

CCN/20888/CO



March 9, 2004

Mr. Doug Mousel  
Town of Prosper  
113 West Broadway  
Prosper, Texas 75078

RE: Request for Utility Service from the Town of Prosper

Dear Mr. Mousel:

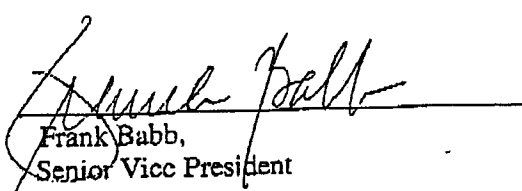
Please accept this letter as my notification to the Town of Prosper that I request water and sewer service for my property located at the South West corner of Prosper Road and County Line Road/CR 6 which consists of approximately 138 acres of land. The attached map illustrates the approximate location of my property.

Thank you for your attention to this matter.

Sincerely,

West Prosper 150 Investment Partners, Ltd.

By:

  
Frank Babb,  
Senior Vice President

14875 Landmark Blvd., Suite 306  
Dallas, Texas 75254

214 696 8110 FAX

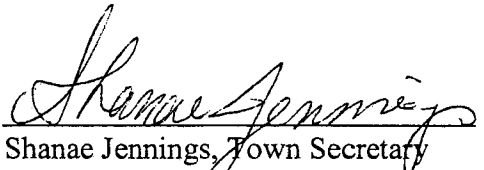


In the State of Texas

§  
§  
§

County of Denton

I, Shanae Jennings, Town Secretary for the Town of Prosper, Texas, hereby certify that the attached document is a true and correct copy of a document taken from the official Town files of the Town of Prosper, Texas, and is maintained in the regular course of business of the Town of Prosper, Texas. Given under my hand and the seal of office on 11<sup>th</sup> day of March, 2004.

  
Shanae Jennings, Town Secretary  
Town of Prosper, Texas

WHEREAS, the parties hereto are entering into this contract in order to control water pollution, and protect, improve, and enhance the water quality of the East Fork of the Trinity River and the water supplies impounded therein; and

WHEREAS, each of the Cities of Mesquite ("Mesquite") in Dallas County, Plano ("Plano") in Collin County, Richardson ("Richardson") in Dallas and Collin Counties, Allen ("Allen") in Collin County, McKinney ("McKinney") in Collin County, Forney ("Forney") in Kaufman County, Frisco ("Frisco") in Collin and Denton Counties, Princeton ("Princeton") in Collin County, Rockwall ("Rockwall") in Rockwall County, and Heath ("Heath") in Rockwall County (collectively the "Cities") presently owns, operates, and maintains its respective combined waterworks and sanitary sewer systems; and

WHEREAS, the Cities have deemed it necessary and desirable to contract with the District to achieve efficiencies of cost and operation; and

WHEREAS, the District has been and is willing to accept the responsibility of providing improved waste treatment in the service area to protect water quality and develop reuse potential; and

WHEREAS, Mesquite, Plano, and the District have entered into and executed the Trinity East Fork Regional Wastewater System Contract, dated as of October 1, 1975 (the "Initial Contract"), to which reference is hereby made for all purposes; and

WHEREAS, the Initial Contract provides that Mesquite and Plano are the initial "Member Cities" of the Trinity East Fork Regional Wastewater System of the District, and that an "Additional Member City" may be added upon execution of a contract similar to the Initial Contract, subject to the further terms and conditions of the Initial Contract; and

WHEREAS, Richardson became an "Additional Member City" and executed its required contract with the District as of January 9, 1978 (the "Richardson Contract"); and

WHEREAS, Allen became an "Additional Member City" and executed its required contract with the District as of August 24, 1978 (the "Allen Contract"); and

WHEREAS, McKinney became an "Additional Member City" and executed its required contract with the District as of August 23, 1979 (the "McKinney Contract"); and

WHEREAS, Forney became an "Additional Member City" and executed its required contract with the District as of February 22, 1990 (the "Forney Contract"); and

WHEREAS, Frisco became an "Additional Member City" and executed its required contract with the District as of November 19, 1996 (the "Frisco Contract"); and

WHEREAS, Princeton became an "Additional Member City" and executed its required contract with the District as of November 26, 1996 (the "Princeton Contract"); and

WHEREAS, Rockwall became an "Additional Member City" and executed its required contract with the District as of March 29, 2001 (the "Rockwall Contract"); and

WHEREAS, Heath became an "Additional Member City" and executed its required contract with the District as of March 29, 2001 (the "Heath Contract"); and

WHEREAS, the Town of Prosper ("Prosper") in Collin and Denton Counties has requested that it become an "Additional Member City" in order to provide for the treatment and disposal of the Wastewater to be received and transported by the District pursuant to the Interceptor Facilities Contract, and all conditions prerequisite thereto have been met; and

WHEREAS, Prosper and the District are authorized to make and enter into this contract under the District Act and the Regional Waste Disposal Act, compiled as Chapter 30, Texas Water Code (the "Code"); and

WHEREAS, the parties hereto recognize these facts:

(a) That the District will use the payments to be received under the Initial Contract, this contract, and similar contracts for the payment of Operation and Maintenance Expense of the System and for the payment of the principal of, redemption premium, if any, and interest on its Bonds, and to establish and maintain debt service reserves and other funds if and as provided in any Bond Resolution; and that the revenues under such contracts will be pledged to such purposes; and

(b) That contracts similar to this instrument may be executed between the District and subsequent Additional Member Cities; and

(c) That District will issue Bonds from time to time in the future to acquire, construct, extend, enlarge, improve, and/or repair the System.

NOW, THEREFORE, the District and Prosper hereby contract and agree as follows:

## ARTICLE I DEFINITIONS

Section 1.01. DEFINITION OF TERMS. In addition to the definitions stated in the preamble hereof, the terms and expressions as hereinafter used in this contract, unless the context clearly shows otherwise, shall have the following meanings:

(a) "Additional Member City" or "Additional Member Cities" means any city or cities in addition to Mesquite, Plano, Richardson, Allen, McKinney, Forney, Frisco, Princeton, Heath, Rockwall, and Prosper with which the District makes a contract for receiving, transporting, treating, and/or disposing of Wastewater through the System.

(b) "Adjusted Annual Payment" means the Annual Payment, as adjusted in accordance with Section 5.03 of this contract during or after each Fiscal Year.

(c) "Annual Payment" means the amount of money estimated as provided in Section 5.03 of this contract to be paid to District by Member Cities as their proportionate share of the Annual Requirement.

(d) "Annual Requirement" means the total amount of money required for District to pay all Operation and Maintenance Expense of the System and to pay the principal of, and redemption premium, if any, and interest on its Bonds, including all charges and expenses of the paying agents and registrars for its Bonds, and to pay any amounts required to be deposited in any special or reserve funds, including a debt service reserve fund and a repair and replacement fund, as required to be established and/or maintained by the provisions of any Bond Resolution.

(e) "Bond Resolution" means any resolution of the Board of Directors of the District authorizing the issuance of Bonds and providing for their security and payment, as such resolution(s) may be amended from time to time as therein permitted.

(f) "Bonds" means any bonds heretofore and hereafter issued by the District pursuant to the Initial Contract, the Richardson Contract, the Allen Contract, the McKinney Contract, the Forney Contract, the Frisco Contract, the Princeton Contract, the Heath Contract, the Rockwall Contract, this contract, and similar contracts with Additional Member Cities for the acquisition, construction, enlargement, improvement, extension, repair, or replacement of the System or any part thereof, whether in one or several issues, or any bonds issued by the District to refund any or all of same.

(g) "Contract", or "this contract", means this contract between Prosper and the District.

(h) "District's System", "Regional System", "Regional Wastewater System", or "System" means all of District's facilities acquired, constructed, used, or operated by the District for receiving, transporting, treating, and disposing of Wastewater of and for Member Cities, pursuant to the Initial Contract, this contract, and all similar contracts with additional Member Cities (but excluding any facilities acquired or constructed with "Special Facilities Bonds" as hereinafter described, and excluding any facilities required to transport Wastewater to any Point of Entry of the District's System), together with any improvements, enlargements, or additions to said System facilities and any extensions, repairs, or replacements of said System facilities acquired, constructed, used, operated, or otherwise incorporated into or made a part of said System facilities in the future by the District. Said terms shall include only those facilities which are acquired, constructed, used, or operated by the District to provide service to Member Cities pursuant to the Initial Contract, this contract, and all similar contracts with Additional Member Cities, and which, as determined by the District, can economically and efficiently provide service to Member Cities. Said terms do not include any District facilities which provide Wastewater services of any kind to cities, political subdivisions, or persons which are not Member Cities, nor do they in any way include or affect the District's water supply system. Said terms do not include any facilities acquired or constructed by the District with the proceeds from the issuance of "Special Facilities Bonds", which are hereby defined as being revenue obligations of the District which are not secured by or payable from Annual Payments under

the Initial Contract, this contract, and similar contracts with Additional Member Cities, but which are payable solely from other sources; but Special Facilities Bonds may be made payable from payments from any person, including any Member City, under a separate contract whereunder the facilities to be acquired or constructed are declared not to be part of the System and are not made payable from the Annual Payments as defined in this contract.

(i) "Fiscal Year" means the twelve (12) month period beginning each October 1 and ending the following September 30, or such other twelve (12) month period as may be established in the future to constitute District's Fiscal Year.

(j) "Local Wastewater Facilities" means the waste collection and treatment facilities owned and operated by the Member Cities.

(k) "Member Cities" means Mesquite, Plano, Richardson, Allen, McKinney, Forney, Frisco, Princeton, Heath, Rockwall, Prosper, and all Additional Member Cities.

(l) "Member City" means any of the Member Cities.

(m) "Operation and Maintenance Expense" means all costs of operation and maintenance of the District's System including, but not limited to, repairs and replacements for which no special fund is created in a Bond Resolution, the cost of utilities, supervision, engineering, accounting, auditing, legal services, insurance premiums, and any other supplies, services, administrative costs, and equipment necessary for proper operation and maintenance of the District's System, payments made for the use of operation of any property, payments of fines, and payments made by District in satisfaction of judgments or other liabilities resulting from claims not covered by District's insurance or not paid by one particular Member City arising in connection with the operation and maintenance of the District's System. Depreciation shall not be considered an item of Operation and Maintenance Expense.

(n) "Point of Entry" means any point at which Wastewater enters the property on which any Wastewater treatment plant operated by the District is located.

