

Project Name: Custody and Safekeeping

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF THOUSAND OAKS  
AND  
THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL  
ASSOCIATION**

THIS AGREEMENT is made and entered into this 1<sup>st</sup> day of January 2025, by and between **CITY OF THOUSAND OAKS**, a municipal corporation ("City"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION** ("Custodian").

City and Custodian agree as follows:

**1. RETENTION OF CUSTODIAN**

City hereby retains Custodian, and Custodian hereby accepts such engagement, to perform the services described in Section 2. Custodian warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

Services to be performed by Custodian shall include general custody and safekeeping, as more particularly set forth in the Scope of Work, attached as Exhibit A, and incorporated herein. Custodian shall deliver to City the deliverables defined in Exhibit A and further defined in Custodian's Custody Agreement, attached as Exhibit C.

**3. COMPENSATION AND PAYMENT**

**(a) Maximum and Rate.** The total compensation payable to Custodian by City for the services under this Agreement shall be earned as described in Exhibit B. The rates and expenses set forth in said exhibit shall be binding upon Custodian until January 1, 2030, after which any change in said rates and expenses must be approved in writing by City's Project Manager (City is to be given 90 days' notice of any rate increase request).

**(b) Payment.** Custodian shall provide City with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to City's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the services provided. All payment shall be made within 30 days of the City's approval of the invoice.

#### **4. CITY PROJECT MANAGER**

The services to be performed by Custodian shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is Jaime Boscarino, City Treasurer.

#### **5. TERM, PROGRESS AND COMPLETION**

The term of this Agreement is from the date first written above to **January 1, 2030**. The City Manager shall have the authority to extend the term of this Agreement in writing one time for a period of five years. Extensions of time shall be memorialized by execution of written amendment.

Custodian shall not commence work on the services to be performed until (i) Custodian furnishes proof of insurance as required by paragraph 10 below, and (ii) City gives written authorization to proceed with the work provided by City's Project Manager.

#### **6. OWNERSHIP OF DOCUMENTS**

All documents prepared by Custodian specifically in the performance of its duties under this Agreement, although instruments of professional service, are and shall be the property of the City.

Notwithstanding anything to the contrary contained in this Agreement, Custodian may utilize proprietary works of authorship and technologies, that have not been created specifically for the City pursuant to this Agreement, including without limitation software, methodologies, tools, specifications, and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, techniques, knowledge, or data, which have been originated or purchased by Custodian or by third parties under contract to Custodian (all of the foregoing, collectively, Custodian Technology). To the extent that Custodian incorporates or utilizes Custodian Technology, including but not limited to software products, all right and title to such Custodian Technology shall remain with Custodian.

#### **7. PERSONAL SERVICES/NO ASSIGNMENT**

This Agreement is for professional services, which are personal to City. Ryan Reardon is deemed to be especially experienced and is a key member of Custodian's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, City on the progress of the work. Should said individual be removed from assisting in this contracted work for any reason, City may terminate this Agreement.

This Agreement is not assignable by Custodian without City's prior consent in writing; provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting

Custodian.

## **8. HOLD HARMLESS AND INDEMNITY**

**(a) Hold Harmless for Custodian's Damages.** Custodian holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Custodian's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Custodian, to Custodian's employees, to Custodian's contractors or subcontractors, or to the owners of Custodian's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

**(b) Defense and Indemnity of Third-Party Claims/Liability.** Custodian shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, agents, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Custodian's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Custodian, or should City otherwise find Custodian's legal counsel unacceptable, then Custodian shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. Custodian shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Custodian's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Custodian's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Custodian shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of the Custodian will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**(c) Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance

by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

## **9. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Without limiting Custodian's indemnification of City, and prior to commencement of Work, Custodian shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

Coverage shall be at least as broad as:

**(a) Commercial General Liability (CGL):** Custodian shall, at Custodian's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including without limitation, blanket contractual liability.

**(b) Automobile Liability:** Custodian shall, at Custodian's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Custodian arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

**(c) Worker's Compensation:** Custodian shall, at Custodian's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Custodian shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its elected officials, officers, agents, employees and volunteers for all work performed by Custodian, its employees, agents and subcontractors.

**(d) Professional Errors and Omissions Insurance:** Custodian shall, at Custodian's sole cost and expense throughout the term of this Agreement, and any extensions thereof, carry professional errors and omissions coverage of no less than \$10,000,000 with tail coverage for an extended reporting period of three (3) years.

**(d) Cyber Liability Insurance:** Custodian shall, at Custodian's sole cost and expense throughout the term of this Agreement, and any extensions thereof, carry cyber liability insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Custodian in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited

to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If Custodian maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Custodian. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### Additional Insured Status

City, its elected officials, officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Custodian including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Custodian's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Custodian shall ensure that the automobile liability policy contains a provision covering City as an additional insured and shall obtain an endorsement to that effect if it does not.

#### Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and no-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

#### City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty

to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Custodian, or City will withhold amounts sufficient to pay premium from Custodian's payments. In the alternative, City may cancel this Agreement.

#### City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Custodian ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Custodian, City and Custodian may renegotiate Custodian's compensation.

#### Primary and Non-Contributory Coverage

For any claims related to this Agreement, Custodian's insurance coverage shall be primary insurance as respects City, its elected officials, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Custodian's insurance and shall not contribute with it and shall be at least as broad as CG 20 01 04 13.

#### Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Custodian to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

#### Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected officials, officers, agents, employees or volunteers or shall specifically allow Custodian or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Custodian hereby waives his own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its

subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

### Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

(a) The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.

(b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.

(c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Custodian must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

### Verification of Coverage

Custodian shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Custodian's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### Subcontractors

Custodian shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Custodian shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

## **10. RELATION OF THE PARTIES**

a. Custodian is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Custodian shall at all times be under Custodian's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Custodian or any of Custodian's officers, employees, or agents except as set forth in this Agreement. Custodian shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Custodian shall not incur or have the power to incur any debt,

obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Custodian in connection with the performance of this Agreement. Except for the fees paid to Custodian as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Custodian for performing services hereunder for City. City shall not be liable for compensation or indemnification to Custodian for injury or sickness arising out of performing services hereunder.

## **11. CORRECTIONS**

In addition to the above indemnification obligations, Custodian shall correct, at its expense, all errors in the work that may be disclosed during City's review of Custodian's report or plans. Should Custodian fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Custodian or withheld from any funds due to Custodian hereunder.

## **12. TERMINATION BY CITY**

City Manager or his or her designee may terminate without cause any or all of the services agreed to be performed under this Agreement upon 90 calendar days' written notice. If termination is for cause, no advance notice need be given. In the event of termination, Custodian shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Custodian within 30 days following submission of a final statement by Custodian unless termination is for cause. In such event, Custodian shall be compensated only to the extent required by law.

## **13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by Custodian of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Custodian for anything done, furnished, or relating to Custodian's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Custodian, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Custodian, its employees, subcontractors, agents and consultants.



#### **14. AUDIT OF RECORDS**

Custodian shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination of this Agreement. Custodian agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Custodian shall reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more. Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Custodian with respect to this Agreement.

#### **15. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

#### **16. CONFLICT OF INTEREST**

Custodian is unaware of any City employee or official that has a financial interest in Custodian's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Custodian shall not offer, encourage or accept any financial interest in Custodian's business by any City employee or official.

#### **17. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the

feminine or neutral genders or vice versa.

**18. MITIGATION OF DAMAGES**

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**19. GOVERNING LAW**

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

**20. TAXPAYER IDENTIFICATION NUMBER**

Custodian shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as most recently issued by the Internal Revenue Service.

**21. NON-APPROPRIATION OF FUNDS**

Payments due and payable to Custodian for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Custodian's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

**22. MODIFICATION/AMENDMENT OF AGREEMENT**

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval of the City and Custodian.

**23. USE OF THE TERM "CITY"**

Reference to "City" in this Agreement includes the City Manager or any authorized representative acting on behalf of City.

**24. PERMITS AND LICENSES**

Custodian, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

## **25. CAPTIONS**

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

## **26. AUTHORIZATION**

Each party has expressly authorized the execution of this Agreement on its behalf and binds said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

## **27. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for Custodian's submitted representations for obtaining this Agreement, Custodian's Custody Agreement attached as Exhibit C, Custodian's Electronic Access Agreement attached as Exhibit D, and Custodian's Electronic Communications Client Authorization and Indemnification attached as Exhibit E, all incorporated herein, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services. In the event of any conflict between the terms and conditions set forth in this Agreement with any terms and conditions contained in any required ancillary document prepared or provided by Custodian, the terms and conditions of this Agreement shall control.

## **28. PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

## **29. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:	Attention: Jaime Boscarino
	Finance Department
	City of Thousand Oaks
	2100 Thousand Oaks Boulevard
	Thousand Oaks, CA 91362

TO CUSTODIAN: Ryan Reardon  
Bank of New York Mellon Trust  
Corporate Trust  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256

### **31. SIGNATURES**

(a) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) **Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e. files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(c) **Digital/Electronic Signatures.** This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

### **32. LEVINE ACT COMPLIANCE**

California Government Code section 84308 (Levine Act) prohibits any Thousand Oaks City Council member from participating in any action related to a contract, agreement, or franchise agreement if the councilmember receives a campaign contribution totaling more than \$250 (aggregated) from the party to the contract, agreement, or franchise agreement, an agent of the party, or any financially interested participant who actively supports or opposes the matter within the previous twelve (12) months. Councilmembers must also disclose any eligible campaign contribution received on the record of the proceeding.

Councilmembers are also prohibited from soliciting, accepting or directing campaign contributions totaling more than \$250 (aggregated) from the applicant or party, an agent of the applicant/party, or any financially interested participant who actively supports or opposes the matter within the previous twelve (12) months, and for twelve (12) months following the date a final decision on the contract/ agreement is made.

