

**BANK DEPOSITORY AGREEMENT FOR
THE CITY OF HITCHCOCK, TEXAS**

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

This Bank Depository Agreement (the "Agreement") is made and entered into this ____ day of ___, 2020 by and between the City of Hitchcock (the "City") and _____ (the "Bank") a bank chartered by the State of Texas.

Section I - Designation of Depository

The City through action of the City Commission, hereby designates the Bank as the depository for banking services for a period of one (1) year commencing on January 1, 2021 and through December 31, 2021, with a provision for four one-year continuations under the same terms and conditions as herein stated, subject to the mutual agreement of both parties. The City reserves the right to terminate this contract, for any reason, upon sixty (60) days written notice. In no event shall the contract exceed five years.

Section II - Designation of Custodian

The City and the Bank hereby designate Frost National Bank (the "Custodian") to hold in trust, according to the terms and conditions of the City Request for Proposal RFP dated November 9, 2020 (the "RFP") and pursuant to a separate Safekeeping Agreement attached as Exhibit A, all securities pledged as depository collateral in accordance with the City's Investment Policy.

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.

The controlling documents for the relationship between the Bank and the City and all services to be provided in that relationship including applicable fees for all services are, in or of priority are as follows:

- Depository Agreement
- City's Request for Proposal dated November 9, 2020, (the "RFP")
- the Bank's Response to the RFP dated November 30, 2020 (the "Proposal")
- Applicable Bank Services agreements service descriptions, and account and service documentation (collectively, "Service Agreements")

These documents are attached to and made a part of the Depository Agreement. Should any conflict arise among the terms of two or more Controlling Documents, such Controlling Documents will govern in the order set forth above.

Section III - Grant of Security Interest

In accordance with the terms of this Agreement, Bank hereby pledges to City and grants to the City a security interest in securities and assigns and pledges securities owned by the bank and held by the Custodian for benefit of City herein after 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 IV - 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 (Chapter 2257, Texas Government Code), 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. Collateral deposits must be placed in the custody of a third-party institution, which (i) meets the requirements as set forth in Chapter 2257, Texas Government Code; (ii) meets the requirements as set forth in Section X; and (iii) customarily provides such custodial services.

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 instruction 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 as pledged to the City.

Section V - 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 its “fair representation”.

Section VI - Authorized City Representative

For the term of this contract, the City, the Bank and Bank designate the individuals as listed in Exhibit B as authorized to represent and act for the City in any and all matters including collateral assignment and substitution, execution of agreements and transfer of funds. Any change in these representatives will be made in writing.

Section VII - Scope of Services

The Bank's response to the RFP, dated November 9, 2020, (the "Response") is incorporated into this Agreement for all purposes, including service charges, time deposit, and demand deposit, and attached as Exhibit C. If any provisions of the Response 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 the amount of the funds to be deposited in the Bank. The City may arrange for any time deposits and Bank may accept such deposits subject to the terms of the Bank's response.

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

Section VIII - Bank Compensation

Bank will be compensated for any and all services rendered to City under this Agreement on a cost per item basis or monthly charge basis as set forth in the service charges of the Bank's Response.

Section IX - 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 X - Special Depository Authorized

In the event Bank suspends business or is taken charge of by a Federal, State or Regulatory body or agency, City shall have the right, upon City Council approval, to select a Special Depository. Then in such event, the Special Depository shall perform in accordance with Chapter 131 of the Texas Local Government Code and any and all other applicable laws.

Section XI - Non-Assignability

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

Section XII - 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 XIII - 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 Galveston County.

Section XIV - Bank Authorization

The Bank represents and warrants that this Agreement is made pursuant to and is duly authorized by the Board of Directors of the Bank has passed a resolution authorizing and approving this Agreement providing for the deposit of funds and pledging of collateral in accordance with this agreement, and recorded in the official records of the Bank.

XV - Indemnity

Any Service Agreement or other subsidiary agreements, schedule and disclosure is hereby modified to remove therefrom any agreement by City to indemnify the Bank and its affiliates, directors, officers, employees and agents and remove remedies available under law in the event Bank negligence or breach of contract.

Bank covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related

to Bank's activities under this Agreement, including any acts or omissions of Bank, any agent, officer, director, representative, employee, consultant or subcontractor of Bank, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BANK AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Bank shall advise the City in writing within 24 hours of any claim or demand against the City or Bank known to Bank related to or arising out of Bank's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Bank's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Bank of any of its obligations under this paragraph.

Notwithstanding any provision of this Agreement stating the City waives or limits City right to make a claim against Bank or exculpates Bank from liability or limits Bank's liability, such a waiver, limitation, or exculpation shall be effective only to the extent authorized by the laws of the State of Texas. Notwithstanding any provision in any Exhibit to this Agreement stating that City will indemnify or hold harmless Bank City shall be obligated to indemnify and hold harmless only t the extent authorized by the laws of the State of Texas. Notwithstanding any provisions in any Exhibit to this Agreement stating that City will pay attorneys' fees incurred by the Bank, City shall be obligated to pay reasonable attorneys' fees only to the extent authorized by the laws of the State of Texas.

XVI - Force Majeure

No party shall be liable for any failure to perform its obligations in connection with any action described in this Contract, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake or other cause beyond such party's reasonable control (including any mechanical, electronic or communications failure, but excluding failure caused by a party's financial condition or negligence).

XVII - Independent Contractor

It is expressly understood and agreed that Bank is and shall be deemed to be an independent contractor; responsible for its respective acts or omissions, and that the City shall in no way be responsible therefor.

XVIII – Compliance

While in the performance of all rights, duties and obligations hereunder, Bank agrees to comply with all applicable Federal, State and local laws, rules, and regulations.

XIX – Notices

Unless otherwise specifically provided for in this Contract, any notice required or permitted to be given under this Contract shall be sufficient if given in writing, sent certified mail, return receipt requested, postage prepaid, to City or Bank at the addresses set below or to any other address of which written notice of change is given:

City:

City of Hitchcock
P.O. Box 48
Hitchcock, TX 77563
Attn: City Manager

Bank:

XX – Captions

The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Contract.

XXI - Venue

Venue of any suit brought in connection with this Contract shall be in Galveston County, Texas.

Executed and agreed in triplicate originals on this day ____ of _____ 2020.

City of Hitchcock:

_____ Bank:

Marie Gelles, City Manager

, President

ATTEST:

ATTEST:

Frost National Bank:

ATTEST:

Board or Loan Committee Resolution Number and Date: _____

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**EXHIBIT B
AUTHORIZED REPRESENTATIVES**

The following individuals are authorized representatives of the City empowered to direct the Bank and the Custodian for the Bank, in regard to collateral pledges, releases and substitutions in the joint safekeeping amount as well as authorized to represent and act for the City in any all matters including execution of agreements and transfer of funds.

City Representative's Signature

Name and Title

Randy Sticklind, Mayor

Marie Gelles, City Manager

Ruth Ann Sorrell, City Secretary

Bank Representatives Name and Title
