

AGENDA ITEM 27

Consider approving Electronic Payment Agreement between Williamson County and Frost National Bank for the County Clerk's Office for LegalEase.

Moved: **Commissioner Boatright**

Seconded: **Judge Doerfler**

Motion: To approve an electronic payment agreement between Williamson County and Frost National Bank for the County Clerk's Office for LegalEase.

Vote: 3 – 0. **Commissioner Hays was absent from the dais.**

< Attachment >

ELECTRONIC PAYMENT AGREEMENT
BETWEEN Williamson County AND FROST NATIONAL BANK

This Electronic Payment Agreement ("Agreement") is made this 17th day of September, 2002, by and between WILLIAMSON COUNTY, TEXAS a political subdivision of the State of Texas, (hereinafter sometimes referred to as "Agency"), and Frost National Bank, 100 West Houston Street, San Antonio, Texas 78296 (hereinafter sometimes referred to as "Bank").

WITNESSETH

WHEREAS, the Agency has the authority to collect certain fees for services provided through the office of the County Clerk of Williamson County (hereinafter sometimes referred to as the "Agency Clerk") as set forth in TEX. LOC. GOV'T CODE ANN., Chapter 118, Subchapter B, and other statutes; and

WHEREAS, the Agency and the Bank share the common goal of increasing the speed and ease of the collection of such fees generated by services provided by the Agency Clerk; and

WHEREAS, LegalEase is a product of the Bank operated under an exclusive license of U. S. patent #4,725,719, whereby a person or entity can authorize direct electronic payment to the Agency for services rendered by the Agency; and

WHEREAS, the Agency wishes to provide services through the Agency Clerk via telephone, mail, and/or facsimile and at convenient walk-in locations;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 DEFINITIONS

1.1 "ACH Electronic Funds Transfer" means the electronic movement of funds through the Automated Clearing House systems operated by the Federal Reserve and participating banks from one financial institution to another.

1.2 "Customer" means the person or entity who has entered into a LegalEase agreement with the Bank and has established a demand deposit account with the Bank specifically for purchasing services through the LegalEase system. Each Customer is assigned a unique customer number by the Bank ("Customer Number").

1.3 "Business Day" means a day on which the Bank is open to the public for carrying on substantially all of its banking functions but not including Saturdays, Sundays and Bank holidays.

1.4 "Agency Clerk" means Nancy E. Rister, the County Clerk of Williamson County, Texas, or [his/her] successor in office or authorized representative.

- 1.5 "Depository Bank" means the bank with which the Agency has its depository relationship.
- 1.6 "Designated Account" means an account with the Depository Bank, the number of which shall be provided by the Agency and/or Agency Clerk to the Bank.
- 1.7 "Guaranteed Transaction" means a LegalEase transaction that (i) has been assigned a sixteen (16) digit approval code ("Approval Code") by the LegalEase system via the Network when it is operational, or (ii) a LegalEase transaction wherein the Agency Clerk has called the Bank and verified the validity of the Customer's LegalEase Customer Number and Access Number and has confirmed funds availability when the Network is not operational.
- 1.8 "LegalEase Access Numbers" means the specific use and unique access numbers issued by the Bank to a Customer. These numbers are issued by the Bank to a Customer who has established a demand deposit account at the Bank for the purpose of purchasing Agency Clerk Services. All Access Numbers are inclusive of the Customer Number of the Customer to whom they are assigned. When an Access Number is provided to the Agency by the Customer to purchase Services, and the Agency presents such numbers to the Bank with other required purchase information, the Customer is authorizing the Bank to electronically withdraw funds from the Customer's LegalEase account and credit the Agency's Designated Account.
- 1.9 "Network" means the Internet based system through which the electronic authorization and settlement capture of LegalEase transactions is accomplished.
- 1.10 "POS Device" means the hardware and/or software through which electronic authorization, capture and settlement of LegalEase transactions is accomplished.
- 1.11 "Processing Day" means the next Business Day following the Transaction Day. If a sale occurs on a Saturday, a Sunday or a bank holiday, the Processing Day shall be the next Business Day immediately following that Saturday, Sunday or bank holiday.
- 1.12 "Service" means any service authorized by the Agency as provided by the County Clerk of Williamson County, Texas.
- 1.13 "Service Office" means the location receiving a request for a Service and accepting payment for that Service. Each such Service Office shall be designated and approved by the Agency and/or Agency Clerk.
- 1.14 "Settlement Day" means the day the Bank shall credit funds for Guaranteed Transactions to the Agency's Designated Account.
- 1.15 "Transaction Day" means the calendar day on which the Service is purchased.
- 1.16 "Vendor" means a third party vendor, contracted by the Bank, which provides electronic authorization, capture, and settlement services. The Vendor is hereby declared to be the Bank's agent for all purposes of this Agreement and all duties set forth herein. The Bank's ability to provide the LegalEase services depends on its ability to use Vendors. The Agency

acknowledges and agrees that Vendors may be used to provide the LegalEase services discussed hereunder.