The Levine Act also required parties to a contract, agreement, or franchise agreement to disclose any campaign contribution over \$250 (aggregated) within the preceding twelve (12) months by the party to the agreement, contract, or franchise agreement. The Levine Act does not apply to competitively bid, labor, or personal employment contracts.

In order to assure compliance with these requirements, Custodian has provided the disclosure requirements identified in the Levine Act Disclosure Form, attached as Exhibit F, incorporated herein by reference, and Custodian verifies by its signature that it has completed Exhibit F in compliance of these requirements.

Custodian shall also be responsible for understanding and complying with requirements of Government Code section 84308, which prohibits parties to a contract/agreement, as well as their agents and representatives, from contributing more than \$250 (aggregated) to a City Council member of the City of Thousand Oaks for the 12 months prior to the award of this Agreement, and for the 12 months following award of this Agreement. Where applicable, Custodian shall disclose any post award campaign contributions prior to seeking an amendment to this Agreement.

**In concurrence and witness whereof**, this Agreement has been executed by the parties effective on the date and year first above written.

**CUSTODIAN**

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

**CITY OF THOUSAND OAKS**

\_\_\_\_\_  
Andrew P. Powers, City Manager

**ATTEST:**

\_\_\_\_\_  
Laura B. Maguire, City Clerk

**APPROVED BY DEPARTMENT HEAD:**

\_\_\_\_\_  
Jaime Boscarino, Finance Director

**APPROVED AS TO FORM:**  
Office of the City Attorney

\_\_\_\_\_  
By: Tracy Friedl, Assistant City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

Custodian shall provide the following services in conjunction with custody and safekeeping:

1. Provide a custody account in the Custodian's trust department for the cash and securities owned by the City. The securities held by the Custodian shall be registered in the name of the City. Cash and securities shall remain the sole property of the City.
2. Collect all coupons and other periodic income on securities held.
3. Settle purchases, sales, and other transactions upon receipt of instructions from authorized City staff on a delivery vs payment basis.
4. Remit all proceeds from security maturities, calls, sales, and interest earnings via electronic payment to the City's operating bank account on a daily basis.
5. Notify the City if monies from investment sales, calls, maturities, and/or coupon payments are not received on the dates due.
6. Provide on-line reporting of portfolio activity and holdings on a same day basis.
7. Provide on-line monthly activity statements and reports including the book value and market value of all portfolio holdings as well as detail of all transactions that occurred in the account during the month.
8. Within five business days of the end of the month, provide the City with a downloadable report (Microsoft Excel compatible) showing the complete inventory of all securities held in safekeeping as of the last day of the previous month, showing each security with its Committee on Uniform Securities Identification Procedures (CUSIP) number, issuer name, coupon/interest rate, purchase (settlement) and maturity dates, type of security, S&P and Moody's credit ratings, par value, book value, and month-end market value.
9. Create, maintain, and retain all records relating to securities held in custody in the City's account to meet the requirements and obligations under generally accepted accounting principles and California State law.

**EXHIBIT B**  
**FEE SCHEDULE**

**Acceptance Fee - Waived**

The Transaction Acceptance Fee is payable at the time of the execution of the governing documents in connection with the closing of the transaction which is the subject of this Fee Schedule and compensates Custodian for the following: review of all supporting documents, initial establishment of the required accounts, and Know Your Client checks.

**Annual Administrative Asset Fee - \$7,500**

An annual fee covering the duties and responsibilities related to account administration, which may include maintenance of accounts on various systems, collection and payment of principal and interest on assets held in the account.

**Activity Fees**

Security purchase, sale or transfer (book entry)	\$10
Security purchase, sale or transfer (physical)	\$25
Wires (outgoing only)	\$10
Call Processing Fee	Waived
Maturity Processing Fee	Waived

If City requires additional services from Custodian that are not set forth above, City and Custodian will negotiate in good faith the addition of such services and the fees related thereto.

## EXHIBIT C



### CUSTODY AGREEMENT

#### (Public Finance)

AGREEMENT, dated as of January 1, 2025, between City of Thousand Oaks ("Customer") and The Bank of New York Mellon Trust Company, N.A., as custodian ("Custodian").

### ARTICLE I DEFINITIONS

Whenever used in this Agreement, the following words shall have the meanings set forth below:

1. **"Authorized Person"** shall be any person, whether or not an officer or employee of Customer, duly authorized by Customer to give Written Instructions on behalf of Customer with respect to one or more accounts, such persons to be designated in a Certificate of Authorized Persons (in the form attached hereto or such other form acceptable to Custodian) which contains a specimen signature of such person.

2. **"BNYM Affiliate"** shall mean any office, branch or subsidiary of The Bank of New York Mellon Corporation.

3. **"Book-Entry System"** shall mean the Federal Reserve/Treasury book entry system for receiving and delivering securities, its successors and nominees.

4. **"Business Day"** shall mean any day on which Custodian and relevant Depositories are open for business.

5. **"Corporate Action Instructions"** shall mean instructions delivered to Custodian by Electronic Means, other than e-mail. Corporate Action Instructions sent by facsimile shall be sent to the following number **844-299-3627** (which such number may be changed from time to time as Custodian may designate in writing).

6. **"Depository"** shall include the Book-Entry System, the Depository Trust Company, and any other book-entry system, securities depository or clearing agency (and their respective successors and nominees) authorized to act as a book-entry system, securities depository or clearing agency pursuant to applicable law and identified to Customer from time to time.

7. **"Electronic Means"** shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Custodian, or another method or system specified by the Custodian as available for use in connection with its services hereunder.

8. **"Securities"** shall include, without limitation, common stock and other equity securities, mutual funds, bonds, debentures and other debt securities, notes, mortgages or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests therein (whether represented by a certificate or held in a Depository or on the books of the issuer).

9. **"Written Instructions"** shall mean written communications actually received by Custodian by letter or Electronic Means.



## **EXHIBIT C**

### **ARTICLE II APPOINTMENT OF CUSTODIAN; ACCOUNTS; REPRESENTATIONS AND WARRANTIES**

1. Customer hereby appoints Custodian as custodian of all Securities and cash at any time delivered to Custodian during the term of this Agreement, and authorizes Custodian to hold Securities in registered form in its name or the name of its nominees. Custodian hereby accepts such appointment and agrees to establish and maintain one or more securities accounts and cash accounts in the name of Customer in which it will hold Securities and cash as provided herein. Such accounts (each, an "Account"; and collectively, the "Accounts") shall be in the name of Customer.

2. Customer hereby represents and warrants, which representations and warranties shall be continuing and shall be deemed to be reaffirmed upon Written Instruction given by Customer, that:

(a) Customer is duly organized and existing under the laws of the jurisdiction of its organization, with full power to carry on its business as now conducted, to enter into this Agreement and to perform its obligations hereunder;

(b) This Agreement has been duly authorized, executed and delivered by Customer, constitutes a valid and legally binding obligation of Customer, enforceable in accordance with its terms, and no statute, regulation, rule, order, judgment or contract binding on Customer prohibits Customer's execution or performance of this Agreement; and

(c) Either Customer owns the Securities in the Account free and clear of all liens, claims, security interests and encumbrances (except those granted herein) or, if the Securities are owned beneficially by others, Customer has the right to pledge such Securities to the extent necessary to secure Customer's obligations hereunder, free of any right of redemption or prior claim by the beneficial owner. Custodian's security interest pursuant to Article V hereof shall be a first lien and security interest subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any other party (other than specific liens granted preferred status by statute), and Customer shall take any and all additional steps which are required to assure Custodian of such priority and status, including (i) notifying third parties or obtaining their consent to Custodian's security interest, (ii) prohibiting transfer of any interest in a Security from the nominee name in which such investment is registered without the express written consent of Custodian and (iii) insuring it does not take any other action that would cause Custodian's first lien and security interest hereunder to be adversely affected.

3. Customer covenants and represents that (i) neither it nor any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, the Office of Foreign Assets Control of the US Department of the Treasury ("OFAC")), the United Nations Security Council, the European Union, HM Treasury, or other relevant sanctions authority (collectively "Sanctions"); and (ii) neither it nor any of its affiliates, subsidiaries, directors or officers will knowingly use any payments made pursuant to this Agreement (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

### **ARTICLE III CUSTODY AND RELATED SERVICES**

1. Subject to the terms hereof, Customer hereby authorizes Custodian to hold any Securities received by it from time to time for Customer's account. Custodian shall be entitled to utilize Depositories to the

## EXHIBIT C

extent possible in connection with its performance hereunder. Securities and cash deposited by Custodian in a Depository will be held subject to the rules, terms and conditions of such Depository.

2. Custodian shall furnish Customer with a monthly summary of all account transfers and activity. Although Customer recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, Customer hereby agrees that confirmations of investments are not required to be issued by Custodian for each month in which a monthly statement is rendered or otherwise made available. No statement need be rendered for an Account if no activity occurred in such Account during such month. Customer may elect to receive advices, confirmations, reports or statements electronically through the Internet to an e-mail address specified by it for such purpose. By electing to use the Internet for this purpose, Customer acknowledges that such transmissions are not encrypted and therefore are insecure. Customer further acknowledges that there are other risks inherent in communicating through the Internet such as the possibility of virus contamination and disruptions in service, and agrees that Custodian shall not be responsible for any loss, damage or expense suffered or incurred by Customer or any person claiming by or through Customer as a result of the use of such methods.

3. With respect to all Securities held in an Account, Custodian shall, unless otherwise instructed to the contrary:

(a) Receive all income and other payments and advise Customer as promptly as practicable of any such amounts due but not paid;

(b) Present for payment and receive the amount paid upon all Securities which may mature and advise Customer as promptly as practicable of any such amounts due but not paid;

(c) Forward to Customer all information or documents that it may receive from an issuer of Securities which, in the opinion of Custodian, are intended for the beneficial owners of U.S. Securities;

(d) Execute, as custodian, any certificates of ownership, affidavits, declarations or other certificates under any tax laws now or hereafter in effect in connection with the collection of bond and note coupons;

(e) Hold directly, or through a Depository, all rights and similar Securities issued with respect to any Securities credited to an Account hereunder; and

(f) Endorse for collection checks, drafts or other negotiable instruments.

