

## DEPOSITORY CONTRACT

This Depository Contract ("Contract") is made and entered into by and between the CITY OF SAN ANGELO, a Texas home-rule municipal corporation, ("City") whose address is 72 West College, San Angelo, Tom Green County, Texas, hereinafter referred to as "City" and \_\_\_\_\_, a financial institution chartered under the laws of the Office of the Comptroller of the Currency ("Bank") whose address is \_\_\_\_\_.

### RECITALS

1. City desires to deposit public funds so as to (1) comply with the law, (2) insure the highest degree of safety and security of public funds, (3) insure that all obligations of City are met on a timely basis, with the assistance of reliable, dependable and timely commercial bank services, (4) maximize the total dollars earned by City with interest bearing accounts in order to be prudent and effective custodians of the taxpayer's financial resources, (5) cooperate with a bank that is willing to be attentive to City's money matters and maintain a good working relationship with City, and (6) compensate Bank for services provided; and

2. Bank desires to maintain such deposits and secure public funds under certain specified terms and conditions;

In consideration of these purposes and of the mutual covenants and agreements contained in this Depository Contract, it is agreed as follows:

#### 1. TERM.

1.1 Primary. This Contract shall commence on \_\_\_\_\_ and remain in full force and effect for a period of three (3) years.

1.2 Option. At termination of the primary term of this Contract, parties shall have the option to extend the Contract for two one-year extensions, under the same terms and conditions provided Bank is not then in default of any term, condition, or covenant in this Contract and provided both parties agree to an extension.

2. EXCHANGE OF INFORMATION. In performance of this contract, the parties agree that the following individuals may be contacted for information or inquiries:

#### A. Bank Personnel

<u>Information/Inquiry</u>	<u>Contact Person</u>	<u>Title</u>
Account Executive		
Transmission		
Accounting/Customer Service		
Deposit Discrepancies		
Processing Procedures		
Credit Card Merchant Services		
Investments / Pledged Securities		

#### B. City Personnel

<u>Information/Inquiry</u>	<u>Contact Person</u>	<u>Title</u>
General Information	Daniel Valenzuela Tina Carriger	City Manager Finance Director
Investments, Pledged Securities, Safekeeping Investments, Bookkeeping	Tina Carriger Jaime Guerrero	Finance Director Chief Accountant

### 3. SERVICES AND COSTS.

#### 3.1 Receipt and Safekeeping of Funds:

- 3.1.1 Generally. Bank agrees to receive and safely keep any and all public funds offered for deposit by City and to reimburse and pay same to City, by paying its designated agent, or whoever may be lawfully entitled to receive same upon request. City agrees to pay **\$.00** per deposit, subject to the results of the monthly account analysis, which is more fully described in paragraph 3.4.3.

- 3.1.2 Types of Accounts. Bank shall at all times maintain any and all bank accounts open and held in the name of City, which accounts may include, but not be limited to, the following types: \_\_\_\_\_ master demand deposit account and any number of additional accounts deemed necessary by City during the term of this contract.
- 3.1.3 Lock Box Services. Bank agrees to establish a lock box service for the processing of City's Municipal Ambulance Service receipts and correspondence under separate agreement.
- 3.1.4 Crediting Deposits. Bank agrees that all deposits including ACH and wire transfers will be credited to City on date of deposit.
- 3.1.5 Withdrawal Requirements. Bank agrees to handle all checks and deposits in such a manner as to waive notice of deposits withdrawal requirements that exceed \_\_\_\_\_ business days on all City accounts at no charge, subject to legal limitations.
- 3.1.6 Coins. Bank agrees to count and deposit lake entrance fees and other deposits involving coins as requested by City at no charge.
- 3.1.7 Night Depository. Bank agrees to provide a night depository service at no cost to City.
- 3.1.8 Safe Deposit Box. Bank agrees to provide a safe deposit box to City at no charge.

### 3.2 Distribution of Funds.

- 3.2.1 Generally. Bank shall at all times transfer funds upon proper request by City and honor and pay all proper drafts and checks of City. City agrees to pay \$0.00 per check paid and \$0.00 per item for any item returned, subject to the results of the monthly account analysis, which is more fully described in paragraph 3.4.3.
- 3.2.2 Overdrafts. Bank agrees, subject to legal limitations, to temporarily honor any overdrafts of City for a period not to exceed \_\_\_\_\_ business days, and to hold any check constituting an overdraft for no longer than a period of \_\_\_\_\_ day before honoring it. "Overdraft" as used in this paragraph shall have the same meaning as specified in paragraph 3.6.2. Bank agrees to promptly notify the Finance Director of City, or his/her designee, by telephone or other means, of the existence of any overdraft situation to enable City to respond to such overdraft before charging for the overdraft. After such

notification City shall have a period of one (1) business day to respond to such overdraft before incurring charges in accordance with paragraph 3.6.2.

- 3.2.3 Stop Payment Orders. Bank agrees to honor stop payment orders from City at no cost. City agrees to order stop payment through Bank's online banking service.

3.3. Special Transactions.

- 3.3.1 Wire Transfers. Bank agrees to provide incoming wire services through the Federal Reserve system at no charge to the City and to provide outgoing wire services at a cost of \$0.00 per outgoing wire transfer, subject to the results of the monthly account analysis as described in paragraph 3.4.3. Bank shall notify City of incoming wire transfers and failures of outgoing wire transfers within one (1) hour of the transaction.
- 3.3.2 Automatic Clearing House. Bank agrees to initiate as well as receive Automatic Clearing House ("ACH") transactions as requested by City through the Bank's approved web-hosted application (City agrees to the terms under a separate contract). Bank agrees to notify City of any rejected or returned ACH item generated by City by sending email notifications. City agrees to transmit direct deposit information to Bank using the Federal Reserve standard ACH format through the Bank's web-hosted application by 3:00pm at least one (1) business day prior to the City's payday.
- 3.3.3 Payroll Cards. In the event City requires Payroll Card services City will agree with Bank under separate agreement to the terms and conditions. Fees will be negotiated with Bank.
- 3.3.4 Positive Pay. Bank agrees to provide City with Positive Pay services and City agrees to terms under separate contract. City agrees to provide Bank a file detailing issued items.
- 3.3.5 Remote Deposit. Bank agrees to provide City with Remote Deposit services and City agrees to terms under separate contract. City agrees to pay \$0.00 per month, subject to the results of the monthly account analysis, which is more fully described in paragraph 3.4.3. Additionally Bank agrees to provide City with two Remote Deposit scanners at no cost. City may purchase additional scanners.
- 3.3.6 Electronic Data Interchange. Bank agrees to provide ACH addendum information (EDI) through Bank's online banking service.

- 3.3.7 Optical Image. Bank agrees to provide images of statements, checks and deposit slips on CD without cost to City.
- 3.3.8 Credit Card Processing. In the event City requires credit card processing services Bank agrees to provide point of sale service and equipment for electronic banking regarding Visa/MasterCard or similar merchant acceptance as an authorized merchant under Bank. Any equipment ordered by City would be billed to City by Bank at Bank's cost. The discount rate will be determined by Bank based on volume.
- 3.3.9 City Investments. Bank will provide for custodial and related services for U.S. government securities purchased by City from the time of delivery of said securities until maturity of such securities. Bank will maintain a custody account at a third party depository satisfactory to City for the purpose of safekeeping City-owned U.S. government securities. Subject to paragraph 3.3.1 above, Bank agrees to wire funds to the third party depository satisfactory to City upon request by City.
- 3.3.10 Expedited Services. Bank agrees to expedite transactions involving federal and state checks, letters of credit and wire transfers when known or upon request of City.
- 3.3.11 Services for Employees. Bank agrees to cash, without charge to City or any City employee, such employee's payroll check, whether or not the employee has an account with Bank.
- 3.3.12 Obtaining Change. Bank agrees to make change of coins and currency to City at no charge.

3.4. Recordkeeping.

- 3.4.1 Daily Activities Reports. Bank agrees to provide daily account activity and balances on all accounts of the City through the Bank's online banking service at no charge. Bank agrees to provide previous day activity information by 8:30 a.m. each morning, which shall include but is not be limited to: 1) account number, 2) ledger balance, 3) collected balance, 4) number of debit and credit transactions 5) itemized debit and credit activity with descriptions and 6) check number, date cleared, and check amount cleared on demand accounts.
- 3.4.2 Monthly Statements. Bank shall keep true and accurate records of

all money and funds deposited, debited or credited in any and all accounts of City and shall provide monthly statements for all accounts, which shall include all corresponding canceled checks, deposit slips, and debit and credit memoranda with checks in numerical order. The cut-off date for bank statement purposes for all City accounts will be the last working day of each month. Bank will ensure that statements are delivered to Finance Department of City within three (3) working days of the cut-off date. City agrees to pay \$0.00 per month per account for account maintenance, subject to the results of the monthly account analysis, as described in paragraph 3.4.3.

3.4.3 Monthly Account Analysis and Summary. Bank agrees to provide a monthly account analysis and a summary analysis for each and every account of the City, both of which shall list all services, charges per unit and total and activity volume to verify the net service charge or the excess earnings. Bank shall provide to City an earnings credit equal to the 91 Day US Treasury Bill minus 20 basis points for month under analysis or the floor of .00% which ever is greater. Service charges shall be charged to City's master account subsequent to notification of City.

3.4.4 Monthly Account Reconciliation. Bank agrees to provide at no cost to City a monthly paid item file for all accounts specified by City and additionally provide a monthly bank statement for all City accounts.

### 3.5 Special Banking - Related Needs and Supplies.

3.5.1 Processing. Bank agrees to process deposits at a cost of \$0.00 per item, subject to the results of the monthly account analysis, as described in paragraph 3.4.3.

3.5.2 Temporary Checks. Bank, at its discretion and subject to its approval, may furnish City with temporary checks on a necessity basis, free of charge.

3.5.3 Miscellaneous Needs and Supplies: Bank agrees to provide a three part deposit slips for all accounts, cashiers' checks as needed, coin wrappers and money straps on request, and commercial locking bank bags to City at no charge to the City. Bank agrees to provide replacement bags, at no charge, as requested during the term of the contract.

### 3.6 Credit

3.6.1 Generally. Bank agrees to extend credit to City upon request by an

authorized official of City at the rate of Wall Street Journal prime rate as it changes minus 0% per annum with a floor of 0%, subject to legal limitations, when such indebtedness is evidenced by warrants or notes not exceeding one (1) year.

3.6.2 Overdrafts. Bank agrees to charge City at the rate of Wall Street Journal prime rate as it changes minus 0% per annum with a floor of 0% for overdrafts or their equivalent subject to the Bank's legal lending limit. An "overdraft" as used in this paragraph and paragraph 3.2.2 above, shall be deemed to occur in an account when the City does not have compensating balances in checking, savings and NOW accounts on deposit with Bank, which may be applied to offset a deficit or negative balance in the account. The maximum amount of the net overdraft to be allowed before checks are returned will be \$.00 less other outstanding indebtedness of the City. Bank is willing to work with City if greater amounts are necessary.

3.6.3 Letters of Credit. Bank agrees to charge City one half of 0.0% of principal per annum for an irrevocable letter of credit if no collateral is pledged by City and one-fourth of 0.0% of principal per annum if a certificate of deposit is pledged by City as collateral.

3.7 Modification of Services. Bank agrees that services may also be added as needed by the City, provided however, that cost of new services will be negotiated at the time the new service is added, and any such modification will be evidenced by a written amendment to this contract.

#### 4. EARNINGS ON DEPOSITS

4.1 Certificates of Deposit. The Bank agrees to pay City on certificates of deposit, the higher of market rates offered to its customers as of the date of deposit or purchase or the guaranteed minimum rates of interest that are based on 20 basis points below (-) the U.S. Treasury Bill or Note yields for similar maturities as published in the Wall Street Journal on the day the certificate of deposit is opened.

4.2 Interest Bearing Checking and Savings Accounts. Interest on (1) checking accounts shall be paid on average collected balances in excess of average collected balances required to pay service charges and (2) money market accounts shall be paid on average collected balances each month at a rate equal to the 91 Day US Treasury Bill less 20 basis points, or the bank will utilize a floor of .0% if the calculated rate is below the floor. Such rate shall be calculated at the end of each month and credited to the City's accounts.

4.3 Investments. Bank agrees to assist City upon request, in purchasing investments that comply with the requirements of the Public Funds

Investment Act as last amended and City's current investment policies based on the following terms and conditions:

- a. \_\_\_\_\_ will offer a Repurchase/Sweep account as an interest bearing account. The rate will be 20 basis points less than the published 91 day US Treasury Bill rate. Excess funds will sweep during the night processing to the Repurchase account for overnight investment. Funds will also sweep from the Repurchase account for overnight investment. Funds will also sweep from the Repurchase account to fund the DDA account. This process is automatic requiring no manual intervention. The rates change daily and will be provided to City daily or on an agreeable schedule that provides the information to City efficiently.

City may designate a zero balance or may wish to maintain a peg balance to provide compensating balances in order to off-set the cost of bank services.

- b. \_\_\_\_\_, will be available to consult with City free of charge concerning purchase of individual securities approved for purchase by the Public Funds Investment Act. \_\_\_\_\_ will purchase securities for City as requested by City and agreed by \_\_\_\_\_ at no charge.
- c. Bank agrees to make its best efforts to provide acceptable investment alternatives to City, but reserves the right to terminate any or all of the investment services described above in the event Bank determines in its sole discretion that continued provision of such investment service is not feasible or advisable.
- d. Bank agrees to review City's Investment Policy and furnish City with an Acknowledgment and Certification of City's Investment Policy that complies with the Public Funds Investment Act, as amended.

## 5. SECURITY FOR DEPOSITS

- 5.1 Generally. Bank promises that all funds of City which are on deposit with Bank will be insured by the \_\_\_\_\_, to the extent permitted by law, and secured in compliance with the provisions of the Public Funds Collateral Act as it presently exists or is hereafter amended, and any other applicable local, state or federal laws, by pledging certain securities as collateral to City. Said securities shall be secured as more particularly described in the Pledge of Collateral Agreement dated October 1 2015, executed by the City of San Angelo and \_\_\_\_\_, on \_\_\_\_\_, 2015, which Agreement is attached to this Contract as



Exhibit "1" and incorporated by reference the same as if fully copied and set forth at length. Bank and City agree that the \_\_\_\_\_ or its successors shall be the "custodian bank" for the purpose of holding and safekeeping said pledged securities. Bank agrees to maintain pledged securities at the \_\_\_\_\_ or its successors pursuant to the terms of said Pledge of Collateral Agreement and Safekeeping Agreement executed by the Bank, City and Custodian Bank. Bank agrees to commit a maximum of \$\_\_\_\_\_ Million Dollars, with higher amounts negotiable, for collateral security of the City's accounts. Bank will charge and City agrees to pay \$.00 per investment security deposited or withdrawn from safekeeping.

- 5.2 Recordkeeping. Bank agrees to maintain a separate, accurate and complete record relating to pledged investment securities and transactions related to same, which shall be reported to the Director of Finance of City or his/her designee at the end of each month or at any time requested by the Director of Finance. This report will reflect the total pledged securities itemized by name, type/description/cusip number, par value, market value at month end, maturity date and rating agency rate, if available.

## 6. GENERAL PROTECTIVE PROVISIONS.

- 6.1 Periodic Evaluations. City or Bank shall be entitled to a meeting at least once every six (6) months to evaluate the working relationship between the City and the Bank for the purpose of addressing any problems and seeking reasonable solutions.
- 6.2 No Endorsement. Bank agrees that it will not advertise or publish, without prior written consent of City, the fact that the City has entered into this contract, except as may be necessary to comply with proper request for information from or filing of reports of federal, state, or local governmental agencies.
- 6.3 Confidentiality. Bank records relating to the City's accounts shall be open to review only by designated City staff members, City appointed or other designated parties during normal business hours. Any request by the public to review such records shall be referred to the Finance Director of City on the date of such request, to ensure confidentiality and compliance with this contract and the Texas Public Information Act. Notwithstanding

the foregoing, Bank shall allow the audit and review of such records as mandated by the Bank's regulating bodies.

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(Bank)

- 6.4 Force Majeure. In the event that performance by City or Bank of any of its obligations under the terms of the Contract shall be interrupted or delayed by an act of nature, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire, flood, or by the occurrence of any other event beyond the control of the parties hereto, that party shall be excused from such performance of such period of time as is reasonably necessary after such occurrence abates for the effects thereof to have dissipated.
- 6.5 Nonassignment. This contract may not be assigned by one party without the written consent of the other party; and if assigned, it shall extend to and be binding upon the respective successors and assignees of parties.
- 6.6 Incorporation of City's Request for Proposal and Bank's Bid. City's Request for Proposal and Bank's Bid which are attached hereto as Exhibit "2", is incorporated by reference the same as if fully copied and set forth at length, and is binding upon this Contract.
- 6.7 Non-Exclusive Contract. City shall be entitled to contract with other depositories for the deposit or investment of a portion of available public funds.
- 6.8 Conflicts of Interest. Bank agrees to maintain and keep current information on real and potential conflicts of interest between the parties and to disclose such information to the Finance Director of City throughout the term of this Contract in compliance with City ordinance or other law.
- 6.9 Changes in Law. Bank agrees to notify City of any known changes in federal or state law that affect this Contract after execution within ten (10) days of learning of such changes.

## 7. TERMINATION.

- 7.1 Any Reason. This contract may be terminated by either party with ninety (90) days' written notice to the other party in accordance with paragraph 8.7.
- 7.2 Default. If either party defaults in the performance of any of the terms and conditions of this contract, written notice of such default shall be given as provided herein; and the party shall have ten (10) days within which to cure

such default. If it fails to cure the default within such period of time, then the complaining party shall have the right to terminate this contract upon \_\_\_\_\_ days notice of election to terminate given to the other party.

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(Bank)

- 7.3 Obligations Surviving Termination. Upon termination of this contract, all finished or unfinished documents, data, studies or reports prepared by Bank, at the option of City, will be delivered to City and become the property of City. All obligations of the parties made or incurred or existing under this contract as of the date of termination with respect to transactions initiated prior to the effective date of termination shall survive such termination, including but not limited to, Bank's obligation to retain duplicates of transaction receipts and credit slips and any continuing obligation of Bank with respect to charge backs.
- 7.4 Reimbursement for Attorney's Fees and Costs. In the event of the breach of any of the covenants, conditions or obligations contained herein by either party, or if it becomes necessary for the non-breaching party to employ attorneys to enforce its rights accruing as a result of such default, the breaching party agrees to pay the other party's reasonable attorney's fees and all costs of court and expenses incurred as a result thereof.
- 7.5 Claims and Remedies. Any termination of this Contract shall not relieve either party from the payment of any sum or sums that are due and payable under this Contract or any claim for damages then or thereafter accruing under this Contract. Any such termination shall not prevent either party from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages under this Contract. All rights, options, and remedies of either party contained in this Contract or otherwise shall be construed and held to be cumulative, and no one of them shall be exclusive of the other; and either party shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Contract. No waiver of a breach of any of the covenants, conditions, or restrictions of this Contract shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction contained in this Contract.

## 8. MISCELLANEOUS.

- 8.1 Parties Bound. This contract binds, and inures to the benefit of the parties to the contract and their respective successors and assigns.

- 8.2 Texas Law to Apply. This contract is to be construed under Texas law, and all obligations of the parties created by this contract are performable in Tom Green County, Texas.
- 8.3 Legal Construction. If any one or more of the provisions contained in this contract are for any reason held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability will not affect any other provision of the contract, which will be construed as if it had not included the invalid, illegal or unenforceable provision.
- 8.4 Headings. The article and section headings contained herein are for convenience and reference and are not intended to define, extend or limit the scope of any provisions of this contract.
- 8.5 Amendment. No amendment, modification or alteration of this contract is binding unless in writing, dated subsequent to the date of this contract and duly executed by the parties.
- 8.6 Authority. The City Council of City of San Angelo by order duly recorded in its minutes, has fully authorized the execution of this contract by City Manager on behalf of City. Bank represents and warrants that the execution of this contract by its respective officers has been duly authorized and recorded in the minutes of its governing body.
- 8.7 Notices. All notices shall be in writing and delivered to the parties at the addresses listed below. Personal hand delivery to an officer authorized to receive notices or the mailing of the notice by registered or certified mail, return receipt requested, postage prepaid, shall be sufficient service. The addresses of the parties for notice purposes shall be as follows, unless notified otherwise in writing:

If to the City:

If to the Bank:

City of San Angelo  
City Hall  
72 W. College Ave.  
San Angelo, Texas 76903  
Attention: Daniel Valenzuela,  
City Manager

Attention:

With a copy to: Tina Carriger, Finance Director

EXECUTED in duplicate originals on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at San Angelo, Tom Green County, Texas.

CITY OF SAN ANGELO

BY: \_\_\_\_\_  
Daniel Valenzuela  
Its: City Manager

ATTEST

BY: \_\_\_\_\_  
Bryan Kendrick  
Its: City Clerk

CONTRACTOR

BY: \_\_\_\_\_  
ATTEST:

BY: \_\_\_\_\_

APPROVED AS TO CONTENT

APPROVED AS TO FORM

\_\_\_\_\_  
Tina Carriger, Finance Director

\_\_\_\_\_  
Theresa James, City Attorney

APPROVED AS TO CONTENT

APPROVED AS TO INSURANCE  
REQUIREMENTS

\_\_\_\_\_  
Julia Antilley, Purchasing Manager

\_\_\_\_\_  
Marion McMinn, Risk Manager