

## TOWN COUNCIL

### STAFF REPORT

#### Finance Department



<b>MEETING DATE:</b>	July 11, 2023
<b>PROJECT:</b>	Consideration to Enter into a Contract and Fiduciary Relationship with First Citizens Bank & Trust as an Investment Management Advisor
<b>PROJECT MANAGER:</b>	Chris Forster, Assistant Town Manager

**REQUEST:** Request for Town Council to authorize Town staff to enter into a contract and fiduciary relationship with First Citizens Bank & Trust Company as an investment advisor to the Town of Bluffton.

**BACKGROUND:** The Town of Bluffton currently has accumulated cash that is held with a few different financial institutions. Our primary depository accounts are with Well Fargo. These accounts are our main check writing accounts and where bond proceeds are held. We have accounts with Palmetto State bank for our DRCI account, our MID funds account, boat ramp and SC Rural Development funds (i.e., Palmetto Electric, Hargray) account. We additionally have approximately \$1.5M in the Local Government Investment Pool (LGIP). The funds in LGIP currently return approximately 4.8% APR but, prior to recent Federal Reserve rate increases, was returning less than 0.5% APR.

In recent years, accumulated cash is a result of a few factors. First, the Town has made a conscious effort to set aside sufficient reserves to meet the needs of responding to emergencies and preparing for future capital asset maintenance and renewals. Second, we have programmed many prior year revenues for our CIP program. These funds currently are committed for various projects and will be spent down as these projects are completed. Third, we have had two bond issuances in recent years, one \$5M GO bond for stormwater and sewer projects and a \$10M TIF revenue bond for the New Riverside Barn Park. These bond proceeds will be spent down as projects are completed and are currently sitting in our depository accounts. Finally, there are balances in accommodations tax and hospitality tax funds. Currently, as cash flow fluctuates, the Town may have as much as \$75M sitting in all our accounts as a result of these factors at a given time.

As interest rates have shifted, there is a need to identify an approach for treasury management that better balances cash flow needs with the need to maximize return on idle funds while protecting returns of our funds in a portfolio that appropriately manages risk according to our investment policy. As a result, the Assistant Town Manager instructed Procurement staff to

publish a solicitation for duly licensed investment management firms with experience in managing municipal funds.

Request for Proposal 2023-18 was published with a number of financial institutions reviewing the solicitation. First Citizens submitted a fully compliant bid package and Southeast Asset Advisors submitted a letter of "no bid". Evaluators reviewed First Citizens bid package and a face-to-face meeting was conducted to answer additional questions.

First Citizens is a well-established financial institution that has 65 municipal clients, managing over \$807M in municipal assets. Staff interviewed their prospective team as well as contacted a few municipal references. All references came back extremely positive. If approved, First Citizens would work with staff to identify appropriate liquidity needs, project spend down timelines and risk tolerance to structure an investment schedule that balances the Town's cash requirement to identify the best investments and terms.

**NEXT STEPS:** Town Council to approve to the signing of the Investment Management Municipal Agreement for South Carolina.

**SUMMARY:** If Town Council approves this action today, signing the municipal investment agreement with First Citizens will commence a fiduciary relationship with strict oversight by the Assistant Town Manager.

**ATTACHMENTS:**

1. Investment Management Municipal Agreement for South Carolina
2. Resolution
3. Recommended Motion

# Investment Management Agreement – SC Municipal

**FIRST-CITIZENS BANK & TRUST COMPANY**, a North Carolina banking corporation with its main office in Raleigh, North Carolina ("First Citizens"), and the undersigned local government ("Client"), agree to establish and maintain an investment management account with First Citizens for Client (the "Account") for the investment and management of all cash, stocks, bonds, securities and other property from time to time designated for the Account ("Assets"), subject to the terms and conditions of this agreement (this "Agreement"). (First Citizens and Client further referred to herein individually as a "Party" or collectively as the "Parties").

