

**INTERLOCAL AGREEMENT
BETWEEN COLLIN COUNTY AND THE TOWN OF PROSPER
CONCERNING THE IMPROVEMENTS TO
COLEMAN STREET BETWEEN PROSPER TRAIL AND PRESTON ROAD
2007 BOND PROJECT #07-00-30**

WHEREAS, the County of Collin, Texas (“County”) and the Town of Prosper, Texas (“Town”) desire to enter into an agreement concerning the construction of improvements to Coleman Street between Prosper Trail and Preston Road (the “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.

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 construct improvements to Coleman Street between Prosper Trail and Preston Road, hereinafter called the “Project”. The Project shall consist of constructing a two-lane undivided arterial (one-half of an ultimate four-lane divided arterial) from Prosper Trail to the south boundary of Prosper High School and from the east boundary of Prosper High School to Preston Road, a distance of approximately 6,000 linear feet. The improvements shall also include construction of underground storm sewers as part of the road improvements and a traffic signal at Coleman Street and Prosper Trail (if warranted). All improvements shall be designed to meet or exceed the current Collin County design standards 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 state statutory requirements. The Town shall provide the County with a copy of the executed construction contract(s) for the Project.

ARTICLE III.

The Town shall also acquire approximately 3 acres of real property in the vicinity of the improvements for use as right-of-way.

ARTICLE IV.

The Town estimates the total actual cost of the project to be \$3,200,000. The County agrees to fund up to one half of the total cost to construct the improvements in an amount not to exceed \$1,412,500. The County shall remit 50 percent of this amount (\$706,250) to the Town within thirty (30) days after the Town issues a Notice to proceed to the lowest responsible bidder and the Town requests payment or upon the availability of bond funds for this Project, whichever occurs later. The County will remit the remaining 50 percent within thirty (30) days after receipt of notice from the Town that the Project is 50 percent complete. Following completion of the Project, the Town shall provide a final accounting of expenditures

for the Project. If the actual cost to construct the Project is less than the estimated amount set forth herein, the Town shall remit the County 50 percent of the difference between the estimated cost and the actual cost. The Commissioners Court may revise this payment schedule based on the progress of the Project. The "total cost of the Project" shall 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 \$1,412,500.

ARTICLE VI.

The Town shall prepare for the County an itemized statement specifying Project costs that have been incurred to date and submit detailed Project cost and progress reports every thirty (30) days until Project completion.

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.

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.

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: Keith Self
Name: Keith Self
Title: County Judge
Date: 12/17/14
Executed on this 17 day of December
2014, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2014-970e-12-15.

ATTEST

By: Robyn Battle
Name: Robyn Battle
Title: Town Secretary
Date: 11-12-2014

TOWN OF PROSPER, TEXAS

By: Harlan Jefferson
Name: Harlan Jefferson
Title: Town Manager
Date: 11/12/2014
Executed on behalf of the Town of
Prosper pursuant to Town Council
Resolution No. N/A

APPROVED AS TO FORM:

By: Terrence Welch
Name: Terrence Welch
Title: Town Attorney
Date: 11-19-14