(o) "Wastewater" means Sewage, Industrial Waste, Municipal Waste, Recreational Waste, and Agricultural Waste, as defined in the Texas Water Code, together with properly shredded garbage, and such infiltration water that may be present.

## ARTICLE II

### PROVIDING OF FACILITIES BY DISTRICT

Section 2.01. FACILITIES AND INITIAL CONTRACT. In order to provide services for receiving, transporting, treating, and disposing of Wastewater for Member Cities, District will use its best efforts to design, acquire, construct, and complete the System, as generally described in the Engineering Reports and hereafter to be obtained with respect to any Member City or Additional

Member City, and to operate and maintain the System, and from time to time enlarge, improve, repair, replace, and/or extend the System to provide service to Mesquite, Plano, Richardson, Allen, McKinney, Forney, Frisco, Princeton, Heath, Rockwall, Prosper, and to Additional Member Cities. It is deemed that the existing facilities of the System are adequate to serve Prosper under current circumstances. The District shall obtain and hold in its name all required discharge permits from the appropriate Federal and State agencies, and each Member City shall assist District in obtaining same. The District shall provide, manage, operate, and maintain the System in such manner as it determines is necessary for providing adequate, efficient, and economical service to Member Cities, and shall have the right to provide single plants, multiplants, or combine two or more plants, and to use or discontinue the use of any facilities of the System as District deems necessary. Prosper and the District hereby acknowledge the existence and requirements of the Initial Contract and the similar contracts with Richardson, Allen, McKinney, Forney, Frisco, Princeton, Heath, and Rockwall and agree that this contract is similar to said previous contracts, that they are bound by said previous contracts, and that Prosper accepts the terms and conditions of said previous contracts as supplemented by this contract.

### ARTICLE III

#### DISCHARGE OF WASTEWATER AND METERING

Section 3.01. DISCHARGE. In consideration of the payments to be made under its respective contract with the District, each of the Cities of Plano, Mesquite, Allen, McKinney, Forney, and Frisco, have and shall have the right to discharge all of its Wastewater from its respective sewer system into District's System, provided that such Wastewater meets the requirements for quantity and quality as set forth in its respective contracts with the District. In consideration of the payments to be made under their respective contracts with the District, (i) Richardson shall have the right to discharge all of its Wastewater from the Spring Creek, Rowlett Creek, Duck Creek and Floyd Branch drainage areas, within the boundaries of Richardson, as described in the "Richardson Engineering Report" and depicted in "Plat 3" attached thereto, but Richardson shall not have the right to discharge any other Wastewater into the District's System, (ii) Frisco shall have the right as an Additional Member City, and pursuant to this contract, to discharge only such Wastewater as originates within those portions of the Rowlett Creek and White Rock Creek drainage basins located within the municipal boundaries of Frisco existing on the date of the Frisco Contract, and (iii) Rockwall and Heath shall each have the right to discharge into the District's System such Wastewater as each is permitted to deliver to the District for transportation pursuant to the Interceptor Facilities Contract. Prosper shall have the right as an Additional Member City, and pursuant to this contract, to discharge up to 4,960,000 gallons per day of Wastewater from its sewer system into the District's System, provided that such Wastewater meets the requirements for quantity and quality set forth in this Contract, as it is permitted to deliver to the District for transportation pursuant to the Interceptor Facilities Contract.

Section 3.02. POINT OF ENTRY. Each Member City may discharge all such Wastewater generated from such city's sewer system into the designated Point or Points of Entry for such Member City, unless such Member City and District mutually agree that like service can be provided elsewhere



in the System. The initial Point of Entry and Additional Points of Entry for Prosper shall be as mutually agreed between Prosper and the District.

Section 3.03. CONVEYANCE TO POINT OF ENTRY. It shall be the sole responsibility of each Member City to transport, or cause to be transported, at no cost to the other Member Cities, its Wastewater to its Point or Points of Entry.

Section 3.04. QUANTITY AT POINT OF ENTRY. (a) The quantity of Wastewater conveyed to the Point or Points of Entry shall be metered and the total annual contributing flow of Wastewater received during any Fiscal Year shall be used to determine each Member City's Annual Payment and the Basic Charge for service as set forth in Article V.

(b) The maximum discharge rate is defined as a rate in million gallons per day (MGD), exceeded for a period of sixty minutes, which, if continued over a period of 24 hours, would be equal to 3.50 times the City's average daily flow during that Fiscal Year.

(c) Any Member City exceeding the maximum discharge rate shall have a surcharge applied to the next Fiscal Year's Annual Payment equal to 1% of the Annual Payment in that Fiscal Year for each 1/10th that the ratio of the maximum discharge to the average daily flow exceeds 3.50.

Section 3.05. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR TREATMENT AND DISPOSAL OF WASTEWATER; TITLE TO WASTEWATER. Liability for damages arising from the reception, transportation, delivery, and disposal of all Wastewater discharged shall remain in each Member City to Points of Entry, and upon passing through District's meters installed at Points of Entry liability for such damages and title to such Wastewater shall pass to District. As between the District and each Member City, each party agrees, to the full extent permitted by law, to indemnify and to save and hold the other party harmless from any and all claims, demands, causes of action, damages, losses, costs, fines, and expenses, including reasonable attorney's fees, which may arise or be asserted by anyone at any time on account of the reception, transportation, delivery, and disposal while Wastewater is in the control of such responsible party, or on account of a prohibitive discharge by a Member City. District has the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all Wastewater discharged by each Member City through Points of Entry, but not for prohibited discharges discharged by any Member City prior to or at any Point of Entry. The District has the right as between the parties to reuse all Wastewater discharged through any Point of Entry.

Section 3.06. METERING. District will furnish, install, operate and maintain at its own expense at each Point of Entry the necessary equipment and devices of standard type for measuring properly all Wastewater to be discharged into the System by Member Cities. Such meters and other equipment shall remain the property of the District. Each Member City shall have access to such metering equipment at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of District in the presence of a representative of the Member City if requested by such Member City. All readings of meters will be entered upon proper books of record maintained by the District. Upon written request the Member City may have access to said record books during reasonable business hours.

Not more than three times in each year of operation, District shall calibrate its meters, if requested in writing by a Member City to do so, in the presence of a representative of such Member City, and the parties shall jointly observe any adjustments which are made to the meters in case any adjustment is found to be necessary.

If, for any reason, any meters are out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of five (5%) per cent, registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half ( $\frac{1}{2}$ ) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months.

Each Member City may, at its option and its own expense, install and operate a check meter to check each meter installed by District, but the measurement for the purpose of this agreement shall be solely by District's meters.

Section 3.07. UNIT OF MEASUREMENT. The unit of measurement for Wastewater delivered hereunder shall be 1,000 gallons, U. S. Standard Liquid Measure.

## ARTICLE IV

### QUALITY

Section 4.01. GENERAL. Each Member City agrees to limit discharge into District's System to Wastewater that complies with quality requirements the District finds necessary from time to time to establish in order to meet standards imposed by regulatory agencies having appropriate jurisdiction or to protect the water quality for water supply purposes. No discharge shall be made into the System which would cause the District to violate any permit granted, or any rule or regulation promulgated, by any State or Federal agency having jurisdiction over the District. Prosper specifically covenants that it will enact and enforce procedures which will prohibit or prevent customers of its sewer system from making any discharge which would cause Prosper to violate the provisions of this contract or any applicable State or Federal permit, law, rule, or regulation. To enable the highest degree of treatment in the most economical manner possible, certain solids, liquids, and gases have been and are hereby prohibited from entering the System, either absolutely or in excess of established standards, and the prohibited discharges will be listed and furnished to all Member Cities, with a minimum of sixty days of notice before the effective date thereof.

Section 4.02. NORMAL QUALITY. To determine normal quality of Wastewater, District will collect twenty-four (24) hour composite samples of Wastewater at each Point of Entry and cause same to be analyzed in accordance with testing procedures as set forth in the latest edition of Standard Methods of Examination of Water and Wastewater, published by American Public Health Association, Inc. Composite samples will normally be taken once a month, or at more frequent intervals if necessary to determine Wastewater quality. Such Wastewater shall not exceed the limits of concentration specified for Normal Wastewater as follows:

Normal Wastewater	Concentration
BOD	275 mg/l
SS	300 mg/l
pH	not less than 6 nor greater than 9
Hydrogen Sulfide	0.1 mg/l

Should the analysis disclose concentrations higher than those listed, District will at once inform the Member City of such disqualification. With approval of the District, Wastewater with concentrations of BOD and SS greater than normal may be discharged into System with the payment of a surcharge, which shall be in addition to the basic charge as outlined in Article V of this contract, and this surcharge shall be sufficient to cover and pay for the additional cost of treatment.

## ARTICLE V

### PAYMENTS

Section 5.01. FINANCING. District will issue its Bonds, in amounts and at times as determined by the District, to provide the System.

Section 5.02. ANNUAL REQUIREMENT. It is acknowledged and agreed that payments to be made under the Initial Contract, the Richardson Contract, the Allen Contract, the McKinney Contract, the Forney Contract, the Frisco Contract, the Princeton Contract, the Heath Contract, the Rockwall Contract, this contract, and similar contracts with Additional Member Cities will be the only source available to District to provide the Annual Requirement; and that the District has a statutory duty to establish and from time to time to revise the charges for services to be rendered and made available to Member Cities hereunder so that the Annual Requirement shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expense; and

(b) A "Bond Service Component" equal to:

- (1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds if permitted by any Bond Resolution; and
- (2) during each Fiscal Year, the proportionate part of any special or reserve funds required to be established and/or maintained by the provisions of any Bond Resolution; and

- (3) an amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
- (4) the charges of paying agents and registrars for paying principal of, redemption premium, if any, and interest on, all Bonds, and for registering and transferring Bonds.

