

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

AGREEMENT FOR MANAGING BANK SERVICES

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Prosperity Bank (hereinafter "Vendor"), a Texas State Banking Association.

WITNESSETH

WHEREAS, County desires that Vendor provide Managing Bank and Lock Box depository services (hereinafter "Services") pursuant to RFP 14-052; and

WHEREAS, Vendor represents that it is qualified and desires to perform such Services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Vendor shall render Services to County as defined in the Specifications and Services Required for Section I — The Managing Bank and Scope of Services for Section IV — Lock Box for Tax Assessor/Collector Services shown in Vendor's response to RFP 14-052 (attached hereto as Exhibit A).

Section 2. Personnel

2.1 Vendor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Vendor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Vendor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Vendor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the Services shall, upon request of County, immediately be removed from association with the Services.

Section 3. Compensation and Payment

Interest Bearing Checking Accounts shall pay a Variable Interest Rate as shown on the "Prosperity Bank Managing Bank Worksheet" and, Vendor's fees shall be calculated at the rates set forth in the "Prosperity Bank Proposed Fee Schedule and Sample Billing" both included in the attached Exhibit A.

Section 4. Period of Contract

The contract is for the period of October 1, 2014 through September 30, 2018.

Section 5. Modifications and Waivers

5.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

5.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

5.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 6. Termination

6.1 Termination for Convenience

6.1.1 Either party may terminate this Agreement at any time upon thirty (30) days written notice.

6.2 Termination for Default

6.2.1 County may terminate the whole or any part of this Agreement for cause if Vendor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

6.2.2 If, after termination, it is determined for any reason whatsoever that Vendor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 6.1 above.

6.3 Upon termination of this Agreement, County shall compensate Vendor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County.

Vendor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

6.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Vendor.

Section 7. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Vendor as a part of its work under this Agreement other than internal banking documents, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Vendor shall promptly furnish all such data and material to County on request.

Section 8. Inspection of Books and Records

Vendor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Vendor directly pertaining to the Services provided to County for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 9. Insurance

9.1 Prior to commencement of the Services, Vendor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Vendor shall provide certified copies of insurance endorsements and/or policies if requested by County. Vendor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Vendor shall obtain such insurance written on an Occurrence form from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

9.1.1 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

9.1.2 Professional Liability insurance with limits not less than \$1,000,000.

9.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage. All Liability policies written on behalf of Vendor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

9.3 If required coverage is written on a claims-made basis, Vendor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

Section 10. Indemnity

10.1 VENDOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER OUT-OF-POCKET EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, DIRECTLY ARISING FROM ACTIVITIES OF VENDOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT DIRECTLY RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF VENDOR OR ANY OF VENDOR'S AGENTS, SERVANTS OR EMPLOYEES.

10.2 THE PARTIES AGREE THAT UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, COUNTY CANNOT ENTER INTO AN AGREEMENT WHEREBY COUNTY AGREES TO INDEMNIFY OR HOLD HARMLESS ANOTHER PARTY; THEREFORE, ALL REFERENCES OF ANY KIND TO COUNTY DEFENDING, INDEMNIFYING, HOLDING OR SAVING HARMLESS VENDOR FOR ANY REASON ARE HEREBY DELETED.

10.3 NOTWITHSTANDING THE FOREGOING OR ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, HOWEVER, VENDOR SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC, CONSEQUENTIAL DAMAGE, OR FOR LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF INFORMED OF THEIR POSSIBILITY.

Section 10A. Reimbursement

Notwithstanding Section 10 or anything else to the contrary in this Agreement, however, the County will reimburse Vendor for any costs or expenses incurred by Vendor that directly result from the negligent act, error, or omission of County or any of County's agents, servants, or employees.

Section 11. Confidential and Proprietary Information

11.1 Each party (the "Recipient") acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to the other party (the "Discloser"). Any and all information of any form obtained by the Recipient or its employees or agents from the Discloser in the performance of this Agreement shall be deemed to be confidential information of the Discloser ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by the Recipient shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Recipient) publicly known or is contained in a publicly available document; (b) is rightfully in Recipient's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Recipient who can be shown to have had no access to the Confidential Information.

11.2 Recipient agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Recipient uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of Recipient's duties and obligations hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Recipient shall use its best efforts to assist Discloser in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Recipient shall advise Discloser immediately in the event Recipient learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Recipient will at its expense cooperate with Discloser in seeking injunctive or other equitable relief in the name of Discloser or Recipient against any such person. Recipient agrees that, except as directed by Discloser, Recipient will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at Discloser's request, Recipient will promptly turn over to Discloser all documents, papers, and other matter in Recipient's possession which embody Confidential Information.

11.3 Recipient acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to Discloser that is inadequately compensable in damages. Accordingly, Discloser may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Recipient acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Discloser and are reasonable in scope and content.

11.4 Discloser in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

11.5 Vendor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential

information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 12. Independent Contractor

12.1 In the performance of work or services hereunder, Vendor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Vendor or, where permitted, of its subcontractors.

12.2 Vendor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 13. Notices

13.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

13.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
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With a copy to:	Fort Bend County Purchasing Department Attn: Purchasing Agent 301 Jackson Street Richmond, Texas 77469
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Vendor:

Prosperity Bank
Attn: John Rebeles, Jr.
14060 Southwest Freeway
Sugar Land, Texas 77478

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Each party shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations.

Section 16. Performance Representation

Vendor represents to County that Vendor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Vendor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

Section 17. Assignment and Delegation

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 19. Successors and Assigns

County and Vendor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Vendor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Arbitration

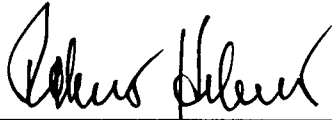
County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.

Section 25. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 1 day of October, 2014.

FORT BEND COUNTY



Robert E. Hebert, County Judge

9-23-2014

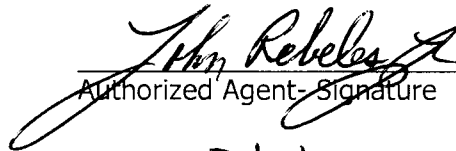
Date

ATTEST:



Dianne Wilson, County Clerk

PROSPERITY BANK



Authorized Agent- Signature

John Rebeles, Jr.

Authorized Agent- Printed Name

President, Sugar Land Banking Center

Title

9-23-14

Date

APPROVED:



Jeff Council, County Treasurer

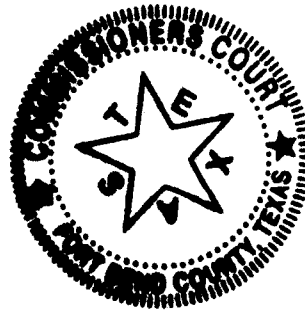


EXHIBIT A

**Not For
Public Distribution
Without
Prior Approval**

Memo

TO: Purchasing Department
FROM: County Judge's Office
DATE: September 25, 2014
SUBJECT: Commissioners Court Date September 23, 2014

Agenda Item 44D

Take all appropriate action on Agreement for Management Bank Services between Fort Bend County and Prosperity Bank, pursuant to RFP 14-052.

Exhibit A to the above agenda item is returned to your office. It will not be filed for recording by our office with the County Clerk. Please ensure that a permanent copy of this exhibit is available in your records in whatever manner you handle confidential documents in accordance with the State records retention schedule.

Thank you.

Copy: County Clerk's Office