1. **Representations.** Client (and each person executing this Agreement on behalf of Client) each represents that:
  - a. Client is authorized to enter into this Agreement and designate the Assets. In addition, Client has the power to delegate investment discretion and other duties to First Citizens as contemplated by this Agreement, and applicable law and any applicable governing documents permit Client to enter into this Agreement;
  - b. There are statutory investment restrictions relating to the investment of the Account;
  - c. All necessary action to enter this Agreement has been taken by Client's governing body after due consideration of its terms and this Agreement has been duly authorized, executed, and delivered by Client and constitutes its legal, valid, and binding obligation, enforceable against Client in accordance with its terms; and
  - d. Client is a validly organized and existing public body politic, existing under the Constitution and laws of a state or commonwealth of the United States.
2. **Designation of Assets.** The Account consists of all assets initially or subsequently deposited with First Citizens for the Account, all assets held by third-party custodians designated in writing by Client ("Third-Party Custodians") and accepted in writing by First Citizens as Assets, and all earnings on Assets and products of Asset transactions, until such assets are withdrawn or distributed from the Account. If applicable, First Citizens may register and hold Assets in its name, in the name of its nominee, or in other form, and may hold Assets through the book-entry systems or depositories customarily used for those Assets. No property may be transferred to the Account without the written consent of First Citizens.
3. **Account Management.** Client hereby appoints First Citizens as Client's exclusive agent and attorney-in-fact to supervise and manage all Assets.
  - a. Client authorizes First Citizens, subject to the terms of this Agreement, to do all acts necessary to carry out its duties under this Agreement, to exercise all rights and privileges related to the Assets, and generally to take all other actions with respect to the Account as, when and how First Citizens in its discretion deems desirable and appropriate, all with the same force and effect as Client could do, exercise, or take, whether or not specifically provided in this Agreement, provided First Citizens complies with any statutory investment restrictions applicable to the Account. As examples, First Citizens is authorized:
    - i. to hold, acquire, collect, control, and retain, and to purchase and sell, and generally to invest and reinvest, or to hold uninvested, or to convert or exchange, assets;
    - ii. to collect and reinvest dividends, interest and other income or proceeds from assets;
    - iii. to grant, purchase and exercise options, warrants, subscription rights and other similar rights;
    - iv. to deposit or invest assets in accounts of or products issued by a regulated financial-services institution, including First Citizens and its affiliates, including but not limited to interest bearing or time deposit accounts, short-term investment accounts, short-term investment funds, and other short-term investment vehicles;
    - v. to execute declarations, certificates, affidavits, elections, or other instruments or documents, and open Account-related mail or other communications sent to Client;
    - vi. to vote or act on Proxies and Corporate Events as described in Section 7;
    - vii. to register and hold assets in First Citizens' name, in the name of its nominee, or in other form;

- viii. to incur and pay from the Account reasonable and necessary expenses of the Account, including calls, assessments, and other sums chargeable or accruing against the Account's assets, and including First Citizens' fees and expenses pursuant to Section 8, and to withhold distributions sufficient, in its judgment, to cover such expenses;
- ix. to comply with applicable laws, regulations and rules (including those of exchanges and other third parties) and in its discretion to act, or to refuse to act until reasonable conditions are satisfied, in any emergency or any situation not specifically provided for in this Agreement; and
- x. on termination of the Account, to take appropriate action to conclude its management and distribute the Account's assets.

b. Notwithstanding the authority granted it or any other provision of this Agreement, First Citizens may refuse to exercise any authority upon any matter by advising Client of the matter and First Citizens' decision not to act, and providing Client with all communications received about the matter.

c. No person dealing with First Citizens will be under any obligation to make any inquiry concerning First Citizens' authority or confirm the application of any payments made to or by First Citizens. In any judicial or administrative proceeding affecting any asset, Client will be deemed to be fully represented by First Citizens when First Citizens is a party to the proceedings.

d. Client acknowledges that the general investment authority granted to First Citizens pursuant to the terms of this Agreement includes, if applicable, the ability to select the most appropriate tax lot selection method for the Account. Currently, the default tax lot selection method being utilized for all accounts for which First Citizens has sole investment discretion is the Long Term, High Cost ("LTHC") method and that is the method that will apply to the Account, until such time as First Citizens selects a different tax lot selection method.