Section 5.03. PAYMENTS BY CITY. (a) For services to be rendered to each Member City by District under the Initial Contract, the Richardson Contract, the Allen Contract, the McKinney Contract, the Forney Contract, the Frisco Contract, the Princeton Contract, the Heath Contract, the Rockwall Contract, this contract, and other similar contracts, each Member City has agreed to pay, at the time and in the manner hereinafter provided, its proportionate share of the Annual Requirement, which shall be determined as hereafter described and shall constitute a Member City's Annual Payment or Adjusted Annual Payment. For each Fiscal Year each Member City's proportionate share of the Annual Requirement shall, subject to the subsequent provisions hereof, be a percentage obtained by dividing such Member City's estimated contributing flow to the System by the total estimated contributing flow to the System by all Member Cities during such Fiscal Year. The calculation of each Annual Payment as determined herein, and each Adjusted Annual Payment, shall be determined as provided in this Section. The terms "contributing flow to the System" and "contributing flow" as used in this contract with respect to any Fiscal Year shall mean (i) the actual metered contributing flow of a Member City or, (ii) as to Richardson, Allen, McKinney, Forney, Frisco, Princeton, Heath, Rockwall, Prosper, and any subsequent Additional Member City, any minimum annual contributing flow for which it has agreed to pay, whichever of the foregoing (i) or (ii) is the greater; provided that the minimum annual contributing flow for which Prosper has agreed to pay shall be calculated as provided in Article IX hereof. Each Member City's Annual Payment shall be calculated by the District by multiplying such Member City's estimated percentage of the estimated total contributing flow times the Annual Requirement. Each Member City's Annual Payment shall be made to District in monthly installments, on or before the twentieth (20th) day of each month, for its required part of the Annual Requirement for each Fiscal Year. Such payments shall be made in accordance with a Schedule of Payments for each Fiscal Year which will be supplied to each Member City. At the close of each Fiscal Year District shall redetermine each Member City's percentage by dividing each Member City's contributing flow to the System by the total contributing flow of all Member Cities. Each Member City's Adjusted Annual Payment shall be calculated by multiplying each Member City's redetermined percentage times the Annual Requirement. The difference between the Adjusted Annual Payment and the Annual Payment, if any, when determined, shall be applied as a credit or a debit to each Member City's account with District and shall be credited or debited to such Member City's next subsequent monthly payment or payments. It is further specifically agreed, however, that for the current Fiscal Year and each Fiscal Year hereafter until and unless the District exercises its option to abandon the Direct Cost method, each Member City shall be obligated to pay, as its additional part of the Annual Requirement, and shall be debited for, any sum by which its actual Direct Cost, as hereinafter defined, for any Fiscal Year in which it exceeds its Adjusted Annual Payment calculated on the basis of contributing flow as provided above; and each Member City shall be entitled to a credit for any amount in excess of its actual Direct Cost when the District has actually received the aggregate of all of the Annual Requirement from all Member Cities for that Fiscal Year. Each Member City's Adjusted Annual Payment shall be further adjusted by giving any applicable

debits and credits on subsequent monthly payments for the next Fiscal Year to reflect such additional adjustments due to Direct Cost. For each Fiscal Year hereafter, the District may continue to fix and collect each Member City's Annual Payment and Adjusted Annual Payment on the basis set forth above, or, at its sole option and within its discretion, may fix and collect each Member City's Annual Payment and Adjusted Annual Payment on the sole basis of contributing flow. In such case each Member City agrees to pay its Annual Payment and Adjusted Annual Payment solely on the basis of contributing flow, without regard to debits or credits for any Direct Cost, except for any Additional Member City entitled to pay on a Direct Cost basis for a temporary period as hereinafter provided. If the District, at its option as provided above, changes the method of making Annual Payments and Adjusted Annual Payments to a contributing flow basis, such basis shall then become the permanent method, and it shall not thereafter be changed. It is further provided, however, that if in any contract with a subsequent Additional Member City the District agrees to provide new or additional facilities to serve such Additional Member City, then such contract may provide that during the temporary period until the end of the Fiscal Year during which such new or additional facilities are placed in operation (but in no event later than the end of the third Fiscal Year following the execution of the contract) such subsequent Additional Member City's Adjusted Annual Payment shall be further adjusted by credits or debits according to its Direct Cost, in the same manner as if, with respect to such Additional Member City, the District were operating on a Direct Cost basis, even though the District actually has changed to a contributing flow basis for the other Member Cities. As used in this contract the term "Direct Cost" shall mean the following:

- (1) that part of the annual Operation and Maintenance Component of the Annual Requirement which is attributable to any Local Wastewater Facilities of a Member City which are acquired, operated, or used by the District as part of the System, and any new and additional facilities of the System provided and designated by the District to serve such Member City, less any amount thereof attributable to the use of any part of said facilities for the benefit of any other Member City or Cities, and
  - (2) that part, if any, of the Bond Service Component of each Annual Requirement which is attributable to any Bonds issued to acquire or improve any existing Local Wastewater Facilities of such Member City or to provide all or any part of any new and additional facilities for the System provided and designated by the District to serve such Member City, and
  - (3) a percentage of that part, if any, of the Bond Service Component of each Annual Requirement attributable to any other Bonds issued to provide any other facilities for the System equal to the percentage of actual use by such Member City of any such facilities during that Fiscal Year.
- (b) Monthly payments by Member Cities, as set forth in each Schedule of Payments, shall be in the following amounts:
- (i) the amount necessary to provide the Bond Service Component of the Annual Requirement so as to enable the District to make all payments with respect to the Bonds when due; and

- (ii) such amounts as will cause the District to have on hand, on or before the twentieth (20th) day of each month, an amount not less than 1/6th of the then current Annual Budget required for Operation and Maintenance Expenses.

It is specifically covenanted and agreed that each Member City shall pay its Annual Payment and Adjusted Annual Payment calculated as provided in this Section, and that the Annual Payment shall be its appropriate percentage based on contributing flow or Direct Cost, whichever is the greater; provided that such Member City is entitled to receive if and when available any credit provided for herein during any Fiscal Year when the provisions hereof relating to Direct Cost are applicable and in effect. If a Member City fails to pay its monthly charge on or before the twentieth (20th) day of any month, it shall incur and pay a penalty of ten percent of the amount due together with any legal or other costs incurred by the District in collecting the amount due. District is authorized to discontinue service to any Member City which fails to make any monthly payment, and which, after written notice, does not make such payment.

(c) If, during any Fiscal Year, District begins providing services to an Additional Member City or Cities, each Member City's Annual Payment for such Fiscal Year shall be redetermined consistent with the provisions of this contract.

(d) Each Member City's Annual Payment also shall be adjusted and redetermined for the balance of any applicable Fiscal Year, consistent with the provisions of this contract, and initially based on estimated contributing flow, at any time during any Fiscal Year if:

- (i) Additions, enlargements, repairs, extensions, or improvements to the System are placed in service by District which require an increase and redetermination of the Annual Requirement;
- (ii) Unusual or extraordinary expenditures for operation and maintenance of the System are required which are not provided for in the Annual Budget or in a Bond Resolution; or
- (iii) A Member City's contributing flow to the System, after the beginning of the Fiscal Year, is estimated to be substantially different from that on which Annual Payments are based as determined by District, to the extent that such difference in flow will substantially affect such Member City's Budget, and consequently such Member City's Annual Payment to District; or
- (iv) The District issues additional Bonds, the payments in connection with which require an increase and redetermination of the Annual Requirement; or
- (v) It appears to the District that for any other reason it will not receive the full amount of the Annual Requirement unless such adjustment and redetermination are made.

(e) The District shall give all Member Cities at least 21 days written notice prior to consideration by the Board of Directors of the District of making any Adjusted Annual Payment for any Member City during any Fiscal Year.

(f) The Annual Payment set forth in this section shall be considered the Basic Charge for service hereunder, and each Member City shall pay a surcharge for excess BOD and/or SS as provided in Section 4.02, and for excessive discharge in the manner set forth in Section 3.04(c).

(g) The Operation and Maintenance Component of the Annual Requirement allocable to such Member City shall be determined finally by the contributing flow and/or the Direct Cost of each Member City, as provided above. However, notwithstanding any other provisions of this contract to the contrary, the Bond Service Component of the Annual Requirement shall be allocated to each Member City, including each Additional Member City, and shall be computed and paid during each Fiscal Year as part of its Annual Payment and Adjusted Annual Payment, either (1) on the basis of the amount of such Member City's contributing flow into the System or (2) its Direct Cost during any such Fiscal Year when the provisions of this contract relating to Direct Cost are applicable and in effect, or (3) on the basis of the amount of such Member City's contributing flow into the System during the Fiscal Year in which such Member City's contributing flow into the System was the greatest, or (4) as to Richardson and each subsequent Additional Member City, on the basis of the amount of any minimum flows for which it has agreed to pay in its System Contract with the District, whichever of the foregoing amounts (1), (2), (3), or (4) is the greatest; provided that each Member City is entitled to receive, if and when available, any credit provided for herein during any Fiscal Year when the provisions of this contract relating to Direct Cost are applicable and in effect. It is the intention hereof that the Bond Service Component allocable to each Member City and to be paid by each Member City shall be computed for each Fiscal Year in such manner that no reduction will be allowed to a Member City because the amount of its actual contributing flow to the System is reduced below a previous high, or because the amount of its actual contributing flow is less than the amount of any minimum flow for which it has agreed to pay, subject to the foregoing provisions relating to Direct Cost.

(h) The facilities and services of the System to be provided to Prosper pursuant to this contract are and will be essential and necessary to the operation of Prosper's combined waterworks and sanitary sewer system, and all payments to be made hereunder by Prosper will constitute reasonable and necessary "operating expenses" of Prosper's combined waterworks and sanitary sewer system, within the meaning of Section 30.030, Texas Water Code and Section 1502.056, Texas Government Code (formerly, Vernon's Article 1113) and the provisions of all ordinances authorizing the issuance of all waterworks and sanitary sewer system revenue bond issues of Prosper, with the effect that Prosper's obligation to make payments from its waterworks and sanitary sewer system revenues under this contract shall have priority over its obligations to make payments of the principal of and interest on any and all of its waterworks and sanitary sewer system revenue bonds. Prosper agrees to fix and collect such rates and charges for waterworks and sanitary sewer system services to be supplied by its waterworks and sanitary sewer system as will make possible the prompt payment of all expenses of operating and maintaining its entire waterworks and sanitary sewer system, including all payments, obligations, and indemnities contracted hereunder, and the prompt payment of the principal of and interest on its bonds payable from the net revenues of its waterworks and sanitary sewer system. The District shall never have the right to demand payment of the amounts due hereunder from funds raised or to be raised from taxation by Prosper. Prosper's payments hereunder shall be made pursuant to the authority granted by Section 30.030 of the Texas Water Code, the

District Act, and Section 1502.056, Texas Government Code (formerly, Vernon's Article 1113). Recognizing the fact that Prosper urgently requires the facilities and services covered by this contract, and that such facilities and services are necessary for actual use and for stand-by purposes; and further recognizing that the District will use the payments received from Prosper hereunder to pay, secure, and finance the issuance of its Bonds, it is hereby agreed that Prosper shall be obligated unconditionally, and without offset or counterclaim, to make the payments designated as the "Bond Service Component" of the Annual Requirement, in the manner provided in this contract, regardless of whether or not the District actually provides such facilities and services, or whether or not Prosper actually receives or uses such facilities and services, and regardless of the validity or performance of the other parts of this or any other contract, and such "Bond Service Component" shall in all events be applied and used for providing debt service and other requirements of the Bonds, and the holders of the Bonds shall be entitled to rely on the foregoing agreement and representation, regardless of any other agreement between the District and Prosper. Prosper further agrees that it shall be obligated to make the payments designated as the "Operation and Maintenance Component" of the Annual Requirement as described in Section 5.02 of this contract, so long as the District is willing and able to provide the facilities and services contemplated hereunder to Prosper.

