

DEPOSITORY AGREEMENT

This Depository Agreement (the “Agreement”) is made and entered into this _____ day of _____, 2021 (the “Effective Date”) by and between the City of Pflugerville, Texas (the “Depositor”) and _____ (the “Bank”), a banking association licensed to conduct business in Texas.

1. **General.** All services rendered to the Depositor by the Bank under this Agreement shall be performed in accordance with commercially reasonable standards for public fund organizations and under the overall direction and instruction of the Depositor pursuant to the Bank’s standard operations, policies, and procedures.
2. **Scope of Services.** The Bank agrees to provide those services as requested from time to time by the Depositor and mutually agreed upon by the Bank.
3. **Custodian.** The Depositor and the Bank, by execution of this Agreement, hereby designate the _____ (the “Custodian”), to hold in trust, according to the terms and conditions of this Agreement, any marketable securities that may be described and pledged by the Bank in accordance with the provisions of this Agreement.
4. **Custodial Fees.** Any and all fees associated with the Custodian’s holding of collateral for the benefit of the Depositor will be paid by the Bank and the Depositor will have no liability therefore.
5. **Deposit Protection.** All funds on deposit with the Bank to the credit of the Depositor shall be secured as provided for in the Public Funds Investment Act (Chapter 2256 of the Texas Government Code as amended), Public Funds Collateral Act (Chapter 2257 of the Texas Government Code as amended), and the Depositor’s Investment Policy, a copy of which has been provided to the Bank. The Depositor agrees to promptly provide to the Bank any changes to its Investment Policy. The Depositor agrees that it shall only direct the Bank in writing to make investments authorized pursuant to the foregoing.

If marketable securities are pledged by the Bank as collateral, the total market value of the securities securing such deposits will be in an amount at least equal to the Depositor’s Investment Policy requirements for the amount of such deposits including the amount of any accrued interest thereon and less the amount that such deposits are insured by an agency or instrumentality of the United States government. The market value of any pledged securities (collateral) will be obtained from non-Bank-affiliated sources. The Bank will monitor and maintain the required collateral margins and levels at all times.

The Bank has heretofore, or will immediately hereafter, deliver to the Custodian collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of the Depositor deposited with the Bank. The Custodian will accept said collateral and hold the same in trust for the purpose herein stated. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by the Custodian in trust so long as deposits of the Depositor remain with the Bank. The Bank hereby grants a security interest in such collateral to the Depositor.

If the Bank shall desire to sell or otherwise dispose of any one or more of said securities so deposited with the Custodian, with the advance written approval of the Depositor, which approval shall not be unreasonably withheld, conditioned or delayed, the Bank may substitute for any one or more of such securities other securities of the same market value and of the character authorized herein. Such right of substitution shall remain in full force and may be exercised by the Bank as often as it may desire; provided, however, that the aggregate market value of all collateral pledged hereunder, shall be at least equal to the amount of collateral required hereunder. If at any time, the aggregate market value of such collateral so deposited with the Custodian be less than the total sum of the Depositor's funds on deposit with the Bank, the Bank shall immediately deposit with the Custodian such additional collateral as may be necessary to cause the market value of such collateral to equal the total amount of required collateral. The Bank shall be entitled to income on securities held by the Custodian, and the Custodian may dispose of such income as directed by the Bank without approval of the Depositor.

The Custodian shall promptly make available to the Depositor copies of safekeeping or trust receipts covering all such collateral held for the Bank, including substitute collateral and monthly statements as provided for herein.

If at any time the collateral in the hands of the Custodian shall have a market value in excess of the sum of balances due to the Depositor by the Bank, the Depositor may authorize the withdrawal of a specified amount of collateral, and the Custodian shall deliver this amount of collateral (and no more) to the Bank.

When the relationship of the Depositor and the Bank shall have ceased and when the Bank shall have properly paid out all deposits of the Depositor, it shall be the duty of the Depositor to promptly give the Custodian notice to that effect; whereupon the Custodian shall, with the approval of the Depositor, redeliver to the Bank all collateral then in its possession belonging to the Bank. An order in writing to the Custodian by the Depositor and a receipt for such collateral by the Bank shall be a full and final release of the Custodian of all duties and obligations undertaken by it by virtue of these presents.

If surety bonds or letters of credit are utilized, the Depositor shall agree as to the issuer and form of contract prior to pledge. The amount securing such deposits will be in an amount at least equal to the Depositor's Investment Policy requirements for the amount of such deposits including the amount of any accrued interest thereon and less the amount that such deposits are insured by an agency or instrumentality of the United States government. The termination or expiration of any direct-issue surety bond or letter of credit shall be a minimum of two (2) business days after the Depositor anticipates withdrawing the secured deposit.