4. **Duties and Liabilities.** Client acknowledges and agrees that:

a. All Account transactions are for the account and at the risk of Client, the Account investments and investment strategies involve risks, investment performance can never be predicted or guaranteed, and the value of the Account will fluctuate due to market conditions and other factors.

b. First Citizens does not guarantee or ensure the success of any Account investment or investment strategy.

c. Neither First Citizens nor its agents, officers, employees, directors, or affiliates will:

- i. be liable for any good faith action, omission, or error in judgment associated with the Account, but may only be liable for losses caused by First Citizens' negligence or willful misconduct in performing its duties herein;
- ii. be liable for any loss arising from any action or inaction by any third-party, such as a broker, issuer or Third-Party Custodian, including a failure to follow First Citizens' instructions or demands, or from any delay or difficulty arising from the rules, regulations, procedures, or requirements of a broker, market, exchange, or other third-party;
- iii. be liable for any loss arising from causes beyond its control, including equipment, communications or transportation failures or interruptions, governmental orders or actions, war or military action, civil unrest or commotion, catastrophes, strikes or other labor disturbances, acts of God, or natural disasters; or
- iv. be liable for loss or deemed in violation of any provision of this Agreement or applicable law if, promptly after the discovery of the issue, First Citizens takes whatever actions may be practical under the circumstances to remedy it, or if it is unable to address an issue due to Client's failure to promptly report the issue or any discrepancy in the information furnished by First Citizens.

d. First Citizens relies on information provided by Client, and is not responsible for any omission or misstatement contained in such information. First Citizens will not be liable for losses arising from Client's failure to promptly communicate any material change in Client's circumstances or objectives, or from Client's failure to provide any requested information that might affect First Citizens' management of the Account.

e. First Citizens may seek the advice of legal counsel regarding the Account or this Agreement. First Citizens may at any time initiate an action or proceeding for settlement of the Account, for the determination of any question of construction which

may arise, or for instructions concerning any matter as to which First Citizens is uncertain of its rights or duties. The expenses of any such advice or proceeding may be paid from the Account in accordance with Section 8 if Client is given reasonable prior notice. First Citizens will have no liability for (i) any act or omission taken or made by it in good faith pursuant to the advice of legal counsel, or (ii) following the instructions of any court, or (iii) any delay or inaction pending such advice or instructions.

5. **Account Statements and Information.**

a. Except as otherwise instructed by Client, First Citizens will provide Client access to electronic statements containing a description of all Account activity during the preceding period, including (a) all Account transactions, (b) all deposits to and withdrawals from the Account, (c) all other debits and credits to the Account, (d) all fees and expenses charged to the Account (other than internal charges imposed on certain assets), and (e) the value of the Account at the beginning and end of the statement period.

b. Upon reasonable request, First Citizens will provide Client with additional, reasonably available, information or documentation concerning the Account, the assets, or Account transactions. Client waives any and all rights it may have to receive other information or documentation (such as confirmations). Client agrees to carefully review those statements and other information, and to promptly report any discrepancies or concerns to First Citizens.

c. First Citizens will value assets by using such consistent methodology and based upon such sources as First Citizens, in good faith, deems reliable to provide fair and accurate valuations. First Citizens may use the furnished initial value when it cannot obtain reliable information about an asset's current value. First Citizens may rely on any valuation of or other information about an asset provided by a Client or any authorized Client representative and has no responsibility to verify that information. First Citizens' statements may reflect an allocation to principal and income, but Client (or Client's legal or tax advisors) is exclusively responsible for any actual allocation of principal and income.

6. **Custody of and Transactions in Assets.**

a. First Citizens will act as custodian of those Assets deposited with it for the Account.

b. As to any Assets held by a Third-Party Custodian, Client will instruct the Third-Party Custodian to follow First Citizens' directions concerning these Assets, and any reference in this Agreement to an action by First Citizens includes First Citizens' direction to a Third-Party Custodian to effect such action.

c. First Citizens will not be obligated to effect transactions in assets unless it has full and immediate access to the assets, whether funds or deliverable securities, necessary to complete the transaction; if not so-accessible, First Citizens may in its sole discretion:

- i. refuse to initiate or settle the transaction;
- ii. settle the transaction on Client's behalf and debit the Account for First Citizens' costs and expenses in executing the transaction, plus a reasonable fee for the extraordinary service; or
- iii. reverse the transaction.

