



## **SECURITY AGREEMENT**

FROST BANK, (the "Bank"), for valuable consideration, the receipt and sufficiency of which is acknowledged, grants a security interest in and a pledge and assignment of (a) any and all Eligible Collateral (as defined below) from time to time held by The Federal Reserve Bank, Federal Home Loan Bank and/or The Bank of New York Mellon Trust Company, N.A. (the "Custodian"), identified on the Custodian's books as held for the account of the Depositor or jointly for the account of the Bank and the Depositor, together with (b) the products and proceeds of the foregoing and any substitutions or replacements thereof, whenever acquired and wherever located (the "Collateral") to **City of Coppel, Texas** (the "Depositor"), in order to secure the payment when due, of the Deposits (as defined below) pursuant to the depository agreement ("Depository Agreement") between the Bank and the Depositor, dated of even date with this security agreement (the "Agreement") :

**1. Definitions.** Except as otherwise expressly defined in this Agreement, all terms used herein which are defined in the Uniform Commercial Code as in effect from time to time in Texas (the "Code") have the same meaning as in the Code. All other terms capitalized but not defined herein or in the Code have the meanings assigned to them in the Depository Agreement.

"Account" shall mean the separate custodial account established pursuant to an agreement with Custodian in the name of Bank and for the benefit and subject to the control of Depositor as secured party in accordance with this Agreement.

"Authorized Person" shall be any officer of Depositor or Bank, as the case may be, duly authorized to give Written Instructions on behalf of Depositor or Bank, respectively, such authorized persons for Depositor to be designated in a certificate substantially in the form of Exhibit B, attached hereto, as such exhibit may be amended from time to time, or as designated in such other forms as may be prescribed by the Bank.

"Book-Entry System" shall mean the Federal Reserve/Treasury Book Entry System for receiving and delivering U.S. Government Securities.

"Business Day" shall mean any day on which Custodian and Bank are open for business and on which the Book Entry System is open for business.

"Collateral Requirement" shall mean an amount of Securities with a Market Value equal to 105% of Uninsured Deposits; provided, however, to the extent that mortgage-backed securities (declining principal balance) are used as Eligible Collateral, "Collateral Requirement" shall mean an amount of Securities with a Market Value equal to 110% of Uninsured Deposits secured with such mortgage-backed securities.

"Deposits" shall mean all deposits by Depositor in Bank, including all accrued interest on such deposits, that are available for all uses generally permitted by Bank to Depositor for actually and finally collected funds under the Bank's account agreement or policies.

"Eligible Collateral" shall mean any Securities of the types enumerated in the Schedule of Eligible Collateral (which types are in compliance with the collateral policy adopted and approved by the governing body of Depositor) attached hereto as Exhibit A, as such exhibit may be amended from time to time pursuant to a written amendment signed by each of the parties to this Agreement, and any Proceeds of such Securities.

"Market Value" shall mean: (i) with respect to any Security held in the Account, the market value of such Security as made available to Bank or Custodian by a generally recognized source selected by the Bank or the Custodian, plus, if not reflected in the market value, any accrued interest on such Security, or, if such source does not make available a market value, the market value shall be as determined by Custodian or the Bank in its sole discretion based on information furnished to Custodian or Bank by one or more brokers or dealers; and (ii) with respect to any cash held in the Account, the face amount of such cash.

"Proceeds" shall mean any principal or interest payments or other distributions made in connection with Eligible Collateral and anything acquired upon the sale, lease, license, exchange, or other disposition of Eligible Collateral.

"Security" or "Securities" shall include, without limitation, any security or securities held in the Book-Entry System; common stock and other equity securities; bonds, debentures and other debt securities; notes, mortgages, or other obligations; and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests in such security or securities.

"Trust Receipt" shall mean evidence of receipt, identification, and recording, including a written or electronically transmitted advice or confirmation of transaction or statement of account. Each advice or confirmation of transaction shall identify the specific securities which are the subject of the transaction. If available, statements of account may be provided by the Bank or the Custodian at least once each month and when reasonably requested by the Depositor, and must identify all Eligible Collateral in the Account and its Market Value.

"Uninsured Deposits" shall mean that portion of the daily ledger balance (amount of funds plus the amount of any accrued interest on the funds) of Depositor's Deposits with Bank which exceeds the standard maximum deposit insurance amount ("SMDIA") of the Federal Deposit Insurance Corporation ("FDIC").

"Written Instructions" shall mean written communications actually received by Bank or Custodian from an Authorized Person or from a person reasonably believed by Bank or Custodian to be an Authorized Person by a computer, telex, telecopier, or any other system whereby the receiver of such communications is able to verify by codes or otherwise with a reasonable degree of certainty the identity of the sender of such communication.

## **2. Security Requirement.**

- (a) The Bank, to secure the timely payment of Uninsured Deposits made by Depositor, has deposited with Custodian certain Securities as more fully described in the initial confirmation or Trust Receipt of such deposit delivered by Custodian to Bank and Depositor respectively pursuant to Chapter 2257 of the Texas Government Code ("Texas Public Funds Collateral Act"). Pursuant to the Code, the Custodian shall act as a bailee or agent of the Depositor and, to the extent not inconsistent with such duties, shall hold Securities as a securities intermediary (as such term is defined in Chapter 8 of the Code) in accordance with the provisions

of this Agreement, the Depository Agreement, and of any agreement entered into with the Custodian further governing the provision of Security by the Bank for Uninsured Deposits.

- (b) (i) To secure the timely payment of Uninsured Deposits made by Depositor with Bank, Bank agrees to deliver or cause to be delivered to Custodian for transfer to the Account, Eligible Collateral having a Market Value equal or greater than the Collateral Requirement.

- (ii) If the Market Value of such Eligible Collateral on any Business Day is less than the Collateral Requirement for such day, the Bank shall be required to deliver additional Eligible Collateral having a Market Value equal to or greater than such deficiency as soon as possible but no later than the close of business of Custodian on the Business Day on which Bank determined such deficiency. If on any Business Day, the aggregate Market Value of the Eligible Collateral provided pursuant to this Agreement exceeds the Collateral Requirement for such day, Custodian shall, at the direction of Bank and with the approval of the Authorized Person acting on behalf of the Depositor, transfer from the Account to or for the benefit of Bank, Eligible Collateral having a Market Value no greater than such excess amount.

- (iii) When additional Eligible Collateral is required to cover incremental Deposits, the Bank must receive the request for collateral one (1) Business Day prior to the Business Day the incremental Deposits are received, and the Bank shall be required to deliver additional Eligible Collateral having a Market Value equal to or greater than the deficiency on the Business Day the incremental Deposits are received.

- (c) For any changes made to the Eligible Collateral held in the Account due to releases, substitutions, or additions of Eligible Collateral, the Custodian shall update its records of the Account accordingly as soon as possible and promptly issue a Trust Receipt to the Depositor and the Bank.
- (d) The Bank shall be entitled to income on Securities held by the Custodian in the Account, and the Custodian may dispose of such income as directed by Bank without approval of the Depositor, to the extent such income is not needed to meet the Collateral Requirement.

**3. Custody of Securities.** The parties agree that all Securities held in the Account shall be treated as financial assets. For purposes of the Code, the security interest granted by Bank in the Eligible Collateral and Proceeds for the benefit of the Depositor is created, attaches, and is perfected for all purposes under Texas law from the time Custodian identifies the pledge of any Eligible Collateral or Proceeds to the Depositor and issues a Trust Receipt to the Depositor for such Eligible Collateral or Proceeds. The security interest of the Depositor in Securities and all Proceeds shall terminate upon the transfer of such Securities or Proceeds from the Account.

**4. Delivery of Securities.** Bank and Depositor agree that Securities and Proceeds delivered to or received by Custodian for deposit in the Account may be in the form of credits to the accounts of Custodian in the Book Entry System. Bank and Depositor authorize Custodian on a continuous and ongoing basis to deposit in the Book Entry System all Securities and Proceeds that may be deposited therein and to utilize the Book Entry System in connection with its performance under this Agreement. Securities and Proceeds credited to the Account and deposited in the Book Entry System will be represented in accounts that include only assets held by Custodian or its agent(s)

for third parties, including but not limited to accounts in which assets are held in a fiduciary, agency, or representative capacity.

The Bank acknowledges that to the extent permitted by law, the records of the Bank and/or the Custodian with respect to the pledge of Eligible Collateral as described in this Agreement: (a) may be inspected by the Depositor or by the Texas Comptroller of Public Accounts (the "Comptroller"), at any time during regular business hours of the Bank or the Custodian; (b) such records may be subject to audit or inspection at any time pursuant to Sections 2257.025 and 2257.061 of the Texas Government Code, as amended; and (c) reports must be filed by the Custodian with the Comptroller when requested by the Comptroller.

**5. Collection of Securities.** If Depositor certifies in writing to Custodian that (a) Bank is in default under any underlying pledge or security agreement between Depositor and Bank, including the Depository Agreement and (b) Depositor has satisfied any notice or other requirement to which Depositor is subject pursuant to the Depository Agreement, then Depositor may give Custodian and any appointed receiver Written Instructions to transfer the value of specific amounts and issues of Securities held in the Account and, if applicable, specific amounts of the Proceeds held in the Account which have not previously been released to Bank, up to the amount that Depositor has in its depository account with Bank as of the date the Bank default occurs, to designated accounts of Depositor and to cease releasing to an account of Bank any Proceeds reflecting the interest and principal on Securities in the Account as provided in Section 2(d).

**6. Representation and Warranties.**

(a) Representations of Bank. Bank represents and warrants, which representations and warranties shall be deemed to be continuing, that:

(i) the Board of Directors of the Bank has authorized the Bank to enter into this Agreement, and such authorization is reflected in the approving resolution of the Bank's Board of Directors and in the minutes of the meeting of the Board of Directors at which this Agreement was approved, and this Agreement has been legally and validly entered into and is enforceable against Bank in accordance with its terms;

(ii) this Agreement and the pledge of Eligible Collateral under this Agreement do not violate or contravene the terms of the Bank's charter documents, by-laws, or any agreement or instrument binding on the Bank or its property, or any statute or regulation applicable to the Bank;

(iii) the Bank has entered into this Agreement and the Depository Agreement (A) in the ordinary course of business, (B) in good faith and on an arm's-length basis with the Depositor, (C) not in contemplation of bankruptcy or insolvency, and (D) without intent to hinder, delay, or defraud the Bank's creditors;

(iv) a copy of each of (A) this Agreement, (B) the Depository Agreement, and (C) the resolution of the Board of Directors of the Bank approving this Agreement and the minutes of the meeting of the Board of Directors at which this Agreement was approved, have been placed (and will be continuously maintained) in the official records of the Bank;

- (v) the Bank is sole legal and actual owner of the Securities or of beneficial interests in Securities deposited in the Account, free of all security interests or other encumbrances, except the security interest created by this Agreement;
  - (vi) this Agreement was executed by an officer of Bank who was authorized by the Bank's Board of Directors to do so;
  - (vii) the Bank is a bank or trust company duly authorized to do business in the State of Texas; and
  - (viii) all acts, conditions, and things required to exist, happen, or to be performed on its part precedent to and in the execution and delivery of this Agreement by it exist or have happened or have been performed.
  - (ix) the Bank shall be in compliance with Chapter 2257 of the Texas Government Code.
- (b) Representations of Depositor. Depositor represents and warrants, which representations and warranties shall be deemed to be continuing, that:
- (i) this Agreement has been legally and validly entered into, has been approved by the Depositor's governing body, and does not and will not violate any statute or regulation applicable to it and is enforceable against Depositor in accordance with its terms;
  - (ii) the appointment of Custodian has been duly authorized by Depositor and this Agreement was executed by an officer of Depositor duly authorized to do so;
  - (iii) (A) all Securities identified on the Schedule of Eligible Collateral, attached hereto as Exhibit A, may be used to secure Depositor's Uninsured Deposits under applicable statutes and regulations, (B) the Collateral Requirement meets the requirements of such applicable statutes and regulations, (C) the governing board of Depositor has approved a collateral policy which authorizes all such Securities to be used as Eligible Collateral, and (D) such collateral policy complies with all applicable statutes and regulations;
  - (iv) it will not sell, transfer, assign, convey, pledge, or otherwise dispose in whole or in part its interests in or the rights with respect to any Securities deposited in the Account, or the Proceeds of such Securities, except as permitted in Section 5 of this Agreement;
  - (v) all acts, conditions, and things required to exist, happen, or to be performed on its part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed;
  - (vi) Depositor will comply with the terms of any other agreements it may have with the Bank in connection with this Agreement; and
  - (vii) In the event Depositor requests any financial services from the Bank other than depository services, the Depositor shall provide the Bank with a copy of the Depositor's current investment policy.

7. **Continuing Agreement.** This Agreement shall continue and remain in full force and effect and shall be binding upon the Bank and its successors and assigns until such time as (a) all Deposits have been paid in full to the Depositor or otherwise paid as instructed by the Depositor, and (b) the Depository Agreement is no longer in effect.

8. **Rights and Remedies of the Depositor.** The Depositor's rights and remedies with respect to the Collateral shall be those of a secured party under the Code, Chapter 2257 Texas Government Code and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted in this Agreement, in the Depository Agreement, and in any other agreement in effect between the Bank and the Depositor. The Depositor agrees to provide the Bank and the Custodian with reasonable notice of the sale, disposition, or other intended action subject to the provisions of this Agreement in connection with the Collateral, whether required by the Code or otherwise.

9. **Application of Proceeds by the Depositor.** In the event the Depositor requests that the Custodian and receiver sell or otherwise dispose of the Collateral in the course of exercising the remedies provided for in Section 5 above and in the Depository Agreement, any amounts held, realized, or received by the Depositor pursuant to the provisions of this Agreement, including the proceeds of the sale, in whole or in part, of any of the Collateral, shall be applied by the Depositor first toward the payment of any costs and expenses incurred by the Depositor (a) in enforcing this Agreement, (b) in realizing on selling, disposing or protecting any Collateral and (c) in enforcing or collecting any Deposits, including attorneys' fees, and then toward payment of the Deposits in such order or manner as the Depositor may elect. Any Collateral remaining after such application and after payment to the Depositor of all the Deposits in full shall be paid or delivered to the Bank, its successors or assigns, or as a court of competent jurisdiction may direct.

10. **Notices.** Any communication, notice, or demand to be given under this Agreement shall be duly given when delivered in writing or sent by telex or facsimile to a party at its address indicated below.

If to the Depositor, at:

Jennifer Miller, Director of Finance  
City of Coppell  
PO Box 9478  
Coppell, TX 75019  
jmiller@coppelltx.gov

If to the Bank, at:

Eileen Slater; Senior Vice President  
Frost Bank  
111 W. Houston Street  
San Antonio, Texas 78205  
eileen.slater@frostbank.com

11. **Miscellaneous.**

- (a) **Updating Certificate of Authorized Persons.** Depositor agrees to furnish to Bank a new and updated "Certificate of Authorized Persons" substantially in the form of Exhibit B, attached hereto, or in similar form as Bank may require, within a reasonable amount of time after there are additions or deletions to list of Authorized Persons authorized to act on behalf of the Depositor.

- (b) Invalidity; Severability. If any clause or provision of this Agreement is for any reason held to be invalid, illegal or unenforceable, such holding shall not affect the validity, legality or enforceability of the remaining clauses or provisions of this Agreement.
- (c) Amendment. This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties.
- (d) Assignment and Binding Effect. The Depositor may not assign all or any part of its rights or obligations under the Agreement without the Bank's prior express written consent, which may be withheld in the Bank's sole discretion. The Bank may assign or delegate all or any part of its rights or obligations under the Agreement, including, without limitation, the performance of the services described herein. The Agreement will be binding on and inure to the benefit of the successors and permitted assigns of either party.
- (e) Governing Law; Venue. This Agreement shall be construed in accordance with the substantive laws of the State of Texas, without regard to conflicts of law principles thereof. Bank and Depositor hereby consent to the non-exclusive jurisdiction of a state or federal court situated in **Dallas** County, Texas, in connection with any dispute arising hereunder. Bank and Depositor hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum. Bank and Depositor each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.
- (f) Liability of the Parties. The Bank's and Depositor's duties and responsibilities to each other are limited as set forth in this Agreement, except with respect to any provisions of the law which cannot be varied or waived by agreement. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER BANK NOR DEPOSITOR WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS) OR FOR ANY INDIRECT LOSS THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER (EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES.**

IN WITNESS WHEREOF, the Bank and Depositor have caused this Agreement to be duly executed as of \_\_\_\_\_.

**FROST BANK**

By \_\_\_\_\_  
Name: Justin Havins  
Title: Assistant Vice President

**DEPOSITOR ACCEPTS AND AGREES**

as of \_\_\_\_\_

**City of Coppel, Texas**

By \_\_\_\_\_  
Name: Mike Land  
Title: City Manager



**EXHIBIT A**  
**Schedule of Eligible Collateral**

Eligible Collateral

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All funds on deposit under the provisions of this agreement shall be continuously secured in accordance with the Texas Public Funds Collateral Act, Chapter 2257 of the Texas Government Code.

The following securities are approved as collateral for **City of Coppell** funds:

1. Obligations of the United States or its agencies and instrumentalities, or which are backed by the full faith and credit of the United States;
2. Direct obligations of this state or its agencies and instrumentalities;
3. Obligations of states, agencies, countiescities, and other political subdivisions of this state or any state rated as to investment quality by a nationally recognized investment rating firm not less than "A" or its equivalent;
4. Obligations with which the principal and interest are unconditionally guaranteed or secured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities

## EXHIBIT B

## CERTIFICATE OF AUTHORIZED PERSONS

**(Depositor)**

The undersigned hereby certifies that he/she is the duly appointed and acting **City Manager of City of Coppell, Texas** (the "Depositor"), and further certifies that the following officers or employees of Depositor have been duly authorized in conformity with the approval of the Depositor's governing body to deliver Written Instructions to **The Federal Reserve Bank, Federal Home Loan Bank and/or The Bank of New York Mellon Trust Company, N.A.** ("Custodian") pursuant to the Security Agreement between Depositor and the Bank dated January 1, 2021, and that the signatures appearing opposite their names are true and correct:

Jennifer Miller	Director of Finance	
Name	Title	Signature

<u>Kimberly Tichen</u>	<u>Assistant Director of Finance</u>	
Name	Title	Signature

Name	Title	Signature
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Name	Title	Signature
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Name	Title	Signature
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Name	Title	Signature
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This certificate supersedes any certificate of authorized individuals you may currently have on file.

By: \_\_\_\_\_

Mike Land  
Title: City Manager

Date: \_\_\_\_\_