

BANK DEPOSITORY AND COLLATERAL AGREEMENT

Most banks have their own bank/collateral agreements but the following is a sample which contains the key elements needed to assure that your public funds on deposit are under contractual control and remain safe. The key points for safety include:

- *an independent third-party custodian should be used, outside the holding company of the bank*
- *the inclusion of the custodian in the collateral agreement, if possible*
- *a margin amount (102%) which captures market price fluctuations*
- *the requirement that the bank is held responsible for monitoring and maintaining the collateral at the required margins daily*
- *the custodian is required to send a monthly report directly to the CITY*
- *the execution of the agreement under the terms of FIRREA¹*
- *your designation of authorized and acceptable collateral types*

Other factors are included here also to assure a safe and effective relationship.

It is critical that your RFP for services and the bank's response be made an exhibit to the contract so that all the conditions required and agreed to are made part of this final agreement.

If the bank chooses the Federal Reserve as its custodian, the Fed will not sign a collateral agreement. In this case the agreement will be with the bank only but there will be a "Circular 7 Pledge Agreement" form from the Federal Reserve for you to complete and a FedMail Form for messaging through e-mail. On the agreement be sure to (a) request "with prior approval" on substitution and (b) request the "three-party" option on transaction confirmations via em-mail.

The CITY of _____ hereinafter referred to as "CITY", through action of its governing body has selected _____, hereinafter referred to as "BANK", and designated BANK as a depository to receive time and/or demand deposits from the CITY. This BANK Depository and Collateral Agreement (the "Agreement") by and between CITY and BANK is made and entered into this ____ day of _____ 20__ for BANK services commencing _____, 20__.

Section I Designation as Depository

The CITY, through action of its governing body, hereby designates the BANK as its depository for banking services for a period commencing _____, 20__ and continuing through _____.

Section II Designation of Custodian

¹ The Financial Institutions Resource and Recovery Enforcement Act governs the actions of FDIC on bank settlements and closures.

The CITY and BANK, by execution of this Agreement hereby designate _____ (the "Custodian") to hold in trust, according to the terms and conditions of the CITY's Request for Proposal, RFP dated _____, (the "RFP") all securities pledged as depository collateral in accordance with the CITY's Investment Policy and the Public Funds Collateral Act, Texas Government Code Section 2257. If the Federal Reserve is designated as Custodian a FRB Pledgee Agreement executed under the terms of Appendix C of the Federal Reserve's Circular 7, as it may be amended from time to time, shall be executed and all the provisions of such Circular 7 are incorporated herein by reference.

Any and all fees from the Custodian associated with the safekeeping of securities pledged to the benefit of the CITY shall be borne by the BANK.

Custodian shall promptly provide CITY with safekeeping or trust receipts for Collateral as received from BANK clearly marked as a pledge to the CITY. Custodian shall provide directly to CITY a monthly report of Collateral to include a description of the securities including cusip, par value, and market values.

CUSTODIAN shall permit the CITY or its independent auditor to examine Collateral in the presence of the appropriate officials of said BANK at any time during normal business hours.

Section III Designation of Authorized Representatives

During the term of this Agreement period, the CITY will through appropriate action of its governing body, designate the officer or officers, who singly or jointly will be authorized to represent and act on behalf of the CITY in any and all matters of every kind arising under this Agreement and to (a) execute and deliver to BANK an electronic 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 CITY, and (c) make withdrawals or transfers by written instrument.

Section IV BANK Representations and Warranties

BANK represents, warrants and agrees:

- a. BANK has full power and authority to enter into this Agreement.
- b. BANK is owner of the Collateral.
- c. BANK shall be entitled to income on Collateral held by Custodian and the Custodian may dispose of such income as directed by the BANK without approval of CITY, provided an Event of Default does not exist.

Section V Authorized CITY Representative

For the term of this Agreement, the CITY and BANK have through appropriate action of their Boards, have designated the individuals authorized to represent and act for the CITY and BANK respectively in any and all matters including collateral assignment and substitution, execution of agreements and transfer of funds. Documents designating these individuals will be provided the CITY and Bank. Any change in these representatives will be made in writing.

