INTERLOCAL AGREEMENT BETWEEN THE CITY OF CELINA AND COLLIN COUNTY REGARDING FRONTIER PARKWAY BRIDGE EXPANSION

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN	§	

THIS INTERLOCAL AGREEMENT (the "Agreement") is entered into effective as of the 15 day of 00..., 2018 (the "Effective Date"), by and among the CITY OF CELINA, TEXAS, a home-rule municipality existing under the laws of the State of Texas (the "City"), and the COLLIN COUNTY, a political subdivision of the State of Texas (the "County") (each individually a "Party" or collectively the "Parties"):

WHEREAS, the County contracted with Birkhoff, Hendricks & Carter, LLP ("Engineer") for engineering services under an agreement known as Frontier Parkway Engineering Services Agreement Collin County Contract No. 2016-229 (Collin County Purchase Order No. 199212) (the "Contract") for design of Frontier Parkway, from the Dallas North Tollway (DNT) to S.H. 289, said improvements, including but not limited to, widening from 2 lanes to 4 lanes with a median that allows for future expansion to 6 lanes and a bridge over the Burlington Northern Santa Fe Railroad (BNSF Overpass), all of said improvements being known as Frontier Parkway (the "Project"), said Contract being attached hereto as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City and the County have determined that the future construction of Frontier Parkway will provide regional transportation benefits that are in the best interest of their citizens; and

WHEREAS, the City has requested schematic re-alignment and re-design of the North Access Road, connecting to and utilizing proposed Prairie Crossing Road and Street A as the Frontier Parkway detour during construction of the BNSF Overpass and the expansion of Frontier Parkway bridge from (4) lanes to (6) lanes (the "Expansion"); and

WHEREAS, the Engineer has submitted to the County and City an amendment known as Amendment No. 4 to the Contract (the "Amendment No. 4"), attached hereto as Exhibit "A-1" and incorporated herein for all purposes; and

WHEREAS, the County and City desire to cooperate in facilitating the completion of the Project and have agreed to share certain portions of the cost of design and construction for the Expansion with all of the design to be incorporated into the bidding and construction documents for the Project; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes local governmental entities to contract with one another to perform governmental functions and services under the terms thereof, and the City and the County have determined that mutual benefits and advantages can be obtained by formalizing their agreement

as to the separate and distinct issues of importance to them regarding the matters addressed in this Agreement.

NOW, THEREFORE, in consideration of these premises and the mutual benefits and advantages accruing to the City and the County, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

WITNESSETH:

ARTICLE 1 - TERM

The term of this Agreement shall begin from the Effective Date and end on completion of the Project and all Parties' obligations under this Agreement.

Either Party may terminate this Agreement without cause or penalty by giving thirty (30) days' advance written notice up until such time as a construction contract is awarded by the County to a contractor. The obligation of the Parties to pay any and all costs, if any, incurred under this Agreement prior to the effective date of termination shall survive such cancellation until performed or discharged by the Parties.

ARTICLE 2 - PROJECT

City and County agree to facilitate Expansion for the Project, only if the City consents in writing, to proceed with the expansion of Frontier Parkway bridge from four (4) lanes to six (6) lanes after obtaining competitive sealed bid alternatives for construction of the Expansion. The Parties understand and agree that City is not obligated under this Agreement to share in the cost of the construction of the Expansion unless City agrees in writing to proceed as indicated herein. Additionally, it is understood that the County may authorize all or parts of Amendment No. 4 without effect on other independent scope and fee items in said amendment.

ARTICLE 3 – ROLES AND GENERAL RESPONSIBILITIES OF THE PARTIES

- 3.1 The County agrees to provide the following:
 - A. Fund all costs associated with said Project and the Expansion, including for design, acquisition of right of way, utility relocation and adjustment, planning, engineering, surveying, construction and governmental approval costs according to the provisions of the executed Interlocal Agreement of the County, Celina and Prosper, Court Order No. 2018-445-06-11, and this agreement;
 - B. Construction agreement administration, site review, and permitting;
 - C. Seek competitive sealed bids for the construction of the Project and the Expansion, that includes a 6-lane bridge, and that includes a deductive "Alternate Project" bid package for a 4-lane bridge;

- D. Interagency cooperation;
- E. A monthly progress report documenting the percent completion of the Expansion shall be provided to the City;
- F. County will notify the City on completion of the Expansion and Project; and
- G. County will include the following language on all on-site public notice signage related to the Expansion: "This project is funded by the Collin County Commissioners Court, the Town of Prosper, and the City of Celina".
- 3.2 The City agrees to provide the following:
 - A. Funding for the re-design of the Project to include the full width BNSF Overpass (6-lanes) with 4-lane approaches as the "Base Project" with a deductive "Alternate Project" bid package for a 4-lane BNSF Overpass in an amount not to exceed ONE HUNDRED TWENTY THOUSAND SEVEN HUNDRED DOLLARS (\$120,700.00);
 - B. Funding for additional bidding services (Increased scope to Base Bid Proposal for 6-lane BNSF Overpass and including analysis and recommendations for Alternate Bid Proposal for 4-lane BNSF Overpass in an amount not to exceed **EIGHT THOUSAND FOUR HUNDRED DOLLARS (\$8,400.00)**;
 - C. Funding for Construction Administration Services Increased scope for 6-lane BNSF Overpass Construction including record drawings of the base construction if the City consents to the Expansion. The cost of the increased scope will be an amount not to exceed EIGHTEEN THOUSAND AND NINETY-NINE DOLLARS (\$18,099.00);
 - D. Funding for the construction cost for the Expansion if the City consents to the Expansion. The construction cost for the Expansion is currently estimated at ONE MILLION THREE HUNDRED SIXTY-SEVEN THOUSAND NINE HUNDRED DOLLARS (\$1,367,900.00). However, the City, by consenting to the Expansion, agrees to pay the difference between the base bid and the deductive "Alternate Project" bid; and
 - E. Interagency cooperation.

ARTICLE 4 - PAYMENT

- 1. City agrees to remit \$129,100.00 for the re-design and the additional bidding services to Collin County within 90 days of the execution of this agreement.
- 2. City agrees to communicate to the County in writing within 45 days from the date of receipt of bids whether or not the City consents to the Expansion. If the City consents to the Expansion, the City will remit \$18,099.00 plus an amount equal to the difference between the base bid and the deductive "Alternate Project" bid within 60 days from the date of receipt of bids.

ARTICLE 5 – IMMUNITY

It is expressly understood and agreed that, in the execution 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.

TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AND WITHOUT WAIVING SOVEREIGN IMMUNITY, EACH PARTY SHALL BE RESPONSIBLE FOR ANY AND ALL CLAIMS, DEMANDS, SUITS, ACTIONS, DAMAGES, AND CAUSES FOR ACTION RELATED TO OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH ITS OWN ACTIONS, AND THE ACTIONS OF ITS PERSONNEL RENDERED OR PERFORMED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

ARTICLE 6 - MISCELLANEOUS

6.1 Notices.

In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (a) when delivered in hand, (b) one (1) business day after being deposited with a reputable overnight air courier service, or (c) three (3) business days after being mailed by United States mail, registered or certified mail, return receipt requested. Postage prepaid, and, in all events, addressed as follows:

Jason Laumer Celina City Manager 142 N. Ohio Street Celina, Texas 75009
In the case of the County

In the case of the City:

Any party hereto may from time to time change its address for notification purposes by giving the other parties prior written notice of the new address and the date upon which it will become effective.

6.2 Relationship of the Parties; No Joint Enterprise. Nothing in this Agreement is intended to create, nor shall be deemed or construed by the parties or by any third party as

