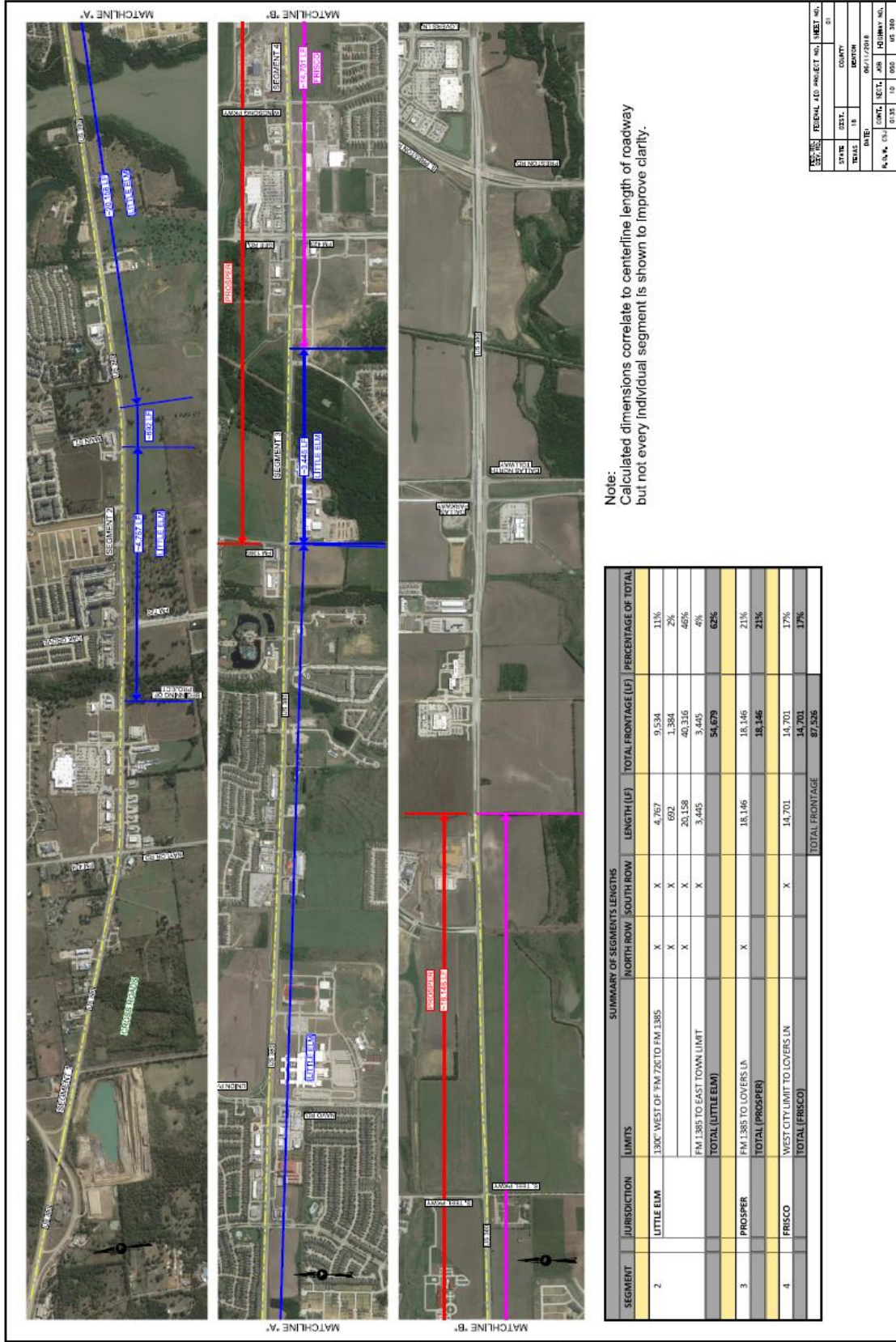
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COUNTY OF COLLIN §

This instrument was acknowledged before me on this the _____ day of _____, 2021 by _____, of the **TOWN OF LITTLE ELM.**

Notary Public, State of Texas

Exhibit 1



Note: Calculated dimensions correlate to centerline length of roadway but not every individual segment is shown to improve clarity.

FEDERAL ID	PROJECT NO.	WEST NO.
STATE	COUNTY	CITY
TOWNSHIP	RANGE	SECTION
DATE	SCALE	PROJECT NO.
DATE	SCALE	PROJECT NO.
DATE	SCALE	PROJECT NO.