Section VI CITY Representations and Warranties

CITY further represents, warrants and agrees:

- a. CITY has full power and authority to enter into this Agreement.
- b. CITY will comply with the terms of any other agreements it may have with the BANK for services provided.

Section VI Grant of Security Interest

In accordance with the terms of this Agreement, BANK hereby pledges to CITY and grants to CITY a security interest in securities and assigns and pledges securities owned by the BANK and held by the CUSTODIAN for benefit of the CITY hereinafter referred to as "Collateral" upon which the CITY shall have first and prior lien.

The CITY shall have the power to determine and designate the character and amount of the funds which will be deposited in the BANK. CITY deposits shall never be the subject of any garnishment or attachment, and BANK shall not recognize any attempt to garnish or attach same or be a party to any action.

Section VII Authorized Collateral

CITY time and demand deposits, inclusive of accrued interest, in excess of the Federal Deposit Insurance Corporation insurance, shall be secured at all times by collateral, acceptable to the CITY and in accordance with the Public Funds Collateral Act (Texas Government Code 2257) and the CITY Investment Policy, pledged by the BANK and held in trust by the Custodian in an amount equal to at least 102% of the total of those funds. Custodian will provide a monthly report of the collateral directly to the CITY with a full description of the securities.

Acceptable collateral includes:

1. United States Treasury Bills, Notes and Bonds
2. Notes and Bonds of United States Agencies and Instrumentalities
3. Collateralized Mortgage Obligations of US Government Agencies and instrumentalities which pass the bank test
4. Other evidences of indebtedness of the US Government which are guaranteed as to principal and interest by the US Government
5. Municipal bonds rated continuously A or better

Such pledged securities shall be subject only to the joint written instructions of both (a) authorized representatives of the CITY and (b) specifically authorized representatives of the BANK. The BANK shall have the right, with the prior written consent of the CITY, to substitute or replace, any or all of the pledged securities with collateral acceptable to the CITY. Newly pledged collateral will be received by the Custodian before release of existing collateral by the Custodian.

Custodian shall promptly forward to CITY original safekeeping or trust receipts covering all collateral pledged. Receipts or reports shall be clearly marked that as pledged to the CITY.

Section VIII Substitutions and Withdrawals

If the aggregate market value of Collateral held by Custodian at any time exceeds the Required Collateral Value, BANK may withdraw any excess Collateral by providing Custodian with a withdrawal notice signed by an authorized representative of both the BANK and CITY. CITY agrees that approval of the withdrawal notice will not be unreasonably withheld if the Collateral exceeds the Required Collateral Value.

If the aggregate market value of Collateral held by Custodian at any time does not equal the Required Collateral Value, BANK shall provide additional Collateral within that business day to bring the total aggregate market value equal to the Required Collateral Value.

BANK may substitute authorized Collateral for any of the Collateral held by Custodian at any time by providing Custodian with a withdrawal notice provided that the market value of the Collateral following such substitution would equal or exceed the Required Collateral Value. All substitutions require CITY'S prior written consent shall not be unreasonably withheld.

Section IX Default and Remedies

Should BANK at any time fail to pay and satisfy, when due, any check, transfer, draft or voucher lawfully drawn against CITY'S deposits, or in any manner breach its agreement with CITY, CITY shall give written notice of such failure or breach and BANK shall have three (3) business days to cure such failure or breach. In the event BANK shall fail to cure such failure or breach within the three (3) days or should the BANK be declared insolvent by a Federal bank regulatory agency, or if a receiver is appointed for the BANK (each an Event of Default) it shall be the duty of the CUSTODIAN, upon demand by the CITY (supported by proper evidence of an Event of Default) to surrender the collateral to CITY.

CITY may sell all or any part of such collateral and out of the proceeds thereof, pay CITY all damages and losses sustained together with any expenses incurred by it of any kind on account of such failure. Collateral may be sold by CITY at public or private sale provided however that BANK shall have one business day notice of the time and place of the sale and BANK and CUSTODIAN shall have the right to bid at such sale.

Section X Financial Position

The BANK will provide a statement of its financial position on at least a quarterly basis. The BANK will provide an annual statement audited by its independent auditors including a letter as to its "fair representation".