2.0 COSTS TO BE BORNE BY BANK

2.1 In order to accomplish the LegalEase services contemplated in this Agreement, the Bank shall provide the Agency Clerk with access to the Network as the Agency Clerk and the Bank determine are required to enable the Agency Clerk to obtain electronic authorization and settlement capture of transactions. The Bank assumes responsibility for all costs and expenses related to the maintenance and enhancement of the Network. The Bank will provide all necessary training for Agency Clerk personnel at the Bank's expense.

3.0 AGENCY CLERK SETTLEMENT ACCOUNT

3.1 The Agency Clerk shall designate to the Bank, prior to the implementation of LegalEase services, the account number of the Designated Account to which all proceeds due the Agency for Services provided herein under will be credited. The Bank shall transfer the proceeds due the Agency for Guaranteed Transactions to the Designated Account at such times as provided in Section 4.3 below. There shall be no charge by the Bank to the Agency for the transfer of the proceeds. The Agency Clerk may change the bank and account number designated to which the proceeds due the Agency are credited by giving the Bank thirty (30) days written notice. In the event that the Agency Clerk determines that there has been an overpayment by the Bank to the Designated Account, the Agency will issue repayment to the Bank in that amount pursuant to the provisions of Section 8.2 below.

3.2 Repayments by the Agency to the Bank resulting from overpayments by the Bank to the Agency shall be made from available current revenue funds.

4.0 PROCESSING PROCEDURES

4.1 The Agency Clerk shall obtain the LegalEase Access Number from the Customer and shall enter this number and the necessary purchase information into the Network. Additionally, if the Customer has assigned a "client number" and/or "case number" for tracking purposes to the proposed transaction, the Agency will obtain this information from the Customer and enter such information along with other necessary purchase information. The Bank will verify the validity of the Access Number, and the availability of funds in the Customer's LegalEase account with the Bank. If the transaction is approved, the Bank will issue to the Agency an Approval Code, deem the transaction a Guaranteed Transaction and transaction information will be captured for settlement. If the transaction is not authorized (declined) and therefore not a Guaranteed Transaction, the Bank will so notify the Agency. The Bank will not guarantee the funds related to the sale of Services by the Agency for transactions that are not guaranteed by the Bank. Such transactions will not be captured for settlement, and any Services rendered will not be made subject to the terms of this Agreement. The Bank has no liability for payment in the event the Agency renders Services for transactions that are not Guaranteed Transactions as provided for herein.

4.2 The Bank will use commercially reasonable efforts to ensure the Network is available to

the Agency Clerk for processing transactions during the hours of 8:00 a.m. to 5:00 p.m. on all Business Days. In the event the Network is not operational during these hours the Bank will provide telephone authorization for the transactions as follows:

- a. The Agency Clerk shall obtain authorization for LegalEase transactions by calling the Bank to verify the Customer account has sufficient funds to cover the sale, and that the Customer Number and Access Number are authorized for use;
- b. If the LegalEase transaction is authorized, the Guaranteed Transaction will then be memorialized on a mutually agreed upon worksheet, including the notation of the Approval Code for the Guaranteed Transaction which shall be given to the Agency Clerk by the Bank at the time of the telephone authorization; and,
- c. Within a reasonable period of time after the Network subsequently becomes operational then those transaction(s) for which the Agency Clerk received telephone authorizations will be entered into the Network by the Agency Clerk on a "post authorization" basis.

4.3 On the first Business Day following the applicable Processing Day, the Bank will credit the Agency's Designated Account, by ACH Electronic Funds Transfer, with the total amount of LegalEase Guaranteed Transactions for each Transaction Day.

4.4 The Bank will issue to the Agency a unique merchant number (the "Merchant Number") that will identify the input terminal assigned to the Agency. Furthermore, the Bank will issue individual user numbers (the "User IDs") and six (6) digit passwords ("Passwords") to each person authorized by the Agency to access the Agency's LegalEase account information online. Each user authorized by the Agency will be required to enter the Merchant Number plus their User ID and Password to access the Agency's LegalEase information and enter LegalEase transactions online. At initial logon or anytime thereafter, authorized users can change their Password by selecting the "change password" option and following the instructions provided. The Agency's Merchant Number will be assigned upon execution of this Agreement, and mailed by regular mail to the Agency care of the Agency Clerk at the postal address provided hereon. Any individual User IDs and Passwords authorized by this Agreement or authorized pursuant to a writing by the Agency will be mailed by regular mail to the individual authorized for access by the Agency at the postal address provided to the Bank by the Agency. The Agency is responsible for providing these authorized users with the Merchant Number. The Agency agrees that any online LegalEase transaction initiated by use of the Merchant Number and an authorized individual's User ID will be subject to and governed by this Agreement.

4.5 THE AGENCY AGREES TO KEEP THE CUSTOMER NUMBERS AND ACCESS NUMBERS RECEIVED FROM CUSTOMERS, THE MERCHANT NUMBER, ALL USER IDS AND ANY ASSOCIATED PASSWORDS CONFIDENTIAL AND FOR USE ONLY AS PROVIDED FOR HEREIN. THE BANK STRONGLY RECOMMENDS THAT THE AGENCY DOES NOT DISCLOSE ANY SUCH NUMBERS, IDS OR PASSWORDS TO ANY THIRD PARTIES NOT AUTHORIZED TO USE THE LEGALEASE SERVICE AS PROVIDED FOR HEREUNDER.

5.0 REPORTS

5.1 On or before 9:00 a.m. of the first Business Day following each Processing Day, the Bank agrees to make available through the Network, a report or data file listing all Guaranteed Transactions occurring the prior Processing Day. In the event the Network is not operational, the Bank agrees to deliver such report or data file to:

Nancy E. Rister
Williamson County Clerk

6.0 LegalEase ACCOUNT RELATIONSHIP

6.1 The Bank releases the Agency and the Agency Clerk from any and all liability resulting from the Bank's contract with Customer(s) and acknowledges that any and all fees related to LegalEase accounts and the use of LegalEase services will be paid by the Customer(s) or the Bank, unless the Bank and the Agency expressly agree otherwise.

7.0 RISK OF LOSS

7.1 The approval of transactions, including the approval of transactions processed while the Network is down, acts as a material inducement for the Agency Clerk to render Services in the manner described in this Agreement. The Bank hereby acknowledges that the Agency and the Agency Clerk rely totally on the authorization information as provided for hereunder in rendering Services. Except to the extent of the Agency's negligence or willful misconduct, the Bank shall bear the risk of loss and shall assume collection responsibilities for all Guaranteed Transactions. Without modifying the risk of loss allocations set out above, the Agency will cooperate with the Bank in preventing the unauthorized use of LegalEase Customer Numbers and Access Numbers. The Agency will also assist in the investigation of such unauthorized use by sharing relevant transaction information regarding Services rendered to the extent allowed by law.

8.0 ADJUSTING ENTRIES

8.1 When the Agency receives notification of an adjustment from a Customer, the Agency agrees to verify said adjustment with such Customer. The Bank agrees to cooperate with Agency in such verification.

8.2 If an adjustment is determined to be valid by the Agency and the Bank, a worksheet will be provided to the Bank by the Agency showing the adjustment required. In the event the adjustment results in the Agency being credited additional funds, the Bank will credit funds, as stated in the worksheet, to the Agency's Designated Account no later than two (2) Business Days following the day the Agency notifies the Bank of its verification of the adjustment. In the event the Agency has received credit for money in an amount more than the actual amount due for the Services, upon approval of said adjustment amount by the Agency, the Agency will make payment to the Bank within fifteen (15) Business Days following the date of its approval of said adjustment amount.

9.0 INDEMNIFICATION; LIMITATION OF LIABILITY

9.1 The Bank agrees to indemnify, defend and hold the Agency and/or the Agency Clerk, and their agents and employees, harmless from any action arising or any losses suffered as a result of the Bank's gross negligence or willful misconduct in providing services under this Agreement. The Agency agrees to not hold the Bank liable for consequential, incidental, special, indirect or punitive damages .

10.0 NOTICES

10.1 All notices required or permitted to be given under this Agreement by one party to the other shall be in writing and shall be given and shall be deemed to have been given immediately if delivered in person to the address set forth in this Section 10.1 for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address specified as follows:

FOR THE AGENCY: Williamson County Clerk
 710 So. Main, Ste.101
 Georgetown, Texas 78626
 Attn: Nancy E. Rister

FOR THE BANK: Frost National Bank - San Antonio
 100 West Houston Street
 San Antonio, Texas 78205
 Attn: Tom Frost III

For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following addresses:

Nancy E. Rister
Williamson County Clerk
710 So. Main St., Ste.101
Georgetown, Texas 78626

10.2 **Change of Address.** The aforesaid addresses may be changed upon giving written notice of said change as provided herein.

