

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, AWARDED A PRIMARY DEPOSITORY SERVICES CONTRACT TO INDEPENDENT FINANCIAL AND AUTHORIZING THE MAYOR, OR DESIGNEE, TO EXECUTE ALL AGREEMENTS NECESSARY TO IMPLEMENT THE CONTRACT.

WHEREAS, the City of Burleson, Texas (“City”), is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City of Burleson is required by Chapter 105 of the Texas Local Government Code to select a primary depository for the City’s funds and,

WHEREAS, the City has solicited for applications from eligible financial institutions to serve as the City’s primary Depository, and

WHEREAS, the City of Burleson has determined that Independent Financial has provided the most advantageous terms to the City,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:

Section 1. The above and foregoing premises are true and correct legislative findings, and they are incorporated herein and made a part hereof for all purposes.

Section 2. The City of Burleson Council hereby awards the City’s primary depository contract to Independent Financial for an initial term of 3 years effective November 1, 2023, with options to extend for up to 2 additional one-year periods.

Section 3. The mayor, or designee, is hereby authorized to execute all necessary agreements to establish the depository relationship as found in Exhibit A.

Section 4. If any section, paragraph, sentence, clause, phrase or word of this Resolution or the application thereof to any person or circumstance is held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this Resolution, and the City Council hereby declares that it would have passed such portions remaining despite invalidity or unconstitutionality.

Section 5. That this resolution shall take effective immediately from and after its passage.

PASSED, APPROVED AND SO RESOLVED by the City Council of the City of Burleson, Texas, on **the 18th day of September 2023.**

Chris Fletcher., Mayor
City of Burleson, Texas

ATTEST:

Amanda Campos, City Secretary

APPROVED AS TO LEGAL FORM:

E. Allen Taylor, Jr., City Attorney

DEPOSITORY SERVICES CONTRACT

THIS DEPOSITORY SERVICES CONTRACT, hereinafter called the “Contract”, is made and entered into on the date last herein written by and between the City of Burleson, Texas, hereinafter called the “City”, and Independent Financial, a banking association, organized under the law of the United States and authorized by law to do banking business in the State of Texas, hereinafter called the “Bank”, and provides as follows:

1. **Designation of Depository.** The City, through action of the City Council, on September 18, 2023, hereby designates the Bank as a primary depository bank for the period beginning November 1, 2023, and continuing through October 31, 2026, with the option for two (2) one-year extensions under the same terms and conditions.

2. **General.** All services rendered to the City by the Bank under this Contract shall be performed in accordance with commercially reasonable standards for public fund organizations and under the overall direction and instructions of the City pursuant to the Bank’s standard operations, policies, and procedures.

3. **Scope of Services.** The Bank agrees to provide those services as described in the City’s Request for Application for Depository Bank Services released on June 26, 2023, hereinafter referred to as the “RFA”. The RFA and the Bank’s response to the RFA, hereinafter referred to as the “Application”, are incorporated herein by reference. The Bank acknowledges that all services performed by the Bank are subject to the approval of the City. The Bank agrees to provide additional services as requested from time to time by the City and mutually agreed upon by the Bank.

4. **City Representatives.** During the term of this Contract, the City will, through appropriate action of its City Council, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of City in any and all matters of every kind arising under this Contract and to (a) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfer on behalf of the City in accordance with the electronic funds or funds transfer agreement and addenda, and (b) make withdrawals or transfer by written instrument.

5. **Custodian.** The City and the Bank, by execution of this Contract, hereby designate (TIB) The Independent Bankers Bank, as custodian, hereinafter called the “Custodian”, to hold in trust, according to the terms and conditions of this Contract, the collateral described and pledged by the Bank in accordance with the provisions of this Contract.

6. **Custodial Fees.** Any and all fees associated with the Custodian’s holding of collateral for the benefit of the City shall be paid by the Bank, and the City will have no liability therefore.

7. **Entire Agreement.** The entire agreement between Bank and City shall consist of this Contract, the City’s RFA (except to the extent Bank took specific exceptions in the Bank’s Application), the Bank’s Application, the Custodial Agreement with Custodian, and other such bank service agreements, policies and documents as may be required and approved by the parties (together, the “Banking Agreements”), each incorporated by reference as they presently exist and each listed in governing order of precedence in the event of conflict among the documents. This Contract supersedes any and all prior representations, statements, and agreements, whether written or oral. The terms and provisions of this Contract may not be amended, altered, or waived except by mutual agreement evidenced by a written instrument signed by duly authorized representatives of both parties.