Should the Bank fail at any time to pay and satisfy, when due, any check, draft, voucher, wire, or ACH transfer lawfully drawn against any deposit and the interest on such deposits or in any manner breach its contract with the Depositor, the Depositor shall give written notice of such failure or breach to the Bank, and the Bank shall have one (1) business day to cure such failure or breach. In the event the Bank shall fail to

cure such failure or breach within one (1) business day or should the Bank be declared insolvent by a Federal bank regulatory agency, it shall be the duty of the Custodian, upon demand of the Depositor, to surrender the above-described collateral to the Depositor; or it shall be the duty of the surety bond or letter of credit provider to perform under the terms of their respective contract.

Upon receipt of such collateral in accordance with the foregoing, the Depositor may sell all or any part of such collateral, or receive all or any part of a surety bond or letter of credit settlement, and out of the proceeds thereof, pay the Depositor all damages and losses sustained by it, together with all reasonable and documented expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, accounting to the Bank for the remainder, if any, of said proceeds or collateral remaining unsold.

Any sale of such collateral, or any part thereof, made by the Depositor hereunder may be either at public or private sale; provided, however, the Depositor shall give to both the Custodian and the Bank two (2) hours reasonable prior written notice of the time and place where such sale shall take place, and such sale shall occur within two (2) hours of such time and shall be to the highest bidder therefore for cash. The Depositor and the Bank shall have the right to bid at such sale.

6. **Term.** The Agreement may be terminated by either party with 30 days' notice of termination to the other party.
7. **Commencement.** The Bank agrees to begin performing the services as designated herein as soon as reasonably possible after the Effective Date.
8. **Termination Provisions Upon Bank's Default.** Should the Bank at any time, in the sole opinion of the Depositor, not carry out its obligations under this Agreement or not be progressing toward completion of the services to be rendered hereunder in an expeditious manner, or if the Bank shall fail in any manner or discharge any other material obligations under this Agreement, the Depositor may, upon providing the Bank with thirty (30) days prior written notice and opportunity to cure, terminate this Agreement effective on that date (the "Termination Date"). Any unreasonable or unacceptable delays in the deposit of funds owing to the Depositor shall constitute a material breach of contract and the basis for termination by the Depositor. If the Depositor shall terminate this Agreement for performance related reasons or other breach of contract, no fees of any type, other than fees due and payable at the time of termination for services performed, and acceptable to the Depositor, shall thereafter be paid to the Bank, and the Depositor shall have a right to set off or otherwise recover any damages incurred by reason of the Bank's breach.
9. **Compensation.** The Depositor and the Bank agree that any compensation for the performance of all duties and services, and interest and term on all deposits is set forth on the applicable fee schedule, disclosure, Certificate of Deposit or Time Deposit Agreement, and/or receipt. Except as otherwise provided in this Agreement, said compensation shall constitute full payment for all services, liaison, products, materials, and equipment required to provide the professional banking services, including services, materials, training, equipment, travel, overhead, and expenses.

10. **Other Agreements.** This Agreement is deemed to supplement and amend the Bank’s signature cards or other documents establishing deposit accounts, as well as any applicable terms, conditions, and or disclosures, or similar documents, as in effect from time to time, and other written agreements into which the Depositor and the Bank have entered or will enter separately from this Agreement (each a “Bank Agreement”). If there is any conflict between the provisions of this Agreement and a Bank Agreement, this Agreement shall govern. This Agreement supersedes any and all prior representations, statements, and agreements, whether written or oral.
11. **Authorized Representatives.** During the term of this Agreement, the Investment Officers, as defined from time to time by the Depositor’s Investment Policy and as designated in accordance with standard policies and procedures of the Bank, are authorized to represent and act on behalf of the Depositor in any and all matters of every kind arising under this Agreement and to (a) execute and deliver to the Bank an electronic fund or funds transfer agreement (and any addenda thereto), (b) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfers on behalf of the Depositor in accordance with the electronic fund or funds transfer agreement and addenda and (c) make withdrawals or transfers by written instrument.
12. **Governing Law and Venue.** This Agreement shall be interpreted under the laws of the State of Texas. Travis County, Texas, will be the venue for any lawsuit arising out of this Agreement.
13. **Notices.** Notices to the Depositor and the Bank shall be sent to the addresses set forth below:

Depositor: CITY OF PFLUGERVILLE, TEXAS
Attn: Melissa Moore
Finance Director
100 E. Main Street
Pflugerville, Texas 78660
512-990-6100
melissam@pflugervilletx.gov

Bank:
Attn:

Changes to notice information may be made by either party with written notification to the other party.

14. **Confidentiality.** Subject to Texas law, each party agrees to maintain the confidentiality of the information provided to the other party and not disclose such

information without the prior consent of the disclosing party unless such information was already in the public domain.

15. **Indemnification.** Subject to Texas law, each party agrees to indemnify and hold harmless the other party from any and all losses or liability arising out of the such party's violation of any federal, state or local laws.

Executed by the undersigned duly authorized officers of the parties hereto.

CITY OF PFLUGERVILLE, TEXAS

BANK

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

ATTEST

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____