4. (a) Custodian shall notify Customer of such rights or discretionary actions or of the date or dates by when such rights must be exercised or such action must be taken provided that Custodian has received, from the issuer or the relevant Depository or a nationally or internationally recognized bond or corporate action service to which Custodian subscribes, timely notice of such rights or discretionary corporate action or of the date or dates such rights must be exercised or such action must be taken. Absent actual receipt of such notice, Custodian shall have no liability for failing to so notify Customer and Custodian shall follow timely directions received in writing through one of the Communication processes so specified by the Custodian.

(b) Whenever Securities (including, but not limited to, warrants, options, tenders, options to tender or non-mandatory puts or calls) confer optional rights on Customer or provide for discretionary action or alternative courses of action by Customer, Customer shall be responsible for making any decisions relating thereto and for directing Custodian to act. In order for Custodian to act, it must receive Customer's Corporate Action Instructions not later than noon (Florida time) at least two (2) Business Days prior to the last scheduled date to act with respect to such Securities (or such earlier date or time as Custodian may notify Customer). Absent Custodian's timely receipt of such Corporate Action Instructions, Custodian shall not be liable for failure to take any action relating to or to exercise any rights conferred by such U.S. Securities.

## EXHIBIT C

5. In order to facilitate access by Customer or its designee to ballots or online systems to assist in the voting of proxies received for eligible positions of Securities held in the Account (excluding bankruptcy matters), the Custodian will, at the written request of Customer upon the execution of this Agreement, appoint a provider of proxy voting services to act as agent of Customer to provide global proxy voting services to Customer. Custodian shall have no obligation or liability in respect of such proxy voting services or the acts or omissions of the provider of such proxy voting services.

6. Custodian shall promptly advise Customer upon its notification of the partial redemption, partial payment or other action affecting less than all Securities of the relevant class. If Custodian or Depository holds any such Securities in which Customer has an interest as part of a fungible mass, Custodian or such Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

7. Custodian shall not under any circumstances accept bearer interest coupons which have been stripped from United States federal, state or local government or agency securities unless explicitly agreed to by Custodian in writing.

8. Customer shall be liable for all taxes, assessments, duties and other governmental charges, including any interest or penalty with respect thereto ("Taxes"), with respect to any cash or Securities held on behalf of Customer or any transaction related thereto. Customer shall indemnify Custodian for the amount of any Tax that Custodian or any other withholding agent is required under applicable laws (whether by assessment or otherwise) to pay on behalf of, or in respect of income earned by or payments or distributions made to or for the account of Customer (including any payment of Tax required by reason of an earlier failure to withhold). Custodian shall, or shall instruct the applicable withholding agent to, withhold the amount of any Tax which is required to be withheld under applicable law upon collection of any dividend, interest or other distribution made with respect to any Security and any proceeds or income from the sale, loan or other transfer of any Security. In the event that Custodian is required under applicable law to pay any Tax on behalf of Customer, Custodian is hereby authorized to withdraw cash from any cash account in the amount required to pay such Tax and to use such cash for the timely payment of such Tax in the manner required by applicable law. If the aggregate amount of cash in all cash accounts is not sufficient to pay such Tax, Custodian shall promptly notify Customer of the additional amount of cash (in U.S. Dollars) required, and Customer shall directly deposit such additional amount in the appropriate cash account promptly after receipt of such notice, for use by Custodian as specified herein. In the event that Custodian reasonably believes that Customer is eligible, pursuant to applicable law or to the provisions of any tax treaty, for a reduced rate of, or exemption from, any Tax which is otherwise required to be withheld or paid on behalf of Customer under any applicable law, Custodian shall, or shall instruct the applicable withholding agent to, either withhold or pay such Tax at such reduced rate or refrain from withholding or paying such Tax, as appropriate; provided that Custodian shall have received from Customer all documentary evidence of residence or other qualification for such reduced rate or exemption required to be received under such applicable law or treaty. In the event that Custodian reasonably believes that a reduced rate of, or exemption from, any Tax is obtainable only by means of an application for refund, Custodian shall have no responsibility for the accuracy or validity of any forms or documentation provided by Customer to Custodian hereunder. Customer hereby agrees to indemnify and hold harmless Custodian in respect of any liability arising from any underwithholding or underpayment of any Tax which results from the inaccuracy or invalidity of any such forms or other documentation, and such obligation to indemnify shall be a continuing obligation of Customer, its successors and assigns, notwithstanding the termination of this Agreement.

9. For the purpose of settling Securities and foreign exchange transactions, Customer shall provide Custodian with sufficient immediately available funds for all transactions by such time and date as conditions in the relevant market dictate. As used herein, "sufficient immediately available funds" shall mean either (i) sufficient cash denominated in the currency of Customer's home jurisdiction to purchase the necessary foreign currency, or (ii) sufficient applicable foreign currency to settle the transaction. Custodian shall provide Customer with immediately available funds each day which result from the actual settlement of all sale transactions, based upon advices received by Custodian from its Depositories. Such funds shall be in the currency of Customer's home jurisdiction or such other currency as Customer may specify to Custodian.

## EXHIBIT C

10. Any foreign exchange transaction effected by Custodian in connection with this Agreement may be entered with Custodian or a BNYM Affiliate acting as principal or otherwise through customary banking channels. Customer may issue standing Written Instructions with respect to foreign exchange transactions but Custodian may establish rules or limitations concerning any foreign exchange facility made available to Customer. Customer shall bear all risks of holding cash denominated in a foreign currency. Without limiting the foregoing, Customer shall bear the risks that rules or procedures imposed by Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders shall prohibit or impose burdens or costs on the transfer to, by or for the account of Customer of property held outside Customer's jurisdiction or denominated in a currency other than its home jurisdiction or the conversion of cash from one currency into another currency. Custodian shall not be obligated to substitute another currency for a currency whose transferability, convertibility or availability has been affected by such law, regulation, rule or procedure. Custodian shall not be liable to Customer for any loss resulting from any of the foregoing events.

11. To the extent that Custodian has agreed to provide pricing or other information services in connection with this Agreement, Custodian is authorized to utilize any vendor (including brokers and dealers of Securities) reasonably believed by Custodian to be reliable to provide such information. Customer understands that certain pricing information with respect to complex financial instruments (e.g., derivatives) may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may or may not be material. Where vendors do not provide information for particular Securities or other property, an Authorized Person may advise Custodian regarding the fair market value of, or provide other information with respect to, such Securities or property as determined by it in good faith. Custodian shall not be liable for any loss, damage or expense incurred as a result of errors or omissions with respect to any pricing or other information utilized by Custodian hereunder.

12. As an accommodation to Customer, Custodian may provide consolidated recordkeeping services pursuant to which Custodian reflects on Account statements Securities not held in Custodian's vault or for which Custodian or its nominee is not the registered owner ("Non-Custody Securities"). Non-Custody Securities shall be designated on Custodian's books as "shares not held" or by other similar characterization. Customer acknowledges and agrees that it shall have no security entitlement against Custodian with respect to Non-Custody Securities, that Custodian shall conclusively rely, without independent verification, on information provided by Customer regarding Non-Custody Securities (including but not limited to positions and market valuations) and that Custodian shall have no responsibility whatsoever with respect to Non-Custody Securities or the accuracy of any information maintained on Custodian's books or set forth on account statements concerning Non-Custody Securities.

13. With respect to Securities issued in the United States, the Shareholders Communications Act of 1985 (the "Act") requires Custodian to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (a) the "beneficial owners" (as defined in the Act) of the issuer's Securities, if the beneficial owner does not object to such disclosure, or (b) acting as a "respondent bank" (as defined in the Act) with respect to the Securities. (Under the Act, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The Act defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security. The Act defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Custodian. Under the Act, Customer is either the "beneficial owner" or a "respondent bank."

☒ Customer is the "beneficial owner," as defined in the Act, of the Securities to be held by Custodian hereunder.

☐ Customer is not the beneficial owner of the Securities to be held by Custodian, but is acting as a "respondent bank," as defined in the Act, with respect to the Securities to be held by Custodian hereunder.

## EXHIBIT C

IF NO BOX IS CHECKED, CUSTODIAN SHALL ASSUME THAT CUSTOMER IS THE BENEFICIAL OWNER OF THE SECURITIES.

For beneficial owners of the Securities only:

- ☐ Customer objects  
☒ Customer does not object

to the disclosure of its name, address and securities position to any issuer which requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Customer.

IF NO BOX IS CHECKED, CUSTODIAN SHALL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY WRITTEN INSTRUCTION FROM CUSTOMER.

14. The Bank of New York Mellon Corporation is a global financial organization that operates in and provides services and products to clients through its affiliates and subsidiaries located in multiple jurisdictions (the "BNY Mellon Group"). The BNY Mellon Group may (i) centralize in one or more affiliates and subsidiaries certain activities (the "Centralized Functions"), including audit, accounting, administration, risk management, legal, compliance, sales, product communication, relationship management, and the compilation and analysis of information and data regarding Customer (which, for purposes of this provision, includes the name and business contact information for the Customer's employees and representatives) and the accounts established pursuant to this Agreement ("Customer Information") and (ii) use third party service providers to store, maintain and process Customer's Information ("Outsourced Functions"). Notwithstanding anything to the contrary contained elsewhere in this Agreement and solely in connection with the Centralized Functions and/or Outsourced Functions, Customer consents to the disclosure of, and authorize BNY Mellon to disclose, Customer's Information to (i) other members of the BNY Mellon Group (and their respective officers, directors and employees) and to (ii) third-party service providers (but solely in connection with Outsourced Functions) who are required to maintain the confidentiality of Customer's Information. In addition, the BNY Mellon Group may aggregate Customer Information with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Customer Information with Customer specifically. Customer represents that Customer is authorized to consent to the foregoing and that the disclosure of Customer's Information in connection with the Centralized Functions and/or Outsourced Functions does not violate any relevant data protection legislation. Customer also consents to the disclosure of Customer's Information to governmental and regulatory authorities in jurisdictions where the BNY Mellon Group operates and otherwise as required by law.

### ARTICLE IV PURCHASE AND SALE OF U.S. SECURITIES; CREDITS TO ACCOUNT

1. Promptly after each purchase or sale of Securities by Customer, an Authorized Person shall deliver to Custodian Written Instructions specifying all information necessary for Custodian to settle such purchase or sale. Custodian shall account for all purchases and sales of Securities on the actual settlement date unless otherwise agreed by Custodian.

2. Customer understands that when Custodian is instructed to deliver Securities against payment, delivery of such Securities and receipt of payment therefore may not be completed simultaneously. Customer assumes full responsibility for all credit risks involved in connection with Custodian's delivery of Securities pursuant to instructions of Customer.

## **EXHIBIT C**

3. Custodian may, as a matter of bookkeeping convenience or by separate agreement with Customer, credit the Account with the proceeds from the sale, redemption or other disposition of Securities or interest, dividends or other distributions payable on Securities prior to its actual receipt of final payment therefor. All such credits shall be conditional until Custodian's actual receipt of final payment and may be reversed by Custodian to the extent that final payment is not received. Payment with respect to a transaction will not be "final" until Custodian shall have received immediately available funds which under applicable law or rule are irreversible and not subject to any security interest, levy or other encumbrance, and which are specifically applicable to such transaction.

### **ARTICLE V OVERDRAFTS OR INDEBTEDNESS**

1. If Custodian in its sole discretion advances funds to Customer or there shall arise for whatever reason an overdraft in the Account (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions or funds transfers) or if Customer is for any other reason indebted to Custodian, Customer agrees to repay Custodian on demand the amount of the advance, overdraft or indebtedness plus accrued interest at a rate ordinarily charged by Custodian to its institutional custody customers.

2. In order to secure repayment of Customer's obligations to Custodian hereunder, Customer hereby pledges and grants to Custodian a continuing lien and security interest in, and right of set-off against, all of Customer's right, title and interest in and to the Accounts and the Securities, money and other property now or hereafter held in the Accounts (including proceeds thereof), and any other property at any time held by it for the account of Customer. In this regard, Custodian shall be entitled to all the rights and remedies of a pledgee and secured creditor under applicable laws, rules or regulations as then in effect.

### **ARTICLE VI CONCERNING CUSTODIAN**

1. (a) Except as otherwise expressly provided herein, Custodian shall not be liable for any costs, expenses, damages, liabilities or claims, including attorneys' and accountants' fees, costs and expenses (collectively, "Losses"), incurred by or asserted against Customer, except those Losses arising out of the negligence or willful misconduct of Custodian. Custodian shall have no liability whatsoever for the action or inaction of any Depository or issuer of Securities. In no event shall Custodian be liable to Customer or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement.

(b) Custodian may enter into subcontracts, agreements and understandings with any BNYM Affiliate, whenever and on such terms and conditions as it deems necessary or appropriate to perform its services hereunder. No such subcontract, agreement or understanding shall discharge Custodian from its obligations hereunder.

(c) Customer agrees to indemnify, save and hold Custodian harmless from and against any and all Losses sustained or incurred by or asserted against Custodian by reason of or as a result of any action or inaction, or arising out of Custodian's performance hereunder, including reasonable fees, costs and expenses of counsel incurred by Custodian in a successful defense of claims by Customer; provided, that Customer shall not indemnify Custodian for those Losses arising out of Custodian's negligence or willful misconduct. This indemnity shall be a continuing obligation of Customer, its successors and assigns, notwithstanding the termination of this Agreement.

## EXHIBIT C

2. Without limiting the generality of the foregoing, Custodian shall be under no obligation to inquire into, and shall not be liable for, any losses incurred by Customer or any other person as a result of the receipt or acceptance of fraudulent, forged or invalid U.S. Securities, or Securities which are otherwise not freely transferable or deliverable without encumbrance.

3. Custodian may, with respect to questions of law specifically regarding the Account, obtain the advice of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice.

4. Custodian shall be under no obligation to take action to collect any amount payable on Securities in default, or if payment is refused after due demand and presentment.

5. Custodian shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting any Account.

6. Customer shall pay to Custodian the fees and charges as may be specifically agreed upon from time to time and such other fees and charges at Custodian's standard rates for such services as may be applicable. Customer shall reimburse Custodian for all costs associated with the conversion of Customer's Securities hereunder and the transfer of Securities and records kept in connection with this Agreement. Customer shall also reimburse Custodian for out of pocket expenses which are a normal incident of the services provided hereunder. Custodian may debit any Account for amounts payable hereunder which remain in arrears for over 60 days.

7. In addition to the rights of Custodian under applicable law and other agreements, at any time when Customer shall not have honored any and all of its obligations to Custodian, whether or not relating to or arising under this Agreement, Custodian shall have the right without notice to Customer to retain or set-off, against such obligations of Customer, any Securities or cash Custodian or a BNYM Affiliate may directly or indirectly hold for the account of Customer, and any obligations (whether matured or unmatured) that Custodian or a BNYM Affiliate may have to Customer. Any such asset of, or obligation to, Customer may be transferred to Custodian and any BNYM Affiliate in order to effect the above rights.

8. (a) Subject to the terms below, Custodian shall be entitled to conclusively rely upon any Written Instructions actually received by Custodian and reasonably believed by Custodian to be duly authorized and delivered.

(b) If Custodian receives Written Instructions or Corporate Action Instructions which appear on their face to have been transmitted by an Authorized Person via (Electronic Means, Customer understands and agrees that Custodian cannot determine the identity of the actual sender of such Written Instructions or Corporate Action Instructions and that Custodian shall conclusively presume that such Written Instructions or Corporate Action Instructions have been sent by an Authorized Person. Customer shall be responsible for ensuring that only Authorized Persons transmit such Written Instructions or Corporate Action Instructions to Custodian and that all Authorized Persons treat applicable user and authorization codes, passwords and/or authentication keys with extreme care.] The Custodian shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the Customer shall provide to the Custodian a Certificate of Authorized Persons, which Certificate of Authorized Persons shall be amended by the Customer whenever a person is to be added or deleted from the listing. If the Customer elects to give the Custodian Instructions using Electronic Means and the Custodian in its discretion elects to act upon such Instructions, the Custodian's understanding of such Instructions shall be deemed controlling. The Customer understands and agrees that the Custodian cannot determine the identity of the actual sender of such Instructions and that the Custodian shall conclusively presume that Instructions that purport to have been sent by an Authorized Person listed on the Certificate of Authorized Persons provided to the Custodian have been sent by such Authorized Person. The Customer shall be responsible for ensuring that only Authorized Persons transmit such Instructions to the Custodian and that the

## EXHIBIT C

Customer and all Authorized Persons are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Customer. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Customer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Custodian and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Customer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

(c) If Customer elects to transmit Written Instructions or Corporate Action Instructions through an electronic platform offered by Custodian or a BNYM Affiliate, Customer's access to and use thereof shall be subject to the terms and conditions contained in a separate written agreement. Customer shall be responsible for requesting access to any such electronic platform and completing the documentation required for such access and nothing herein shall obligate Custodian to ensure any such access. Should Customer fail to, or elect not to, avail itself of such access, neither Custodian nor any BNYM Affiliate accepts any responsibility whatsoever for any Losses arising as a result of the lack of such access in connection with its services under this Agreement. Notwithstanding any other provision of this Agreement, whenever Custodian is required to deliver any notice or information to Client under the terms of this Agreement, it may do so by making the relevant notice or information available to Customer via an electronic platform operated by Custodian or a BNY Mellon Affiliate. If Customer elects (with Custodian's prior consent) to transmit Written Instructions or Corporate Action Instructions through an on-line communications service owned or operated by a third party, Customer agrees that Custodian shall not be responsible or liable for the reliability or availability of any such service.

9. Upon reasonable request and provided Custodian shall suffer no significant disruption of its normal activities, Customer shall have access to Custodian's books and records relating to the Account during Custodian's normal business hours. Upon reasonable request, copies of any such books and records shall be provided to Customer at Customer's expense.

10. It is understood that Custodian is authorized to supply any information regarding the Account which is required by any law, regulation or rule now or hereafter in effect.

11. Custodian will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by natural disasters, fire, acts of God, strikes or other labor disputes, work stoppages, acts of war or terrorism, general civil unrest, actual or threatened epidemics, pandemics, quarantine restrictions, disease, act of any government, governmental authority or police or military authority, declared or threatened state of emergency, legal constraint, the interruption, loss or malfunction of utilities or transportation, communications or computer systems, or any other similar events beyond its reasonable control. Custodian will use commercially reasonable efforts to minimize the effect of any such events.

12. Custodian shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement, and no covenant or obligation shall be implied against Custodian in connection with this Agreement.



## **EXHIBIT C**

### **ARTICLE VII TERMINATION**

Either party may terminate this Agreement by giving to the other party a notice in writing specifying the date of such termination, which shall be not less than ninety (90) days after the date of such notice. Upon termination hereof, Customer shall pay to Custodian such compensation as may be due to Custodian, and shall likewise reimburse Custodian for other amounts payable or reimbursable to Custodian hereunder. Custodian shall follow such reasonable Written Instructions concerning the transfer of custody of records, Securities and other items as Customer shall give; provided, that (a) Custodian shall have no liability for shipping and insurance costs associated therewith, and (b) full payment shall have been made to Custodian of its compensation, costs, expenses and other amounts to which it is entitled hereunder. If any Securities or cash remain in the Account, Custodian may deliver to Customer such Securities and cash. Upon termination of this Agreement, except as otherwise provided herein, all obligations of the parties to each other hereunder shall cease.