(i) On or before August 1 of each year District will furnish each Member City with a tentative budget and an estimated schedule of monthly payments to be made by such Member City for the ensuing Fiscal Year. On July 1 of each year, the District shall be in a position to furnish any Member City an estimate of the City's annual requirement. On or before October 1 of each year, District shall furnish such Member City with a finalized schedule of the monthly payments to be made by such Member City to the District for the ensuing Fiscal Year. Each Member City agrees that it will make such payments to the District on or before the twentieth (20th) day of each month of such Fiscal Year. If any Member City shall dispute the Annual Budget, and proceed as provided in Article VII, such Member City nevertheless promptly shall make the payment or payments determined by District, and if it is subsequently determined by agreement that such disputed payments made by such Member City should have been less, District shall promptly revise, reallocate, and readjust the charges among all Member Cities then being served by District in such manner that such Member City will recover its overpayment. In the event any Member City is assessed a surcharge for excess BOD and/or SS, District will bill such Member City for such surcharge on or before the tenth (10th) day of the month following the determination of the surcharge and such Member City shall pay such surcharge on or before the twentieth (20th) day of the month of receipt of any such bill. Any such surcharge collected by District shall be applied by District against the total cost of Operation and Maintenance Expense of the System.

(j) If any Member City's Annual Payment is redetermined as is herein provided, District will promptly furnish such Member City with an updated schedule of monthly payments reflecting such redetermination.

(k) All interest income earned by the investment of any Funds created pursuant to any Bond Resolution shall be credited towards the payment of the Bond Service Component and taken into account in determining the Annual Requirement; except that as to any Acquisition or Construction Fund created from any Bond proceeds all interest income earned by the investment thereof may, at the option of the District, be credited to such Acquisition or Construction Fund and



used for the System purposes for which the Bonds are issued, or be credited towards the payment of the Bond Service Component.

Section 5.04. USE OF OTHER REVENUES OF SYSTEM. (a) If the District receives any net income from the sale of treated Wastewater from the System prior to its discharge into a public stream of the State of Texas, the District will apply and credit said net income towards payments of Operation and Maintenance Expenses.

(b) Notwithstanding any other provisions of this contract, the District may provide any excess available capacity or service of the System to any person, as defined by the Texas Water Code, provided that such service does not interfere with or impair the rights of any Member City under this contract, and any such service shall in all events be subordinate and subject to such rights; and provided further that the District must charge for such service in amounts at least sufficient to pay all Operation and Maintenance Expense attributable thereto plus an amount which will produce an estimated reasonable allocation as determined by the District, plus an additional amount of not less than 20% of the foregoing to cover prior incurred costs, to be credited to the Bond Service Component of the Annual Requirement. The District is not authorized to issue Bonds, as defined in this contract, to provide the services of the System to any persons other than Member Cities.

## ARTICLE VI

### GENERAL PROVISIONS

Section 6.01. FORCE MAJEURE. In case by reason of "Force Majeure" the District or any Member City shall be rendered unable wholly or in part to carry out its obligations under this agreement, then if such party shall give notice and full particulars of such "Force Majeure" in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure (with the exception of the obligation of each Member City to make the payments required in Section 5.03 of this contract, which in all events shall be made as provided therein) shall be suspended during the continuance of the inability then claimed, but for no longer periods, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on the part of a Member City to provide water necessary for operation of its water and Local Wastewater Facilities hereunder, or of District to receive Wastewater on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts

by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

Section 6.02. **INSURANCE.** District will carry insurance for such purposes and in such amounts as are determined by the District to be necessary or advisable.

Section 6.03. **REGULATORY BODIES.** This contract shall be subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas, or any authorized representative or agency of any of them.

Section 6.04. **EFFLUENT REUSE:** (a) District will make the effluent discharge from its Wastewater treatment plants available for any lawful and beneficial reuse purpose, and a charge shall be made to the customer receiving such effluent sufficient to cover any additional cost involved in providing the service, plus a reasonable portion of the cost of treating the Wastewater which produced such effluent; provided that such portion of the cost allocable to treatment shall not be required to exceed an amount which would, in the judgment of the District, render the use of such effluent by a customer economically infeasible.

(b) Notwithstanding the provisions of Section 3.05 and subsection 6.04(a), each Member City shall have the first right to use all effluent produced from its Wastewater for reuse solely for its own municipal purposes (i.e. golf course irrigation, recreation, etc.), without any charge except for any additional costs to the District necessary to provide the effluent for such municipal use; provided that no Member City shall sell such effluent or make it available to any other customer, and subject to the aforesaid first right of each Member City, the District shall have the right to use all such effluent for District purposes without any charge except for additional costs necessary to provide the effluent for District purposes. As to Plano, however, it is understood and agreed that the reuse of its effluent to fulfill its obligations under its present contracts with the Plano Municipal Golf Course and the Los Rios Country Club (for the primary term and any optional extensions of the contract with Plano Municipal Golf Course and for the primary term of the contract with Los Rios Country Club) shall constitute a reuse for its own municipal purposes, and the foregoing restrictions with respect to selling and making available effluent shall not apply to such present contracts during the terms thereof as aforesaid. In accordance with the provisions of Section 3.05, and notwithstanding the foregoing, to the extent that effluent produced by the District is discharged to watercourses of the State, the right of any Member City to reuse such effluent produced from its Wastewater is terminated, and the District shall have the right as between parties, and pursuant to any necessary authorization of the State, to reuse such discharged effluent.

Section 6.05. **ANNUAL AUDIT OF SYSTEM.** The District shall, at the close of each Fiscal Year, cause an Annual Audit of the System to be prepared.

Section 6.06. **PUBLICATIONS, REFERENCE WORKS, GOVERNMENTAL REGULATIONS.** In each instance herein where reference is made to a publication, reference work or Federal or State regulation, it is the intention of the parties that at any given time the then current edition of any such publication of reference work or Federal or State regulation shall apply. If a publication or reference work is discontinued or ceases to be the generally accepted work in its field

or if conditions change or new methods or processes are implemented by the District, new standards shall be adopted which are in compliance with State and Federal laws and any valid rules and regulations issued pursuant thereto.

Section 6.07. OPERATION OF THE SYSTEM. District covenants that it will operate and maintain the System in accordance with accepted good business and engineering practices.

Section 6.08. CONTINUING DISCLOSURE OF INFORMATION. Prosper shall comply or, upon the request of the District, shall provide to the District such information as will enable the District to comply with any continuing disclosure requirements with respect to the Bonds imposed by Securities and Exchange Commission Rule 15c2-12.

## ARTICLE VII

### DISTRICT ANNUAL BUDGET

Section 7.01. FILING WITH CITY. (a) Not less than sixty (60) days before the commencement of each Fiscal Year while the Initial Contract and all similar contracts with Member Cities are in effect, District shall cause its tentative budget for operation and maintenance of the System for the ensuing Fiscal Year to be prepared and a copy thereof filed with each Member City. If no protest or request for a hearing on such tentative budget is presented to District within thirty (30) days after such filing of the tentative budget by one or more Member Cities, the tentative budget for the System, when adopted by District's Board of Directors, shall be considered for all purposes as the "Annual Budget" for the ensuing Fiscal Year. But if a protest or request for a hearing is duly filed, it shall be the duty of the District to fix the date and time for a hearing on the tentative budget. The Board of Directors of the District shall consider the testimony and showings made in such hearing. The Board of Directors of the District may adopt the budget or make such amendments thereof as to it may seem proper. The budget thus approved by the Board of Directors of the District shall be the Annual Budget for the next ensuing Fiscal Year.

(b) The Annual Budget may be amended to provide for transfers of budgeted funds between expenditure accounts, provided however that said transfers do not result in an overall increase in budgeted funds as provided in the Annual Budget. The Annual Budget may be amended and increased through formal action by the Board of Directors of District, if required. Certified copies of any amended Annual Budget and the resolution authorizing same shall be filed immediately by the District with each Member City.

## ARTICLE VIII

### THE SYSTEM

Section 8.01. INITIAL FACILITIES OF THE SYSTEM. (a) Immediately after execution of the Initial Contract, the District established the System initially to consist of facilities at Mesquite and Plano.

(b) As permitted and then authorized by Section 25.024, Texas Water Code (now, Section 30.024, Texas Water Code), and other provisions of law, the District, Mesquite and Plano agreed under the Initial Contract that the Initial Contract shall constitute an operating agreement with respect to the treatment and disposal facilities at Mesquite and Plano which existed on, and are described in the Initial Contract and which on the date of the Initial Contract constituted a part of the Local Wastewater Facilities of Mesquite and Plano respectively.

Section 8.02. DISTRICT CONTRACTS WITH ADDITIONAL MEMBER CITIES. (a) The District reserves the right to contract with subsequent Additional Member Cities to provide the services of the System to such Additional Member Cities; provided that the terms and provisions of such contracts with Additional Member Cities shall be, to the extent practicable and applicable, the same as the terms and provisions of the Initial Contract and the other similar contracts with Member Cities, except that with respect to any Local Wastewater Facilities of such Additional Member City which are to be acquired, operated, or used by the District as a part of the System as a result of such contract, the District and the Additional Member City may agree in such contract for mutually acceptable payments in connection therewith from Bond proceeds or as an Operation and Maintenance Expense of the System (provided that in any formula used for determining such payments, the value attributed to such Local Wastewater Facilities shall not exceed a sum equal to the principal amount of all then outstanding bonds or other obligations issued by the Additional Member City to acquire and construct such Local Wastewater Facilities), and except that such contract shall provide for payments calculated on the basis of adequate minimum flows as hereinafter provided. All Member Cities shall be bound by the Initial Contract, the Richardson Contract, the Allen Contract, the McKinney Contract, the Forney Contract, the Frisco Contract, the Princeton Contract, the Heath Contract, the Rockwall Contract, this contract, and the similar contracts with Additional Member Cities. The District shall not enter into contracts for any services by the System except with cities which become Member Cities, or as otherwise provided in this contract.