7. **Proxies and Corporate Events.** Except as otherwise provided in this Agreement or required by law, with respect to all Assets in the Account (including those Assets held by a Third-Party Custodian):

a. First Citizens will:

- i. vote or give general or limited proxies or directions to vote, with or without power of substitution;
- ii. enter into or continue a voting trust agreement; or
- iii. execute waivers, consents, or objections or otherwise act for Client, with respect to any election or other voting matter, call for redemption, exchange offer, tender offer, rights offering, subscription rights, conversion or similar rights, merger, consolidation, reorganization, reclassification or recapitalization, default of payment, bankruptcy, class action, or similar event or proceeding affecting the Assets ("Corporate Events");

and may do so alone, through participation in a committee or group, or through a delegate or agent.

b. When First Citizens votes or acts with respect to Proxies or Corporate Events, it will have no obligation to forward

associated materials to Client.

c. First Citizens will use reasonable efforts to be informed of Corporate Events, but has no responsibility to act or inform Client of Corporate Events of which it does not receive notice.

d. Except when prohibited by law, First Citizens may in its discretion delegate some or all of the authority conferred by this Section 7 to third-parties, including the authority to vote upon Corporate Events.

e. Client does not object to First Citizens' disclosure of Client's name, address and securities positions to securities issuers who request such information in order to communicate with beneficial owners about Corporate Events.

8. **Fees and Expenses.** Client agrees:

a. Client will compensate First Citizens for its services under this Agreement ("Account Fees") in accordance with the terms of the published fee schedule(s) applicable to the Account at the time the services are rendered unless Client and First Citizens have a written agreement which documents an alternate fee arrangement. Client acknowledges receipt of the applicable currently published fee schedules and understands that such fees may increase from time to time. Client further understands that the Account values used in calculating Account Fees may differ from those shown on Account statements due to settlement date accounting, treatment of accrued income, distributions, and/or necessary adjustments.

b. Client will reimburse First Citizens for reasonable expenses incurred in rendering services under this Agreement. Client understands that the Account Fees do not cover brokerage commissions, investment vehicle fees, Third-Party Custodian fees, certain other charges imposed by third-parties, or other charges Client agrees to pay in addition to the Account Fees. Client further understands that certain investment vehicles which may be used in the Account impose fees, charges and other expenses as described in the vehicle's prospectus, and that the Account will bear a proportionate share of these expenses in addition to the Account Fees.

c. First Citizens may deduct all applicable fees and expenses as they are incurred from the Account. Unless otherwise agreed in writing by Client and First Citizens, First Citizens will pay fees and expenses first from cash, cash equivalent or short-term investment Assets; if the values of these Assets are insufficient to cover fees and expenses owed, First Citizens may elect to collect the amounts owing from Client or liquidate other Assets, in its sole discretion, as necessary to pay fees and expenses. When invoiced, Client will make timely payment of all amounts due First Citizens. To the extent permitted, First Citizens will place a lien on all Account Assets for the discharge of Client's obligations under this Agreement and will have a right of offset against the Assets for any indebtedness to First Citizens. First Citizens may require an advance of estimated costs and expenses in connection with services requested whose costs may exceed any unencumbered Assets then held by First Citizens. First Citizens may direct any Third-Party Custodian to sell sufficient securities (selected in First Citizens' discretion) to satisfy Client's obligations.

d. That the Account will bear the costs of all brokers' commissions and similar costs relating to the Assets, and Client acknowledges that First Citizens may place some securities orders, consistent with its best execution practices, with brokers who provide investment research services to First Citizens in consideration of the placement of those transactions, in accordance with applicable law.

9. **Disbursements and Withdrawals.** First Citizens agrees to disburse Account income and/or principal (less any fees and expenses due First Citizens) in accordance with Client's written instructions, which may include periodic cash payments or withdrawals. If First Citizens is also serving as custodian, withdrawn Assets will be delivered in-kind unless Client requests that the assets be liquidated. First Citizens will process withdrawals and distributions as quickly as reasonably possible, but Client understands that assets may not be immediately available, that requests requiring liquidations generally take longer than distributions in-kind, and that First Citizens should receive as much advance notice as possible of a desired withdrawal or distribution.

10. **Investment Strategy and Client Instructions.**

a. Except as otherwise instructed by Client, First Citizens will in its sole discretion invest and manage Assets based upon Client's Investment Policy Statement, which is developed taking into account Client-provided information regarding investment objectives, risk tolerances as well as the statutory investment restrictions described in Section 1(b). First Citizens will not be liable for losses arising from acting upon any Client instructions.

b. First Citizens is entitled to rely upon and is protected in acting upon written or oral instructions from Client. Client

instructions ordinarily should be written, but Client agrees that First Citizens may, but is not required to, accept and act upon oral instructions. First Citizens may rely upon instructions communicated by telephone, facsimile or electronic mail, or by any other means, which it reasonably believes to be genuine and authorized by Client. First Citizens will not be liable for acting, or for failure to act or delay in acting, upon any such instructions or apparent instructions.

c. First Citizens may, but is not required to, follow instructions given by any person it reasonably believes to have been authorized by Client to direct the account. First Citizens will not be liable for acting, or for failure or delay in acting, upon any such instructions or apparent instructions.

d. First Citizens may, but is not obligated to, require confirmation of any Client instruction. First Citizens will have no liability for awaiting or for not obtaining such confirmation before acting.

