

**COOPERATIVE PURCHASING AGREEMENT BETWEEN  
NORTH TEXAS MUNICIPAL WATER DISTRICT  
AND THE CITY OF PROSPER**

This Cooperative Purchasing Agreement (the "*Agreement*") is made and entered into by and between The City of Prosper (the "City"), and the North Texas Municipal Water District ("Entity"), a water control and improvement district created pursuant to Article 16, Section 59 of the Texas Constitution.

**WHEREAS**, Section 271.102 of the TEXAS LOCAL GOVERNMENT CODE authorizes a local government to participate in a Cooperative Purchasing Program with another local government or a local cooperative organization; and

**WHEREAS**, The Entity currently has a contract for Magnesium Hydroxide Treatment Implementation with Premier Magnesia, LLC ("Vendor"); and

**WHEREAS**, City has a need for the same or similar services and desires to enter into a Cooperative Purchasing Agreement with the City pursuant to Chapter 271 of the Tex. Loc. Gov't Code; and

**WHEREAS**, a local government that purchases goods and services pursuant to a Cooperative Purchasing Program with another local government satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and materials.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the sufficiency of which is hereby acknowledged by the Parties, the City and Entity have agreed to the terms and conditions set forth below.

**ARTICLE I**

**PURPOSE**

1.1 The purpose of this Agreement is to allow City to prepare, execute and administer its own contract with the Entity's Vendor for 20-102-P Magnesium Hydroxide Treatment Implementation as a Cooperative Purchasing Program.

**ARTICLE II**

**TERM**

2.1 . This Agreement may be terminated at any time by the City or Entity, with or without cause, upon thirty (30) days written notice to the other party.

**ARTICLE III**  
**DUTIES OF ENTITY**

3.1 City shall prepare, execute, and administer its own contract with Vendor and the Entity shall not be a party to the contract with the Vendor and City. City shall have no obligations for payment to Vendor for any services or goods incurred by any party other than the City. Entity shall have no obligations for payment to Vendor for any services or goods incurred by any party other than Entity. Any payments owed the Vendor for services or goods provided to City shall be paid by City directly to Vendor. Payments shall be made out of current revenues available to Entity. Any payments owed the Vendor for services or goods provided to the City shall be paid by the City directly to Vendor. Entity will be responsible for the Vendor's compliance with provisions relating to the quality of items provided to Entity and terms of delivery to Entity and any other terms or conditions of Entity's contract with Vendor. The City will be responsible for the Vendor's compliance with provisions relating to the quality of items provided to the City and terms of delivery to the City and any other terms or conditions of the City's contract with Vendor.

3.2 Entity designates the Entity's Purchasing Manager to act on behalf of Entity in all matters relating to the Entity's Cooperative Purchasing Program.

**ARTICLE IV**  
**GENERAL PROVISIONS**

4.1 The City and Entity hereby find and agree that the recitals set forth above are true and correct and form the basis upon which the Entity and the City have entered into this Agreement.

4.2 The City and Entity shall cooperate with one another in good faith and comply with all requests of the other Party as reasonably necessary to achieve full compliance with the intent of this Agreement.

4.3 This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations.

4.4 All payments required under this Agreement shall be made from current revenues available to the paying party.

4.5 The obligations of the Parties hereto are subject to final approval by the governing body or authorized representative of each, and upon request of the other Party, each Party will provide sufficient documentation to the other Party that this Agreement has been authorized by its respective governing body or authorized representative.

4.6 The Parties are each entering into this Agreement solely for the benefit of themselves and agree that nothing in this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than the Parties.

4.7 This Agreement may not be modified or amended except by an instrument in writing signed by authorized representatives of the Parties.

4.8 The terms of this Agreement shall be binding upon, and inure to, the benefit of each of the Parties and their successors and permitted assigns. However, no assignment of the rights and duties of a Party may be made to a non-governmental entity unless approved in writing by both Parties.

4.9 This Agreement may be executed by the Parties in any number of separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all such counterparts shall together constitute one and the same contract. If this Agreement is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Agreement to be executed.

4.10 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. Exclusive venue shall be in Collin County, Texas.

4.11 The headings of the Articles of this Agreement are included for convenience only and shall not be deemed to constitute a part of this Agreement.

4.12 The City and Entity agree and acknowledge that (i) this Agreement does not create a joint venture, partnership, or joint enterprise, and that neither Party is an agent of the other, and (ii) that this Agreement shall never be interpreted or construed to imply or otherwise create any such relationship between the Parties.

4.13 The failure of either Party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that Party's right to insist upon appropriate performance or to assert any such right on any future occasion.

4.14 It is expressly understood and agreed that, in the execution of the Agreement and contracts incidental hereto, neither the City nor Entity waive any immunity or defense that would otherwise be available to it against any claim arising from the Agreement, including the defense of governmental immunity.

4.15 This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Entity as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provisions of this Agreement.

4.16 No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement shall be interpreted fairly and reasonable, and neither more strongly for or against any Party, regardless of the actual drafter of this Agreement.

4.17 Each party does hereby agree to waive all claims against and release the other party and its respective officials, officers, agents, employees, in both their public and private capacities, from any and all liability, claims, suits, demands and losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement. Entity waives any claims it may have for damages against the City in the event that an early termination of the City's contract with Vendor causes an increase in generator repair costs to Entity.

## **ARTICLE V**

### **NOTICES**

5.1 Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with successful send confirmation, or by certified mail to the last business address as listed herein.

**City of Prosper:**

Purchasing Division  
Attn: Purchasing Manager  
City of Prosper  
P.O. Box 307  
Prosper, TX 75078  
Phone: (972) 569-1018  
[jcalhoun@prospertx.gov](mailto:jcalhoun@prospertx.gov)

**North Texas Municipal  
Water District:**

Attn: Jennafer P. Covington  
Executive Director/General Manager  
North Texas Municipal  
Water District  
501 E. Brown Street  
Wylie, Texas 75098  
Phone: 972-442-5405  
Fax: 972-295-6440  
[jcovington@ntmwd.com](mailto:jcovington@ntmwd.com)

**IN WITNESS WHEREOF**, The City and Entity, acting under authority of their respective authorized representatives, have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original, effective as of the Effective Date.

**NORTH TEXAS MUNICIPAL  
WATER DISTRICT**

**CITY OF PROSPER**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Jennafer P. Covington, Executive Director  
\_\_\_\_\_  
"BY" Printed Name and Title

\_\_\_\_\_  
"BY" Printed Name and Title

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Leann Bumpus, Executive Admin Assistant  
\_\_\_\_\_  
"ATTEST" Printed Name and Title

\_\_\_\_\_  
"ATTEST" Printed Name and Title