

~~AMENDED~~**FIRST AMENDMENT TO THE 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)**

Commented [HW1]: Updating to FIRST AMENDMENT, to allow us the flexibility to consider future amendments, if necessary.

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; ~~and~~

WHEREAS, ~~this First Amendment to the 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; and~~

WHEREAS, ~~the parties wish to include ~~a~~ certain design and construction features for the ~~addition~~ benefit of future developments that require access to Frontier Parkway (within the Project limits); and~~

WHEREAS, ~~this Amended Interlocal Agreement First Amendment to the ILA will supersede and repeal Court Order # 2018-445-06-11; and~~

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NOW, THEREFORE, this ~~Amended First Amendment to the~~ 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.

Additional features to the Project may be added that will be solely for the benefit of Prosper or Celina, and create a change in scope. New features may include, but are not limited to, traffic signal warrant studies, traffic signal accommodations, sidewalks and accommodations for access/connection to Frontier Parkway, such as left turn lanes, median openings, and deceleration/right turn lanes -within the project limits. All proposed new features will be submitted directly to the design engineer by Prosper or Celina to determine feasibility of the new feature and to determine the additional design and construction costs. If new features include items not encompassed in the original bid tab, the feature will be provided to the Contractor for their proposal. The cost of the new features will be shared by Prosper and Celina according to the proportional value to each municipality. Prosper and Celina will submit a request for the new feature, based on the information from the design engineer, to the Collin County Director of Engineering for approval. It is the intent of Collin County to approve all such requests unless the request is submitted too late to be incorporated into the construction without delaying the work and without having to remove any work already built or, for whatever reason, the design of the project cannot be adjusted to accommodate the proposed new feature. If a new feature is approved, 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 within sixty (60) days after approval. Collin County's Director of Engineering will have the authority to submit the amendment to the design contract and the change order for the construction contract to the Commissioners Court for approval without further action by the Prosper Town Council or the Celina City Council. Upon approval by the Commissioners Court, the additional work will be incorporated into the design and construction of the Project. 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.

Commented [HW2]: Since Celina and Prosper previously decided not to include street lighting and median improvements in the project, I suggest removing these two items.

ARTICLE III.

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.

VENUE. 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.

SEVERABILITY. 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.

ARTICLE IX.

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

ARTICLE X.

SUCCESSORS AND ASSIGNS. 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 XI.

IMMUNITY. 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 than those set forth herein, and this ILA shall not create any rights in parties not signatories hereto.

ARTICLE XII.

TERM. 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.

ARTICLE XIII.

This Amended First Amendment to the ILA will supersede and repeal Court Order # 2018-445-06-11.

APPROVED AS TO FORM:

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

COUNTY OF COLLIN, TEXAS

By: _____
Name: Chris Hill
Title: County Judge
Date: _____
Executed on this the ____ day of _____,
2021, by the County of Collin, pursuant
to Commissioners' Court Order
No. _____.

ATTEST:

By: _____
Name: Robyn Battle
Title: Town Secretary
Date: _____

TOWN OF PROSPER, TEXAS

By: _____
Name: Harlan Jefferson
Title: Town Manager
Date: _____
Executed on behalf of the Town of
Prosper pursuant to Town Council
Resolution No. _____

APPROVED AS TO FORM:

By: _____
Name: Terrence S Welch
Title: Town Attorney
Date: _____

ATTEST:

By: _____
Name: Vicki Faulkner
Title: City Secretary
Date: _____

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. _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: City Attorney
Date: _____