8. **Collateralization.** All funds on deposit with the Bank to the credit of the City shall be secured by collateral as provided for in the Public Funds Investment Act (Chapter 2256 of the Texas Government Code as amended), the Public Funds Collateral Act (Chapter 2257 of the Texas Government Code), the City’s Investment Policy, and the Bank’s Application. The City agrees to promptly provide to the Bank

any changes to its Investment Policy. The Depositor agrees that it shall only direct the Bank in writing to make investments authorized pursuant to the foregoing.

If marketable securities are pledged by the Bank as collateral, the total market value of the securities securing such deposits shall be in an amount at least equal to the minimum required amount as per the City's Investment Policy. The market value of any pledged securities (collateral) must be obtained from non-Bank-affiliated sources. The Bank shall monitor and maintain the required collateral margins and levels at all times.

The Bank has heretofore, or will immediately hereafter, deliver to the Custodian collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the funds of the City deposited with the Bank. The Custodian shall accept said collateral and hold the same in trust for the purposes herein stated. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by the Custodian in trust so long as deposits of the City remain with the Bank. The Bank hereby grants a security interest in such collateral to City.

If at any time the collateral in the hands of Custodian shall have a market value in excess of the required balances, the City may authorize the withdrawal of a specified amount of collateral, and the Custodian shall deliver this amount of collateral (and no more) to the Bank.

If the Bank shall desire to sell or otherwise dispose of any one or more of said securities so deposited with the Custodian, the Bank may substitute for any one or more of such securities other securities of the same market value and of the character authorized herein. Such right of substitution shall remain in full force and may be exercised by the Bank as often as it may desire; provided, however, that the aggregate market value of all collateral pledged hereunder, shall be at least equal to the amount of collateral required hereunder. If at any time, the aggregate market value of such collateral so deposited with the Custodian be less than the total sum of the City's funds on deposit with the Bank, the Bank shall immediately deposit with the Custodian such additional collateral as may be necessary to cause the market value of such collateral to equal the total amount of required collateral. The Bank shall be entitled to income on securities held by the Custodian, and the Custodian may dispose of such income as directed by the Bank without approval of the City.

If surety bonds or letters of credit are utilized, the City shall agree as to the issuer and form of contract prior to pledge. The amount of surety bonds or letters of credit will be at least equal to the minimum required amount as per the City's Investment Policy.

9. **Pledge Receipts.** The Custodian shall promptly forward to the City copies of pledge receipts covering all such collateral held for the City, including substitute collateral as provided for herein.

10. **Default.** Should the Bank fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposits and the interest on such deposits or in any manner breach the Banking Agreements with the City, the City shall give written notice of such failure or breach to the Bank, and the Bank shall have one (1) business day to cure such failure or breach. In the event the Bank shall fail to cure any such failure or breach within one (1) business day or should the Bank be declared insolvent by a Federal banking regulatory agency, it shall be the duty of the Custodian, upon demand of the City, to surrender the above-described collateral to the City, or it shall be the duty of the surety bond or letter of credit provider to perform under the terms of their respective contract.

The City may sell any part of such collateral, or receive all or any part of a surety bond or letter of credit settlement, and out of the proceeds thereof, pay the City all damages and losses sustained by it, together with all reasonable and documented expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, and account to the Bank for the remainder, if any, of said proceeds or collateral remaining unsold.

11. **Sale of Seized Collateral.** Any sale of such seized collateral, or any part thereof, made by the City hereunder may be either at public or private sale, provided however, it shall give both the Custodian and the Bank two (2) hours' prior written notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefore for cash. The City and the Bank shall have the right to bid at such sale.

12. **Release of Collateral.** When the relationship of the City and the Bank shall have ceased and when the Bank shall have properly paid out all deposits of the City, it shall be the duty of the City to give the Custodian notice to that effect; whereupon the Custodian shall, with the approval of the City, redeliver to the Bank all collateral then in its possession belonging to Bank. An order in writing to the Custodian by the City and a receipt for such collateral by the Bank shall be a full and final release of the Custodian of all duties and obligations undertaken by it by virtue of these presents.

13. **Successors.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

14. **Compensation.** The City and the Bank agree that any compensation for the performance of all duties and services and interest rate or earnings credit paid on all deposits is set forth in the Application accepted by the City. Except as may otherwise be provided in the Banking Agreements, said compensation shall constitute full payment for all services, liaison, products, materials, and equipment required to provide the professional banking services, including services, materials, training, equipment, travel, overhead, and expenses. Fees shall be fixed for the term of the Banking Agreements, including all extensions.

15. **Consideration.** The Banking Agreements, are executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

16. **Counterparts.** This Contract and other agreements shall be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic or other signature shall also be deemed to constitute an original if properly executed.

17. **Authority to Execute.** The individuals executing this Contract and other agreements on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Contract and other agreements to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Contract and other agreements in order for the same to be an authorized and binding on the party for whom the individual is signing and that each individual affixing his or her signature hereto is authorized to do so.

18. **Governing Law and Venue.** This Contract shall be governed by the laws of the State of Texas. Johnson County shall be the venue for any lawsuit arising out of this Contract.

19. **Certification Regarding Boycotting of Israel.** Texas Government Code, Title 10, Subtitle F, Chapter 2271.002 - Provision Required in Contract. (a) This section applies only to a contract that:

- (1) Is between a governmental entity and a company with 10 or more full-time employees; and
- (2) Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the government entity.

(b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) Does not boycott Israel; and
- (2) Will not boycott Israel during the term of the contract.

20. **Certification Regarding Boycotting of Certain Energy Companies.** Texas Government Code, Title 10, Subtitle F, Chapter 2274.002 - Provision Required in Contract. (a) This section applies only to a contract that:

- (1) Is between a governmental entity and a company with 10 or more full-time employees; and
- (2) Has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the government entity.

(b) Except as provided in Subsection (c), a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) Does not boycott energy companies; and
- (2) Will not boycott energy companies during the term of the contract.

(c) Subsection (b) does not apply to a governmental entity that determines the requirement of Subsection (b) are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

21. **Certification Regarding Boycotting of Firearms Entity or Firearms Trade Association.** Texas Government Code, Title 10, Subtitle F, Chapter 2274.002 - Provision Required in Contract. (a) This section applies only to a contract that:

- (1) Is between a governmental entity and a company with at least 10 full-time employees; and
- (2) Has a value of at least \$100,000 that is paid wholly or partly from public funds of the government entity.

(b) Except as provided by Subsection (c) and Section 2274.003, a governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it:

- (1) Does not have a practice, policy, guidance, or directive that discriminates against a firearm entity of firearm trade association; and
- (2) Will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(c) Subsection (b) does not apply to a governmental entity that:

- (1) Contracts with a sole-source provider; or
- (2) Does not receive any bids from a company that is able to provide the written verification required by that subsection.

22. **Notices.** Except as may otherwise be specified in the applicable service-level agreements and/or set-up forms, any demand, notice, request, instruction, designation, or other communication(s) required in writing under this Contract shall be personally delivered or sent certified mail, return receipt requested, to the other party as follows:

City: **Burleson**
Attn: Finance Director
141 W Renfro Street
Burleson, TX 76028-4296

Bank: Independent Financial
Attn:

Changes to notice information may be made by either party with written notification to the other party.

23. **Severability.** If any provision of this Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties, shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the illegal, invalid, or unenforceable provision as possible. The remaining portion of the Contract not declared illegal, invalid, or unenforceable shall remain valid and in full force and effect for the term remaining.

24. **Binding Commitment.** The Bank hereby acknowledges itself duly and firmly bound for the faithful performance of all the duties and obligations required by applicable law, including the Government Code and Local Government Code, such that all funds deposited with it as depository shall be faithfully kept by it and accounted for according to law.

25. **Continuation.** Unless this contract is terminated sooner, the Bank's designation as the primary City Depository will remain continuously in effect through October 31, 2026, subject to execution of the extension options.

26. **Miscellaneous.** By executing this Agreement, Bank warrants, agrees, verifies, and certifies that to the best of its knowledge and belief, no member of City Council, City Manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.

Executed by the undersigned duly authorized officers of the parties hereto:

CITY

BANK

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

ATTEST

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____