### **ARTICLE VIII MISCELLANEOUS**

1. Customer agrees to furnish to Custodian a new Certificate of Authorized Persons in the event of any change in the then present Authorized Persons. Until such new Certificate is received, Custodian shall be fully protected in acting upon Written Instructions of such present Authorized Persons.

2. Any notice or other instrument in writing, authorized or required by this Agreement to be given to Custodian, shall be sufficiently given if addressed to Custodian and received by it at its offices at 4655 Salisbury Road, Suite 300, Jacksonville, FL 32256 or at such other place as Custodian may from time to time designate in writing; provided however, any instruction given to Custodian in connection with Securities pursuant to Section 4(b) of Article III shall be given by Customer exclusively by Corporate Action Instructions.

3. Any notice or other instrument in writing, authorized or required by this Agreement to be given to Customer shall be sufficiently given if addressed to Customer and received by it at its offices at 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362 or at such other place as Customer may from time to time designate in writing.

4. Each and every right granted to either party hereunder or under any other document delivered hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of either party to exercise, and no delay in exercising, any right will operate as a waiver thereof, nor will any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

5. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected thereby. This Agreement may not be amended or modified in any manner except by a written agreement executed by both parties. This Agreement shall extend to and shall be binding upon the parties hereto, and their respective successors and assigns; provided however, that this Agreement shall not be assignable by either party without the written consent of the other.

6. (a) This Agreement shall be construed in accordance with the substantive laws of the State of California, without regard to conflicts of laws principles thereof. Customer and Custodian hereby consent to the jurisdiction of a state or federal court situated in California in connection with any dispute arising hereunder. To the extent that in any jurisdiction Customer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Customer irrevocably agrees not to claim, and it hereby waives, such immunity. Customer and Custodian each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.

## EXHIBIT C

(b) The parties hereto agree that the establishment and maintenance of the Account, and all interests, duties and obligations with respect thereto, shall be governed by the laws of the State of California.

(c) **For Governmental Entities:** To the extent that in any jurisdiction Customer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Customer irrevocably agrees not to claim, and it hereby waives, such immunity, to the extent permitted by applicable law.

7. The parties hereto agree that in performing hereunder, Custodian is acting solely on behalf of Customer and no contractual or service relationship shall be deemed to be established hereby between Custodian and any other person.

8. Customer hereby acknowledges that Custodian is subject to federal laws, including the Customer Identification Program (CIP) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which Custodian must obtain, verify and record information that allows Custodian to identify Customer. Accordingly, prior to opening an Account hereunder Custodian will ask Customer to provide certain information including, but not limited to, Customer's name, physical address, tax identification number and other information that will help Custodian to identify and verify Customer's identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. Customer agrees that Custodian cannot open an Account hereunder unless and until the Custodian verifies the Customer's identity in accordance with its CIP. If Customer is a hedge fund or other type of collective investment vehicle (i) Customer has established and presently maintains an anti-money laundering program (the "Program") reasonably designed to prevent Customer from being used as a conduit for money laundering or other illicit purposes or the financing of terrorist activities, (ii) it is in compliance with the Program and all anti-money laundering laws, regulations and rules now or hereafter in effect that are applicable to it, (iii) it has verified the identity of each of its investors and documented the origin of the assets funding each investor's account with Customer, (iv) it can represent and warrant that, to the best of its knowledge, no investor has invested in Customer for money laundering or other illicit purposes; and (v) it shall promptly notify Custodian in writing if any of the foregoing representations and warranties are no longer true.

9. In the event The Bank of New York Mellon Trust Company, N.A. becomes subject to a proceeding under a U.S. special resolution regime, the transfer of this Agreement (and any interest and obligation in or under, and any property securing, this Agreement) from The Bank of New York Mellon Trust Company, N.A. will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if this Agreement (and any interest and obligation in or under, and any property securing, this Agreement) were governed by the laws of the United States or a state of the United States.

In the event The Bank of New York Mellon Trust Company, N.A. or any of its affiliates becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to this Agreement that may be exercised against The Bank of New York Mellon Trust Company, N.A. are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if this Agreement were governed by the laws of the United States or a state of the United States.

## EXHIBIT C

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. **IN WITNESS WHEREOF**, Customer and Custodian have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST COMPANY,  
NATIONAL ASSOCIATION

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CITY OF THOUSAND OAKS

---

Andrew P. Powers, City Manager

**ATTEST:**

---

Laura B. Maguire, City Clerk

**APPROVED BY DEPARTMENT HEAD:**

---

Jaime Boscarino, Finance Director

**APPROVED AS TO FORM:**

Office of the City Attorney

---

Tracy Friedl, Assistant City Attorney

## EXHIBIT D

### **ELECTRONIC DELIVERY TERMS AND CONDITIONS** **(Corporate Trust)**

These Electronic Delivery Terms and Conditions (“**T&Cs**”) set forth the terms and conditions governing BNY Mellon’s provision to the undersigned entity(ies) and its (their) Affiliates listed on **Schedule A** (“**Client**”) of BNY Mellon Digital Delivery Services (“**BDDS**”), defined below, in connection with any agreement now or hereafter entered into between Client and BNY Mellon (each a “**Services Agreement**”). In these T&Cs, references to a “**Services Agreement(s)**” means the Services Agreement(s) to which these T&Cs pertain. Provision of BDDS to Client is contingent upon Client’s compliance with these T&Cs (including any Schedules) and any applicable Terms of Use (collectively this “**Agreement**”). In the case of conflict between the terms of a Services Agreement and these T&Cs or the Terms of Use, the order of precedence shall be the Services Agreement followed by these T&Cs and then the Terms of Use. Client may amend **Schedule A** by delivery of a revised **Schedule A** to BNY Mellon.

**1. Definitions.** All capitalized terms used herein will have the meanings ascribed to them below:

- a. “**Affiliate**” means a legal person that is controlled by, controlling or under common control with a party to these T&Cs.
- b. “**API**” means any BNY Mellon application programming interface identified on the API Site and made available to Client pursuant to this Agreement.
- c. “**API Credentials**” mean, collectively, consumer key, secret and signed client certificate issued by BNY Mellon to allow Electronic Access to an API.
- d. “**BNY Mellon**” means the BNY Mellon legal entity(ies) with which you are a party pursuant to a Services Agreement.
- e. “**BNY Mellon Confidential Information**” means any non-public information regarding BDDS, including proprietary databases, data compilations, software, processes, scripts, informational or training materials, specifications, manuals or documentation made available to the Client in connection with the provision of BDDS.
- f. “**BNY Mellon Data**” means any content, documents, data or information provided or made available to Client and its Users through Electronic Access. BNY Mellon Data expressly includes any proprietary databases or other protectable collections of information irrespective of whether or not the underlying data elements include any data or information not proprietary to BNY Mellon but excludes any Client Confidential Information.
- g. “**BNY Mellon Digital Delivery Services**” or “**BDDS**” mean, collectively, the Sites, APIs, Messaging Services, Electronic Access, and BNY Mellon Data.
- h. “**BNY Mellon Indemnified Parties**” mean collectively, BNY Mellon together with its Affiliates, Licensors, and Suppliers, if any.
- i. “**Client**” means the client contracting party executing these T&Cs.
- j. “**Client Confidential Information**” means any non-public data related to Client, its Users, and Client’s customers and accounts provided to BNY Mellon by or on behalf of Client in connection with a Services Agreement.
- k. “**Credentials**” mean, collectively, API Credentials, Site Credentials, and Messaging Credentials.

- l. “**Data Terms Website**” means the website at <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website of which Client is provided notice from time to time, containing requirements and use restrictions on the Licensed Information imposed on BNY Mellon by the Licensors. In the event of a conflict between the provisions in the Data Terms Website and in these T&Cs, the provisions of the Data Terms Website shall prevail.
- m. “**Electronic Access**” means Client’s access to Sites, APIs, and Messaging Services, if any, through which Client is able to access products and services provided by BNY Mellon.
- n. “**Intellectual Property**” means all copyright, patents, trademarks and service marks, rights in designs, moral rights, rights in computer software, rights in databases and other protectable collections of information, rights in confidential information, trade secrets, inventions and know-how, trade and business names, domain names (including all extensions, revivals and renewals, where relevant) in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.
- o. “**Licensor**” means any third-party provider of proprietary information and/or data that is included in BNY Mellon Data (“**Licensed Information**”).
- p. “**Losses**” includes any losses, liabilities, damages, costs, expenses, claims, causes of action, or judgments, including reasonable attorneys’ fees and expenses.
- q. “**Messaging Credentials**” mean, collectively, any keys, secrets, and/or tokens issued to Client by BNY Mellon to allow access to Messaging Services.
- r. “**Messaging Services**” means the provision by BNY Mellon of electronic messaging channels to permit transmission of electronic messages between BNY Mellon and Client pursuant to this Agreement.
- s. “**Schedule**” means a schedule to this Agreement substantially in the forms shown on **Exhibits 1 and 2** and setting forth (i) the specific APIs to be licensed to Client, the duration of Client’s license, all applicable fees, and any other pertinent API information; and/or (ii) the specific electronic message type(s), the associated messaging channel(s) information, the term, applicable fees, and any other pertinent information of the Messaging Services, including any services to be performed by BNY Mellon for initial setup and preparation for the commencement of the Messaging Services. Each Schedule shall be consecutively lettered, executed by the parties, and incorporated herein by reference.
- t. “**Site**” means a BNY Mellon-designated information delivery website, file transfer protocol (FTP) site, or web portal, including, where applicable, the API information delivery portal, currently <https://marketplace.bnymellon.com> (“**API Site**”), made available to Client.
- u. “**Site Credentials**” mean collectively, a user-id, a password and, where applicable, a secure identification device (or other method of multi-factor authentication) issued for a User to allow Electronic Access to Site(s).

- v. “**Supplier**” means a third party retained by BNY Mellon in connection with BNY Mellon’s provision of BDDS.
- w. “**Terms of Use**” mean the terms, conditions, and disclosures that may be set forth on the Sites.
- x. “**User**” means any person Client authorizes for Electronic Access to the Sites, including any third-party or any employee, contractor, or agent of a third party (such as an investment manager, consultant, or other third-party service provider).

## 2. License Grant

- a. Subject to the payment of any applicable license fees, Client is hereby granted a nonexclusive, nontransferable, non-sublicensable, limited, revocable right and license to use BDDS solely for its internal business purposes and in accordance with this Agreement. For the avoidance of doubt, Client’s internal business purposes specifically exclude direct use of any portion of BDDS by Client’s customers and creation of a product or service by or on behalf of Client using all or any portion of BDDS, unless expressly agreed in writing by BNY Mellon.
- b. Notwithstanding the foregoing, Client has the right to sublicense Client’s right and license to use APIs and/or Messaging Services, if any, to Client’s third parties (collectively, “**Client Service Providers**”), provided that (i) in each instance such sublicense is mutually agreed upon by the parties and specified in a Schedule with respect to particular API(s) and/or Messaging Services, and (ii) any exercise of such sublicense by Client Service Provider is limited to actions taken on Client’s behalf to provide services to Client alone. Client is responsible for all acts and omissions by any Client Service Provider as if such acts or omissions were those of Client.

## 3. Access Administration

- a. To facilitate Electronic Access to the Sites, BNY Mellon will implement an access administration method, which could be BNY Mellon administration (“**BNYM Administration**”) or client federated administration (“**Client Administration**”). By authorizing any of its Users for Electronic Access, Client agrees to, acknowledges, and accepts any applicable Terms of Use.
  - (i) In the case of BNYM Administration, Client will furnish BNY Mellon with a written list of the names of its Users and designate which Users will have the authority to provide instructions to BNY Mellon that have an impact on assets held by BNY Mellon for Client’s accounts. Upon BNY Mellon’s approval of Users (which approval will not be unreasonably withheld), BNY Mellon will send Client the initial Site Credentials (including a temporary password) for each User, which Client will be responsible for providing to its Users. Client shall notify BNY Mellon in writing of any User to be deactivated and return any secure identification devices issued to such User. Upon receipt of Client’s deactivation notice and any secure identification devices, BNY Mellon shall promptly deactivate Site Credentials for such User, at which point such individual shall no longer be deemed a User.
  - (ii) In the case of Client Administration, Client will designate Users and provide them with Site Credentials that shall include for each User multi-factor authentication and fraud protection methods. Client is solely responsible for its Users’ Electronic Access and the protection of its Users’ Site Credentials. Upon Client deactivating User’s Site Credentials, such individual will no longer be deemed a User, and Client shall promptly notify BNY Mellon in writing of such deactivation.

- b. Client must provide BNY Mellon with Client's and/or Client Service Provider's digital client certificate prior to being granted Electronic Access to APIs. Upon BNY Mellon's approval (which will not be unreasonably withheld), BNY Mellon will provide Client with API Credentials and any Site Credentials, if applicable. Once the API Credentials are issued, Client shall be solely responsible for their administration and use.
- c. Client must provide BNY Mellon with Client's and/or Client Service Provider's digital client certificate and all other necessary information detailed in applicable Schedule(s) prior to being granted Electronic Access to Messaging Services. Upon BNY Mellon's approval (which will not be unreasonably withheld), BNY Mellon will provide Client with applicable Messaging Credentials and technical information for establishing messaging channel(s). Once Messaging Credentials are issued, Client shall be solely responsible for their administration and use.
- d. Client acknowledges and agrees that BNY Mellon will have no obligation to verify or confirm (i) the actual identity of a person using Site Credentials for Electronic Access or that such person is, in fact, a User; or (ii) that a party using the API Credentials or Messaging Credentials for Electronic Access is, in fact, the Client or Client Service Provider. BNY Mellon is entitled to rely and act on any commands, directions or instructions issued through Electronic Access in connection with Site Credentials or API Credentials. Client acknowledges and agrees that BNY Mellon is not responsible for detecting any errors in any such commands, directions and instructions.
- e. Client is solely responsible for ensuring that Client, Client Service Providers and Users comply with this Agreement. To the extent any Licensed Information is provided through Electronic Access, Client is solely responsible for ensuring that Client, Client Service Providers, and Users comply with the restrictions and requirements posted on the Data Terms Website. BNY Mellon reserves the right to prohibit or revoke Electronic Access of any User whom BNY Mellon determines has breached the terms of this Agreement, or whose conduct BNY Mellon reasonably determines may constitute a criminal offense, violate any applicable law or constitute a security risk for BNY Mellon Indemnified Parties, Users, or other customers.
- f. Client shall not, and shall not permit any of its Users to, breach, circumvent, or attempt to breach or circumvent, any security measures used in connection with BDDS. Client shall, and shall require Client Service Providers to, maintain commercially reasonable processes and controls to prevent the introduction of any viruses, malware, malicious computer code, and other destructive software to BDDS or any other BNY Mellon system.

**4. Reservation of Rights, Confidentiality and Use of Data**

- a. Any Intellectual Property and any other rights, title or interest not expressly granted to Client, Client Service Providers, or Users in relation to BDDS are reserved to BNY Mellon, its Affiliates, Licensors, and Suppliers. Client may not, and may not permit Client Service Providers to, use, modify, decompile, or reverse engineer BDDS except as expressly authorized in writing by BNY Mellon. Unless expressly provided otherwise in this Agreement, nothing in this Agreement will be construed as giving Client, Client Service Provider, or Users any license or right to use the trade marks, logos and/or service marks of BNY Mellon, its Affiliates, Licensors, or Suppliers.
- b. BNY Mellon retains complete discretion and authority to modify, in whole or in part, BDDS. Unless provided otherwise in the applicable Schedule, in the event BNY Mellon (i) implements a material change to the functionality of BDDS or (ii) modifies BDDS so as to render an aspect of it incompatible with the current version, BNY Mellon will provide advance notice to Client of any such modifications.



- c. For the sake of clarity, the terms and conditions of these T&Cs, any Schedules, any non-public information related to the Sites, APIs, Messaging Services, and Electronic Access (including Site Credentials and/or API Credentials), and any portion of BNY Mellon Data that is not disclosed to the general public but is made available solely to Client, Client Service Providers, or Users, are BNY Mellon Confidential Information.
- d. Unless expressly agreed in writing by BNY Mellon, BNY Mellon Data is provided solely for Client's internal use and excludes direct use by its customers or any other third parties. Client acknowledges and agrees that Client may not incorporate any portion of the BNY Mellon Data into Client's products or services, or otherwise use any portion of the BNY Mellon Data to develop its products or services without BNY Mellon's express prior written approval.
- e. Where applicable, BNY Mellon may make analytics regarding Client's API usage and/or errors in API performance ("**Analytics**") available to Client and its Users on the API Site.
- f. Client represents and warrants that with respect to Client Confidential Information, including third party data, if any, it is authorized to allow BNY Mellon to make Client Confidential Information available through BDDS subject to the terms of this Agreement.
- g. Client agrees that BNY Mellon, its Affiliates, and Suppliers may disclose to each other, and use, Client Confidential Information (including Client's customer data and personal data of Users): (i) to the extent necessary for the provision of Services and fulfilling BNY Mellon's regulatory and legal obligations; (ii) in connection with business administration functions performed on a centralized basis by BNY Mellon, its Affiliates, and Suppliers; and (iii) to analyze and improve Services and for internal research and development activities related thereto.
- h. Client agrees that BNY Mellon and its Affiliates may aggregate Client Confidential Information with other client-related data or other data on a fully anonymized basis and use such aggregated data for purposes of product or service development and distribution, general marketing purposes, and producing market or similar analyses for its clients, provided that in any such case Client Confidential Information cannot be identified with or derived from any such aggregated and anonymized data.

**5. Disclaimers and Limitation of Liability:**

- a. ALTHOUGH BNY MELLON USES REASONABLE EFFORTS TO PROVIDE ACCURATE AND UP-TO-DATE INFORMATION THROUGH ELECTRONIC ACCESS, BNY MELLON, AND ITS LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS AS TO ACCURACY, RELIABILITY OR COMPREHENSIVENESS OF BDDS. CLIENT ACKNOWLEDGES AND AGREES THAT BNY MELLON IS A DISTRIBUTOR AND NOT A PUBLISHER OF ANY LICENSED INFORMATION AND HAS NO CONTROL OVER IT.
- b. BDDS ARE PROVIDED ON AN "AS-IS", "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE, OR NONINFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE SET FORTH HEREIN. THERE IS NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, REGARDING BDDS.
- c. IN NO EVENT WILL BNY MELLON INDEMNIFIED PARTIES BE LIABLE TO CLIENT OR ANYONE ELSE FOR ANY LOSS, DAMAGE, OR INJURY RESULTING FROM A VOLUNTARY SHUTDOWN OF ANY PART OF BDDS TO ADDRESS TECHNICAL PROBLEMS, COMPUTER VIRUSES, DENIAL-OF-SERVICE MESSAGES, OR OTHER



SIMILAR PROBLEMS.

- d. EXCEPT TO THE EXTENT THAT LIABILITY CANNOT BE EXCLUDED UNDER APPLICABLE LAW, BNY MELLON WILL HAVE NO LIABILITY, CONTINGENT OR OTHERWISE, TO CLIENT OR TO THIRD PARTIES, FOR (i) ANY ERRORS OR OMISSIONS IN THE ENTRY, TRANSMISSION, EXECUTION OR REPORTING OF ORDERS AND TRANSACTIONS, INCLUDING ERRORS RESULTING FROM INACCURATELY PLACING ORDERS AND TRANSACTIONS; (ii) ANY COMMUNICATION FAILURES, INCLUDING THE FAILURE OF ANY CONNECTION OR COMMUNICATION SERVICE TO PROVIDE OR MAINTAIN CLIENT'S ACCESS TO AN API OR THE SITE, OR FOR ANY DELAY OR INTERRUPTION OR DISRUPTION OF SUCH ACCESS OR ANY ERRONEOUS COMMUNICATIONS BETWEEN BNY MELLON AND CLIENT, REGARDLESS OF WHETHER THE CONNECTION OR COMMUNICATION SERVICE IS PROVIDED BY BNY MELLON OR A THIRD PARTY SERVICE PROVIDER; (iii) ANY INABILITY TO EXECUTE ORDERS AND TRANSACTIONS OR THE COST OF SUBSTITUTE SERVICES; (iv) THE ACCURACY OF THE SITE CONTENT INCLUDING ANALYTICS OR THE CAPACITY, ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE, OR CONTINUED AVAILABILITY OF THE APIS OR THE SITE; OR (v) THE EXISTENCE OF ANY VIRUSES OR OTHER MALICIOUS COMPUTER CODE AFFECTING THE OPERATION OF THE APIS OR THE SITE.

**6. Suspension and Termination of Electronic Access:**

The parties agree as follows:

- a. Upon termination of Client's Services Agreement(s), these T&Cs, including for clarity Client's right to Electronic Access, will automatically terminate with respect to each applicable Site, API, and/or Messaging Service.
- b. Unless expressly agreed otherwise in writing by BNY Mellon, upon termination of Electronic Access, Client shall return or destroy all BNY Mellon Confidential Information that is in Client's possession or under Client's control, and all secure identification devices, provided, however, that Client may retain such information, subject to obligations of confidentiality, for customary backup, audit and recordkeeping purposes. Upon request, Client shall provide to BNY Mellon written certification by an officer confirming compliance with the requirements herein.
- c. BNY Mellon may suspend Electronic Access to any API, Messaging Service, or Site in the event of (i) Client's breach of this Agreement or a violation of the restrictions and requirements posted on the Data Terms Web Site that is not cured within five (5) business days of BNY Mellon's notice to Client or such other period as the parties may agree in writing (including by email), (ii) a security risk or other threat to BNY Mellon, the Sites, APIs, Messaging Services, or other BNY Mellon clients' access or use of same, or (iii) Licensor prohibiting BNY Mellon from permitting Client or Users to have access to its Licensed Information. In the event of such suspension, BNY Mellon will use commercially reasonable efforts to promptly notify Client including via posting on Site(s).

**7. Indemnification:**

Client will indemnify, defend, and hold harmless BNY Mellon Indemnified Parties from and against all Losses resulting from a claim by a third party that arises out of any person obtaining Electronic Access through Client, Users or Client's third parties or through use of Site Credentials or API Credentials, whether or not Client or a User authorized such access, except to the extent that any such Losses resulted from the fraud, gross negligence, or willful misconduct of a BNY Mellon Indemnified

Party, as applicable. Client's indemnity provided herein is in addition to any indemnity and other remedies contained in any Services Agreements and will not supersede or be superseded by such Services Agreements, except to the extent specifically set forth in such Services Agreements and expressly stating an intent to modify these T&Cs. Client will defend, indemnify, and hold harmless BNY Mellon Indemnified Parties from and against any Losses, based on a claim by a third party relating to, or arising in connection with any use of BDDS by Client, Users, or any of Client's third parties in a manner not authorized under a Services Agreement, these T&Cs, or the Terms of Use. In the event Client is not permitted by law to indemnify and hold harmless any BNY Mellon Indemnified Party for Losses, if a BNY Mellon Indemnified Party incurs Losses or is made a party to litigation, a BNY Mellon Indemnified Party shall be reimbursed by Client for any and all Losses occasioned thereby, except to the extent that any such Losses resulted from the fraud, gross negligence, or willful misconduct of such BNY Mellon Indemnified Party, as applicable.

Notwithstanding anything to the contrary in this Agreement, BNY Mellon or its designated Affiliate will defend Client and pay any amounts agreed to by BNY Mellon in a settlement and damages finally awarded by a court of competent jurisdiction, in any action or proceeding commenced by a third party against Client based on a claim that BDDS infringe such third party's patent, copyright, or trade secret. The foregoing obligations will not apply, however, to any claim or action arising from use of BDDS (i) in a manner not authorized under this Agreement or the Data Terms Web Site; or (ii) in combination with other software or services not supplied by BNY Mellon.

**8. Choice of Law; Forum:**

Unless otherwise agreed and specified herein, this Agreement is governed by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of law. Client expressly and irrevocably agrees that exclusive jurisdiction and venue for any claim or dispute with BNY Mellon, its employees, contractors, officers or directors or relating in any way to Client's use of BDDS resides in the state or federal courts in New York, New York. Client further irrevocably agrees and expressly and irrevocably consents to the exercise of personal jurisdiction in those courts over any action brought with respect to this Agreement. BNY Mellon and Client hereby waive the right of trial by jury in any action arising out of or related to the BNY Mellon or this Agreement.

**9. Client Authority:**

Client hereby represents and warrants to BNY Mellon that these T&Cs and the indemnity contained herein have been duly authorized, executed and delivered on Client's behalf, that Client has full authority to execute these T&Cs, both for the undersigned entities and for any affiliate with Electronic Access, and that the individual executing these T&Cs has the requisite authority to bind the undersigned entities and each such affiliate to these T&Cs, and that these T&Cs constitute Client's binding obligation enforceable in accordance with its terms.

**City of Thousand Oaks**

on behalf of itself and any affiliates listed on Schedule A.

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

Name: **Andrew P. Powers**

Title: **City Manager**

Date: **1/1/2025**

[Redacted]

on behalf of itself and any affiliates listed on Schedule A.

By: \_\_\_\_\_  
Name: [Redacted]  
Title: [Redacted]  
Date: [Redacted]

## Schedule A

Affiliates

None

**Exhibit 1 Form of API Schedule**

**Schedule [ ] - Licensed APIs**

[fill in chart]

API Name (and Version # if applicable)	# of API calls/duration (if applicable)	Fee(s)	Duration of right and license to use API

**API Support**

BNY Mellon’s scheduled maintenance window for the API Site is 12:01am-6:00am Sunday ET. BNY Mellon shall offer a help desk to respond to Client’s inquiries concerning the use of the API Site Sunday 8:00 p.m. through Friday 8:00 p.m. Eastern Time, which Client may contact via email at NEXENAPISupport@bnymellon.com or via phone in the following regions: Americas - +855 284 9065 or +1 615 457 5589; Europe, Middle East, Africa - +44 20 7964 6161; Asia Pacific - +800 2265 6369or +65 6432 0314, as may be updated by BNY Mellon from time to time.

**Exhibit 2 Form of Messaging Schedule**  
**Schedule [ ] - Licensed Messaging Services**

[fill in chart]

<b>Name of Messaging Service/Type of Message</b>	<b>Term of Messaging Service [insert date range]</b>	<b>Fee(s)</b>



BNY MELLON

**ELECTRONIC COMMUNICATIONS:  
CLIENT AUTHORIZATION & INDEMNIFICATION**

*Re: All currently existing and future Corporate Trust Transactions and accounts of the Client (as defined below) for which BNY Mellon serves as trustee, agent, account bank, custodian, or in a similar corporate trust capacity (collectively, the **"Corporate Trust Transactions"**).*

City of Thousand Oaks (the **"Client"**) has executed an agreement (the **"BNYM Electronic Access Agreement"**) with The Bank of New York Mellon Corporation and/or its subsidiaries or joint ventures (**"BNY Mellon"**), which enables the Client and its Users (as defined in the BNYM Electronic Access Agreement) to use BNY Mellon's Electronic Access (**"Electronic Access"**) to access electronically certain BNY Mellon Sites (as defined in the BNYM Electronic Access Agreement) and products and services of BNY Mellon. The Client may utilize Electronic Access, SWIFT, and/or Secure File Transfer Protocol (**"SFTP"**) to deliver to BNY Mellon electronic instructions and directions for all activities, and all notices and documents, with respect to the Corporate Trust Transactions.

The Client and BNY Mellon hereby agree to the following terms (this **"Agreement"**):

1. The Client, as account holder, issuer or obligor with respect to each Corporate Trust Transaction, hereby authorizes and directs BNY Mellon, acting in the capacity set forth in the applicable agreement for each such Corporate Trust Transaction, to rely upon and comply with instructions and directions (whether signed or unsigned) relating to all activities in connection with each Corporate Trust Transaction (collectively, the **"Electronic Instructions and Directions"**), and to accept and rely upon all notices and documents delivered electronically (in addition to any other delivery method authorized under the applicable agreement for each such Corporate Trust Transaction) to BNY Mellon through Electronic Access, SWIFT, and/or SFTP (collectively, the **"Electronic Notices"**).

2. With respect to any Electronic Instructions and Directions and Electronic Notices received by BNY Mellon, BNY Mellon shall have no duty or obligation to verify or confirm (a) the identity of the person who, using Electronic Access, SWIFT, and/or SFTP, sent such Electronic Instructions and Directions or Electronic Notices on behalf of the Client or (b) that the person who sent such Electronic Instructions and Directions or Electronic Notices is, in fact, a person authorized to give or deliver instructions, directions, notices, or documents on behalf of Client, provided that such instruction, direction, notices, or documents come from or purport to come from an Authorized Transactional User (as defined in the BNYM Electronic Access Agreement). BNY Mellon shall have no liability for any losses, liabilities, damages, costs, expenses, claims, or judgments (including attorneys' fees and expenses) (collectively **"Losses"**) incurred or sustained by the Client or any other party in connection with or as a result of BNY Mellon's reliance upon or compliance with this Agreement and acceptance of, reliance upon or compliance with any Electronic Instructions and Directions or Electronic Notices. For the avoidance of doubt, any and all Losses resulting from Electronic Instructions and Directions or Electronic Notices will be the sole

responsibility of the Client except to the extent that such Losses result from the gross negligence, fraud, or willful misconduct of BNY Mellon. In addition, BNY Mellon and the Client shall not be responsible for any indirect, special, consequential, or punitive damages. The Client agrees: (i) to assume all risks arising out of the use of Electronic Access to submit Electronic Instructions and Directions to BNY Mellon, including without limitation the risk of BNY Mellon acting on unauthorized instructions and directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions and directions to BNY Mellon and that there may be more secure methods of transmitting instructions and directions than the method(s) selected by the Client; (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions and directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify BNY Mellon immediately upon learning of any compromise or unauthorized use of the security procedures.

3. The Client agrees to, and shall, pay and reimburse and be liable to BNY Mellon and each director, officer, and employee, and agent, delegate, or other appointee of BNY Mellon (BNY Mellon and each such other person being an **"Indemnified Party"**) on demand for, and, to the extent permitted by law, to indemnify and hold harmless each such Indemnified Party from and against, without limitation, any and all Losses incurred or suffered by an Indemnified Party in any way, directly or indirectly, arising out of, related to, or connected with the reliance upon or compliance with, by BNY Mellon or any other Indemnified Party, this Agreement and the acceptance of, reliance upon or compliance with, by BNY Mellon or any other Indemnified Party, any Electronic Instructions and Directions or Electronic Notices or the taking or not taking of action in accordance with or based upon this Agreement and any Electronic Instructions and Directions or Electronic Notices, including, without limitation, (i) any claim, cause of action, litigation, proceeding, action, or investigation (whether civil, criminal, or administrative and whether sounding in tort, contract, or otherwise and whether such Indemnified Party is a party to such litigation, proceeding, action, or investigation) in any way directly or indirectly arising out of, related to, or connected with, the taking, by BNY Mellon or any other Indemnified Party, of action in accordance with or based upon this Agreement and any Electronic Instructions and Directions or Electronic Notices and (ii) Losses resulting from, arising out of or in any manner connected with, directly or indirectly, (a) a determination that BNY Mellon or any other Indemnified Party breached its or their fiduciary duty under the applicable agreement governing a Corporate Trust Transaction as a result of relying upon and complying with this Agreement and the acceptance of, reliance upon or compliance with, any Electronic Instructions and Directions or Electronic Notices and (b) disputes between the parties, including, by way of example and not by way of limitation, the enforcement of this Agreement; provided, however, that the foregoing indemnity (the **"Indemnity"**) shall not be applicable to any Losses suffered or incurred by an Indemnified Party as a result of an Indemnified Party's gross negligence, fraud, or willful misconduct as determined by a judgment of a court that is binding on such Indemnified Party, is final and is not subject to review on appeal, it being understood that the reliance upon and compliance with this Agreement and the acceptance of, reliance upon or compliance with, any Electronic Instructions and Directions or Electronic Notices shall not constitute gross negligence, fraud, or willful misconduct. In the event Client is not permitted by law to indemnify and hold harmless BNY Mellon or any other Indemnified Party for Losses pursuant to this Section 3, if an Indemnified Party incurs Losses or is made a party to litigation pertaining to this Agreement, an Indemnified Party shall be reimbursed by Client for any and all Losses occasioned thereby if Client is notified in writing prior to the incurrence of such Losses, except to the extent that any Losses resulted from the fraud, gross negligence, or willful misconduct of such Indemnified Party, as applicable.



BNY Mellon will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by natural disasters, fire, acts of God, strikes or other labor disputes, work stoppages, acts of war or terrorism, general civil unrest, actual or threatened epidemics, disease, act of any government, governmental authority or police or military authority, declared or threatened state of emergency, legal constraint, the interruption, loss or malfunction of utilities or transportation, communications or computer systems, or any other similar events beyond its reasonable control. BNY Mellon will use commercially reasonable efforts to minimize the effect of any such events.

4. This Agreement is in addition to and supplements the BNYM Electronic Access Agreement and any agreement governing the Corporate Trust Transactions; and nothing contained herein (other than the right of the Client to use Electronic Access, SWIFT and/or SFTP as an additional method of delivery of Electronic Instructions and Directions or Electronic Notices) shall, or shall be deemed to, alter, modify, amend, or supersede, or be altered, modified, amended, or superseded by, any such agreement, whether executed prior to or after the execution and delivery of this Agreement. By way of illustration and not by way of limitation, (a) nothing contained herein shall, or shall be deemed to, alter, modify, amend, or supersede the rights and remedies of BNY Mellon as set forth in the BNYM Electronic Access Agreement and any agreement governing the Corporate Trust Transactions; and (b) the Indemnity contained herein is in addition to the indemnity, immunities, and rights of BNY Mellon in all of its capacities under such Corporate Trust Transactions.

5. The undersigned officers of each of the Client and BNY Mellon hereby represent and warrant that this Agreement and the Indemnity contained herein have been duly authorized, executed and delivered on its behalf and constitute their legal, valid, and binding obligations enforceable in accordance with their terms, except as such enforceability may be limited by (i) bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and (ii) general principles of equity; and hereby waive any defenses based upon the invalidity of such representations and warranties.

6. The Indemnity authorized herein shall be in addition to any other remedies, relief, or indemnification available to each Indemnified Party under this Agreement, at law or otherwise. The rights and remedies conferred hereunder shall be cumulative and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of additional rights or remedies or the subsequent exercise of such right or remedy. The indemnification provisions of this Agreement shall continue in full force and effect notwithstanding the termination of this Agreement.

7. Notices provided pursuant to this Agreement shall be delivered in person, or sent by overnight mail, in either case with a copy via pdf attachment to an e-mail, or by e-mail, to the following addresses:

To BNY Mellon:

Name:	Ryan Reardon
Address:	4655 Salisbury Road, Suite 300 Jacksonville, FL 32256
E-mail:	Ryan.Reardon@bnymellon.com

To Client:

Name:	Jaime Boscarino
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Address: 2100 Thousand Oaks Blvd.  
Thousand Oaks, CA 91362  
E-mail: jboscarino@toaks.gov

8. The Client and BNY Mellon each agrees that (i) the terms of this Agreement and the Indemnity contained herein will be governed by and construed in accordance with the substantive laws (and not the choice of law rules) of the State of New York, and (ii) all actions and proceedings relating to or arising from, directly or indirectly, this Agreement and the Indemnity contained herein may be brought in courts located within the State of New York and each of the undersigned parties hereby submits to personal jurisdiction of such courts for such actions or proceedings.

9. The person executing this Agreement on behalf of the Client represents and certifies that he/she possesses full power, capacity, and legal authority to bind the Client to this Agreement.

By \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Andrew P. Powers  
Title: City Manager

**THE BANK OF NEW YORK MELLON CORPORATION,**  
on behalf of itself, its subsidiaries, and its joint ventures,  
(including The Bank of New York Mellon and  
The Bank of New York Mellon Trust Company, N.A.)

## EXHIBIT F



### LEVINE ACT DISCLOSURE FORM

California Government Code section 84308 (Levine Act) prohibits any Thousand Oaks City Council member from participating in any action related to a contract, agreement, or franchise agreement (excluding labor or competitively bid contracts) if the Council member receives a campaign contribution totaling more than \$250 (aggregated) from the party to the contract, agreement or franchise agreement, their agents, or any financially interested participant who actively supports or opposes the matter within the previous twelve (12) months. Council members must also disclose any eligible campaign contribution received on the record of the proceeding.

Council members are prohibited from accepting, soliciting, or directing a campaign contribution of more than \$250 (aggregated) from a party, their agent/representative, or a financially interested participant during a proceeding and for 12 months following the date a final decision is made. In addition, a party, their agent/representative, or a financially interested participant is prohibited from contributing more than \$250 (aggregated) to a Council member during a proceeding and for 12 months following the date a final decision is made.

The Levine Act also requires parties to certain contracts, agreements, or franchise agreements to disclose any campaign contribution over \$250 (aggregated) within the preceding twelve (12) months by the party to the agreement, contract, or franchise agreement and their agents. The Levine Act does not apply to competitively bid, labor, or personal employment contracts.

- ☒ The Levine Act (Gov Code § 84308) DOES NOT apply to this proposal/application
- ☐ The Levine Act (Gov Code § 84308) DOES apply to this proposal/application and the required disclosure is set forth below:

1. Have you or your company, or any agent on behalf of you or your company, made campaign contributions totaling more than \$250 (aggregated) to any council member in the 12 months preceding the date you submitted your proposal/application, the date you completed this form, or the anticipated date of any Council action related to this proposal/application?

☐ YES

☐ NO

Council Member Name	Payee Name	Payment Date	Payment Amount

2. Do you or your organization, or any agency or representative on behalf of you or your organization, anticipate or plan to make any campaign contributions of more than \$250 (aggregated) to any City Council member in the 12 months following any City Council action related to this proposal/application? **\*\* There may be legal restrictions on making contributions during the 12 months following City Council Action. It is recommended that you consult with your own legal counsel regarding the requirements of law.**

☐ YES

☐ NO

Council Member Name	Payee Name	Payment Date	Payment Amount

Answering "YES" to either question above does not preclude the City of Thousand Oaks from entering into or taking any subsequent action related to this proposal/application. However, it may preclude the identified Council member(s) from participating in any actions/decisions related to this proposal/application.

9/16/24

Date

Troy Pitman, Senior Vice President

Printed Name/Title of Authorized  
Representative

The Bank of New York Mellon  
Trust Company, N.A.

Name of Business/Legal  
Entity



Signature

**\*\*\* You must submit a supplemental form if you make any new reportable contribution(s) while the proposal/application is being considered \*\*\***

\*\* "Aggregated" contributions, as described in FPPC Regulation §18438.5, include the following types of contributions made during a 12-month period: (1) all contributions made by the party or participant; (2) all contributions made by an agent of the party or participant; and (3) all contributions made by an individual or entity required to be aggregated with the party or participant, and any agent of the party or participant.