

Notice is hereby given in accordance with Chapter 105 of the Texas Local Government Code that the City of Olmos Park is accepting proposals for performance of depository services for the City of Olmos Park.

Eligible institutions are hereby invited to submit sealed proposals for a two (2) year Bank Depository Agreement with an option to renew for three (3) subsequent years. The proposed agreement will begin on June 1, 2019 and terminate on May 31, 2021, unless terminated by written 30-day notice by either party or unless the City options to renew. To be considered, the application must be completed, signed, placed in a sealed envelope and delivered to the City Manager at the address listed below no later than 1:00 p.m. **Wednesday, April 17, 2019**. Applications received after the deadline will not be considered and will be returned unopened.

The name and address of the designated person of the City of Olmos Park who will receive the applications are:

Celia M. DeLeon  
City of Olmos Park  
120 W. El Prado  
San Antonio, TX 78212  
(210) 824-3281

The City Council will consider the selection of one or more depositories at its regular May meeting which is currently scheduled for 6:00 pm on May 16, 2019. The regular City Council meeting is held at City Hall City Council Chambers, 120 W. El Prado, San Antonio, Texas.

More information can be found at [www.olmospark.org](http://www.olmospark.org)

It is not City policy to contract on the basis of cost alone. Quality and suitability as to purpose are among the various additional factors considered by the City. The City reserves the right to reject any and/or all applications and to make awards on individual application items as they may appear advantageous to the City and to waive all formalities.

By submitting a proposal, the Bank agrees to enter into the attached agreement if selected as the depository for the City of Olmos Park. Agreement will be modified to reflect the information provided in the Bank's proposal. Bank's proposal shall be attached to, and become a part of, the agreement between the City of Olmos Park and the Bank.

The City reserves the right to open or close any number or type of accounts as it deems necessary throughout the term of the agreement. Any fee charged for services not listed but later requested by the City will be mutually agreed upon. All fees shall be fixed for the entire contract period.

The Bank Depository Services Agreement is an important component of the treasury and cash management system of the City. From this perspective, the City is seeking a financial institution that is:

- Capable of providing all bank services as required by the City;
- Attentive and responsive to the City's financial matters;
- Financially sound and meets the City's requirements; and
- Convenient location(s) to the City.

The City shall carefully review the submitted proposals. The staff recommendation to the Council shall be the proposal determined to be the "best value" for the City. The evaluation of the proposals will be based on, but not limited to, the following criteria, in no particular order of priority:

- Ability to perform and provide the required and requested banking services;
- References from similar entities;
- Costs of services;
- Funds availability;
- Interest paid on interest bearing accounts and deposits;
- Completeness of proposal; and
- Financial strength.

Included for review is the Depository Agreement and Security Agreement. These documents are only for review and are not to be returned with the proposal.

Questions should be directed to Celia DeLeon at (210) 824-3281.

## **BANK DEPOSITORY AGREEMENT**

THIS BANK DEPOSITORY AGREEMENT, 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 the **City of Olmos Park** hereinafter called "DEPOSITOR," and \_\_\_\_\_, a national banking association, duly organized and authorized by law to do banking business in the State of Texas and now carrying on such business in said State, hereinafter called "BANK".

### **I.**

DEPOSITOR hereby designates BANK as a depository for the period beginning \_\_\_\_\_, 2019 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 for this Agreement cannot exceed 5 years.

DURING the term of this Agreement, the DEPOSITOR will, through appropriate action of its City Council, 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 and to (a) execute and deliver to BANK an electronic fund or funds transfer agreement (and any addenda thereto), (b) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment, or transfers on behalf of DEPOSITOR in accordance with the electronic fund or funds transfer agreement and addenda, (c) make withdrawals or transfers by written instrument, and (d) deliver 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 (hereinafter defined), (3) this Agreement, and (4) the attached Security Agreement (hereinafter defined).

### **II.**

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 Market 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.

### III.

SUBJECT to the provisions stated above and to the particular terms of 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, canceled checks, 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 seven (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.

### IV.

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 (hereinafter defined), all of which are attached hereto.

DEPOSITOR AND BANK, by execution of this Agreement, hereby designate Federal Reserve Bank/Federal Home Loan Bank hereinafter called "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 specified levels of insurance for DEPOSITOR'S funds deposited at any one Texas financial institution, including accrued interest on such funds. 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 hereby agrees and certifies that the collateral listed in Exhibit A to the Security Agreement may be used as collateral to secure DEPOSITOR'S funds on deposit with the BANK. The total market value of the collateral (which includes accrued interest or income to the extent it is not included in the market price) securing such deposits will be in an amount at least equal to 102% (110% when mortgage-backed securities are used for collateral) of the amount of such deposits plus the amount of any accrued interest thereon and less the amount that such deposits are insured by the FDIC (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 hereby agrees to notify the BANK of such expected increase at least one business day prior to the expected date the additional deposits are expected to be received.