(b) A city may become an Additional Member City in the following manner and under the following conditions;

(i) A formal request must be submitted to the District furnishing information on the area to be served, a description of existing facilities, and the latest annual audit of such proposed Additional Member City's waterworks and/or sewer systems, if any.

(ii) Such proposed Additional Member City must provide funds for any necessary engineering studies if funds are not available from the appropriate Federal or State agencies. The preliminary studies must determine or estimate, for the ensuing five year period, the size

and type of any proposed facilities, their estimated cost, and estimated flows of Wastewater, so as to enable the District to ascertain or estimate the requirements of the proposed Additional Member City for the ensuing five year period.

(iii) After all preliminary data is developed, the Board of Directors of the District shall call a hearing and notify all Member Cities to review the request of the proposed Additional Member City. The Board of Directors of the District then shall determine if the proposed Additional Member City shall become a Member City.

(c) Each Additional Member City must agree to make minimum payments under its contract, on the basis of estimated annual minimum flows, that would provide amounts annually at least sufficient, as determined by the District, to pay:

(i) all of the annual Operation and Maintenance Component of the Annual Requirement which is attributable to any Local Wastewater Facilities of such Additional Member City which are to be acquired, operated, used, or improved by the District as part of the System and any other new and additional facilities of the System provided and designated by the District to serve such Member City, less any amount thereof attributable to the use of any part of said facilities for the benefit of any other Member City or Cities, and

(ii) an amount (to be credited and applied to the Bond Service Component of each Annual Requirement), at least equal to:

(a) all of that part of the Bond Service Component of each future Annual Requirement attributable to Bonds issued to acquire or improve any existing Local Wastewater Facilities of such Additional Member City to be a part of the System, and all Bonds issued within five years from the date of such contract to provide any other new and additional facilities for the System to serve such Additional Member City, plus

(b) a percentage of the Bond Service Component of each future Annual Requirement for all then outstanding Bonds equal to the then estimated percentage of use by such proposed Additional Member City of any portion of the then existing System, plus

(iii) an annual amount (to be credited to the Bond Service Component of the Annual Requirement and/or to the Operation and Maintenance Component of the Annual Requirement, at the option of the District) as estimated and determined by the District to equalize the previous capital cost (including the cost of previously constructed excess capacity) of facilities to be used to provide service to the Additional Member City.

(d) The provisions of this Section and the payments to be made under an Additional Member City's contract are further subject to the provisions of Section 5.03 of the Initial Contract and this contract.

Section 8.03. **ADDITIONAL CAPACITY AND FACILITIES.** As the responsible agency for the establishment, administration, management, operation, and maintenance of the System, the District will, from time to time, determine when and to what extent it is necessary to provide additions, enlargements, improvements, repairs, and extensions to the System to receive, transport, treat, and dispose of Wastewater of any Member Cities, including all Additional Member Cities, and to issue its Bonds to accomplish such purposes, and all Member Cities, including Additional Member Cities, shall be obligated to pay both the Operation and Maintenance Component and the Bond Service Component included in the Annual Requirement with respect to the entire System, as expanded, as provided in Section 5.03; provided that this Section shall not be construed so as to reduce or alter the requirements of Section 8.02 with respect to minimum payments.

## ARTICLE IX

### PAYMENTS BY PROSPER

Section 9.01. Pursuant to Section 8.02 of the Initial Contract, it is required that Prosper, as an Additional Member City, must agree to pay its share of the estimated Annual Requirement and the actual Annual Requirement as required by Article V of the Initial Contract and this contract (and in particular by Section 5.03), subject to the provisions of Section 8.02 of the Initial Contract and this Contract with respect to agreed minimum payments on the basis of annual minimum contributing flows. It is further agreed and understood that there are no Local Wastewater Facilities of Prosper involved in this contract.

Section 9.02. Prosper shall pay its part of the entire Annual Requirement, including the Operation and Maintenance Component and the Bond Service Component, commencing with its initial discharge into the System under this contract, calculated on the basis of (1) an agreed minimum contributing flow of 214,000 gallons of sewage per day, or (2) Prosper's actual contributing flow, or (3) Prosper's Direct Cost, or (4) Prosper's maximum contributing flow, whichever of (1), (2), (3), or (4) is the greatest (subject to any credits due to Direct Cost).

Section 9.03. In addition to the payments required by Section 9.02, Prosper shall pay an amount (to be credited and applied to the Bond Service Component of each Annual Requirement) at least equal to all of that part of the Bond Service Component of each future Annual Requirement attributable to Bonds, if any, issued within five years from the date of this contract to provide any other new and additional facilities for the System to serve only Prosper.

Section 9.04. The District hereby officially finds, determines, and agrees that the above amounts required by Sections 9.02 and 9.03 will cover all amounts required to be paid by Prosper as an Additional Member City under the Initial Contract, and that this contract complies with the requirements of the Initial Contract in all respects.

## ARTICLE X

### REMEDIES

Section 10.01. Any party to this contract, and any holder of the District's Bonds, may require any party hereto, and its officials and employees, to carry out, respect, and enforce the covenants and obligations of this contract, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against such party, and its officials and employees.

## ARTICLE XI

### EFFECTIVE DATE AND TERM

Section 11.01. **EFFECTIVE DATE.** This contract shall become effective as of the date of execution hereof.

Section 11.02. **TERM OF CONTRACT.** This contract shall continue in force from the effective date hereof at least until all Bonds, including any Bonds issued to refund same, shall have been paid in full; and shall also remain in force thereafter throughout the useful life of the System.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the 24<sup>th</sup> day of February, 2007, which is the date of this Contract.

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: Marni Fuller  
President, Board of Directors

ATTEST:

Jerry E. Yancey  
Secretary, Board of Directors  
(SEAL)

TOWN OF PROSPER, TEXAS

By: [Signature]  
Mayor

ATTEST:

Shirae Jennings  
Town Secretary  
(SEAL)





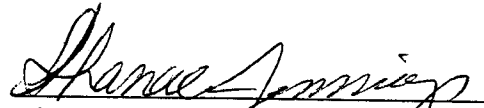
CCN/208668/CO

In the State of Texas

§  
§  
§

County of Denton

I, Shanae Jennings, Town Secretary for the Town of Prosper, Texas, hereby certify that the attached document is a true and correct copy of a document taken from the official Town files of the Town of Prosper, Texas, and is maintained in the regular course of business of the Town of Prosper, Texas. Given under my hand and the seal of office on 11<sup>th</sup> day of March, 2004.

  
Shanae Jennings, Town Secretary  
Town of Prosper, Texas

NORTH TEXAS MUNICIPAL WATER DISTRICT - UPPER EAST FORK  
WASTEWATER INTERCEPTOR SYSTEM SUPPLEMENTAL CONTRACT  
(TOWN OF PROSPER, TEXAS)

THE STATE OF TEXAS :

NORTH TEXAS MUNICIPAL WATER DISTRICT :

THIS NORTH TEXAS MUNICIPAL WATER DISTRICT - UPPER EAST FORK  
WASTEWATER INTERCEPTOR SYSTEM SUPPLEMENTAL CONTRACT (TOWN OF  
PROSPER, TEXAS) (the "Contract") made and entered into as of the 24th day of February, 2007,<sup>4</sup>  
by and between NORTH TEXAS MUNICIPAL WATER DISTRICT (the "District"), an agency and  
political subdivision of the State of Texas, being a conservation and reclamation district created and  
functioning under Article 16, Section 59, of the Texas Constitution, pursuant to Chapter 62, Acts of  
the 52nd Legislature of the State of Texas, Regular Session, 1951, as amended (the "District Act"),  
and the Town of Prosper, in Collin and Denton Counties, Texas ("Prosper").

WITNESSETH:

WHEREAS, Prosper is a duly created municipality operating under the Constitution and  
general laws of the State of Texas; and

WHEREAS, the District and Prosper are authorized to enter into this Contract pursuant to the  
District Act, Chapter 30, Texas Water Code, and other applicable laws; and

WHEREAS, the District has acquired and constructed and is operating a regional  
Wastewater treatment system to serve various Member Cities (hereinafter defined) within the  
watershed or drainage area of the East Fork of the Trinity River, in Dallas, Collin, and Denton  
Counties, Texas (the "Treatment System"); and

WHEREAS the Treatment System heretofore acquired and constructed is described in various  
engineering reports, and includes the facilities and capacities required to serve the Cities of Mesquite,

Plano, Richardson, Allen, McKinney, Forney, Frisco, Princeton, Rockwall, Heath, and Prosper (the "Member Cities"); and

WHEREAS, the contracts between the District and the Member Cities require that each of the Member Cities must arrange or provide for the transportation of its Wastewater to its Point or Points of entry into the District's Treatment System; and

WHEREAS, in order to comply with such requirement the Cities of Allen, McKinney, Plano, and Richardson, Texas (the "Initial Contracting Parties") and the District entered into the "Upper East Fork Wastewater Interceptor System Contract", dated as of July 26, 1984 (the "Initial Contract"), the City of Frisco, Texas ("Frisco") and the District entered into the "Upper East Fork Wastewater Interceptor Supplemental Contract (City of Frisco, Texas), dated November 19, 1996 (the "Frisco Contract"), and the City of Princeton, Texas ("Princeton") and the District enter into the "Upper East Fork Wastewater Interceptor System Supplemental Contract (City of Princeton, Texas)", dated November 26, 1996 (the "Princeton Contract") (the Frisco Contract and the Princeton Contract, collectively, the "Supplemental Contracts") which provided for the separate financing, construction, operation, and maintenance by the District of an interceptor system (the "Interceptor System"), to transport the Wastewater of the Initial Contracting Parties and any Additional Contracting Parties into the District's Treatment System, and with such Interceptor System not to constitute any part of the Treatment System; and

WHEREAS, pursuant to the Initial Contract and the Supplemental Contracts the District has issued and delivered, and there are now outstanding, the following:

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Refunding Bonds, Series 1988, dated August 1, 1988, authorized by resolution of the Board of Directors of the District on August 5, 1988;

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Bonds, Series 1998, dated February 15, 1998, authorized by a resolution of the Board of Directors of the District on February 26, 1998;

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Refunding, Series 1999, dated March 1, 1999, authorized by a resolution of the Board of Directors of the District on October 22, 1998; and

the unpaid and unrefunded North Texas Municipal Water District Upper East Fork Wastewater Interceptor System Contract Revenue Refunding Bonds, Series 2003, dated May 1, 2003, authorized by a resolution of the Board of Directors of the District on April 24, 2003;

WHEREAS, the Initial Contract makes provision for Additional Contracting Parties to become Contracting Parties with substantially the same rights and obligations as each of the Initial Contracting Parties, upon the execution of a contract similar to the Initial Contract; and

WHEREAS, upon the execution of this Contract, Prosper will become such an Additional Contracting Party, and thus a Contracting Party, in accordance with the requirements of the Initial Contract, with all conditions prerequisite to such execution having been met; and

WHEREAS, this Contract substantially restates the essential provisions of the Initial Contract and is structured similar thereto to the fullest extent applicable and practicable, including the requirements with respect to "minimums", but with such additions and changes that are necessary to meet the actual circumstances, with the effect that Prosper, being the an Additional Contracting Party, hereby adopts the provisions of the Initial Contract, as supplemented and necessarily changed by this Contract; and

WHEREAS, the "minimums" set for Prosper in Section 13(c) of this Contract are equitable and have been fixed by the District as required in the Initial Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District agrees to provide Wastewater transportation services of the Interceptor System to Prosper under this Contract, and to issue its Bonds from time to time, upon and subject to the terms and conditions hereinafter set forth, to-wit:

Section 1. DEFINITION OF TERMS. The following terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

(a) "Additional Contracting Party" means any party with which, in accordance with the Initial Contract and this Contract, the District makes a contract similar to this Contract for providing services of the Interceptor System, provided that after execution of any such contract such party shall become one of the Contracting Parties for all purposes of this Contract, unless otherwise specifically provided herein.

(b) "Adjusted Annual Payment" means the Annual Payment, as adjusted during or after each Annual Payment Period, as provided by this Contract.

(c) "Annual Payment" means the amount of money to be paid to the District by each of the Contracting Parties during each Annual Payment Period as its proportionate share of the Annual Requirement.

(d) "Annual Payment Period" means the District's Fiscal Year, which currently begins on October 1 of each calendar year and ends on the last day of September of the next calendar year.

(e) "Annual Requirement" means the total amount of money required for the District to pay all Operation and Maintenance Expenses of the Interceptor System, to pay the debt service on its Bonds, to pay or restore any amounts required to be deposited in any special, contingency, or reserve funds required to be established and/or maintained by the provisions of the Bond Resolutions, all as further described in this Contract.

(f) "Bond Resolution" means any resolution of the District which authorizes any Bonds.

(g) "Bonds" means all bonds heretofore and hereafter issued by the District, including specifically the outstanding bonds described in the preamble to this Contract, whether in one or more series or issues, and the interest thereon, to acquire and construct the Interceptor System, and/or subsequently to improve and/or extend the Interceptor System, and any bonds issued to refund any Bonds or to refund any such refunding bonds.

(h) "Contracting Parties" means the Cities of Allen, McKinney, Plano, Richardson, Frisco, Princeton, and Propser, together with any other party or parties which hereafter becomes one of the Contracting Parties by becoming an Additional Contracting Party.

(i) "Contracting Party" means any one of the Contracting Parties.

(j) "Engineering Report" means the report of Shimek, Jacobs & Finklea, Consulting Engineers, Dallas, Texas, dated November, 1983, describing the original facilities of the Interceptor System, together with all changes therein and supplements and additions thereto by said Consulting Engineers or other engineers.

(k) "Interceptor System" means collectively the Wastewater transportation facilities described in the Engineering Report, and all improvements and additions to and extensions, enlargements, and replacements of such facilities which are acquired and constructed by the District in order to receive and transport Wastewater of the Contracting Parties to their respective Points of Entry into the Treatment System. However, and notwithstanding the foregoing, said term includes only those facilities which are acquired or constructed with proceeds from the sale of Bonds issued, or payments made, pursuant to the Initial Contract and this Contract, and any similar contracts with Additional Contracting Parties. Said term does not include any part of the Treatment System or any facilities acquired or constructed by the District with the proceeds from the issuance of "Special

Facilities Bonds", which are hereby defined as being revenue obligations of the District which are not secured by or payable from Annual Payments made under the Initial Contract, this Contract, and similar contracts with Additional Contracting Parties, and which are payable solely from other sources.

(l) "Operation and Maintenance Expenses" means all costs and expenses of operation and maintenance of the Interceptor System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements for which no special fund is created in the Bond Resolutions, operating personnel, the cost of utilities, the costs of supervision, engineering, accounting, auditing, legal services, supplies, services, administration of the Interceptor System, including the District's general overhead expenses attributable to the Interceptor System, insurance premiums, equipment necessary for proper operation and maintenance of the Interceptor System, and payments made by the District in satisfaction of judgments resulting from claims not covered by the District's insurance arising in connection with the operation and maintenance of the Interceptor System. The term also includes the charges of the bank or banks and other entities acting as paying agents and/or registrars for any Bonds. The term does not include depreciation.

(m) "Treatment Contracts" means the contracts, and all amendments thereto or replacements thereof, heretofore or hereafter entered into between or among the Contracting Parties and the District with respect to the Treatment System, with such existing contracts being described as follows:

Trinity East Fork Regional Wastewater System Contract, dated as of October 1, 1975 among the Cities of Mesquite and Plano and the District.

City of Richardson-Trinity East Fork Regional Wastewater System Contract dated as of January 9, 1978, between the City of Richardson and the District.



City of Allen-Trinity East Fork Regional Wastewater System Contract, dated as of August 24, 1978, between the City of Allen and the District.

City of McKinney-Trinity East Fork Regional Wastewater System Contract, dated as of August 29, 1979, between the City of McKinney and the District, and

City of Frisco-Trinity East Fork Regional Wastewater System Contract, dated as of November 19, 1996, between the City of Frisco and the District.

City of Princeton-Trinity East Fork Regional Wastewater System Contract, dated as of November 26, 1996, between the City of Princeton and the District.

Town of Prosper -Trinity East Fork Regional Wastewater System Contract, dated as of the date of this Contract, between the Town of Prosper and the District.

(n) "Treatment System" means the District's "Treatment System" as generally described in the preamble to this Contract, and includes all facilities acquired, constructed, or operated by the District pursuant to the Treatment Contracts.

(o) "Wastewater" means Sewage, Industrial Waste, Municipal Waste, Recreational Waste, and Agricultural Waste, together with Properly Shredded Garbage and such Infiltration Water that may be present, all as defined in the Texas Water Code.

Section 2. CONSULTING ENGINEERS; CONSTRUCTION OF INTERCEPTOR SYSTEM. Shimek, Jacobs & Finklea have been the Consulting Engineers for the Interceptor System, provided that the Consulting Engineers may be changed at the option of the District. The District has used its best efforts to acquire and construct the Interceptor System; and the Interceptor System has been acquired and constructed in general accordance with the Engineering Report. Such acquisition and construction has been financed by the District through the issuance of its Bonds payable from and secured by Annual Payments made under the Initial Contract, and the District agrees to use its best efforts to issue its Bonds in the future as required and in accordance with each of the contracts with the Contracting Parties. The proceeds from the sale and delivery of such future

Bonds also will be used for the payment of the District's expenses and costs in connection with the Interceptor System and the Bonds, including, without limitation, all financing, legal, printing, and other expenses and costs related to the issuance of such Bonds and the Interceptor System.

Section 3. QUANTITY AND POINTS OF ENTRY. (a) In consideration of the payments to be made by each Contracting Party, during each Annual Payment Period during which the Interceptor System is in operation, each Contracting Party shall or may discharge into the Interceptor System, at its Point or Points of Entry hereinafter described, all of the Wastewater which is required, or permitted to be, discharged into the District's Treatment System by such Contracting Party under the Treatment Contracts, subject to the restrictions hereinafter stated; and provided that each such Contracting Party must transport such Wastewater to its Point or Points of Entry into the Interceptor System.

(b) The maximum rate at which Wastewater is discharged by each Contracting Party at its Point or Points of Entry into the Interceptor System shall not exceed for a period of sixty minutes a rate which, if continued for a period of twenty-four hours would equal 3.50 times such Contracting Party's estimated average daily contributing flow of Wastewater into the Treatment System for the then current Annual Payment Period. The total quantity of Wastewater discharged into the Interceptor System shall never exceed the amount which the Interceptor System and the Treatment System are capable of receiving, treating, and disposing, unless approved by the District, subject to terms and conditions to be established by the District. Notwithstanding the foregoing, no Contracting Party shall ever make any discharge into the Interceptor System or the Treatment System which would cause them to be overloaded or be in violation of its permits from the State of Texas and/or the United States of America.

(c) Wastewater meeting the quality requirements of Section 4 of this Contract will be received into the Interceptor System at the Points of Entry, respectively, to be established pursuant to mutual agreement between the District and the affected Contracting Party. Additional Points of Entry may be established by mutual agreement between the District and a Contracting Party in the future if such additional Points of Entry are determined by the District to be beneficial to the Interceptor System.

(d) It is the intention of the Contracting Parties that the Interceptor System shall be acquired, constructed, extended, and improved so that at all reasonable times it will be capable of receiving and transporting all eligible Wastewater of each Contracting Party which such Contracting Party is required or permitted to discharge into the District's Treatment System pursuant to the Treatment Contracts, and that the District will from time to time issue its Bonds in such amounts as are, within its judgment and discretion, sufficient to achieve such results. It is further the intention of the Contracting Parties that the District shall issue or use its best efforts to issue its Bonds for such purpose, and to provide improvements, enlargements, and extensions to the Interceptor System as needed for the Contracting Parties.

Section 4. QUALITY. Each Contracting Party shall discharge into the Interceptor System only such Wastewater as it is required or permitted to discharge into the District's Treatment System, and will not discharge into the Interceptor System any wastes prohibited by the Treatment Contracts.

Section 5. METERING OF WASTEWATER. The District will furnish, install, operate, and maintain at its expense the necessary equipment and devices of standard type required for measuring properly all Wastewater discharged into the District's Treatment System by each Contracting Party, respectively, under the Treatment Contracts. Such meters and other equipment shall remain the property of the District. Each Contracting Party shall have access to such metering equipment at all

reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of the District in the presence of a representative of the affected Contracting Party or Parties if requested by such Contracting Party or Parties. All readings of meters will be entered upon proper books of record maintained by the District. Upon written request any Contracting Party may have access to said record books during reasonable business hours. Not more than three times in each year of operation, the District shall calibrate its meters, if requested in writing by the affected Contracting Party or Parties to do so, in the presence of a representative of such Contracting Party or Parties, and such parties shall jointly observe any adjustments which are made to the meters in case any adjustment is found to be necessary. If, for any reason, any meters are out of service or out of repair, or if, upon any test, the percentage of inaccuracy of any meter is found to be in excess of five (5%) per cent, registration thereof shall be corrected for a period of time extending back to the time when such inaccuracy began, if such time is ascertainable, and if not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the date of the last calibration, but in no event further back than a period of six (6) months. Any Contracting Party may, at its option and its own expense, install and operate a check meter to check each meter installed by the District, but the measurement for the purpose of this agreement shall be solely by the District's meters, except as in this Section specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the District, but the reading, calibration, and adjustment thereof shall be made only by the Contracting Party or Parties, except during any period when a check meter may be used under specific written consent by the District for measuring the amount of Wastewater delivered into the Treatment System, in which case the reading,

calibration, and adjustment thereof shall be made by the District with like effect as if such check meter or meters had been furnished or installed by the District.

Section 6. UNIT OF MEASUREMENT. The unit of measurement for Wastewater discharged into the Interceptor System and the Treatment System shall be 1,000 gallons, U. S. Standard Liquid Measure.

Section 7. LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR WASTEWATER; TITLE TO WASTEWATER. Liability for damages arising from the transportation, delivery, reception, treatment, and/or disposal of all Wastewater discharged into the Interceptor System hereunder shall remain in each Contracting Party to its Point or Points of Entry, respectively, into the Interceptor System, and title to such Wastewater shall be in such Contracting Party to such Point or Points, and upon passing through Points of Entry liability for such damages and title to such Wastewater shall pass to the District. As between the District and each Contracting Party, each party agrees, to the full extent permitted by law, to indemnify and to save and hold the other party harmless from any and all claims, demands, causes of action, damages, losses, costs, fines, and expenses, including reasonable attorney's fees, which may arise or be asserted by anyone at any time on account of the transportation, delivery, reception, treatment, and/or disposal while title to the Wastewater is in such party, or on account of a prohibited discharge by a Contracting Party. The District has the responsibility as between the parties for the proper reception, transportation, treatment, and disposal of all Wastewater discharged into the Interceptor System, but not for prohibited discharges discharged by any party at any Point of Entry. The District has the right as between the parties to the reuse of all Wastewater discharged into the Interceptor System.

Section 8. OTHER CONTRACTS. (a) The District reserves the right to enter into contracts to provide the Wastewater transportation services of the Interceptor System to Additional Contracting Parties under contracts similar to this Contract, subject to the requirements concerning "minimums" and other matters as hereinafter provided; provided, however, that prior to or concurrently with becoming an Additional Contracting Party under this Contract such party must enter into a Treatment Contract with the District in connection with the Treatment System. Each contract with any Additional Contracting Party shall comply with the requirements of this Contract, shall substantially restate the essential provisions of this Contract, and shall be structured to be similar hereto to the fullest extent applicable and practicable, with such additions or changes as are necessary to meet the actual circumstances, with the effect that each Additional Contracting Party will substantially adopt the provisions of this Contract, as supplemented and necessarily changed by its contract. However, the District shall not obligate itself to receive Wastewater into the Interceptor System from any future Additional Contracting Party if, in the judgment and discretion of the District, such obligation would jeopardize the District's ability to meet its obligation to receive and transport Wastewater discharged into the Interceptor System by prior Contracting Parties.

(b) Notwithstanding the foregoing a party may become an Additional Contracting Party only in the following manner and under the following conditions:

(i) A formal request must be submitted to the District by the proposed Additional Contracting Party furnishing information on the area to be served, a description of existing facilities, and the latest annual audit of such proposed Additional Contracting Party's waterworks and/or sewer systems, if any.

(ii) Such proposed Additional Contracting Party must provide funds for any necessary engineering studies if funds are not available therefor from the appropriate Federal or State agencies. The preliminary studies must determine or estimate, for the ensuing five year period, the size and type of any proposed improvements, enlargements, or extensions to the Interceptor System to serve such Additional Contracting Party, their estimated cost, and estimated flows of Wastewater, so as to enable the District to ascertain or estimate the requirements of the proposed Additional Contracting Party for the ensuing five year period.

(iii) After all preliminary data is developed, the Board of Directors of the District shall call for a hearing on the matter and notify all Contracting Parties to review the request of the proposed Additional Contracting Party. The Board of Directors of the District then shall determine if the proposed Additional Contracting Party should become an Additional Contracting Party. If so determined, the Board of Directors then may authorize the District to enter into the required contract with such Additional Contracting Party as provided in this Contract, and may authorize any Bonds required in connection with such Additional Contracting Party.

(iv) Each such contract with an Additional Contracting Party must provide for minimum payments under its contract, on the basis of estimated annual minimum flows into the District's Treatment System, that would provide amounts annually at least sufficient, as determined by the District, to pay that portion of the annual Operation and Maintenance Component of the Annual Requirement which is attributable to that part of the Interceptor System provided by the District to serve such Additional Contracting Party, and to pay that portion of the Bond Service

Component of each Annual Requirement attributable to Bonds issued within five years from the date of such contract to acquire or improve any new and additional facilities for the Interceptor System to serve in whole or in part such Additional Member City, plus a percentage of the Bond Service Component of each future Annual Requirement for all then outstanding Bonds equal to the then estimated percentage of use by such proposed Additional Contracting Party of any portion of the then existing Interceptor System.

(c) It is further recognized and agreed that in the future the District may provide services of the Interceptor System to parties which are not Additional Contracting Parties, provided that all such services of the Interceptor System to parties which are not Additional Contracting Parties shall in all respects be subordinate to the prior rights of the Contracting Parties, and all contracts or other arrangements relating to such services shall recognize, and be made subordinate to, such prior rights.

Section 9. FISCAL PROVISIONS. (a) Subject to the terms and provisions of this Contract, the District will provide and pay for the cost of the acquisition and construction of all Interceptor System facilities, by using its best efforts to issue its Bonds in amounts which will be sufficient to accomplish such purposes, and the District will own and operate the Interceptor System. It is acknowledged and agreed that payments to be made under contracts with the Contracting Parties will be the basic source available to the District to provide the Annual Requirement, and that, in compliance with the District's duty to fix and from time to time revise the rates of compensation or charges for services of the Interceptor System rendered and made available by the District, the Annual Requirement will change from time to time, and that each



such Annual Requirement shall be allocated among the Contracting Parties as hereinafter provided, and that the Annual Requirement for each Annual Payment Period shall be provided for in each Annual Budget and shall at all times be not less than an amount sufficient to pay or provide for the payment of:

- (A) An "Operation and Maintenance Component" equal to the amount paid or payable for all Operation and Maintenance Expenses of the Interceptor System; and
- (B) A "Bond Service Component" equal to:
  - (1) the principal of, redemption premium, if any, and interest on, its Bonds, as such principal, redemption premium, if any, and interest become due, less interest to be paid out of Bond proceeds or from other sources if permitted by any Bond Resolution, and all amounts required to redeem any Bonds prior to maturity when and as provided in any Bond Resolution; and
  - (2) the proportionate amount of any special, contingency, or reserve funds required to be accumulated and maintained by the provisions of any Bond Resolution; and
  - (3) any amount in addition thereto sufficient to restore any deficiency in any of such funds required to be accumulated and maintained by the provisions of any Bond Resolution.

Section 10. ANNUAL BUDGET. Each Annual Budget for the Interceptor System shall always provide for amounts sufficient to pay the Annual Requirement. On or before July 1 of each fiscal year during the term of this Contract the District shall furnish to each Contracting Party a preliminary estimate of the Annual Payment required from each Contracting Party for the next

following Annual Payment Period. Not less than forty days before the commencement of each such Annual Payment Period under this Contract the District shall cause to be prepared as herein provided its preliminary budget for the Interceptor System for the next ensuing Annual Payment Period, which budget shall specifically include the Operation and Maintenance Component and the Bond Service Component. A copy of such preliminary budget shall be filed with each Contracting Party together with an estimated schedule of monthly payments to be made by each Contracting Party. The preliminary budget shall be subject to examination, at reasonable times during business hours, at the office of the City Secretary of each Contracting Party. If no protest or request for a hearing on such preliminary budget is presented to the District within thirty days after such filing of the preliminary budget by one or more Contracting Parties or by the owners of a minimum of 25% in principal amount of the Bonds then outstanding, the preliminary budget for the Interceptor System shall be considered for all purposes as the "Annual Budget" for the next ensuing Annual Payment Period. But if protest or request for a hearing is duly filed, it shall be the duty of the District to fix the date and time for a hearing on the preliminary budget, and to give not less than ten days notice thereof to the Contracting Parties. An appropriate Committee of the District shall consider the testimony and showings made in such hearing and shall report its findings to the Board of Directors of the District. The Board of Directors may adopt the preliminary budget or make such amendments thereof as to it may seem proper. The budget thus approved by the Board of Directors of the District shall be the Annual Budget for the next ensuing Annual Payment Period. The Annual Budget may be amended by the District at any time to transfer from one division thereof to another funds which will not be needed by such division. The amount for any division, or the amount for any purpose, in the Annual Budget may be increased through formal

action by the Board of Directors of the District even though such action might cause the total amount of the Annual Budget to be exceeded; provided that such action shall be taken only in the event of an emergency or special circumstances which shall be clearly stated in a resolution at the time such action is taken by the Board of Directors. Certified copies of the amended Annual Budget and resolution shall be filed immediately by the District with each Contracting Party.

Section 11. PAYMENTS BY CONTRACTING PARTIES. (a) For the Wastewater transportation services to be provided to the Contracting Parties under this Contract, each of the Contracting Parties agrees to pay, at the time and in the manner hereinafter provided, its proportionate share of the Annual Requirement, which shall be determined as herein described and shall constitute a Contracting Party's Annual Payment. Each of the Contracting Parties shall pay its part of the Annual Requirement for each Annual Payment Period directly to the District, in monthly installments, on or before the 10th day of each month, commencing the month following the month in which the District first makes Wastewater transportation services available to Prosper from the Interceptor System, in accordance with the schedule of payments furnished by the District, as hereinafter provided.

