

**UPPER TRINITY REGIONAL WATER DISTRICT  
NORTHEAST REGIONAL WATER RECLAMATION SYSTEM**

**AMENDMENT TO  
PARTICIPATING MEMBER CONTRACT  
WITH  
TOWN OF PROSPER**

**THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §**

This **AMENDMENT** (the “Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between **UPPER TRINITY REGIONAL WATER DISTRICT** (“the District”), and **TOWN OF PROSPER** (“Prosper”), to amend the Northeast Regional Water Reclamation System Participating Member Contract dated December 4, 2007, as amended, (the “Contract”), which Contract provides for Prosper to participate in the District’s Doe Branch Water Reclamation Plant (“Doe Branch Plant”) of the Northeast Regional Water Reclamation System.

**WITNESSETH:**

**WHEREAS**, the District has constructed and is operating the Doe Branch Plant, the capacity of which is currently 4.0 MGD; and

**WHEREAS**, Prosper has subscribed to 1.0 MGD of capacity in the Doe Branch Plant; and

**WHEREAS**, a portion of the Doe Branch Plant capacity (0.250 MGD) from the prior Phase 2 expansion remains unsubscribed and is being held as Common-To-All capacity for future needs by one or more participants; and

**WHEREAS**, Prosper has requested that the District allocate a portion (0.125 MGD) of the remaining unsubscribed Common-To-All capacity to Prosper; and

**WHEREAS**, continued growth within Prosper’s service area is causing an increase in its wastewater flow to the Doe Branch Plant and is creating a need for additional wastewater treatment service; and

**WHEREAS**, to accommodate an expected increase in Wastewater flow and to provide additional capacity desired by Prosper and other participants in the Doe Branch Plant, the District is moving forward with plans to increase the treatment capacity of the Doe Branch Plant to 12.0 MGD, an additional 8.0 MGD; and

**WHEREAS**, the District is also planning to construct a trunk main parallel to the existing Doe Branch Phase 1 trunk main from the Doe Branch Plant to Fishtrap Road to accommodate additional wastewater flow; and

**WHEREAS**, the expansion of the Doe Branch Plant treatment capacity by an additional 8.0 MGD and the construction of the parallel trunk main shall hereinafter collectively be referred to as the “Project”; and

**WHEREAS**, as part of the Project, Prosper has requested an additional 3.0 MGD of treatment capacity (a total of 4.125 MGD) to meet its future wastewater needs; and

**WHEREAS**, the City of Celina (“Celina”) is also expected to participate in the Project (Prosper and Celina shall hereinafter be referred to as the “Participants”); and

**WHEREAS**, funds for the Project are expected to be provided in part by the Participants and in part by issuance of Bonds by the District; and

**WHEREAS**, to timely meet the wastewater needs of the Participants in the future, the District will notify Prosper of the need to move forward with the design and construction of the next expansion when the twelve-month rolling average of the Doe Branch Plant flow reaches seventy-five percent (75%) of the then existing treatment capacity; and

**WHEREAS**, both parties desire to amend the Contract to increase Prosper’s capacity in the Doe Branch Plant and to enable the design, funding and construction of the Project according to the provisions of the Contract and this Amendment.

**NOW, THEREFORE**, the District and Prosper, in consideration of the terms, conditions and covenants contained in this Amendment, agree as follows:

**Section 1. Adoption of Preamble.** All the matters stated in the Preamble of this Amendment are true and correct and are hereby incorporated into the body of this Amendment as though fully set forth in their entirety herein.

**Section 2. Definitions.** Capitalized terms not otherwise defined herein shall have the same meanings as those set forth in the Contract.

**Section 3. Increase in Subscribed Capacity.** Exhibit B of the Contract is hereby amended to increase Prosper’s subscribed capacity in the Doe Branch Plant from 1.0 MGD to 4.125 MGD (an additional 3.125 MGD of capacity).

**Section 4. Remaining Phase 2 Common-To-All Capacity.** Prosper desires to subscribe to 0.125 MGD of the Common-To-All Capacity remaining from the Doe Branch Plant Phase 2 expansion. The District issued its Bonds to pay the capital costs associated with said Common-To-All Capacity. For the additional Common-To-All Capacity being subscribed to herein, Prosper shall be responsible for paying, as of October 1, 2023, the annual debt service payment for the additional capacity as part of its Annual Requirement.

**Section 5. Project Construction.**

A. The District intends to pursue the construction of the Project in accordance with a construction manager at risk procurement process, as provided in Subchapter F of Chapter 2267 of the Texas Government Code. Based on such procurement process, the District expects to enter into a contract for guaranteed maximum price for the construction of the Project, subject to potential changes in the scope of the construction that may be determined by the District to be required for construction of the Project. A preliminary estimate of the Project costs is attached hereto as Exhibit A. The final Project costs will be determined based on bids obtained pursuant to Chapter 2267 of the Texas Government Code. To the extent practicable, the District, at least 30 days prior to approval of any Change Orders, shall provide to Prosper such Change Orders which would increase costs above the guaranteed maximum price of the construction contract for the Project.

- B To the extent allowed by law, the District and its successors and assigns shall indemnify and hold harmless Prosper, Its officials, employees, officers, representatives and agents (each an "Indemnified Party"), from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put: (i) by reason of, the negligent design, engineering, and/or construction by the District or any architect, engineer, or contractor hired by the District of any of the Project; (ii) the District's nonpayment under contracts between the District and its consultants, engineers, advisors, contractors, subcontractors and suppliers in the provision and/or construction of the Project; (iii) any claims of persons employed by the District or its agents to construct the Project; or (iv) any claims and suits of third parties, including but not limited to District's respective partners, officers, directors, employees, representatives, agents, successors, assignees, vendors, grantees, and/or trustees, regarding or related to the Project or any agreement or responsibility regarding the Project, including claims and causes of action which may arise out of the partial negligence of an Indemnified Party (the "Claims"). Notwithstanding the foregoing, no indemnification is given hereunder for any action, damage, claim, loss or expense determined by a court of competent jurisdiction to be directly attributable to the willful misconduct or sole negligence of any Indemnified Party. District is expressly required to defend City against all such Claims, and Town is required to reasonably cooperate and assist District in providing such defense. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set.
- C. When the twelve-month rolling average of the Doe Branch Plant flow reaches seventy-five percent (75%) of the 12.0 MGD treatment capacity, the District will notify the Participants in writing of the need to move forward with design and construction of the next expansion. Upon receipt of notice from the District, Prosper will review its current and future wastewater needs; and, will subscribe to additional capacity it will need within one hundred eighty (180) days of receipt of said notice.

#### **Section 6. Project Capital Costs.**

In general, the capital cost for the Project shall be allocated amongst the Participants according to their respective subscribed capacities and use, and in conformance with the Contract, as amended. Funding for the Project is expected to be provided in part by the Participants and in part by the issuance of District bonds. Upon request by Prosper, the District shall make available all bids, contracts, receipts, invoices, and such other records Prosper may deem necessary to verify the Project costs. Plans, specifications, and contract documents for the Project shall clearly identify and itemize all facilities to be constructed to allow the associated costs, expenses, and fees to be reasonably estimated and determined. The District shall comply with any and all laws for the design, construction, and procurement of services for the Project.

- A. Prosper has elected to provide up-front funds, including \$6,102,367.26 of federal American Rescue Plan Act funding, for its share of the Project; and, shall deliver said funds in accordance with the mutually agreed schedule established in Exhibit B attached hereto. If Prosper does not deposit the required funds in accordance with the attached schedule, the District may proceed with issuing its Bonds to cover the Town's share of Project costs. Should the District be required to issue its Bonds, Prosper agrees to pay as part of its Annual Requirement a pro rata share of the annual debt service payments and other costs (both fixed and variable costs) associated with the Project. The District

will use its best efforts to issue its Bonds and to arrange for other financing as necessary to provide for the capital costs to design, construct and manage the Project. In the unlikely event that the District is unable to issue its Bonds or to arrange alternative financing in sufficient amount to finance the entire cost of the Project, it is mutually agreed that Prosper will deposit the remaining funds (if any) required by Prosper's share of the proposed Project.

- B. Upon completion of construction and when the Project is in operation, the District will prepare and provide Prosper with an accounting of all applicable Project costs and will conduct a settle-up for said costs. Any excess funds deposited will be reimbursed on a pro rata basis to those Participants who deposited said funds with the District. If there is a shortfall, Prosper agrees to promptly pay its pro rata share or to be otherwise responsible for said costs upon notice by the District.
- C. A portion of the capacity made available in the Project may be unsubscribed by the Participants, such excess capacity will be considered Common-To-All capacity to be shared on a pro rata basis by the Participants. The District may issue Bonds or other financial assistance to pay the capital costs associated with the Common-To-All capacity, if any. The Participants, including Prosper, shall be responsible for paying a pro rata share of the annual debt service payments and other appropriate costs for the Common-To-All capacity according to their respective contracts and in proportion to their respective subscribed capacities. A settle-up of capacity and costs will be made (accordingly, with reimbursement or credit as warranted and appropriate) when any potentially benefitting party desires to subscribe to any of the Common-To-All capacity in the future.
- D. The Parties agree that Prosper has not created a sinking fund for the costs set forth in this Agreement, and therefore, all payments in fiscal years after the fiscal year in which this Amendment is executed, are subject to appropriation in Prosper's budget for such costs.

**Section 7. Contract Provisions.** All other provisions of the Contract shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto acting under authority of their respective governing bodies have caused this Amendment to be fully executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written, which is the Effective Date of this Amendment.

**UPPER TRINITY REGIONAL WATER DISTRICT**

By: \_\_\_\_\_  
Clay M. Riggs, President, Board of Directors

**ATTEST:**

\_\_\_\_\_  
Allen L. McCracken, II, Secretary, Board of Directors

(DISTRICT SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Matthew Boyle, Counsel for the District

**TOWN OF PROSPER**

By: \_\_\_\_\_  
Mario Canizares, Town Manager

**ATTEST:**

\_\_\_\_\_  
Michelle Lewis Sirianni, City Secretary

(TOWN SEAL)

**EXHIBIT A**

**Preliminary Project Cost Estimates**

**Doe Branch Plant Expansion (to 12 MGD)\***

Design	\$10,394,898
Construction	\$186,446,408
Project Management	<u>\$13,051,248</u>
Total	\$209,892,554

**Parallel Doe Branch Phase 1 Trunk Main\***

Design	\$1,115,655
Construction	\$29,300,000
Project Management	<u>\$2,051,000</u>
Total	\$32,506,655

\* These are preliminary Project cost estimates. Final costs will be determined based on bids obtained pursuant to Chapter 2267 of the Texas Government Code. Upon completion of construction and when the Project is in operation, the District will prepare and provide an accounting of all applicable Project costs and will conduct a settle-up of said costs.

**EXHIBIT B**  
**Funding Schedule**

In accordance with Section 6 (A) of this Amendment, the Town of Prosper agrees to deposit its share of Project costs according to the schedule below.

<b><u>DATE (no later than)</u></b>	<b><u>AMOUNT</u></b>
March 1, 2024	\$6,102,367.26
November 1, 2024	\$31,250,000
November 1, 2025	\$31,250,000

The remaining estimated balance of \$52,597,237.24 will be reimbursed over subsequent years based on final project costs.