- creating, (a) the relationship of principal and agent, partnership or joint venture between the City and the County or (b) a joint enterprise between the City, the County and/or any other party. Without limiting the foregoing, the purposes for which the City and the County have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.
- **6.3** Successors and Assigns. This Agreement shall bind, and shall be for the sole and exclusive benefit of, the respective parties and their legal successors. Neither the City nor the County shall assign, sublet or transfer its respective interests in this Agreement without the prior written consent of the other parties to this Agreement, unless otherwise provided by law.
- **6.4** Severability. If any provision of this Agreement, or the application thereof to any entity or circumstance, is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other entities or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- **6.5** Written Amendments. Any change in the agreement, terms and/or responsibilities of the parties hereto must be enacted through a written amendment. No amendment to this Agreement shall be of any effect unless in writing and executed by the City and the County.
- **6.6 Limitations.** All covenants and obligations of the City and County under this Agreement shall be deemed valid covenants and obligations of said entities, and no officer, director, or employee of the City or the County shall have any personal obligations or liability hereunder.
- **6.7. Sole Benefit.** This Agreement is entered into for the sole benefit of the City, the County and their respective successors, and nothing in this Agreement or in any approval subsequently provided by any party hereto shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the public in general.
- **6.8** Authorization. Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval or authorization from any third party is required to be obtained or made in connection with the execution, delivery or performance of this Agreement. Each signatory on behalf of the City and the County, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Agreement.
- 6.9 Choice of Law; Venue. The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas and exclusive venue for any legal actions arising hereunder shall be in Collin County, Texas.
- **6.10 Interpretation**. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court, other governmental or judicial authority, or arbitrator by reason of such party having or being deemed to have drafted, prepared, structured or dictated such provision.

- **6.11** Waiver. No delay or omission by any party hereto to exercise any right or power hereunder shall impair such right or power or be construed as a waiver thereof. A waiver by any of the parties hereto of any of the covenants, conditions or agreements to be performed by any other party or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.
- **6.12. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no representations, understandings or agreements relative hereto which are not fully expressed in this Agreement.
- **6.13** Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one single agreement between the parties.
- **6.14 Headings.** The article and section headings used in this Agreement are for reference and convenience only, and shall not enter into the interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day above stated.

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Title:				CITY N				

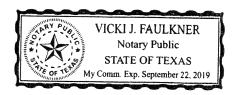
CITY OF CELINA, TEXAS

ACKNOWLEDGMENT

THE STATE OF TEXAS	
COUNTY OF COLLIN	

This instrument was acknowledged before me on the _____ day of _______, 2018, by _______, of the City of Celina, Texas, on behalf of said city.

Notary Public, State of Texas

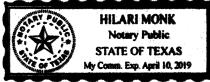


COLLIN COUNTY, TEXAS

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By:XUM Mr AU	
Printed Name: Keillo Self	
Title: County Judge	

ACKNOWLEDGMENT

THE STATE OF TEXAS	§	
	§	
COUNTY OF COLLIN	§	
This instrument was ack	nowledged bef	fore me on the <u>ICalh</u> day of <u>IChberk</u> <u>County Judge</u> of Collin County, Texas, or
behalf of said County.		I lasemark
	\overline{N}	Jotary Public State of Texas



AFTER RECORDING RETURN TO:

CITY OF CELINA 142 N. OHIO STREET CELINA, TX 75009

Exhibit A

INTERLOCAL AGREEEMNT BETWEEN

COLLIN COUNTY, THE TOWN OF PROSPER AND THE CITY OF CELINA
CONCERNING THE DESIGN AND CONSTRUCTION OF
FRONTIER PARKWAY FROM THE DALLAS NORTH TOLLWAY TO PRESTON ROAD (SH 289)

INTERLOCAL AGREEMENT BETWEEN

COLLIN COUNTY, THE TOWN OF PROSPER AND THE CITY OF CELINA CONCERNING THE DESIGN AND CONSTRUCTION OF

FRONTIER PARKWAY FROM THE DALLAS NORTH TOLLWAY TO PRESTON ROAD (SH 289)

- WHEREAS, the County of Collin, Texas (the "County"), the Town of Prosper, Texas ("Prosper") and the City of Celina, Texas ("Celina"), (Prosper and Celina herein sometimes collectively referred to as "The Municipalities"), desire to enter into this agreement concerning the design and construction of improvements to Frontier Parkway from the Dallas North Tollway to Preston Road (SH 289) (the "Project") in the Town of Prosper and the City of Celina, 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 County, Prosper and Celina have determined that the improvements related to the Project may be designed and constructed most economically by implementing this Interlocal Agreement (ILA) for Collin County to administer the Project; and
- WHEREAS, this ILA shall provide the terms and conditions of the funding participation of the three parties; and
- WHEREAS, the parties hereto have investigated and determined that is in the best interest of each of their respective jurisdictions to enter into this ILA.
- NOW, THEREFORE, this ILA is made and entered into by and between the County, Prosper, and Celina upon and for the mutual consideration stated herein, the receipt and sufficiency of which is hereby acknowledged:

WITNESSETH:

ARTICLE I.

The Project shall consist of widening Frontier Parkway from the Dallas North Tollway to Preston Road (SH 289) from 2 lanes to 4 lanes. More specifically, the roadway will be 4 lanes with a median that allows for future expansion to 6 lanes. The project includes a bridge over the Burlington Northern Santa Fe Railroad that will be approximately 555 feet long that will be wide enough for the full 6 lanes with 8-foot sidewalks on both sides. The drainage will generally be curb inlets, storm sewer and culverts; however, there will be a large drainage channel on the south side of the roadway between Frontier Park and the Dallas North Tollway. The Project will be administered by Collin County.

ARTICLE II.

Collin County estimated the total project cost to be \$21,750,000 in March, 2017. An additional amount of \$805,000 is added to this estimate to allow for escalation of construction prices until the end of 2018, for a total estimated 2018 project cost of \$22,555,000. The County, Prosper and Celina shall share the costs as follows:

- Prosper shall be responsible for a payment to Collin County of \$3,650,000 plus one-third of the difference between the actual total project cost for the four-lane bridge alternate and \$16,000,000.
- Collin County allocated \$3,973,868 to Celina for this project. An initial transfer was made to Celina in the amount of \$477,404. Celina shall be responsible for a re-payment to Collin County of the portion of this initial transfer which has not been already paid toward the project.
- Celina shall be responsible for a payment to Collin County of \$4,350,000 in Regional Toll Revenue (RTR) funds which were allocated to this project for the benefit of both municipalities but for which Celina executed the contract with Texas Department of Transportation (TxDOT) for these funds.
- Celina shall be responsible for a payment to Collin County of one-third of the difference between the actual total project cost for the four-lane bridge alternate and \$16,000,000, except that Celina will also be responsible for payment of the cost to design a six-lane bridge in addition to a four-lane bridge as well as the full amount of the difference in construction cost between a six-lane bridge and a four-lane bridge as determined by the difference between the base bid and alternate bid.

- \$4,000,000 in additional RTR funds have been made available to the project. Collin County will be responsible for acquiring those funds for use on the project.
- The County shall also be responsible to provide one-third of the difference between the actual total project cost for the four-lane bridge alternate and \$16,000,000.

There may be additional features to the Project that will be solely for the benefit of Prosper and Celina, such as a traffic signal warrant study at the high school, street lighting, median irrigation and sidewalks. The scope of these features have not yet been defined. At such time as Prosper and Celina define the scope of these feature, they will be incorporated into the design and an amendment to this agreement will be required. While those features will be incorporated into the design and construction of the Project, the cost of those features will be shared by Prosper and Celina according to the proportional value to each municipality. Prosper and Celina will be responsible to pay Collin County the amounts determined to be owed by each party for the design and construction of these features.

ARTICLE IIL

TIMING.

- 1. Celina shall remit \$4,350,000 (the RTR funds) to Collin County within 90 days of the execution of this agreement.
- 2. Prosper shall remit \$3,650,000 to Collin County within 90 days of the execution of this agreement.
- 3. Celina shall remit within 90 days of the execution of this agreement the amount of Collin County bond funds that have been transferred to Celina but which have not been expended on this Project.
- 4. Celina shall remit within six months of the execution of this agreement the amount to design a six-lane bridge in addition to a four-lane bridge as agreed to by Celina and Collin County in a separate document based on a design proposal from the design engineer.
- 5. After the determination of the final probable cost of construction by the design engineer, all three entities will have the opportunity to review the estimated total project cost. If the estimated total project cost exceeds \$22,555,000 plus the amount agreed to for optional additional features referred to in Article II by more than ten percent, then each entity will have the right to terminate its further participation in the project within 60 days of notification of the final probable cost of construction. If one party terminates its participation, the other two entities have the right to terminate participation as well, or contribute equally to fund the difference. If Celina terminates its further participation, the RTR funds from Celina and the Celina County bond funds will remain in the project fund for contribution towards the construction of the project by the other two entities. If Prosper terminates its further participation, the \$3,650,000 from Prosper to remain in the project fund for contribution towards the construction of the project by the other two entities. If the overpass is removed from the scope of the project, then Prosper is entitled to reimbursement of the \$3,650,000.
- 6. If the estimated total project cost does not exceed the amount defined in Paragraph 5 of this article the project will be scheduled to be advertised for bidding within 120 days of notification of the final probable cost of construction to all three parties.
- 7. If the lowest responsible bid exceeds an amount that causes the total project cost to exceed the amount defined in Paragraph 5 of this article by more than ten percent, then each entity will have the right to terminate its further participation in the project within 30 days of the opening of the bid. If one party terminates its participation, the other two entities have the right to terminate participation as well, or contribute equally to fund the difference. If Celina terminates its further participation, the RTR funds from Celina and the Celina County bond funds will remain in the project fund for contribution towards the construction of the project by the other two entities. If Prosper terminates its further participation, the \$3,650,000 from Prosper to remain in the project fund for contribution towards the construction of the project by the other two entities. Only the further participation amount will be refunded to the terminating entity.
- 8. Prosper and Celina shall each remit to Collin County one-third of the difference between the actual alternate bid for the project with a four-lane bridge and \$16,000,000 within 45 days of the opening of the bid, except that Celina may also remit the difference in construction cost between a six-lane bridge and a four-lane bridge as determined by the difference between the base bid and the alternate bid within 45 days of the opening of the bid.
- 9. At project "close-out", when the final construction amount is determined, an adjustment will be made to the amounts paid by Prosper and Celina. If the actual total project cost is less than the estimated amount as defined in Paragraph 5 of this article plus any amount the bid was over the final probable cost of construction, Collin County will refund one-third of the difference each to Prosper and Celina within 90 days. If the actual total project cost is more than the estimated amount plus the any amount the bid was over the final probable cost of construction, Prosper and Celina will each remit one-third of the difference to Collin County within 90 days.

10. If the Project is terminated per the provisions in Paragraphs 5 and 7 above, \$3,650,000 will be refunded to Prosper and \$8,350,000 in RTR funds will be refunded to TxDOT.

ARTICLE IV.

Celina is currently under contract with the Texas Department of Transportation (TxDOT) for use of the \$4,350,000 in RTR funds. It is the intent of the County that Celina remain under contract to TxDOT and comply with all provisions of that agreement, while transferring the RTR funds to the County according to this agreement.

ARTICE V.

Collin County will enter into a contract with TxDOT for the use of the \$4,000,000 and will fully comply with that agreement.

ARTICLE VI.

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 ILA, 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 ILA.

ARTICLE VII.

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

ARTICLE VIII.

<u>SEVERABILITY</u>. The provisions of this ILA are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this ILA 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 ILA shall be enforced as if the invalid provision had never been included.

ARTICLEIX.

<u>ENTIRE AGREEMENT.</u> This ILA embodies the entire agreement between the parties and may only be modified in a writing executed by all parties.

ARTICLE X.

<u>SUCCESSORS AND ASSIGNS.</u> This ILA shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. None of the parties will assign or transfer an interest in this ILA without the written consent of the other parties.

ARTICLE XL

<u>IMMUNITY</u>. It is expressly understood and agreed that, in the execution of this ILA, none of the parties waive, 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 ILA, the parties do not create any obligations, express or implied, other that those set forth herein, and this ILA shall not create any rights in parties not signatories hereto.

ARTICLE XII.

<u>TERM.</u> This ILA shall be effective upon execution by all parties and shall continue in effect annually until final written acceptance of the Project by all three parties. This ILA shall automatically renew annually during this period.

APPROVED AS TO FORM: By: Name: Title: Date: ATTEST: By: Name: Robyn Battle Title: Town Secretary Date: Date:	By: Name: Keith Self Title: County/Judge Date: Executed on this the 11 day of June 2012, by the County of Collin, pursuant to Commissioners' Court Order No. 2018 - 445-06-11 By: Name: Harlan seffector Title: Town Marker Date: Executed on behalf of the Town of Prosper pursuant to Town Council Resolution No.
APPROVED AS TO FORM:	
Name: Terrence S Welch Title: Town Attornet Date:	
ATTEST: By: 7) Let Faulkner Name: Vicki Faulkner Title: City Secretary Date: 06/28/2019	CITY OF CELINA, TEXAS By: Name: Jason Laumer Title: City Manager Date: Executed on behalf of the City of Celina pursuant to City Council Resolution No. Council action May 1,2013
APPROVED AS TO FORM:	
By: Name:	
Title: City Attorney Date: 25 (2)	