(b) For each Annual Payment Period each Contracting Party's proportionate share of the Annual Requirement shall be a percentage obtained by dividing the number of gallons of contributing flow of Wastewater estimated to be discharged into the District's Treatment System by such Contracting Party pursuant to the Treatment Contracts during such Annual Payment Period, as determined by the District after consultation with such Contracting Party, by the aggregate total number of gallons of contributing flow of Wastewater estimated to be discharged into the District's Treatment System by all Contracting Parties pursuant to the Treatment

Contracts during such period, as determined by the District after consultation with all of the Contracting Parties. All such payments for each Annual Payment Period shall be made in accordance with a written schedule of payments for the appropriate Annual Payment Period which will be supplied to each of the Contracting Parties by the District. At the close of each Annual Payment Period the District shall determine the actual metered number of gallons of contributing flow of Wastewater discharged into the District's Treatment System by each Contracting Party pursuant to the Treatment Contracts during said period and determine each Contracting Party's actual percentage of the Annual Requirement by dividing such Contracting Party's actual metered contributing flow into the Treatment System by the actual metered contributing flow of all Contracting Parties into the Treatment System. Each Contracting Party's Adjusted Annual Payment shall be calculated by multiplying each such Contracting Party's redetermined percentage times the actual Annual Requirement. The difference between the amounts which actually have been paid by each Contracting Party and the amounts actually due from such Contracting Party hereunder shall be applied as a credit or a debit to such Contracting Party's account with the District and shall be credited or debited to such Contracting Party's next monthly payment or payments, or as otherwise agreed between the District and the affected Contracting Party, provided that all such credits and debits shall be made in a timely manner not later than the end of the next following Annual Payment Period.

(c) Notwithstanding the provisions of (b), above, and as an exception thereto, it is agreed that if, during any Annual Payment Period, the estimated and/or actual metered contributing flow of Wastewater into the District's Treatment System of any Contracting Party pursuant to the Treatment Contracts is, for any reason whatsoever, less than the minimum amount hereinafter

prescribed and provided for it, such Contracting Party shall pay its share of each Annual Requirement as if its estimated and/or actual metered contributing flow of Wastewater into the District's Treatment System pursuant to the Treatment Contracts were such minimum amount. However, if such Contracting Party's estimated and/or actual metered contributing flow of Wastewater into the District's Treatment System is equal to or in excess of such minimum amount, its share of all of each Annual Requirement shall be calculated on the basis of estimated and actual contributing flow as provided in (b), above. All contracts with Additional Contracting Parties shall provide for equitable minimums similar to those provided for below. Such minimums shall be fixed in amounts as required by Section 8(b) hereof, as determined by the District, and also shall be at least sufficient, as determined by the District, to assure an initial annual payment by such Additional Contracting Party for not less than the amount of its estimated contributing flow of Wastewater into the District's Treatment System during the first year of service under such contract. For the purpose of calculating the minimum percentage of each Annual Requirement for which each Contracting Party is unconditionally liable, without offset or counterclaim (also see Section 14 hereof), the contributing flow of Wastewater into the District's Treatment System of each Contracting Party pursuant to the Treatment Contracts, during each Annual Payment Period, shall be deemed to be not less than the minimum amount (regardless of whether or not such amount was actually discharged into the District's Treatment System pursuant to the Treatment Contracts) specified for such Contracting Party as follows:

City of Allen:	1,810,000 gallons per day
City of McKinney:	2,000,000 gallons per day
City of Plano:	11,570,000 gallons per day
City of Richardson:	2,000,000 gallons per day

City of Frisco:	600,000 gallons per day
City of Princeton:	500,000 gallons per day
Town of Prosper	1,455,000 gallons per day

(d) Notwithstanding the foregoing, the Annual Requirement, and each Contracting Party's share thereof shall be redetermined, after consultation with each of the Contracting Parties, at any time during any Annual Payment Period, to the extent deemed necessary or advisable by the District, if:

- (i) The District commences furnishing services of the Interceptor System to an Additional Contracting Party or Parties;
- (ii) Unusual, extraordinary, or unexpected expenditures for Operation and Maintenance Expenses are required which are not provided for in the District's Annual Budget for the Interceptor System or in any Bond Resolution;
- (iii) Operation and Maintenance Expenses are substantially less than estimated;
- (iv) The District issues Bonds which require an increase in the Bond Service Component of the Annual Payment; or
- (v) The District receives either significantly more or significantly less revenues or other amounts than those anticipated.

(e) During each Annual Payment Period all revenues received by the District from providing services of the Interceptor System to parties which are not Contracting Parties, shall (i) first be credited to the Operation and Maintenance Component of the Annual Requirement, and (ii) then any remainder credited to the Bond Service Component of the Annual Requirement, with the result that such credits under (i) and (ii), respectively, shall reduce, to the extent of such

credits, the amounts of such Components, respectively, which otherwise would be payable by the Contracting Parties pursuant to the method prescribed in (b) and (c), above. The District may estimate all such credits which it expects to make during each Annual Payment Period in calculating each Annual Payment.

(f) Each Contracting Party hereby agrees that it will make payments to the District required by this Section on or before the 10th day of each month of each Annual Payment Period. If any Contracting Party at any time disputes the amount to be paid by it to the District, such complaining party shall nevertheless promptly make such payment or payments, but if it is subsequently determined by agreement or court decision that such disputed payments made by such complaining party should have been less, or more, the District shall promptly revise and reallocate the charges among all Contracting Parties in such manner that such complaining party will recover its overpayment or the District will recover the amount due it. All amounts due and owing to the District by each Contracting Party or due and owing to any Contracting Party by the District shall, if not paid when due, bear interest at the rate of ten (10) percent per annum from the date when due until paid. The District shall, to the extent permitted by law, discontinue the services of the Interceptor System to any Contracting Party which remains delinquent in any payments due hereunder for a period of sixty days, and shall not resume such services while such Contracting Party is so delinquent. It is further provided and agreed that if any Contracting Party should remain delinquent in any payments due hereunder for a period of one hundred twenty days, and if such delinquency continues during any period thereafter, such Contracting Party's minimum amount of gallons of Wastewater specified and described in (c), above, shall be deemed to have been zero gallons during all periods of such delinquency, for the purpose of calculating and

redetermining the percentage of each Annual Payment to be paid by the non-delinquent Contracting Parties, and the District shall redetermine such percentage on that basis in such event so that the non-delinquent Contracting Parties collectively shall be required to pay all of the Annual Requirement. However, the District shall pursue all legal remedies against any such delinquent Contracting Party to enforce and protect the rights of the District, the other Contracting Parties, and the owners of the Bonds, and such delinquent Contracting Party shall not be relieved of the liability to the District for the payment of all amounts which would have been due hereunder, in the absence of the next preceding sentence. It is understood that the foregoing provisions are for the benefit of the owners of the Bonds so as to insure that all of the Annual Requirement will be paid by the non-delinquent Contracting Parties during each Annual Payment Period regardless of the delinquency of a Contracting Party. If any amount due and owing by any Contracting Party to the District is placed with an attorney for collection, such Contracting Party shall pay to the District all attorneys fees, in addition to all other payments provided for herein, including interest.

(g) If, during any Annual Payment Period, any Contracting Party's Annual Payment is redetermined in any manner as provided or required in this Section, the District will promptly furnish such Contracting Party with an updated schedule of monthly payments reflecting such redetermination.

Section 12. SPECIAL PROVISIONS. (a) The District will continuously operate and maintain the Interceptor System in an efficient manner and in accordance with good business and engineering practices, and at reasonable cost and expense.



(b) The District agrees to carry fire, casualty, public liability, and other insurance on the Interceptor System for purposes and in amounts which ordinarily would be carried by a privately owned utility company owning and operating such facilities, except that the District shall not be required to carry liability insurance except to insure itself against risk of loss due to claims for which it can, in the opinion of the District's legal counsel, be liable under the Texas Tort Claims Act or any similar law or judicial decision. Such insurance will provide, to the extent feasible and practicable, for the restoration of damaged or destroyed properties and equipment, to minimize the interruption of the services of such facilities. All premiums for such insurance shall constitute an Operation and Maintenance Expense of the Interceptor System.

(c) It is estimated that the Interceptor System will be placed in operation as soon as practicable. It is expressly understood and agreed, however, that any obligations on the part of the District to acquire, construct, complete, and/or improve the Interceptor System and to provide the services of the Interceptor System to the Contracting Parties shall be (i) conditioned upon the District's ability to obtain all necessary permits, material, labor, and equipment, and upon the ability of the District to finance the cost of the Interceptor System through the actual sale of the District's Bonds and (ii) subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction.

(d) The District shall never have the right to demand payment by any Contracting Party of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes, and the obligations under this Contract shall never be construed to be a debt of such kind as to require any of the Contracting Parties to levy and collect a tax to discharge such obligation.

(e) Each of the Contracting Parties, respectively, has represented and covenanted or hereby represents and covenants that all payments, including indemnity payments, to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its combined waterworks and sewer system, as defined in Section 30.030, Texas Water code, as amended, and Section 1502.056, Texas Government Code (formerly, Vernon's Ann. Tex. Civ. St. Article 1113), and that all such payments will be made from the revenues of its combined waterworks and sewer system. Each of the Contracting Parties, respectively, has represented or determined or hereby represents and has determined that the services to be provided by the Interceptor System are absolutely necessary and essential to the present and future operation of its combined water and sewer system, and that the Interceptor System constitutes the reasonable and necessary method for transporting its Wastewater into the District's Treatment System, and, accordingly, all payments required by this Contract to be made by each Contracting Party shall constitute reasonable and necessary operating expenses of its combined water and sewer system as described above, with the effect that the obligation to make such payments from revenues of such combined water and sewer system shall have priority over any obligation to make any payments from such revenues of principal, interest, or otherwise, with respect to all bonds or other obligations heretofore or hereafter issued by such Contracting Party.

(f) Each of the Contracting Parties has agreed or hereby agrees throughout the term of this Contract to continuously operate and maintain its combined waterworks and sewer system and to fix and collect such rates and charges for water and sewer services and/or sewer services to be supplied by its combined waterworks and sewer system as aforesaid as will produce revenues in an amount equal to at least (i) all of the expenses of operation and maintenance expenses of such system, including specifically its payments under this Contract, and (ii) all other amounts as