V.

BANK HAS HERETOFORE or will immediately hereafter 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 of DEPOSITOR deposited with BANK. Said collateral or substitute collateral, as hereinafter provided for, 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 hereof and of the Security Agreement so long as the depository relationship between DEPOSITOR and BANK shall exist hereunder, and thereafter so long as any portion of the deposits made by DEPOSITOR with BANK hereunder shall have not been properly paid out by BANK to DEPOSITOR or on its order. The BANK hereby grants a security interest in such collateral to DEPOSITOR.

VI.

THE BANK shall cause CUSTODIAN to accept said collateral and hold the same in trust for the purpose herein stated, in a separate joint safekeeping account with the CUSTODIAN, the DEPOSITOR, and the BANK, to be managed pursuant to the Security Agreement, and operating agreements, guidelines, and procedures as follows in Section VII through Section XIV hereof, and pursuant to the terms of any agreement with the CUSTODIAN.

VII.

IT is distinctly understood by all the parties hereto 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 hereunder with the CUSTODIAN by BANK, and shall be liable to no one hereunder except for the safekeeping of the securities herein provided for as and when received, and the ordinary negligence of its own officers, agents, and employees.

VIII.

SHOULD BANK fail at any time to pay immediately and satisfy upon presentation any check, draft, or voucher lawfully drawn upon any Demand Deposit, or fail at any time 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 demand of DEPOSITOR (supported by proper evidence of any of the above listed circumstances), to surrender the above-described collateral to DEPOSITOR. DEPOSITOR may sell all or any part of such collateral and out of the proceeds therefrom, pay DEPOSITOR all damages and losses sustained by it, together with

all expenses of any kind and every kind incurred by it on account of such failure or insolvency, or sale, accounting to BANK for the remainder, if any, of said proceeds or collateral remaining unsold.

#### IX.

ANY SALE of such collateral, or any part thereof, made by DEPOSITOR hereunder may be either at public or private sale; provided, however, DEPOSITOR shall give to both CUSTODIAN and BANK three (3) days notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefor for cash. DEPOSITOR and BANK shall have the right to bid at such sale.

#### X.

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 herein, which said 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 initial 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.

#### XI.

BANK SHALL CAUSE CUSTODIAN to promptly forward to DEPOSITOR trust receipts covering all such collateral held for DEPOSITOR, including substitute collateral as provided herein. 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.

#### XII.

IF at any time the collateral held by the CUSTODIAN for the benefit of the DEPOSITOR shall have a market value in excess of the Collateral Requirement, then on 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 possible.

### XIII.

EITHER DEPOSITOR or BANK shall have the right to terminate this Agreement prior to the expiration date by advance written notice to the other of its election to do so, and this Agreement shall be void from and after the expiration of ninety (90) days after the receipt of such notice, provided all provisions of this Agreement have been fulfilled. This Agreement may be amended in a writing executed by both the DEPOSITOR and the BANK.

### XIV.

WHEN the relationship of DEPOSITOR and BANK shall have ceased to exist between DEPOSITOR and BANK, 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, whereupon the CUSTODIAN shall redeliver to BANK all collateral then in its possession belonging to BANK for the benefit of DEPOSITOR, taking its receipt therefor, and an order in writing presented to the CUSTODIAN by DEPOSITOR and a receipt for such collateral by BANK shall be a full and final release of the CUSTODIAN of all duties and obligations undertaken by it by virtue of this Agreement, and it shall stand fully and finally acquitted of all liability of any kind and character whatsoever to both DEPOSITOR and BANK.

### XV.

THE BANK represents 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) Other than the security interest granted to DEPOSITOR herein, no other security interest has been, nor will be, granted in the securities utilized to collateralize deposits;
- (c) BANK accounts are insured to the regulatory limits by the FDIC;
- (d) This Agreement has been approved by the BANK's Board of Directors and such approval is evidenced by a resolution of BANK's Board of Directors adopted at the meeting at which this Agreement was approved and further, such approval is reflected in the minutes of such meeting of the Board of Directors; and

- (e) 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.

XV.

THE BANK represents 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) Other than the security interest granted to DEPOSITOR herein, no other security interest has been, nor will be, granted in the securities utilized to collateralize deposits;
- (c) BANK accounts are insured to the regulatory limits by the FDIC;
- (d) This Agreement has been approved by the BANK's Board of Directors and such approval is evidenced by a resolution of BANK's Board of Directors adopted at the meeting at which this Agreement was approved and further, such approval is reflected in the minutes of such meeting of the Board of Directors; and
- (e) 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 that:

- (a) The DEPOSITOR has complied with all applicable law governing the selection of a depository bank, and this 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 it; and
- (b) 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.

XVII.

THE BANK represents and warrants that this Agreement is made pursuant to and is duly authorized by the Board of Directors of the BANK. A true and correct copy of the resolution of the BANK'S Board of Directors adopted at the meeting at which this Agreement was approved and accepted is attached to this Agreement and incorporated for all purposes.