11.0 CONTRACT PERIOD

11.1 **Initial Term.** The term of this Agreement is for a period of twenty-four (24) months, commencing on _____ 2002 and terminating on _____ 2004 ("Initial Term").

11.2 **Renewal Term.** At the end of the Initial Term and provided this Agreement has not been terminated as provided for herein, this Agreement shall be automatically extended and renewed on a yearly basis (each one (1) year period a "Renewal Term") unless written notice is received by either party at least sixty (60) days prior to the expiration of the Initial Term or Renewal Term as applicable.

11.3 **Termination.** This Agreement may be terminated by either party, without cause, by giving the other party sixty (60) days written notice as such notice is provided for in Section 10.1.

12.0 ASSIGNMENT

12.1 This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and assigns.

13.0 RETENTION, ACCESSIBILITY AND AUDIT OF RECORDS

13.1 **Bank Retention.** The Bank shall maintain all operational and fiscal records and documentation for all expenditures pertaining to this Agreement in a readily available state and location until an audit in conformance with generally accepted accounting principals and procedures for governmental organizations is completed and all questions arising from it are resolved satisfactorily, or for three (3) years from the transaction date, whichever occurs later.

13.2 **Agency Access.** The Bank shall give the Agency, and/or Agency Clerk, and their duly authorized representatives, access to and the right to examine all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by the Bank pertaining to this Agreement at reasonable times and for reasonable periods. These rights to access shall continue as long as these records are retained by the Bank.

13.3 **Agency Retention.** The Agency shall maintain all operational and fiscal records and documentation for all expenditures pertaining to this Agreement in a readily available state and location until an audit in conformance with generally accepted accounting principals and procedures for governmental organizations is completed and all questions arising from it are resolved satisfactorily, or for three (3) years from the transaction date, whichever occurs first.

13.4 **Bank Access.** The Agency shall give the Bank, or its duly authorized representatives, access to and the right to examine all books, records, accounts, reports, files, and other papers, things or property belonging to or in use by the Agency pertaining to this Agreement to the extent allowed by law at reasonable times and for reasonable periods. These rights to access shall continue as long as these records are retained by the Agency.

14.0 MISCELLANEOUS PROVISIONS

14.1 **Entire Agreement.** This Agreement contains the entire understanding of all parties and supersedes any and all previous discussions, proposals, or agreements, if any, between all parties with respect to the subject matter hereof. There shall be no amendment or modification of this Agreement except in writing signed by the parties hereto.

14.2 **Applicable Law.** This Agreement shall be construed pursuant to the laws of the State of Texas and all obligations hereunder are performable in Williamson County, Texas.

14.3 **Open Records Act.** To the extent, if any, that any provision in the Agreement is in conflict with TEX. GOV'T. CODE ANN., Chapter 552 ("Open Records Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that the Agency, its

officers and employees may request advice, decisions, and opinions of the Attorney General of the State of Texas in regard to the application of the Open Records Act to any software, or any part thereof, or other items or data furnished to the Agency and/or whether or not the same are available to the public. It is further understood that the Agency, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that the Agency, its officers and employees shall have no liability or obligations for the disclosure to the public of any software, or a part thereof, or other items or data furnished to the Agency in reliance on any advice, decision or opinion of the Attorney General of the State of Texas.

14.4 Non-Waiver. Any act of forbearance by either party to enforce any provision of this Agreement shall not be construed as a waiver or relinquishment by that party of any right granted herein or of the future performance of such term, covenant or condition.

14.5 Reservation of Rights and Remedies. All rights of both parties under this Agreement are specifically reserved, except as stated in Section 9.0, or where otherwise explicitly waived. Any payment, act or omission by a party shall not impair or prejudice any remedy or right of that party under this Agreement. Any right or remedy stated in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement, at law or at equity, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

14.6 Continued Liability. Notwithstanding any exercise by the Agency of its right of termination, the Bank shall not be relieved of any liability to the Agency for damages due to the Agency by virtue of any breach of this Agreement by the Bank. Agency may withhold payments owed to the Bank under Section 8.2 until the exact amount of damages due the Agency from the Bank is agreed upon or is otherwise determined.

14.7 Compliance with Laws. The Bank and the Agency shall comply with the Constitution of the United States and the State of Texas and all federal, state, Agency and city laws, rules, orders, ordinances and regulations applicable to performance of this Agreement.

14.8 Non-Discrimination. The Bank and the Agency shall provide all services and activities under this Agreement in compliance with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933]. The parties shall not discriminate against any employee, applicant for employment, or eligible recipient of services based on race, religion, color, sex, national origin, age or handicapped condition.

15.0 SEVERABILITY

15.1 If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of the Agreement shall be construed as if that portion were not included in the Agreement and shall remain valid and binding.

16.0 INTERPRETATIONAL GUIDELINES

16.1 Computation of Time. If the last day of any period falls on a Saturday, Sunday or a day

that either the Agency or the Bank has declared a holiday for its employees, these days shall be omitted from the computation.

16.2 Number and Gender. Words of any gender in this Agreement shall be construed to include any other gender and words in the singular shall be construed to include the plural unless the context in the Agreement clearly requires otherwise.

16.3 Headings. The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Agreement.

17.0 LEGAL AUTHORITY

17.1 Bank Signers. The person or persons signing this Agreement on behalf of the Bank, or representing themselves as signing this Agreement on behalf of the Bank, do hereby warrant and guarantee that he, she or they have been duly authorized by the Bank to sign this Agreement on behalf of the Bank and to bind the Bank validly and legally to all terms, performances, and provisions in this Agreement.

17.2 Agency Signers. The person or persons signing this Agreement on behalf of the Agency, or representing themselves as signing this Agreement on behalf of the Agency, do hereby warrant and guarantee that he, she or they have been duly authorized by the Agency to sign this Agreement on behalf of the Agency and to bind the Agency validly and legally to all terms, performances, and provisions in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on the date written above.

WILLIAMSON COUNTY, TEXAS

 9-17-02

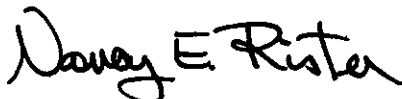
John C. Doerfler
Williamson County Judge

FROST NATIONAL BANK




Tom Frost III
Senior Executive Vice President

ATTEST:




Nancy E. Rister
Williamson County Clerk

APPROVED:


Nancy E. Rister
Williamson County Clerk

APPROVED AS TO FINANCIAL CONTENT:


David Flores
Williamson County Auditor

AGENDA ITEM 28

Consider approval of additional surveying services for Parmer Lane Extension.

Moved: **Judge Doerfler**

Seconded: **Commissioner Limmer**

Motion: To approve additional surveying services agreement with Diamond Surveying for the Parmer Lane Extension, not to exceed \$13,682.50.

Vote: **2 – 1 - 1. Commissioner Boatright voted against the motion. Commissioner Hays was absent from the dais.**

< Attachment >



Shane Shafer, R.P.L.S.
1915 S. Austin Ave., Suite 111
Georgetown, TX 78626

Office Phone 931-3100 Fax: 930-5391

PROPOSAL NO. WCRB-2002-3
September 3, 2002

Williamson County-
C/o Michael Weaver, Prime Strategies, Inc.
1508 S. Lamar Blvd.
Austin, Texas 78704

Re: Proposal for additional surveying services for Parmer Lane Extension Project.
Original Proposal No. 2000-7, dated March 29, 2000.

Dear Mr. Weaver:

In addition to the work already completed, the following additional services have been requested:

Scope of Services

1. Perform field and office work necessary to provide topographic and utility location information along the south side of S.H. 29 in area specified by TC & B for drainage study (see attached map).
Estimated Fee: \$1,860.00
2. Perform field and office work necessary to set stakes along the Proposed right-of way of Parcel No. 16 (Geneva Keith Tract) every twenty (20) feet along the curve for fence alignment. This item was requested by the landowner and approved by Sheets and Crossfield as part of the closing negotiations.
Estimated Fee: \$747.50
3. Perform field and office work necessary to revise Metes & Bounds description and Sketch for Parcel No. 133 (Burlson Tract), remove and reset appropriate survey monumentation defining the proposed right-of-way of Parmer Lane Extension. This item was requested by landowner and approved by Sheets and Crossfield as part of the closing negotiations.
Estimated Fee: \$675.00
4. Prepare Metes & Bounds description and Sketch for Parcel No. 53 (Tesch Tract) along C.R. 268. This item was requested by landowner and approved by Sheets and Crossfield as part of the closing negotiations.
Estimated Fee: \$225.00
5. Perform office and field work necessary to set stakes along proposed right-of-way of Parcel No. 103 (Sasser Tract) approximately every two-hundred (200) feet for fence alignment. This item was requested by landowner and approved by Sheets and Crossfield as part of the closing negotiations.
Estimated Fee: \$1,605.00
6. Perform office work necessary to revise Metes & Bounds description and Sketch for Parcel No. 142 (Phillip Joseph Tract), revised due to the elimination of drainage easement