11. **Termination and Distribution upon Termination.**

a. This Agreement will remain in full force and effect unless revoked or terminated as provided in this Section 11. First Citizens will not be liable for continuing to serve under this Agreement prior to its receipt of notice of termination, or for any losses occurring while First Citizens seeks confirmation of a termination.

b. This Agreement may be terminated by either Client or First Citizens upon 30 days written notice to the other, provided that the effective date of any such notice will allow First Citizens reasonable time to conclude the management of the Account and transfer or distribute the assets. Regardless of notice, Client's withdrawal or transfer of all assets will terminate this Agreement.

c. Except as otherwise provided in this Section 11, upon the termination of this Agreement, First Citizens will deliver all Account assets in its custody, less any accrued but unpaid expenses and fees, as instructed by Client or Client's agent. Notwithstanding, any initiated asset transactions will be consummated or settled before such distribution. Delivery of the Account assets to or as directed by Client, or as instructed by a court, discharges First Citizens from any further responsibility or liability for the Assets. If First Citizens does not receive such instructions, it may take any reasonable action to transfer or distribute the Account's assets.

d. Termination of this Agreement will not affect the Parties' liabilities or obligations arising prior to termination. All provisions of this Agreement whose terms and context indicate such an intent will survive termination.

12. **Other Accounts and Transactions.** Client understands and agrees:

a. First Citizens may in its sole discretion aggregate purchases and sales of assets with same-day transactions for other client accounts. When so-aggregated, the actual prices paid or received will generally be averaged, and each aggregated transaction will be deemed to have occurred at the average price. When the aggregated orders are partially filled, or in rare circumstances when averaging is impracticable or would result in inequity, prices in aggregated transactions may be allocated in another equitable fashion.

b. In the event any asset is called for partial redemption by its issuer, First Citizens may in its discretion allot the called portion between Client and other First Citizens clients in any manner First Citizens reasonably deems equitable.

c. First Citizens may give advice or take actions for itself or other clients differing from the action taken for or advice given to Client.

d. First Citizens may, but is not required to, purchase or sell, or recommend for purchase or sale, any security which First Citizens purchases or sells for its own account or the accounts of other clients, or in connection with which First Citizens renders services.

e. First Citizens will not seek or use inside information regarding securities for Client's or the Account's benefit.

13. **Resolution of Disputes.** Any dispute between the Parties arising out of or relating to this Agreement, including the interpretation of any provision herein and/or performance by either party, will be resolved as provided in this Section 13.

a. **Informal Dispute Resolution.** Except as to disputes within proceedings initiated under 13(d), below, either party may initiate an Informal Dispute Resolution ("IDR") by written notice to the other party. The IDR request will set forth the substance and basis of the dispute(s) in reasonable detail. Each party will appoint a designated representative having authority to resolve and settle such dispute. The designated representatives will meet as often as reasonably necessary to discuss and attempt to

resolve the dispute. The IDR process will continue until terminated by either party by written notice to the other party. The expiration of any statute(s) of limitations applicable to the relevant dispute(s) will be tolled during the IDR process.

b. Arbitration. Subject to 13(d) below, any dispute not resolved pursuant to the IDR process will be submitted to mandatory and binding arbitration pursuant to the following terms:

- i. Initiation of Arbitration. The initiating party will provide a written arbitration demand to the American Arbitration Association("AAA") and the other party, describing in reasonable detail the nature and basis of the dispute.
- ii. Conduct of Arbitration. The arbitration will be conducted before the AAA pursuant to its Commercial Arbitration Rules. Notwithstanding any inconsistent provision within those Rules, (A) the arbitrator(s) will allow discovery of relevant non-privileged documents; (B) a hearing on the merits of all arbitrated claims will be commenced within 180 days of the written arbitration demand, and the arbitrator(s) will render an award within 10 days after the conclusion of the hearing; and (C) the arbitrator(s) will not have the authority to award punitive, exemplary, or special damages.
- iii. Place of Arbitration Hearings. Arbitration hearings will be held in Raleigh, North Carolina or the place determined by the AAA.
- iv. Costs and Expenses. Unless the arbitrator(s) rules otherwise, the Parties will jointly and equally pay the expenses of the arbitrator(s) and administrative costs assessed by the AAA. Unless provided by applicable statute or contract, as determined by the arbitrator(s), each party will bear its own expenses, including attorneys' fees, incurred during the IDR and arbitration.
- v. Enforcement. Any arbitration award rendered pursuant to this Section 13 may be enforced by any court of competent jurisdiction.

c. No Class Claims. No claim will be arbitrated on a class action basis nor be consolidated in any proceeding with the claims of any other person(s) or entity(ies), including claims brought as a private attorney general or in other representative capacities; provided however, that common claims of joint account holders may be joined in a proceeding. No person or entity will have the right to act as a class representative or participate as a member of a class of claimants with respect to any claim, even if the claim has been asserted in court.

d. Special Relief. Notwithstanding the requirements of Section 13(a) and (b), if a party makes a good faith determination that injunctive relief or an interpleader proceeding is necessary to protect the party's interests with respect to a specific dispute or a specific element(s) of a dispute, the party may seek injunctive relief or bring an interpleader proceeding upon that specific dispute or element(s) in any state or federal court located within Wake County, North Carolina. All other issues within the dispute(s) will be resolved through arbitration under 13(b) above. If a party initiating a proceeding for injunctive relief fails to obtain such relief, that party will pay all reasonable expenses, including attorneys' fees, incurred by the other party as the result of those proceedings. Client will pay, or reimburse First Citizens, for all costs and expenses, including reasonable attorneys' fees, incurred as a result of an interpleader proceeding.

e. Federal Arbitration Act. This Section 13 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. This Section 13 survives (i) termination of or changes to this Agreement, the Account, or your relationship with us concerning the Account; (ii) bankruptcy; and (iii) any transfer of the Account.

#### 14. Notices.

a. Each party will deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each a "Notice") in writing to be sent by courier, delivery service, U.S. mail (first-class mail or priority mail (in all cases, with postage or other delivery costs prepaid)) or electronic mail (with electronic confirmation of receipt from the recipient) in accordance with the most current address of the receiving party as noted in the sending party's records.

b. All Notices will be deemed effective upon receipt.

#### 15. Construction of Agreement.

a. Capitalized Terms. Capitalized terms will have the meanings indicated by associated parentheticals unless the particular context clearly indicates that a different meaning was intended.



b. Headings. The headings, titles, and captions within this Agreement are only for convenience and reference, and do not define, limit, or extend any provision herein.

c. Entire Agreement. This writing constitutes the entire agreement between Client and First Citizens and supersedes any prior understanding or agreement between them concerning the Account. No oral or written representations, arrangements, understandings, or agreements exist between the Parties relating to the Account unless fully expressed in this Agreement.

d. Gender and Number. Regardless of the gender and number actually used, the words and phrases of this Agreement will be construed to include any other gender and any other number that the context requires.

e. Invalidity and Severability. If any provisions or terms of this Agreement are held invalid or unenforceable by any court, arbitrator, or regulatory agency, such invalidity or unenforceability will not affect any other provision or term herein. The arbitrator, court or regulatory agency will, if practicable, substitute a valid and enforceable provision that carries out the Parties' intent.

f. Governing Law. Except when the laws of the United States apply or Client's state apply, this Agreement will be construed and governed under the laws of the State of North Carolina, without regard to its conflicts of laws principles.

g. Counterparts: Electronic Delivery and Signature. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but which collectively will constitute one instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or electronic delivery shall be sufficient to bind the Parties hereto to the terms and conditions of this Agreement. Facsimile or electronic signatures delivered by the Parties hereto shall be sufficient as original signatures.

h. Waiver. The failure of either party to enforce at any time any provision of this Agreement will not constitute or be construed as a waiver of the provision or of the right of the party to later enforce it. Waiver by either party of a breach or default by the other will not operate as a waiver of any other breach or default.

i. Beneficiaries. This Agreement will be binding upon Client and First Citizens and their respective representatives, successors, and permitted assigns, but otherwise does not benefit, or create an obligation to, any other person or entity. Nothing expressed in this Agreement will be deemed to confer on any other person or entity any legal right, remedy or claim with respect to this Agreement or the Account.

16. **Amendment and Assignment**.

a. Any amendments, changes, alterations, modifications, additions, or qualifications to the terms of this Agreement must be made in writing and signed by Client and First Citizens.

b. This Agreement may not be assigned by either party without the written consent of the other, which consent will not be unreasonably withheld or delayed. Any corporate successor to all or any relevant part of the investment management business of First Citizens may continue in the capacity as Investment Manager under this Agreement without the necessity of transfer, conveyance, or assignment.

*[Signatures on the following page.]*

**IN WITNESS WHEREOF**, Client and First Citizens have executed this Agreement, to be in full force and effect as of the date both Parties have signed.

\_\_\_\_\_  
Client Name (Print)

\_\_\_\_\_  
Client Name (Print)

\_\_\_\_\_  
TIN

\_\_\_\_\_  
TIN

\_\_\_\_\_  
Signature of Client Representative

\_\_\_\_\_  
Signature of Client Representative

\_\_\_\_\_  
Name of Client Representative

\_\_\_\_\_  
Name of Client Representative

\_\_\_\_\_  
Title or Capacity of Client Representative

\_\_\_\_\_  
Title or Capacity of Client Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**FIRST-CITIZENS BANK & TRUST COMPANY**

SAMPLE

\_\_\_\_\_  
Signature of First Citizens Representative

\_\_\_\_\_  
Name of First Citizens Representative

\_\_\_\_\_  
Title of First Citizens Representative

\_\_\_\_\_  
Date

Rev. 7/2022

Your investments in securities, annuities and insurance are not insured by the FDIC or any other federal government agency and may lose value. They are not a deposit or other obligation of, or guaranteed by any bank or bank affiliate and are subject to investment risks, including possible loss of the principal amount invested. Past performance does not guarantee future results.

First Citizens Wealth Management is a registered trademark of First Citizens BancShares, Inc. First Citizens Wealth Management products and services are offered by First-Citizens Bank & Trust Company, Member FDIC; First Citizens Investor Services, Inc., Member FINRA/SIPC, an SEC-registered broker-dealer and investment advisor; and First Citizens Asset Management, Inc., an SEC-registered investment advisor.

Brokerage and investment advisory services are offered through First Citizens Investor Services, Inc., Member FINRA/SIPC. First Citizens Asset Management, Inc. provides investment advisory services.

Bank deposit products are offered by First Citizens Bank, Member FDIC. Equal Housing Lender 

CLIENT: \_\_\_\_\_

1. **The Purpose of the Investment Policy Statement.** The purpose of this Investment Policy Statement (“IPS”) is to establish a clear understanding between (“Client”) and **First-Citizens Bank & Trust Company** (“Investment Manager”) as to the investment goals, objectives, and constraints applicable to the Client’s investment portfolio (“Portfolio”).

2. **Statement of Objectives and Time Horizon.** The specific objectives for the Portfolio’s assets shall be to achieve a return that is consistent with meeting the Client’s long term goals given the Client’s time horizon and risk tolerance. It is understood that there can be no guarantee about the attainment of the goals or investment objectives outlined herein.

3. **Portfolio Guidelines and Investment Policy.** The Portfolio shall be invested in accordance with the following statutory guidelines:

SC Code § 6-5-10. Authorized investments by political subdivisions. (Effective May 22, 2008)

(a) The governing body of any municipality, county, school district, or other local government unit or political subdivision and county treasurers may invest money subject to their control and jurisdiction in:

(1) Obligations of the United States and its agencies, the principal and interest of which is fully guaranteed by the United States.

(2) Obligations issued by the Federal Financing Bank, Federal Farm Credit Bank, the Bank of Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, and the Farmers Home Administration, if, at the time of investment, the obligor has a long-term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations.

(3)(i) General obligations of the State of South Carolina or any of its political units; or (ii) revenue obligations of the State of South Carolina or its political units, if at the time of investment, the obligor has a long-term, unenhanced, unsecured debt rating in one of the top two ratings categories, without regard to a refinement or gradation of rating category by numerical modifier or otherwise, issued by at least two nationally recognized credit rating organizations.

(4) Savings and Loan Associations to the extent that the same are insured by an agency of the federal government.

(5) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the

amount of the certificates of deposit so secured, including interest; provided, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.

(6) Repurchase agreements when collateralized by securities as set forth in this section.

(7) No load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (i) is limited to obligations described in items (1), (2), (3), and (6) of this subsection, and (ii) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, value its assets by the amortized cost method.

(8) A political subdivision receiving Medicaid funds appropriated by the General Assembly in the annual general appropriations act may utilize appropriated funds and other monies generated by hospital operations to participate in principal protected investments in the form of notes, bonds, guaranteed investment contracts, debentures, or other contracts issued by a bank chartered in the United States or agency of a bank if chartered in the United States, financial institution, insurance company, or other entity which provides for full principal payment at the end of a contract term not to exceed twelve years if the issuer has received a rating in one of three highest general rating categories issued by no fewer than two nationally recognized credit rating organizations. No more than forty percent of the appropriated funds and other monies generated by hospital operations may be invested in the manner provided in this item. Revenue realized pursuant to these investments must be expended on health care services.

(b) The provisions of this chapter shall not impair the power of a municipality, county, school district or other local governmental unit or political subdivision or county treasurer to hold funds in deposit accounts with banking institutions as otherwise authorized by law.

(c) Such investments shall have maturities consistent with the time or times when the invested moneys will be needed in cash.

(d) For purposes of subsection (a), in the case of a defeased obligation, an obligation shall be treated as the obligation of the issuer of the obligation included in the qualifying defeasance escrow for the defeased obligation. A "defeased obligation" means any obligation the payment of which is secured and payable solely from a qualifying defeasance escrow and the terms of which may not be amended or modified without the consent of each of the holders of the defeased obligation. A "qualifying defeasance escrow" means a deposit of securities, including defeasance obligations, with a trustee or similar fiduciary under the terms of an agreement that requires the trustee or fiduciary to apply the proceeds of any interest payments or maturity of the defeasance obligation to the payment of the defeased obligation and when the trustee or fiduciary has received verification from a certified public accountant that the payments will be sufficient to pay the defeased obligation timely. A defeasance obligation must not be callable or subject to prepayment

by the issuer and it must be a direct general obligation of the United States and its agencies, or an obligation the payment of principal and interest on which is fully and unconditionally guaranteed by the United States.

4. **Restrictions.**

- ☐ No security restrictions have been imposed on the management of the Portfolio.
- ☐ Security restrictions have been imposed on the management of the portfolio as follows: \_\_\_\_\_

SAMPLE

The Client adopts the provisions of this IPS with the signature of its properly authorized representative below:

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Client Name (Print)

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Signature of Client's Representative

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Name of Client Representative

---

Title or Capacity of Client's Representative

---

Date

ACKNOWLEDGED BY:

FIRST-CITIZENS BANK & TRUST COMPANY

---

Signature

---

Print Name

---

Title

---

Date

SAMPLE

**A RESOLUTION**

RELATING TO THE TOWN OF BLUFFTON, SOUTH CAROLINA, AUTHORIZATION TO ENTER INTO A CONTRACT AND FIDUCIARY RELATIONSHIP WITH FIRST CITIZENS BANK AND TRUST COMPANY

**WHEREAS**, the Town of Bluffton desires to have a duly-licensed advisor for investments of its municipal funds; and

**WHEREAS**, First Citizens Bank and Trust Company is such a licensed advisor and fiduciary having experience managing municipal funds for other South Carolina governmental entities;

**NOW, THEREFORE, BE IT RESOLVED**, by the Town Council (the "Council"), as the governing body of the Town of Bluffton, as follows:

1. The Council hereby declares that this Resolution shall constitute its consent to enter into a contract and fiduciary relationship with First Citizens Bank & Trust Company as an investment advisor to the Town of Bluffton.

Approved this 11<sup>th</sup> day of July 2023.

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Lisa Sulka, Mayor

Town of Bluffton, South Carolina

ATTEST:

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Marcia Hunter, Town Clerk

SEAL

Recommended Motion

Consideration to Approve a Resolution to Enter into a Contract and Fiduciary Relationship with First Citizens Bank & Trust Company as an Investment Advisor to the Town of Bluffton – Chris Forster, Assistant Town Manager

**“I make a motion to approve a resolution to enter into a contract and fiduciary relationship with First Citizens Bank & Trust Company as an Investment Advisor to the Town of Bluffton.”**