XVIII.

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.

XIX.

THE BANK'S response to the DEPOSITOR'S Request For Proposal is considered to be part of this Agreement. Any conflicts between the two agreements are determined by the Bank's proposal.

[The rest of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Bank has caused this Agreement to be duly executed as of the \_\_\_\_\_, day of \_\_\_\_\_, 2019.

**BANK**

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

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

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

DEPOSITOR accepts and agrees as the \_\_\_\_\_ day of \_\_\_\_\_, 2019 \_\_\_\_\_

**DEPOSITOR:**

**CITY OF OLMOS PARK**

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

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

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

**ATTEST:**

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

\_\_\_\_\_

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

Title: CITY SECRETARY



## SECURITY AGREEMENT

Name of Bank (the "Bank"), for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby 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 and/or Federal Home Loan Bank (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 therefor, whenever acquired and wherever located (the "Collateral") to City of Olmos Park (the "Depositor"), in order to secure the payment when due, of the Deposits (as defined below) pursuant to the depository agreement dated as of the date hereof the ("Depository Agreement"), between the Bank and the Depositor:

(1) Definitions. Except as otherwise expressly defined herein, 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 herein 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 thereon, 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 hereto, and any Proceeds thereof.

"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 thereon, 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 therein.

"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 the Market Value thereof. [When declining principal securities are used to secure funds of a school district, the district must receive a report once a month providing the total market value of those declining principal securities.]

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

"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 heretofore or hereafter 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 therewith, shall hold Securities as a securities intermediary (as such term is defined in Chapter 8 of the Code) in accordance with the provisions hereof, of 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 heretofore or hereafter 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 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 actually 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 actually 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 hereby 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 hereunder. 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 hereby 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 of 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 Written Instructions (x) to transfer 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, to designated accounts of Depositor and (y) to cease releasing to an account of Bank any Proceeds reflecting interest and principal on Securities in the Account as provided in Section 2(d) hereof.
- (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 hereunder 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 (i) in the ordinary course of business, (ii) in good faith and on an arm's-length basis with the Depositor, (iii) not in contemplation of bankruptcy or insolvency, and (iv) 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;
  - (iii) the Bank is the owner of 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;
  - (iv) this Agreement was executed by an officer of Bank who was authorized by the Bank's board of directors to do so;
  - (v) the Bank is a bank or trust company duly authorized to do business in the State of Texas; and

- (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 by it exist or have happened or have been performed.
- (b) Representations of Depositor. Depositor 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, 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 security 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 thereof, except as permitted in Section 5 of this Agreement; and
  - (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.
- (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 as instructed by the Depositor and (b) the Depository Agreement is no longer of any force or 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 herein, in the Depository Agreement, and in any other agreement now or hereafter in effect between the Bank and the Depositor. The Depositor hereby agrees to provide the Bank and the Custodian with reasonable notice of the sale, disposition, or other intended action hereunder in connection with the Collateral, whether required by the Code or otherwise, and such notice shall constitute reasonable notice to the Bank and to the Custodian if such notice is delivered at least three days prior to such action, to the Custodian and to the Bank's address specified in Section 10 hereof.



- (9) Application of Proceeds by the Depositor. In the event the Depositor sells or otherwise disposes of the Collateral in the course of exercising the remedies provided for in Section 5 hereof and in the Depository Agreement, any amounts held, realized, or received by the Depositor pursuant to the provisions hereof, including the proceeds of the sale of any of the Collateral or any part thereof, shall be applied by the Depositor first toward the payment of any costs and expenses incurred by the Depositor in enforcing this Agreement, in realizing on or protecting any Collateral and 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 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, at:

City of Olmos Park  
120 West El Prado Drive  
San Antonio, Texas 78212

If to the Bank, at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(11) Miscellaneous. (a) Depositor agrees to furnish to Bank a new certificate substantially in the form of Exhibit B, attached hereto, or in similar forms which may be prescribed by the Bank, in the event that any present Authorized Person for the Depositor ceases to be an Authorized Person for the Depositor or in the event that any other Authorized Persons for the Depositor are appointed and authorized.

(b) 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.

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

(d) 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.

(e) 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 has caused this Agreement to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

(BANK)

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

Name:

Title:

Dated:

DEPOSITOR ACCEPTS AND AGREES  
as of \_\_\_\_\_, 2019

(DEPOSITOR)

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

Name:

Title: MAYOR

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.

**EXHIBIT B**

**CERTIFICATE OF AUTHORIZED PERSONS**

**(Depositor)**

The undersigned hereby certifies that he/she is the duly elected and acting Mayor of Olmos Park (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 (name of custodian) ("Custodian") pursuant to the Security Agreement between Depositor and the Bank dated \_\_\_\_\_, and that the signatures appearing opposite their names are true and correct:

\_\_\_\_\_  
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.

{corporate  
seal}

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



