



Manager's Memorandum

From: Paul Naughton, Parks Planning Manager

Through: Dan Baker, Parks & Rec Director
 Robyn Battle, Exec. Dir. of Community Services
Whitney Lehm, Grants Administrator WL

Date: October 28, 2022

Re: Interlocal Agreement with Collin County for the First Street Pedestrian & Bicycle Tunnel and Trails Project

<u>Routing</u>	
	Initial & Date
Budget	<i>JJ</i> 12-1-22
Purchasing	<i>JK</i> 12-1-22
TMO	
[<input checked="" type="checkbox"/>] Approved	
[<input type="checkbox"/>] Denied	
TSO	<i>RW</i> 12-5-22 <i>KS</i> 12/6/22

Description of Item: **Contract/Agreement** **Other**

Attached is the Interlocal Agreement between Collin County and the Town of Prosper, Texas accepting a grant award from the 2018 Collin County Parks and Open Spaces Project Assistance Fund for the First Street Pedestrian & Bicycle Tunnel and Trails.

The Town estimates the total actual cost of the First Street Pedestrian & Bicycle Tunnel and Trails to be \$2,054,621.00. The County agrees to fund a portion of the total cost in an amount not to exceed \$250,681.00.

The awarded grant in the amount of \$250,681.00 will reduce the total funds needed from the overall road project.

Budget Impact:

Total estimates for the First Street Pedestrian & Bicycle Tunnel and Trails will be \$2,054,621.00 in which \$250,681.00 will be funded by by this grant and the remaining \$1,803,940.00 will be funded by the road project (First Street: Coit to Custer CIP project) from the account #750-6610-1000-2014-ST.

Legal Review:

Utilizing a pre-approved standard form.

Attachments:

1. Interlocal Agreement
- 2.
- 3.
- 4.
- 5.

**INTERLOCAL AGREEMENT
BETWEEN
COLLIN COUNTY
AND THE
TOWN OF PROSPER
2018 PARKS AND OPEN SPACE BOND PROJECT OI18PG33**

WHEREAS, the County of Collin, Texas (“County”) and the Town of Prosper (“Town”) desire to enter into an Agreement concerning the First Street Pedestrian & Bicycle Tunnel and Trails project in the Town of 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; and

WHEREAS, the Town and the County find that this Agreement will benefit the residents of the County and provide additional park and recreational facilities and open space for all County residents; and

WHEREAS, this Agreement will support or advance the mission of the Collin County Parks and Open Space Strategic Plan;

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 for the construction of the First Street Pedestrian & Bicycle Tunnel and Trails project, hereinafter called the “Project”.

ARTICLE II.

The Town shall prepare plans and specifications for improvements, accept bids, award a construction contract and administer the construction contract in accordance with all state statutory requirements. The Town shall provide the county with a copy of executed construction contract(s) for the Project. All improvements shall be in accordance with the plans and specifications approved by the Town. Changes to the Project which alter the initial funding set forth in Exhibit “A” must be reviewed by the Parks Foundation Advisory Board and approved by Commissioners Court.

ARTICLE III.

The Town will not expend assistance funds to acquire easements or real property for use as right-of-way.

ARTICLE IV.

The Town estimates the total actual cost of the Project to be \$1,312,201.00. The County agrees to fund a portion of the total cost for items described in Exhibit "A" in an amount not to exceed **\$250,681.00**. The County shall reimburse the Town for invoices paid by the Town for cost related to the Project on a dollar for dollar matching basis. Alternative payment schedules would require Commissioners Court approval.

ARTICLE V.

Collin County's dollar for dollar matching participation in this project shall not exceed \$250,681.00 as indicated in Article IV above. The Town shall be responsible for any costs, which exceed the total estimated project cost.

ARTICLE VI.

The Town shall also provide **quarterly progress reports** in electronic format to the contact identified on Exhibit "A". Following completion of the project, the Town shall provide **an itemized final accounting of expenditures** including the Town's match, in-kind services or donations for the project. All projects for which the County has provided funds through its 2018 Parks and Open Space Bond Program must remain open and accessible to all County residents. Upon development of the property, the Town shall install a **project sign** identifying the project as being partially funded by the Collin County 2018 Parks and Open Space Bond Program.

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, judgements 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 for any disputes arising under this Agreement 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 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.

EXPENSES FOR ENFORCEMENT. In the event either Party hereto is required to employ an attorney to enforce the provisions of this Agreement or is required to commence legal proceedings to enforce the provisions hereof, the prevailing Party shall be entitled to recover from the other, reasonable attorney's fees and court costs incurred in connection with such enforcement, including collection.

ARTICLE XV.

FORCE MAJEURE. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.


ARTICLE XVI.

TERM. This Agreement shall be effective upon execution by both parties and shall continue in effect annually until final acceptance of the Project.


ARTICLE XVII.

The declarations, determinations and findings declared, made and found in the preamble to this Agreement are hereby adopted, restated and made part of the operative provisions hereof.

APPROVED AS TO FORM:

By: 
Name: SHONA NAVARRE
Title: ADMIN. SECRETARY
Date: 1-10-23

COUNTY OF COLLIN, TEXAS

By: 
Name: Chris Hill
Title: County Judge
Date: 01-10-23
Executed on this 10th day of JANUARY
2023, by the County of Collin,
pursuant to Commissioners' Court
Order No. 2023-011-01-09.

ATTEST:

By: Michelle Lewis Strianni
Name: Michelle Lewis Strianni
Title: Town Secretary
Date: 12-6-22

TOWN OF PROSPER

By: Ron K. Patterson
Name: Ron K. Patterson
Title: Interim Town Manager
Date: 12-5-22
Executed on behalf of the Town of
Prosper pursuant to Town
Council Resolution No. 2022-25

APPROVED AS TO FORM:

By: Terrence S. Welch
Name: Terrence S. Welch
Title: Town Attorney
Date: 12-13-22

EXHIBIT "A"

The County will provide funding assistance for the following:

- A portion of 5" thick reinforced concrete sidewalk (Item 2)

Total funding **\$250,681.00**
County Project Code OI18PG33

Contact Information

Request for reimbursement submitted to:

Collin County Engineering Department
Dawn Redwine
4690 Community Avenue, Suite 200
McKinney, Texas 75071
972-548-3744

Submission of electronic photos and quarterly reports:

Dawn Redwine
dredwine@co.collin.tx.us

Project Manager Contact: (must be able to answer specific questions regarding project)

Name: Dan Baker

Address: 409 E. First Street

 Prosper, TX 75078

Phone: 972-569-1060

Fax:

Email: dpbaker@prospertx.gov