



## **BANK DEPOSITORY AGREEMENT**

This depository agreement for public fund entities, together with the terms of the BANK's bid to serve as depository, a copy of which is attached hereto, if applicable (collectively, this "Agreement"), is made and entered into on the date last herein written by and between **CITY OF COPPELL**, hereinafter called "DEPOSITOR," and FROST BANK, a Texas state bank, duly organized and authorized by law to do banking business in the State of Texas and now carrying on such business in said State (the "BANK").

### **1. Appointment of Depository and Term.**

DEPOSITOR designates BANK as a depository for the period beginning **November 30, 2025**, and continuing until this Agreement has been canceled in accordance with the provisions hereof, for certain accounts in the name of the DEPOSITOR, and such accounts shall be opened by the DEPOSITOR designating the accounts and making deposits therein and the BANK accepting said deposits. The term of this Agreement (the "Term") shall be **November 30, 2030**, as defined in the **CITY OF COPPELL's** Request for Proposal, unless the parties mutually agree to an extension of the Term of this Agreement if such extension is allowed by applicable law. If the parties agree to such an extension of the Term, then the parties shall either execute an addendum to this Agreement or other written evidence stating that the parties have agreed to an extension, the statutory or other legal authority for such extension and the date upon which such extension of the Term expires.

During the Term of this Agreement, the DEPOSITOR will, through appropriate action of its governing body, designate the officer or officers who, individually or jointly, will be authorized to represent and act on behalf of the DEPOSITOR in any and all matters of every kind arising under this Agreement, including, but not limited to, taking such actions as: (a) executing and delivering to BANK an electronic fund or funds transfer agreement (and any addenda thereto); (b) appointing and designating, from time to time, a person or persons authorized to request withdrawals, orders for payment, or transfers on behalf of DEPOSITOR in accordance with the electronic fund or funds transfer agreement and addenda; (c) making withdrawals or transfers by written instrument; and (d) delivering to BANK the DEPOSITOR's collateral policy and evidence of approval by the DEPOSITOR's governing body of (1) the collateral policy, (2) the CUSTODIAN (defined below), (3) this Agreement, and (4) the attached Security Agreement (defined below).

### **2. Establishment of Accounts.**

DEPOSITOR shall deposit such of its funds as it may choose, and BANK shall receive such deposits as "Demand Deposits," Interest on Checking Accounts ("IOCs"), "Savings Accounts," Money Management Accounts ("MMAs"), and/or Certificates of Deposit ("CDs"), as designated by DEPOSITOR, and BANK shall hold said Demand Deposits, IOCs, Savings Accounts, MMAs, and/or CDs subject to payment in accordance with the terms of the particular deposit. BANK will allow, credit, and pay interest on such IOCs, Savings Accounts, MMAs, and/or CDs at a rate to be set by the BANK, with: (1) interest on IOCs and MMAs to be paid monthly as it accrues through the last day of each month; (2) interest on Savings Accounts to be paid quarterly as it accrues through the last day each quarter; and (3) interest on CDs to be paid at maturity. Interest on CDs shall be calculated for the exact number of days on the basis of a 365-day year. All BANK accounts or products listed above shall be in the name of Depositor with the designation of the fund or account in accordance with instructions of Depositor.

**3. Depository Services; DEPOSITOR Records; Fees.**

Subject to the provisions stated above and to the particular terms of Demand Deposits, MMAs, Savings Accounts, or IOCs, BANK shall pay on demand to the order of DEPOSITOR upon presentation of checks, drafts, or vouchers properly issued, all or any portion of said deposits now on deposit or to be deposited with said BANK, as long as collected funds are on deposit.

BANK statements, check images, check registers, deposit slips, debit and credit notices, reconciliations, notices of interest earned, and any other related documentation, or images thereof, shall be retained by BANK for a period of 7 years after the date of receipt of the items. To the extent permitted by law, BANK shall make all records, books, and supporting documents, or images thereof, pertaining to services applicable to DEPOSITOR accounts and transactions pursuant to this Agreement available at any reasonable time during the term of this Agreement, to DEPOSITOR and its designated representatives. To the extent permitted by law, DEPOSITOR shall have the right to examine, audit, inspect, or make copies of any of such documents.

To determine charges for services rendered, BANK utilizes an earnings credit rate ("ECR") on BANK's account analysis system, determined and calculated in a manner specified in the BANK's proposal/offer. The BANK's account analysis system is used to calculate and account for all BANK-performed deposit and treasury management service charges. BANK will calculate the DEPOSITOR's combined average daily collected balances, and using the ECR, number of days in the year, and number of days in the month calculate the earnings credit allowance of the BANK and use such earnings credit allowance to offset the accrued analyzed charges to the DEPOSITOR of combined services rendered by BANK. For any amount of such accrued analyzed charges not offset by DEPOSITOR's earnings credit allowance as described above, DEPOSITOR shall remit payment in such amount to BANK monthly. Any excess or unused earnings credit allowance may be carried to the next month toward the offset of that month's accrued analyzed charges; provided, however, that excess earnings credit allowances carried forward from a previous month must be used for offset of accrued analyzed charges within the same calendar quarter, and such earnings credit allowances shall reset to zero as of the end of each calendar quarter (March 31, June 30, September 30 and December 31). Any interest paid on MMAs, Savings Accounts or IOCs shall be considered an interest expense and included in the accrued analyzed charges of the DEPOSITOR on the account analysis statement.

**4. Security of Funds; Acceptable Security; Appointment of CUSTODIAN; Increases in Collateral Amounts.**

All funds on deposit with BANK to the credit of the DEPOSITOR (including Demand Deposits, IOCs, Savings Accounts, MMAs, and CDs) shall be secured pursuant to the BANK's "Security Agreement" or similar agreement (the "Security Agreement") and any agreement required by the CUSTODIAN (defined below), all of which are attached hereto.

DEPOSITOR and BANK, by execution of this Agreement, designate Federal Reserve Bank, Federal Home Loan Bank or The Bank of New York Mellon Trust Company, N.A. as the "CUSTODIAN," to hold collateral in an account maintained by CUSTODIAN in the name of the BANK and subject to the control of DEPOSITOR, according to the terms and conditions of this Agreement, the Security Agreement, and any agreement required by the CUSTODIAN to document such relationship.

DEPOSITOR recognizes that the Federal Deposit Insurance Corporation (or its successor) (the "FDIC") provides insurance for DEPOSITOR's funds deposited at any one Texas financial institution, including accrued interest on such funds, only up to maximum regulatory limits as set by the FDIC. All uninsured funds on deposit with BANK to the credit of the DEPOSITOR shall be secured by collateral as provided for in the Texas Public Funds Collateral Act and in other applicable law (collectively, the "Acts"), and DEPOSITOR agrees and certifies that the collateral listed in Exhibit A to the Security Agreement shall be eligible to be used as collateral to secure DEPOSITOR's funds on deposit with the BANK. The market value of the collateral securing DEPOSITOR's funds must at all times equal or exceed 102% of the daily ledger balance (amount of funds plus the amount of any accrued interest on the funds) of all DEPOSITOR's

Demand Deposits, IOC's, Savings Accounts, MMA's and CDs, less the FDIC standard maximum deposit insurance amount ("SMDIA") (the "Collateral Requirement"). The market value with respect to any collateral as of any date and priced on such date will be obtained by the BANK from a generally recognized pricing source.

When the need for collateral with the BANK is expected to increase on any given day or over a series of days, DEPOSITOR agrees to notify the BANK of such expected increase at least 1 business day prior to the expected date the additional deposits are expected to be received.

**5. Delivery of Collateral to CUSTODIAN.**

BANK already, or will immediately after the effective date of this Agreement, deliver to CUSTODIAN collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the uninsured funds (as described in Section 4 above) of DEPOSITOR deposited with BANK. Such collateral or substitute collateral (as discussed below), shall be kept and retained by CUSTODIAN in an account maintained in the name of BANK and subject to the control of DEPOSITOR pursuant to the terms of this Agreement and of the Security Agreement, so long as the depository relationship between DEPOSITOR and BANK shall exist, and after the termination or expiration of this Agreement so long as any portion of the deposits made by DEPOSITOR with BANK shall have not been properly paid out by BANK to DEPOSITOR or on its order. The BANK grants a security interest in such collateral to DEPOSITOR. The joint custody account at the Federal Reserve Bank, Federal Home Loan Bank or The Bank of New York Mellon Trust Company, N.A. will be held in the BANK's and DEPOSITOR's name.

**6. Custodian Safekeeping Account.**

The BANK shall cause CUSTODIAN to accept said collateral and hold the same in trust for the purposes stated in this Agreement, in a separate joint safekeeping account with the CUSTODIAN, the DEPOSITOR, and the BANK, to be managed pursuant to the Security Agreement, and the operating agreements, guidelines, and procedures as stated in this Agreement and pursuant to the terms of any separate agreement with the CUSTODIAN.

**7. Duties and Liabilities of CUSTODIAN.**

It is distinctly understood by all the parties that the CUSTODIAN shall not be required to ascertain the amount of funds on deposit by the DEPOSITOR with BANK, nor the validity, authenticity, genuineness, or negotiability of the securities deposited with the CUSTODIAN by BANK pursuant to this Agreement, and the CUSTODIAN is not liable to anyone for performing in accordance with this Agreement, except for the safekeeping of the securities delivered to Custodian, and for any negligence, gross negligence or willful misconduct of CUSTODIAN's own officers, agents, and employees.

**8. Right of DEPOSITOR Upon BANK'S Breach of Duties Under Agreement or BANK'S Insolvency.**

Should BANK fail at any time to pay immediately and satisfy upon proper presentation any check, draft, or voucher lawfully drawn upon any Demand Deposit, or fail at any time upon proper presentation or authorization to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any IOC, MMA, or Savings Account and the interest on such IOC, MMA, or Savings Account, or in case BANK becomes insolvent or in any manner breaches its contract with DEPOSITOR, it shall be the duty of the CUSTODIAN, upon the demand of DEPOSITOR (in DEPOSITOR's sole discretion, and supported by proper evidence of any of the above listed circumstances), to surrender the above-described collateral to DEPOSITOR. DEPOSITOR may, in accordance with the terms of this Depository Agreement and any applicable provisions of a Security Agreement, sell all or any part of such collateral, and out of the proceeds of such sale deduct for itself payment of all damages and losses sustained by it, together with all expenses of any kind and every kind incurred by DEPOSITOR on account of such breach, failure or insolvency, accounting to BANK for the remainder, if any, of such proceeds or collateral remaining unsold.

**9. Collateral Substitutions by BANK.**

If BANK shall desire to sell or otherwise dispose of any one or more of such collateral so deposited with the CUSTODIAN, it may, with prior approval of DEPOSITOR, substitute for any one or more of such collateral other collateral of the same market value and of the character authorized in this Agreement, and such right of substitution shall remain in full force and be exercised by BANK as often as it may desire to sell or otherwise dispose of any such collateral; provided, however, that at all times, the aggregate amount of such collateral or substituted collateral deposited with the CUSTODIAN shall always be such that it meets the Collateral Requirement. If at any time the aggregate amount of such collateral so deposited with the CUSTODIAN is less than the Collateral Requirement, then in that event, BANK shall immediately deposit with the CUSTODIAN additional collateral as may be necessary to meet the Collateral Requirement.

BANK shall be entitled to income on collateral held by the CUSTODIAN, and the CUSTODIAN may dispose of such income as directed by BANK without approval of DEPOSITOR, to the extent such income is not needed to secure DEPOSITOR's deposits, and provided that retention of such income does not otherwise violate this Agreement.

**10. Trust Receipts For Collateral; DEPOSITOR'S Right To Itemized List of Collateral.**

BANK shall cause CUSTODIAN to promptly forward to DEPOSITOR trust receipts via regular mail, or will provide such trust receipts and reporting on the Nexen Internet service made available to DEPOSITOR, covering all such collateral held for DEPOSITOR by CUSTODIAN, including substitute collateral substituted in accordance with this Agreement. BANK shall also maintain records relating to all such collateral held for the benefit of DEPOSITOR. Upon written request of the DEPOSITOR, and if in accordance with the CUSTODIAN's agreement, the BANK shall request that the CUSTODIAN furnish as of any date requested a completely itemized list of collateral held as security for DEPOSITOR.

**11. Collateral Value In Excess of Collateral Requirement.**

If at any time the collateral held by the CUSTODIAN for the benefit of the DEPOSITOR has a market value in excess of the Collateral Requirement, then upon the written authorization of an authorized representative of the BANK, confirmed by an authorized representative of the DEPOSITOR, the BANK may request withdrawal of a specified amount of collateral, the CUSTODIAN shall deliver this amount of collateral (and no more) to BANK, and the CUSTODIAN shall have no further liability for collateral so redelivered to BANK.

All substitutions, releases, and additional pledges of collateral pursuant to the terms hereof and of the Security Agreement shall be completed at the earliest time as is commercially reasonable.

**12. Termination; Amendment of Agreement.**

Either DEPOSITOR or BANK shall have the right to terminate this Agreement prior to the expiration date by providing the other party with 90 days prior written notice of its election to terminate. The Agreement shall terminate 90 days after delivery of such written notice, provided that all provisions of this Agreement have been fulfilled.

In addition to any other remedy that DEPOSITOR may have at law or in equity, if BANK breaches this Agreement in any manner or defaults on its obligations hereunder and does not cure such breach or default within 30 days of BANK receiving notice of such breach or default from DEPOSITOR, then after expiration of such 30 day cure period, DEPOSITOR may terminate this Agreement and withdraw its funds by giving BANK written notice of termination and withdrawal. Both BANK and DEPOSITOR agree that among other items constituting default under this Agreement is a failure to maintain adequate collateral or adequate capital ratios (if applicable).

In the event that DEPOSITOR fails to comply with any of its promises in this Agreement, or if any of its representations are untrue or any of its warranties is breached, and DEPOSITOR does not cure such

breach or default within 30 calendar days of DEPOSITOR receiving notice of such breach or default from BANK, then after expiration of such 30 calendar day cure period, BANK may terminate this Agreement by sending written notice to DEPOSITOR of BANK's decision to terminate. Upon receipt of such notice, DEPOSITOR shall make provisions for the immediate withdrawal of DEPOSITOR's funds from BANK.

This Agreement may be amended in a writing executed by both the DEPOSITOR and the BANK.

**13. Post-Termination/Expiration Obligations.**

When the relationship of DEPOSITOR and BANK shall have ceased to exist, and when BANK shall have properly paid out all deposits of DEPOSITOR, it shall be the duty of DEPOSITOR to give the CUSTODIAN a certificate to that effect. Upon CUSTODIAN's receipt of such certificate, the CUSTODIAN shall redeliver to BANK all collateral then in its possession belonging to BANK for the benefit of DEPOSITOR, and taking its receipt for such delivery. An order in writing presented to the CUSTODIAN by DEPOSITOR and a receipt for such collateral by BANK shall constitute a full and final release of the CUSTODIAN of all its duties and obligations under this Agreement, and the CUSTODIAN shall not have any liability of any kind whatsoever to both DEPOSITOR and BANK, except for any liability as set forth in Section 7 above where such liability arose while the collateral was in CUSTODIAN's control.

**14. Representations and Warranties of the Parties.**

The BANK represents and warrants that:

- (a) the BANK is the sole legal and actual owner of the securities or of a beneficial interest in the securities utilized to collateralize deposits;
- (b) BANK accounts are insured to the regulatory limits of the FDIC;
- (c) this Agreement has been approved by the BANK's Board of Directors, and such approval is evidenced by a true and correct copy of the resolution of BANK's Board of Directors adopted at the meeting at which this Agreement was approved (attached to this Agreement and incorporated for all purposes), and further, such approval is reflected in the minutes of such meeting of the Board of Directors; and
- (d) this Agreement is an official record of the BANK, and has been, and will continue to be, an official record of the BANK from the date of its approval by the BANK's Board of Directors.

The DEPOSITOR represents, warrants and promises that:

- (a) the DEPOSITOR has complied with all applicable law governing the selection of a depository bank, that DEPOSITOR has full power and authority to enter into this Agreement, the Agreement is a valid and binding agreement enforceable against the DEPOSITOR pursuant to its terms, and does not and will not violate any statute or regulation applicable to DEPOSITOR;
- (b) all acts, conditions, and things required to exist, happen, or to be performed on DEPOSITOR's part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed; and
- (c) DEPOSITOR will comply with the terms of any other agreements it may have with BANK in connection with this Agreement.

**15. Incorporation of Request For Proposal and Response; Conflicting Provisions.**

The DEPOSITOR's Request for Proposal dated **April 10, 2025; RFP # 217** ("RFP"), and the BANK's response to the DEPOSITOR's Request For Proposal, dated **April 10, 2025** ("Response"), are incorporated into this Agreement by reference. In the event of any conflicts between the RFP and the Response, the provisions of the RFP control. In the event of any conflicts between the Response and this Agreement regarding provisions and topics addressed in both documents, the provisions of this Agreement control. In the event of any provisions and topics addressed in the Response and not addressed in this Agreement, the Response controls.

**16. 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 THE SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES.**

**17. 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.

**18. 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 consent to the non-exclusive jurisdiction of a state or federal court situated in **Bexar** County, Texas, in connection with any dispute arising from or relating to this Agreement. BANK and DEPOSITOR 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 irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.

**19. Notices.**

Any communication, notice, or demand to be given hereunder 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: Kimberly Tiehen, Director of Strategic Financial Engagement  
City of Coppell  
PO Box 9478  
Coppell, TX 75019  
ktiehen@coppelltx.gov

If to BANK: Abby Murphy, Vice President  
Frost Bank  
2950 North Harwood Street  
Dallas, Texas 75201  
abby.murphy@frostbank.com

**20. Security Measures.**

BANK and DEPOSITOR agree to implement and follow mutually agreeable and adequate measures to protect the privacy and security of DEPOSITOR's transactions and information, including communications and information held by DEPOSITOR or BANK, or transmitted between DEPOSITOR and BANK. These measures may set forth in various BANK service-specific agreements or documentation, and shall address such issues as: (1) signature and identity verification; (2) fraud detection, prevention and reporting; (3) security codes and similar controls; (4) transmittal procedures and prior and proper authorization of telecopy, telephone, electronic and other transactions; (5) e-commerce issues such as encryption, e-mail security, and website security; and (6) computer and other access controls. BANK shall provide DEPOSITOR with at least 30 days prior written notice of any changes or amendments to the Bank's security procedures, as described in this Section 20 and elsewhere in this Agreement or other BANK service-specific agreements or documents, unless such changes or amendments must, in BANK'S sole opinion and discretion, be made: (i) immediately in order to guard against or mitigate a risk of fraud or criminal activity; or (ii) immediately to comply with an order or directive from law enforcement, court of law or any other regulatory agency with authority over the BANK's activities and operations.

**21. Assignment and Binding Effect; Amendment.**

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.

**22. Third Party Service Providers.**

In the normal course of its business, BANK may engage third party vendors or subcontractors to provide or assist in providing all or part of certain services. In the event that BANK engages such third party vendors or subcontractors, any contracts that BANK enters into with such third party vendors or subcontractors for the assistance in providing services under this Agreement shall contain necessary clauses requiring such third party vendors or subcontractors to comply with the provisions of this Agreement, including, but not limited to, levels of performance, service and data security. Any third party vendor or subcontractor used by BANK is an independent contractor and not the BANK's agent. This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties.

**23. Records, Reports and Audits.**

BANK shall maintain separate, accurate and complete records relating to the DEPOSITOR's funds, the pledged securities and all transactions relating to the pledged securities. BANK will also take reasonable steps to insure that the CUSTODIAN shall maintain separate, accurate and complete records relating to the pledged securities and all transactions relating to the pledged securities. DEPOSITOR and its representatives or agents shall have the right to examine and audit at any reasonable time upon 5 days prior written notice all records maintained pursuant to this Section 23.

IN WITNESS WHEREOF, the BANK and DEPOSITOR have caused this Agreement to be duly  
executed as of as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BANK:

**FROST BANK**

ATTEST:

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

Name: Abby Murphy

Title: Vice President

\_\_\_\_\_  
Name:  
Title:

DEPOSITOR accepts and agrees as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

DEPOSITOR:

**CITY OF COPPELL**

ATTEST:

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

Name: Mike Land

Title: City Manager

\_\_\_\_\_  
Name: Phoebe Stell  
Title: Interim City Secretary





## **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 ("FRB"), Federal Home Loan Bank ("FHLB") 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 COPPELL** (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 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 102% 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 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.
- (iv) Depositor agrees that, with respect to Eligible Collateral held with FHLB or FRB, as Custodian, Depositor authorizes Custodian as its agent to approve substitutions of Eligible Collateral ("Substitute Collateral") supplied to Custodian by Bank for Eligible Collateral in the Account upon receipt of Written Instructions from Bank identifying the Eligible Collateral to be substituted.
- (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.
- (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 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:

Kimberly Tiehen, Director of Strategic Financial Engagement  
City of Coppel  
PO Box 9478  
Coppell, TX 75019  
ktiehen@coppelltx.gov

If to the Bank, at:

Abby Murphy, Vice President  
Frost Bank  
2950 North Harwood Street  
Dallas, Texas 75201  
abby.murphy@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 **Bexar** 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 the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**FROST BANK**

By \_\_\_\_\_  
Name: Abby Murphy  
Title: Vice President

**DEPOSITOR ACCEPTS AND AGREES**

as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF COPPELL**

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, counties, cities, 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
5. Obligations of the Federal Home Loan Bank, Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association.
6. Obligations of the Government National Mortgage Association.
7. Any obligation of an approved government agency which is considered to be an asset-backed, mortgage-backed, or pooled security.

**EXHIBIT B**  
**CERTIFICATE OF AUTHORIZED PERSONS**  
**(Depositor)**

The undersigned hereby certifies that he/she is the duly elected and acting **City Manager of CITY OF COPPELL** (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 \_\_\_\_\_, and that the signatures appearing opposite their names are true and correct:

Kimberly Tichen	Director of Strategic Financial Engagement	
Name	Title	Signature

Vanessa Tarver	Assistant Director of Strategic Financial Engagement	
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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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: \_\_\_\_\_

**THIRD PARTY CUSTODIAN AGREEMENT**  
(Collateralized Municipal Deposits)

**THIS AGREEMENT**, made and executed as of \_\_\_\_\_ by and among the **CITY OF COPPELL** (the "Public Entity"), Frost Bank (the "Bank") and The Bank of New York Mellon Trust Company, N.A. (the "Custodian").

**W I T N E S S E T H**

WHEREAS, Public Entity desires to maintain or continue to maintain public deposits with Bank;

WHEREAS, Bank desires to obtain such deposits and to provide security therefor as required by applicable law, regulation or rule;

WHEREAS, Custodian agrees to provide safekeeping services and to hold any securities pledged by Bank in a custodial account established for the benefit of Public Entity as secured party pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth hereafter, the parties hereto agree as follows:

1. Security Requirements

(a) Bank, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by Public Entity, including any interest due thereon and any costs or expenses incurred by Public Entity and arising out of the collection of any deposits made with Bank, has deposited with Custodian certain investment property as identified by the parties on Schedule A, attached hereto, and as more fully described in the initial confirmation Trust Receipt of such deposit delivered by Custodian to Bank and Public Entity respectively (which investment property together with any additions thereto, substitutions therefor and the proceeds thereof, are hereinafter collectively referred to as "Collateral"), to be held by Custodian pursuant to the provisions hereof. Pursuant to the Texas Business and Commerce Code, as amended, Custodian shall act as a bailee or agent of Public Entity and, to the extent not inconsistent therewith, hold the Collateral as a securities intermediary (as such terms are defined in Chapter 8 of the Texas Business & Commerce Code, as amended, and in Chapter 2257 of the Texas Government Code, as amended) and in accordance with the provisions hereof. Bank hereby grants to Public Entity a pledge and security interest in and to such Collateral and shall deliver Collateral to Custodian in the manner prescribed in Section 2 of this Agreement.

(b) Subject to paragraph (c) below, Public Entity authorizes Custodian as its agent to approve substitutions of Collateral ("Substitute Collateral") supplied to Custodian by Bank for Collateral in the Account upon receipt of Written Instructions from Bank identifying the Collateral to be substituted. Such Written Instructions shall when received by Custodian be deemed Bank's representation and warranty, on which Custodian may rely without further inquiry, that (i) the Substitute Collateral constitutes Collateral that is eligible for deposit hereunder and (ii) has a Margin Value equal to or greater than the Margin Value of the Collateral to be substituted (each, an "Approved Substitution"). Following completion of each Approved Substitution Custodian shall update its records of the Account as soon as possible and issue a Trust Receipt to Public Entity in accordance with the requirements of paragraph (d) below.

(c) Custodian assumes no responsibility to determine or monitor whether or not any Collateral originally deposited hereunder or Substitute Collateral or additional Collateral hereafter deposited are eligible for deposit under applicable law, rule or regulation or whether the Market Value of the Collateral thereof meets the requirements of any law, rule or regulation applicable to the deposit hereunder. The determination of eligibility and whether the Market Value of the Collateral satisfies statutory or regulatory requirements will be the responsibility of Bank. Custodian shall be fully protected in relying on Written Instructions of either Bank or Public Entity directing Custodian to release any of the Collateral to Bank. To the extent of any conflict in the instructions of Public Entity and Bank, the instructions of Public Entity shall control and Bank shall hold Custodian harmless for acting in accordance with Public Entity's instructions.

(d) Custodian shall promptly issue a Trust Receipt to Public Entity on any Business Day on which Collateral is transferred to and from the Account. For the avoidance of doubt, it is understood and agreed that Trust Receipts may be combined to identify more than one transaction on any one Business Day and Custodian shall not be required to issue more than one Trust Receipt to Public Entity on any Business Day.

## 2. Custody of Collateral

(a) Bank and Public Entity hereby appoint Custodian as custodian of all Collateral at any time delivered to Custodian pursuant to this Agreement. Custodian hereby accepts appointment as such Custodian and agrees to establish and maintain the Account and appropriate records identifying the Collateral as pledged by Bank to Public Entity. Collateral in the Account shall be kept separate and apart from the general assets of Custodian on Custodian's books and records. Subject to the terms hereof, Custodian, in performing its duties and responsibilities pursuant to this Agreement, shall act as custodian for, and agent of, Public Entity. The parties agree that all securities held in the Account shall be treated as financial assets. For purposes of the Texas Business and Commerce Code, as amended, the security interest granted by Bank in the Collateral for the benefit of Public Entity is created, attaches, and is perfected for all purposes under Texas law from the time Custodian receives Collateral for deposit or credit to the Account and issues a Trust Receipt to Public Entity for such Collateral. The security interest of Public Entity in the Collateral and all Proceeds thereof shall terminate upon the transfer of such Collateral or Proceeds from the Account.

(b) The Bank and Public Entity agree that Collateral delivered to the Custodian for deposit in or credit to the Account may be in the form of credits to the accounts of Custodian at the Book-Entry System or a Depository or by delivery to the Custodian of physical certificates in a form suitable for transfer or with an assignment in blank to the Public Entity or Custodian. The Bank and Public Entity hereby authorize the Custodian on a continuous and ongoing basis to deposit in the Book-Entry System and/or the Depositories all Collateral that may be deposited therein and to utilize the Book-Entry System and/or Depositories and the receipt and delivery of physical securities or any combination thereof in connection with its performance hereunder. Collateral that is not held in the Book-Entry System, Depositories or through another financial intermediary will be held in the Custodian's vault and physically segregated from securities and other non-cash property belonging to the Custodian.

(c)(i) Upon the initial and each subsequent deposit of Collateral and Proceeds into the Account (including but not limited to any deposit of Collateral as part of an Approved Substitution), Custodian shall promptly provide Public Entity with a Trust Receipt. Additional customized Account statements may be available upon mutual agreement of Public Entity and Custodian.

(ii) Public Entity agrees that it shall promptly review all Trust Receipts and Account statements delivered to it by Custodian and shall promptly advise Custodian and Bank by Written Instruction of any error, omission or inaccuracy in such statements. In the event that Custodian receives such a Written Instruction identifying a specific concern with respect to a suspected error, failure or omission with respect to the Account, Custodian shall undertake to correct any errors, failures or omissions, provided that Custodian and Bank shall work together to determine that such error, failure or omission actually occurred and Custodian shall notify Public Entity of its action concerning each such error, failure, or omission.

(d) The Account shall not be subject to any security interest, lien or any right of set-off by Custodian.

(e) With respect to all Collateral held in the Account, Custodian by itself, or through the use of the Book-Entry System or the appropriate Depository, shall, unless otherwise instructed to the contrary by Bank: (i) collect all income and other payments reflecting interest and principal on the Collateral in the Account and credit such amounts to the account of Bank; (ii) forward to Bank copies of all information or documents that it may receive from an issuer of Collateral which, in the opinion of Custodian, is intended for the beneficial owner of the Collateral including, without limitation all proxies and other authorizations properly executed and all proxy statements, notices and reports; (iii) execute, as Custodian, any certificates of ownership, affidavits, declarations or other certificates under any tax laws now or hereafter in effect in connection with the collection of bond and note coupons; (iv) hold directly, or through the Book-Entry System or Depository, all rights issued with respect to any Collateral held by Custodian hereunder; and (v) upon receipt of Written Instructions from Bank, Custodian will exchange Collateral held hereunder for other securities and/or

cash in connection with (A) any conversion privilege, reorganization, recapitalization, redemption in kind, consolidation, tender offer or exchange offer, or (B) any exercise, subscription, purchase or other similar rights.

(f) Custodian agrees to file reports with the Comptroller of Public Accounts of the State of Texas (the "Comptroller") regarding the Collateral pledged to secure the Uninsured Deposits of Public Entity hereunder, as and when required by the Comptroller.

### 3. Events of Default

Subject to applicable law, rules and regulations, or regulatory authority and oversight, in the event Bank shall fail to pay Public Entity any amount of the Uninsured Deposits by Public Entity covered by this Agreement in accordance with the terms of such Deposit, or should Bank fail or suspend active operations, the Uninsured Deposits in such Bank shall become due and payable immediately and Public Entity shall have the right to unilaterally demand delivery of all the Collateral in the Account by Written Instructions to Custodian and to sell such securities at public or private sale. In the event of such sale, Public Entity, after deducting all legal expenses and other costs, including reasonable attorneys' fees, from the proceeds of such sale, shall apply the remainder towards any one or more of the liabilities of Bank to Public Entity and shall return the surplus, if any, to Bank.

### 4. Representation and Warranties

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

- (i) this Agreement has been legally and validly entered into, does not and will not violate any statute or regulation applicable to it and is enforceable against Bank in accordance with its terms;
- (ii) it is the legal and actual owner, free and clear of all liens and claims, of all the Collateral pledged pursuant to this Agreement;
- (iii) this Agreement was executed by an officer of Bank who was authorized by Bank's board of directors to do so and will at all times be maintained as an official record of Bank;
- (iv) all Collateral held by Custodian hereunder are eligible to secure Public Entity's deposits at Bank under applicable statutes or regulations and the Market Value of the Collateral held by Custodian hereunder at all times meet the requirements of such statutes or regulations;
- (v) Bank is a bank or trust company duly authorized to do business in the state where it is located;
- (vi) 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.

(b) Representations of Public Entity. Public Entity hereby represents and warrants, which representations and warranties shall be deemed to be continuing, that:

- (i) this Agreement has been legally and validly entered into, does not and will not violate any statute or regulation applicable to it and is enforceable against Public Entity in accordance with its terms;
- (ii) the appointment of Custodian has been duly authorized by Public Entity and this Agreement was executed by an officer of Public Entity duly authorized to do so;

- (iii) it will not transfer, assign its interests in or the rights with respect to any Collateral pledged pursuant to this Agreement, except as authorized pursuant to Section 3 of the Agreement;
- (iv) 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.

5. Concerning Custodian

(a) Custodian shall not be liable for any loss or damage, including counsel fees, resulting from its action or omission to act or otherwise, except for any loss or damage arising out of its own negligence or willful misconduct, and shall have no obligation hereunder for any loss or damage, including counsel fees, which are sustained or incurred by reason of any action or inaction by the Book-Entry System or any Depository. In no event shall Custodian be liable to Public Entity, Bank or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement. Custodian may, with respect to questions of law, apply for and obtain the advice and opinion of counsel and shall be fully protected with respect to anything done or omitted by it in good faith and conformity with such advice or opinion. Public Entity, to the extent permitted by law, and Bank agree, jointly and severally, to indemnify Custodian and to hold it harmless against any and all costs, expenses, damages, liabilities or claims, including reasonable fees and expenses of counsel, which Custodian may sustain or incur or which may be asserted against Custodian by reason of or as a result of any action taken or omitted by Custodian in connection with operating under this Agreement, except those costs, expenses, damages, liabilities or claims arising out of the negligence or willful misconduct of Custodian or any of its employees or duly appointed agents. This indemnity shall be a continuing obligation of Public Entity and Bank notwithstanding the termination of this Agreement.

(b) Custodian shall not be responsible for, or considered to be custodian of, any Collateral received by it for deposit in the Account until Custodian actually receives and collects such Collateral directly or by the final crediting of Custodian's account on the books of the Book-Entry System or the appropriate Depository. Custodian will be entitled to reverse any credits made on Public Entity's behalf where such credits have been previously made and the Collateral are not finally collected.

(c) Custodian shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement and no covenant or obligation shall be implied against Custodian in connection with this Agreement.

(d) Public Entity's and Bank's authorized officers and, if permitted by law, representatives of the Comptroller, upon reasonable notice, shall each have access to Custodian's books and records maintained with respect to Public Entity's and Bank's respective interests in the Account during Custodian's normal business hours. Upon the reasonable request of Public Entity, Bank or the Comptroller when applicable law permits, copies of any such books and records shall be provided by Custodian to the requesting party's authorized officer at the requesting party's expense.

(e) In performing hereunder, Custodian may enter into subcontracts, agreements and understandings with third parties (including affiliates) whenever and on such terms and conditions as it deems necessary or appropriate. If any of such subcontracts, agreements, or understandings with third parties are for the deposit of Collateral for the benefit of Public Entity, (i) such third party will qualify as a "permitted institution" pursuant to Chapter 2257 of the Texas Government Code (the "Texas Public Funds Collateral Act"), (ii) Custodian shall cause such third party to provide records to Custodian evidencing the deposit of Collateral with such third party, and (iii) records of the third party relating to such Collateral will at all times state the name of Custodian. No such subcontract, agreement or understanding shall discharge Custodian from its obligations hereunder.

(f) Reliance on Pricing Services. If Custodian, as an accommodation to Bank or the Public Entity, agrees to provide information concerning Market Values, Custodian is authorized to utilize any generally recognized pricing information service (including brokers and dealers of securities) in order to provide Market Values hereunder, and Bank and Public Entity agree that Custodian shall not be liable for any loss, damage, expense, liability or claim (including attorneys' fees) incurred as a result of errors or omissions of any such pricing information service, broker or dealer.

(g) Force Majeure. Custodian shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God, earthquakes, fires, floods, wars, civil or military disturbances, sabotage, epidemics, riots, loss or malfunctions of utilities, computer (hardware or software) or communications service, labor disputes, acts of civil or military authority, or governmental, judicial or regulatory action; provided however, that Custodian shall use its best efforts to resume normal performance as soon as practicable under the circumstances. Provided, however, that if Custodian cannot resume normal performance within thirty (30) days of the cessation of such "force majeure" event, in addition to the termination rights set forth in Section 6 of this Agreement, Bank and Public Entity may terminate this Agreement immediately and without early termination penalty, liquidated damages or other penalty.

6. Termination

Any of the parties hereto may terminate this Agreement by giving to the other parties a notice in writing specifying the date of such termination, which shall be the earlier of (i) not less than 90 days after the date of giving such notice or (ii) the date on which the Deposits are repaid in full. Such notice shall not affect or terminate Public Entity's security interest in the Collateral in the Account. Upon termination hereof, Custodian shall follow such reasonable Written Instructions of Bank and Public Entity concerning the transfer of custody of Collateral, collateral records and other items. Upon the date set forth in the termination notice, this Agreement shall terminate except as otherwise provided herein and all obligations of the parties to each other hereunder shall cease.

7. Miscellaneous

(a) Public Entity and Bank each agree to furnish to Custodian a new Certificate substantially in the form of Exhibit A and Exhibit B, respectively, attached hereto in the event that any present Authorized Person ceases to be an Authorized Person or in the event that any other Authorized Persons are appointed and authorized. Until such new Certificate is received, Custodian shall be fully protected in acting upon Written Instructions or signatures of the present Authorized Persons.

(b) Custodian shall be entitled to rely upon any Certificate or Written Instruction actually received by Custodian and reasonably believed by Custodian to be duly authorized and delivered. Notwithstanding anything herein to the contrary, it is understood and agreed that regardless of the circumstances, Custodian shall accept and solely act upon Written Instructions.

(c) Any Written Instructions or other instrument in writing authorized or required by this Agreement shall be given to Custodian and shall be sufficiently given if sent to Custodian by regular mail to its offices at

c/o The Bank of New York Mellon  
101 Barclay Street, 4<sup>th</sup> Floor  
New York, NY 10286  
Attention: GCS – Collateral Management

or at such other place as Custodian may from time to time designate in writing.

(d) Any notice or other instrument in writing authorized or required by this Agreement to be given to Bank shall be sufficiently given if sent to Bank by regular mail to its offices at

Abby Murphy, Vice President  
Frost Bank  
2950 North Harwood Street  
Dallas, Texas 75201  
abby.murphy@frostbank.com

or at such other place as Bank may from time to time designate in writing.

(e) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Public Entity shall be sufficiently given if sent to Public Entity by regular mail to its offices at

Kimberly Tiehen, Director of Strategic Financial Engagement  
City of Coppell  
PO Box 9478  
Coppell, TX 75019  
ktiehen@coppelltx.gov

or at such other offices as Public Entity may from time to time designate in writing.

(f) In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and unenforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

(g) This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties hereto.

(h) This Agreement shall extend to and be binding upon the parties hereto, and their respective successors and assigns; provided however, that this Agreement shall not be assignable by any party without the written consent of the other parties.

(i) This Agreement shall be construed in accordance with the substantive laws of the State of Texas, without regard to conflicts of laws principles thereof. In connection with any dispute arising hereunder, Bank, Public Entity and Custodian hereby consent to the non-exclusive jurisdiction of a state or federal court situated in the county in the State of Texas in which Public Entity maintains its principal office. Bank, Public Entity and Custodian 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, Public Entity and Custodian each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.

8. Adjudication of Claims. Solely to the extent required or permitted under applicable law governing the operations of the Public Entity (including Tex. Civ. Prac. & Rem Code Ann. §101.001 et. seq. (the Texas Tort Claims Act) and Tex. Loc. Gov't Code Ann. §271.151 et. seq. (Adjudication of Claims Arising Under Written Contacts with Local Governmental Entities)), each party hereto irrevocably agrees not to claim or assert, for itself or its assets, immunity (sovereign or otherwise) from suit, execution, attachment (before or after judgment) or any other legal process arising out of this Agreement in respect of such party's obligations hereunder.

9. Compliance with Texas Government Code Section 2271.002. As required by Section 2271.002 of the Texas Government Code, Custodian hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the phrase "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

10. Compliance with Texas Government Code Section 2252.152. Pursuant to Section 2252.152 of the Texas Government Code, Custodian hereby verifies that it is not engaged in active business operations with Sudan, Iran or a foreign terrorist organization. For purposes of this Agreement, the phrase "foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

11. Definitions

Whenever used in this Agreement, the following terms shall have the following meanings:



(a) "Account" shall mean the custodial account established with Custodian for the benefit of Public Entity as secured party in accordance with this Agreement.

(b) "Authorized Person" shall be any officer of Public Entity or Bank, as the case may be, duly authorized to give Oral Instructions or Written Instructions on behalf of Public Entity or Bank, such persons to be designated in a Certificate substantially in the form of Exhibit "A" for Public Entity or Exhibit "B" for Bank attached hereto as such exhibits may be amended from time to time.

(c) "Approved Substitution" shall have the meaning set forth in paragraph (e) of Section 1 of this Agreement.

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

(e) "Business Day" shall mean any day on which Custodian and Bank are open for Business and on which the Book-Entry System and/or the Depositories are open for business.

(f) "Certificate" shall mean the Certificate of Authorized Persons attached hereto as Exhibit "A" or Exhibit "B".

(g) "Comptroller" shall have the meaning set forth in paragraph (d) of Section 5 of this Agreement.

(g) "Depository" shall include the Depository Trust Company and any other securities depository and clearing agency (and their successors and nominees) registered with the Securities and Exchange Commission or otherwise regulated by appropriate federal or state agencies as a securities depository or clearing agency.

(h) "Deposits" shall mean all deposits by Public Entity in Bank that are available for all uses generally permitted by Bank to Public Entity for actually and finally collected funds under Bank's account agreement or policies.

(i) "Market Value" shall mean, with respect to any Security held in the Account, the market value of such Security as made available to Custodian by a generally recognized source selected by Custodian plus, if not reflected in the market value, any accrued interest thereon, or, if such source does not make available a market value, the market value shall be as determined by Custodian in its sole discretion based on information furnished to Custodian by one or more brokers or dealers; provided however that, if agreed in writing by the parties hereto, Bank may provide Custodian with such Market Values.

(j) "Nationally Recognized Statistical Rating Organization" shall mean Moody's, Standard and Poor's, Fitch, Duff and Phelps, BankWatch and IBCA.

(k) "Public Entity" shall mean a state or a political or governmental entity, agency, instrumentality, or subdivision of the State of Texas, including a municipality, an institution of higher education, as defined by Section 61.003, Texas Education Code, a junior college, a district created under Article XVI, Section 59, of the Texas Constitution, and a public hospital.

(l) "Substitute Collateral" shall have the meaning set forth in paragraph b of Section 1 of this Agreement.

(m) "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 Collateral which is the subject of the transaction and state the Market Value thereof. Statements of account shall identify all Collateral in the Account, the Aggregate Margin Value thereof, and the applicable Collateral Requirement.

(n) "Uninsured Deposits" shall mean that portion of Public Entity's Deposits with Bank which exceeds the insurance coverage available from the Federal Deposit Insurance Corporation.

(o) "Written Instruction(s)" shall mean written communications actually received by Custodian from an Authorized Person or from a person reasonably believed by 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized and their respective seals to be hereunto affixed, as of the day and year first above written.

**CITY OF COPPELL**

**FROST BANK**

\_\_\_\_\_

\_\_\_\_\_

By: Mike Land

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

Title: City Manager

Title: \_\_\_\_\_

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.**

\_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT A**  
**CERTIFICATE OF AUTHORIZED PERSONS**  
**(Public Entity - Written Instructions)**

The undersigned hereby certifies that he/she is the duly elected and acting City Manager of the **CITY OF COPPELL** (the "Public Entity"), and further certifies that the following officers or employees of Public Entity have been duly authorized in conformity with Public Entity's SFE Leadership to deliver Written Instructions to The Bank of New York Mellon Trust Company, N.A. ("Custodian") pursuant to the Third Party Custodian Agreement between Public Entity, Frost Bank ("Bank") and Custodian dated \_\_\_\_\_, and that the signatures appearing opposite their names are true and correct:

<u>Kimberly Tiehen</u>	<u>Director of Strategic Financial Engagement</u>	
Name	Title	Signature

<u>Vanessa Tarver</u>	<u>Assistant Director of Strategic Financial Engagement</u>	
Name	Title	Signature

_____	_____	_____
Name	Title	Signature

_____	_____	_____
Name	Title	Signature

_____	_____	_____
Name	Title	Signature

_____	_____	_____
Name	Title	Signature

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

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

Name: Mike Land

Title: City Manager

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

**Schedule A**  
**SCHEDULE OF ELIGIBLE COLLATERAL**

Third Party Custodian Agreement (Collateralized Municipal Deposits) dated as of \_\_\_\_\_, among **CITY OF COPPELL** ("Local Gov't"),  
**Frost Bank** ("Bank") and The Bank of New York Mellon Trust Company N.A. ("Custodian"),

	Yes/No	Margin
<b><u>U.S. TREASURIES</u></b>		
BILLS	Y	102%
BONDS	Y	102%
NOTES	Y	102%
STRIPS	Y	102%
SYNTHETIC TREASURIES	N	
(e.g.CATS,COUGRS,TIGRS)		
<b><u>AGENCY DEBENTURES</u></b>		
FAMC (Fed Agriculture Mtge Corp)	Y	102%
FCFAC (Farm Credit Finan. Asst.)	Y	102%
FFCB (Farm Credit System Banks)	Y	102%
FmHA (Farmers Home Admin.)	Y	102%
FHLB (Federal Home Loan Banks)	Y	102%
FHLMC (Federal Home Loan Mtge)	Y	102%
FICO (Financing Corporation)	Y	102%
FLBB (Federal Land Bank Bonds)	N	
FNMA (Federal Nat'l Mtge Corp)	Y	102%
REFCO (Resolution Funding Corp)	N	
SLMA (Student Loan Mtge Corp)	N	
TVA (Tennessee Valley Authority)	Y	102%
USPS (U.S. States Postal Service)	N	
AGENCY STRUCTURED NOTES	N	
<b><u>INTERNATIONAL AGENCIES</u></b>		
ADBB (Asian Development Bank)	N	
AFDB (African Development Bank)	N	
IADB (Inter-American Dev. Bank)	N	
IFCO (International Finance Corp)	N	
WLDB (World Bank)	N	

	Yes/No	Margin
<b><u>GNMA</u></b>		
TRUST RECEIPTS	N	
GNMA I/II-SINGLE FAMILY	Y	102%
GNMA I/II-OTHERS-FIXED RATE	Y	102%
GNMA I/II OTHERS-ADJUST. RATE	Y	102%
<b><u>AGENCY MORTGAGE BACKS</u></b>		
TRUST RECEIPTS	N	
PASS THROUGH-S-FIXED RATE	Y	102%
PASS THROUGH-S-ADJUST. RATE	Y	102%
MBS STRIPS (IO,PO,RECOMB)	N	
<b><u>AGENCY REMICS/CMOS</u></b>		
<b>REMIC TYPES:</b>		
RESIDUALS	N	
INVERSE IO FLOATERS	N	
IOETTES	N	
INTEREST ONLY (IO)	N	
PRINCIPAL ONLY (PO)	N	
INVERSE FLOATERS	N	
SUPER FLOATERS	N	
COMPANION FLOATERS	N	
SEQUENTIAL AND OTHER FLOATERS	Y	102%
PAC & OTHER SCHEDULED FLOATERS	Y	102%
Z BONDS	N	
COMPANION BONDS	N	
SEQUENTIAL BONDS	Y	102%
TAC BONDS	Y	102%
PAC & OTHER SCHEDULED BONDS	Y	102%
<b><u>MUNICIPAL BOND</u></b>		
MUNICIPAL BONDS (≥ A)	Y	102%
MUNICIPAL BONDS (≤ BB+,Ba1,BB+)	N	

<b><u>PRIVATE LABELS CMOS</u></b>	Yes/No	Margin
≥BBB-,Baa3,BBB-	N	
≤ BB+,Ba1,BB+	N	
<b>CMO TYPES:</b>		
RESIDUALS	N	
INVERSE IO FLOATERS	N	
IOETTES	N	
INTEREST ONLY (IO)	N	
PRINCIPAL ONLY (PO)	N	
INVERSE FLOATERS	N	
SUPER FLOATERS	N	
COMPANION FLOATERS	N	
SEQUENTIAL AND OTHER FLOATERS	N	
PAC & OTHER SCHEDULED FLOATERS	N	
Z BONDS	N	
COMPANION BONDS	N	
SEQUENTIAL BONDS	N	
TAC BONDS	N	
PAC & OTHER SCHEDULED BONDS	N	
<b><u>ASSET BACKED SECURITIES</u></b>		
ASSET BACKED SECURITIES (≥BBB-,Baa3,BBB-)	N	
ASSET BACKED SECURITIES (≤ BB+,Ba1,BB+)	N	
<b><u>CORPORATES</u></b>		
CORPORATE BOND (≥BBB-,Baa3,BBB-)	N	
CORPORATE BOND (≤ BB+,Ba1,BB+)	N	
MEDIUM-TERM NOTE (≥BBB-,Baa3,BBB-)	N	
MEDIUM-TERM NOTE (≤ BB+,Ba1,BB+)	N	
<b><u>MONEY MARKETS</u></b>		
COMMERCIAL PAPER (≥A1/P1/F1)	N	
COMMERCIAL PAPER (≤A2/P2/F2)	N	
BANKERS ACCEPTANCE	N	
CD (DOMESTIC & EURO)	N	
BANK NOTES	N	

BUYER ACKNOWLEDGES AND AGREES THAT IF A CLASS OF SECURITY CONTAINS NEW ISSUES OF SECURITIES, SUCH NEW ISSUES OF SECURITIES SHALL BE DEEMED TO BE ELIGIBLE COLLATERAL.

[LOCAL GOVERNMENT]

**CITY OF COPPELL**

[BANK]

**FROST BANK**

ACCEPTED:

**THE BANK OF NEW YORK MELLON TRUST COMPANY N.A.**

By: Mike Land  
Title: City Manager  
Date:

By:  
Title:  
Date:

By:  
Title:  
Date: