

## **BANK DEPOSITORY AGREEMENT**

This Bank Depository Agreement (Agreement) is made and entered into this 9th day of March 2021 by and between the City of Bay City, Texas (City) and Prosperity Bank, Bay City, Texas (Bank) a bank chartered by the State of Texas and having a place of business in the City of Bay City, Matagorda County, Texas.

### **Section I Designation as Depository**

The City, through action of its City Council, hereby designates the Bank as its depository for banking services for a three (3) year period, commencing on March 1, 2021 and terminating on February 29, 2024 with an option to extend for two additional years at the written request of the City, or until the City designates another depository for banking services.

### **Section II Designation of Custodian**

As more fully described in the Collateral Agreement between the parties, the City and Bank hereby designate the Federal Home Loan Bank of Dallas (the "Custodian") to hold in trust, according to the terms and conditions of the City Request for Proposal, RFP No. R-122020-1 submitted January 22, 2021, (the "RFP"), all securities pledged as depository collateral in accordance with the City's Investment Policy.

### **Section III Collateral**

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

Such pledged securities shall be subject only to the joint written instructions of both (a) authorized representatives of the City and (b) specifically authorized representatives of the Bank. The Bank shall have the right, with the prior written consent of the City, to substitute or replace, any or all of the pledged securities with collateral acceptable to the City.

### **Section IV Financial Position**

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

### **Section V Authorized City Representative**

For the term of this Agreement, the City designates, and Bank is authorized to recognize, the individuals as listed in Exhibit A as authorized to represent and act for the City in any and all matters including collateral assignment and substitution, execution of agreements and transfer of funds. Any change in these representatives must be made in writing by City and delivered to Bank. Bank may continue to recognize an individual listed on Exhibit A until Bank is notified by the City the individual is no longer authorized.

### **Section VI Scope of Services**

The Bank's response to the City's RFP, submitted January 22, 2021 (the "Response") is incorporated into this Agreement for all purposes, including service charges, time deposit, demand deposit and loan rates, and attached as Exhibit B. If any provisions of the Response and this Agreement are in conflict, this Agreement shall control.

The Bank shall faithfully perform all of its duties and obligations required by the laws of the State of Texas for public funds depositories and shall upon presentation pay all checks drawn on it against collected funds on demand deposits in accordance with Bank's policies and procedures, and shall, at the expiration of the Agreement, turn over to its successor all funds, City-owned securities, property, and things of value held as depository.

The City shall have the power to determine and designate the character and amount of the funds to be deposited in the Bank. The City may arrange for time deposits and Bank may accept such deposits subject to the terms of the Bank's Response.

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

#### **Section VII Bank Compensation**

Bank will be compensated for any and all services rendered to City under this Agreement. Bank agrees to offset monthly service fees against its customary earnings credit for balances in City's non-interest bearing accounts.

#### **FEE BASIS LANGUAGE**

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

For new services not defined in this Agreement shall be negotiated by the City and Bank and mutually agreed upon in writing, but in no case shall the charge be in excess of the then current published price by the Bank.

#### **Section VIII Default**

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

In the event of a default, failure or insolvency of the Bank, City shall give written notice of such default to Bank, and Bank shall have three (3) business days to cure such default. In the event Bank fails to cure such default, the City shall be deemed to have vested full title to all securities pledged under this Agreement. The City is empowered to take possession of and transfer and or sell any and all securities. If the security is liquidated, any proceeds over the defaulted amount, plus expenses related to liquidation, shall be returned to the Bank. This power is in addition to other remedies which the City may have under this Agreement and without prejudice to its rights to maintain any suit in any court for redress of injuries sustained by the City under this Agreement.

#### **Section IX . INTENTIONALLY OMITTED.**

#### **Section X Notice**

Any notice required to be given to Bank in writing shall be sufficient when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the Bank at the address shown below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received.

Prosperity Bank  
Tami Savage  
1600 7<sup>th</sup> Street  
Bay City, Texas 77414

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City of Bay City, Texas  
Attn.: Finance Director  
1901 Fifth Street  
Bay City, Texas 77414

**Section XI Non-Assignability**

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

**Section XII Termination**

This Agreement may be terminated by either the City or the Bank by giving sixty (60) day's prior written notice to the other Party.


**Section XIII Law Governing**

All applicable provisions and requirements of the laws of the State of Texas governing depositories for the City shall be a part of this Agreement. Venue for any dispute under this Agreement shall be brought in a state district court in Matagorda County, Texas.

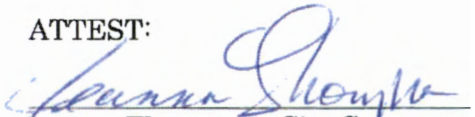
**Section XIV Bank Authorization**

The Bank represents and warrants that this Agreement is made pursuant to and is duly authorized by the Board of Directors of the Bank and recorded in the official records of the Bank.

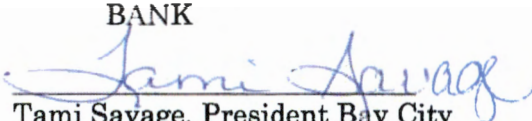
CITY

  
\_\_\_\_\_  
Robert K. Nelson, Mayor

ATTEST:

  
\_\_\_\_\_  
Jeanna Thompson, City Secretary

BANK

  
\_\_\_\_\_  
Tami Savage, President Bay City

ATTEST:

\_\_\_\_\_

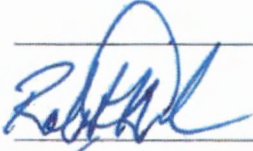
EXHIBIT A

**AUTHORIZED REPRESENTATIVES**

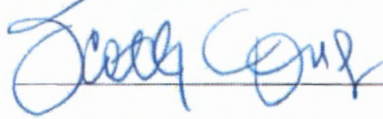
The following individuals are authorized representatives of the City empowered to direct the Bank and the Custodian for the Bank, in regard to collateral pledges, releases and substitutions in the joint safekeeping account as well as authorized to represent and act for the City in any and all matters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

City Representative's Signature

Name and Title



Robert K. Nelson, Mayor



Scotty Jones, Finance Director

**Exhibit B**

**Bank's Response to City's RFP**