Section XI Scope of Services

The BANK response to the CITY RFP dated _____, (the "Response") is incorporated into this Agreement for all purposes, including services and service fees, time deposit, demand deposit and loan rates is attached as Exhibit _____. Any BANK Service Agreements with Terms and Conditions ("Terms") on specific services are attached and part of this Agreement. If any provisions of the Response or Terms and this Agreement are in conflict, this Agreement will control.

The BANK shall faithfully perform all of its duties and obligations required by the laws of the State of Texas for public funds depositories and shall upon presentation pay all checks drawn on it against

collected funds on demand deposits, and shall, at the expiration of the Agreement, turn over to its successor all funds, CITY owned securities, property and things of value held as depository.

The CITY shall have the power to determine and designate the character and amount of the funds to be deposited in the BANK. CITY may arrange for time deposits and BANK may accept such deposits but all time deposits will be awarded on a competitive basis.

This Agreement, along with all Exhibits and other incorporated documents shall constitute the entire Agreement between the parties.

Section XII BANK Compensation

BANK will be compensated for any and all services rendered to CITY under this Agreement. Interest from interest bearing accounts will not be charged through the account analysis. CITY has the right to choose whether fees are paid on a fee or compensating balance basis dependent on rates available.

a. On a compensating balance basis, BANK agrees to offset monthly service fees against its customary or agreed upon earnings credit rate for balances in CITY accounts. CITY and BANK will settle net insufficiencies in earnings credits, or excess earnings credits from excess balances, on a semi-annual basis calculated on the anniversary date of this Agreement. If sweep accounts are instituted for the CITY's accounts as part of this Agreement, the balances in these accounts will be swept to the compensating balance on a nightly basis on a compensating balance basis.

b. On a fee basis of compensation BANK will be compensated for any and all services rendered to CITY under this Agreement on a cost per item or monthly charge basis as set forth in the service charges of the BANK Response.

Section XIII Events of Default

The BANK shall be in default if it fails to pay all or part of a demand deposit, a matured time deposit, or a matured certificate of deposit, including accrued but unpaid interest, at a specified maturity date. The BANK shall also be in default if ruled "bankrupt", "insolvent" or "failed" by a federal or state banking regulator, or if a receiver is appointed for the BANK.

In the event of a default, failure or insolvency of the BANK, the CITY shall be deemed to have vested full title to all securities pledged under this Agreement. The CITY is empowered to take possession of and transfer and or sell any and all securities. If the security is liquidated, any proceeds over the defaulted amount, plus expenses related to liquidation, shall be returned to the BANK. This power is in addition to other remedies which the CITY may have under this Agreement and without prejudice to its rights to maintain any suit in any court for redress of injuries sustained by the CITY under this Agreement.

Section XIV Non-Assignability

This Agreement is not assignable in whole or in part but is binding on the parties, their successors and assigns.

Section XV Termination

This Agreement may be terminated by either the CITY or the BANK by giving sixty (60) days prior written notice to the parties.

Section XVI Law Governing

All applicable provisions and requirements of the laws of the State of Texas governing depositories for the CITY shall be a part of this Agreement. The venue for all actions concerning this Agreement will be _____ County.

Section XVII Assigns

No portion of the Agreement may be assigned without the express written consent of the other party and any assignment must comply with all provisions of this Agreement.

Section XVIII Miscellaneous

The headings in this Agreement are for the convenience of reference only and should not be used in interpreting the Agreement. If any provision of this Agreement is found to be illegal or unenforceable under applicable law, that provision shall be deemed reformed so as to be enforceable to the extent permitted by applicable law.

THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT OF THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on either party unless it is in writing and signed by all parties hereto.

Section XIX Execution of Agreement

BANK represents that the BANK Board of Directors or BANK Loan Committee has passed a resolution authorizing and approving this Agreement providing for the deposit of funds and pledging Collateral in accordance with this Agreement; that such resolution is reflected in the official records of the BANK.

Section XX Official BANK Board Action

In accordance with FIRREA requirements, the BANK represents and warrants that this Agreement is made pursuant to and is duly authorized by the Board of Directors of the BANK and the authorizing resolution is recorded in the official records of the BANK.

Executed this _____ day of _____, 20_____.

CITY

BANK

Name and Title

Name and Title

ATTEST:

ATTEST:
