

**RESOLUTION R-100-17**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH  
U.S. BANK NATIONAL ASSOCIATION FOR INVESTMENT CUSTODIAL SERVICES**

**WHEREAS**, the City of Wheaton, Illinois (the "City") is an Illinois Home Rule Municipality pursuant to provisions of Article VII, Section 6 of the Illinois Constitution of 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

**WHEREAS**, the City has previously engaged Marquette Associates, Inc. ("Marquette") to provide investment consulting and portfolio performance monitoring services for the City's operating funds; and

**WHEREAS**, Marquette conducted investment custody searches for safekeeping the City's investments; and

**WHEREAS**, the City desires to engage a financial institution to be the custodian for the City's investments in accordance with the City's Investment Policy; and

**WHEREAS**, it is determined by Marquette and City that U.S. Bank National Association meets the City's needs; and

**WHEREAS**, it is necessary for the City to enter into an agreement with U.S. Bank National Association for the purposes of providing investment custodial services for the City's investments.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute and the City Clerk is hereby directed to attest to an agreement between the City of Wheaton and U.S. Bank National Association for investment custodial services.

ADOPTED this 2<sup>nd</sup> day of October, 2017

  
Mayor

ATTEST:

  
City Clerk

City Clerk

Roll Call Vote

Ayes: Councilman Prendiville  
Mayor Gresk  
Councilman Scalzo  
Councilman Suess  
Councilman Barbier

Nays: None

Absent: Councilwoman Fitch  
Councilman Rutledge

Motion Carried Unanimously

## CUSTODY AGREEMENT

This Custody Agreement (the "Agreement") is between the City of Wheaton, Illinois, an Illinois home rule municipality, organized under the laws of the State of Illinois ("Customer"), and U.S. Bank National Association, a national banking association organized under the laws of the United States with offices in Minneapolis, Minnesota ("Bank").

The parties hereby agree as follows:

### 1. Appointment and Acceptance.

1.1 Customer hereby appoints Bank to provide custody services in connection with securities, cash, and other property Customer deposits, or causes to be deposited, from time to time under this Agreement; investment and reinvestments thereof; and income thereon, as provided herein (collectively the "Assets"). Bank hereby agrees to hold the Assets in a custody account established in the name of Customer (the "Account"), upon the terms and conditions set forth below.

1.2 In the event that Customer requires Bank to establish one or more sub-accounts within the Account under this Agreement ("Sub-Accounts"), Bank shall open such accounts pursuant to Bank's account opening procedures in effect at the time. The term "Account" as used in this Agreement shall refer to one or all of the Sub-Accounts, as the context of this Agreement shall require.

1.2.1 In no event shall Customer open Sub-Accounts for the benefit of entities having different tax identification numbers than Customer. Each Sub-Account will have the same tax identification number as Customer.

### 2. Books, Records and Accounts.

2.1 Accounting. Bank shall maintain proper books of account and complete records of Assets and transactions in the Account.

2.2 Audit. On at least five business days advance written notice, Bank shall permit Customer and Customer's independent auditors to inspect during Bank's regular business hours any books of account and records of Assets and transactions in the Account.

### 3. Asset Delivery, Transfer, Custody and Safekeeping.

3.1 Customer will from time to time deliver, or cause to be delivered, Assets to Bank. Bank shall receive and accept such Assets for the Account upon directions from Customer.

3.2 Account Statements. Bank will furnish Customer with (i) an Account statement with the frequency designated below (or as subsequently agreed upon by Bank and Customer) within thirty (30) calendar days after the end of the reporting period and (ii) a final Account statement within thirty (30) calendar days after Bank has transferred all Assets from the Account as provided under this Agreement. Such Account statements will reflect Asset transactions during the reporting period and ending Asset holdings. To the extent Customer has established an account in Bank's on-line portal, Bank will furnish such Account statements by way of such system. If no frequency is so designated or agreed upon, Customer shall be deemed to have designated "Monthly".

(Check at least one):

- ☒ Monthly
- ☐ Quarterly
- ☐ Semi-annually
- ☐ Annually

3.3 Except to the extent that Customer and Bank have entered into a separate written agreement that expressly makes Bank an investment manager of the Assets, the Account statements described above (including their timing and form)

serve as the sole written notification of any securities transactions effected by Bank for the Account. Customer has the right to demand that Bank provide written notification of such transactions pursuant to 12 CFR 12.4(a) or 12 CFR 12.4(b) at no additional cost to Customer.

3.4 Bank shall forward to any person authorized under this Agreement to direct the purchase or sale of an Asset information it receives with respect to the Asset concerning voluntary corporate actions and mandatory corporate actions, subject to the following exceptions:

3.4.1 Exception: If Bank receives during the term of this Agreement a class-action litigation proof of claim in respect to any of the Assets held in the Account during the class action period, Bank shall file such claim on behalf of Customer regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such a filing.

3.4.2 Exception: Bank will not forward so-called "mini-tenders". Mini-tenders are tender offers for a small amount of the outstanding securities of a "target" company, generally with an offer price at or below market value. For equity issues, unless a tender offer is made for 5% or greater of the outstanding securities, and is subject to Securities and Exchange Commission ("SEC") review, the tender offer will not be forwarded by Bank.

3.4.3 Exception: No tender offer will be forwarded by Bank for a debt issue if, (i) it is not registered with the SEC, (ii) it has a "first received, first buy" basis with no withdrawal privilege and includes a guarantee of delivery clause, or (iii) the offer includes the statement that "the purchase price includes all accrued interest on the note and has been determined in the sole discretion of the buyer and may be more than or less than the fair market value of the notes" or similar language.

3.5 Upon receipt of directions from Customer, Bank shall return Assets to Customer, or deliver Assets to such location or third party as such directions may indicate, provided that in connection therewith it is the sole responsibility of Customer to provide any transfer documentation as may be required by the applicable Depository (as defined below) or third party recipient. Bank shall have no power or authority to assign, hypothecate, pledge or otherwise dispose of Assets, except as provided herein or pursuant to such directions.

**4. Powers of Bank.** In the performance of its duties under this Agreement, Bank shall have the following powers:

4.1 Sign Documents. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any or all other instruments that may be necessary or appropriate to the proper discharge of its duties under this Agreement.

4.2 Maintain Assets at a Depository or with a Sub-custodian. To maintain Assets at any registered clearing agency (such as the Depository Trust Company) or any Federal Reserve Bank (each, a "Depository") or with any sub-custodian; to permit such Assets to be registered in the name of Bank, Bank's nominee, the Depository, the Depository's nominee, the sub-custodian, or the sub-custodian's nominee; and, in connection with transactions involving foreign securities, to employ securities depositories, clearing agencies, clearance systems, sub-custodians, or agents located outside the United States.

4.3 Hire Service Providers. To hire service providers (including, but not limited to, attorneys, depositories, and sub-custodians) to assist Bank in exercising Bank's powers under this Agreement, including any service provider that is affiliated with Bank.

4.4 Do Other Things. To perform other acts necessary to the proper discharge of its duties under this Agreement.

4.5 Hold Assets Un-invested. To hold Assets un-invested pending cash investment, distribution, resolution of a dispute, or for other operational reasons and to deposit the same in an interest-bearing or noninterest-bearing de account of Bank, notwithstanding Bank's receipt of "float" income from such un-invested cash.

4.6 Litigate. As directed by Customer, to bring, defend, or settle lawsuits involving the Account or the Assets at the sole expense of the Account.

4.7 Retain Disputed Funds. To withhold delivery or distribution of Assets that are the subject of a dispute pending final adjudication of the dispute by a court of competent jurisdiction.

4.8 Distribute Assets. To distribute Assets as set forth herein.

4.9 Safe-keep Assets. To safe-keep Assets as set forth herein.

4.10 Register Assets. To register any Asset in the name of Bank or Bank's nominee or to hold any Asset in unregistered or bearer form or in such form as will pass title by delivery, provided that Bank's records at all times show that all such assets are part of the Account. In consideration of Bank's registration of any securities or other property in the name of Bank or its nominee or agent, Customer agrees to pay on demand to Bank or to Bank's nominee or agent the amount of any loss or liability, claimed or asserted against Bank or Bank's nominee or agent by reason of such registration.

4.11 Collect Income. To collect all income, principal, and other distributions due and payable on Assets. If an Asset is in default, or if payment is refused after due demand, and Bank receives notice of such default or refusal from the Asset's issuer or transfer agent, then Bank shall so advise Customer.

4.12 Exchange Foreign Currency. To exchange foreign currency into and out of United States dollars through customary channels, including Bank's foreign exchange department.

4.13 Advance Funds or Securities. To advance funds or securities in furtherance of settling securities transactions and other financial-market transactions under this Agreement.

**5. Purchases.** Upon the receipt of directions from Customer, Bank shall settle Customer's purchases of securities on a contractual settlement basis. For the purposes of §9-206 of the Uniform Commercial Code, Customer acknowledges that its legal obligation to pay the purchase price to Bank for such purchases arises immediately at the time of the purchase. Customer hereby covenants and agrees that (i) it shall not instruct Bank to sell any Asset until such Asset has been fully paid for by Customer, and (ii) Customer shall not engage in any practice whereby Customer relies on the proceeds from the sale of an Asset to pay for the earlier purchase of the same Asset.

**6. Sales.** Upon receipt of directions from Customer, Bank will deliver Assets held by it as Bank under this Agreement and sold by or for Customer against payment to Bank of the amount specified in such directions in accordance with the then current securities industry practices and in form satisfactory to Bank. Customer acknowledges that the current securities industry practice for physical securities is for physical delivery of such securities against later payment on delivery date. Bank agrees to use commercially reasonable efforts to obtain payment therefor during the same business day, but Customer confirms its sole assumption of all risks of payment for such deliveries. Bank assumes no responsibility for the risks of collectability of checks received for the Account.

## **7. Settlements.**

7.1 Bank shall provide Customer with settlement of all purchases and sales of Assets in accordance with Bank's instruction-deadline schedule provided that Bank has all the information necessary and the Account has all the Assets necessary to complete the transaction.

7.2 To avoid a deficiency in the Account, if the Account does not have sufficient funds to pay for an Asset, Customer covenants and agrees that (i) it shall not initiate any trade without sufficient Assets to settle such trade, and (ii) Customer shall not notify any third party that Bank will settle the purchase of an Asset. Customer covenants and agrees that it will not allow or direct anyone else to act contrary to (i) and (ii) above.

7.3 Bank shall not be liable or responsible for or on account of any act, omission, default, or insolvency of any broker, bank, trust company, person, or other agent designated by Customer to purchase or sell securities for the Account.

## **8. Valuation: Client-Controlled Assets.**

8.1 Valuation. For purposes of reporting the value of an Asset on an Account statement:

8.1.1 Pricing, If Available. Bank will report a value that is (i) provided to Bank by a third-party provider or vendor or (ii) readily determinable on an established market, if such value is available to Bank when preparing the statement.

8.1.2 Pricing, If Unavailable. If such value is unavailable, Customer will, upon Bank's request, direct Bank as to the value; Bank will then report such value. Absent such a direction, Bank will report the most recent value that Bank received from the Asset's broker, fund accountant, general partner, issuer, investment manager, transfer agent, or other service provider (commonly known as a pass-through price).

8.1.2.1 To the extent the value of an Asset is so reported, Customer hereby represents and warrants as follows: (i) Customer has received, read, and understood any prospectus, summary description, declaration of trust, subscription agreement, offering memorandum, and fact sheet for the Asset; understands the Asset's fees and expenses, transfer and withdrawal limitations, type, category, issuer, objectives, principal strategies and risks, and current underlying investments; and understands the identity of the Asset's administrator, investment advisor, auditor, and other service providers (and any affiliations among them) and the services they provide, respectively, to the Asset. (ii) Such value reflects such disclosures, investment-related information, and service-provider information.

8.1.2.2 Customer covenants and agrees that it will under no circumstances provide Bank with a security issued by Customer or Customer's affiliates, or direct Bank to purchase a security issued by Customer or Customer's affiliates, unless the value of such security is readily determinable on an established market.

8.1.3 Limitations. Customer hereby acknowledges that the reported value:

8.1.3.1 Might be neither fair market value nor fair value (under Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 820, *Fair Value Measurements and Disclosures*, or applicable law).

8.1.3.2 Is not a recommendation as to the advisability of buying, holding, or selling the Asset and not a substitute for investigating the Asset's value in connection with a decision to buy, hold, or sell (or for obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision).

8.1.4. Pricing Sources; Methodology. Upon Customer's request, Bank will provide Customer with information about Bank's pricing sources and methodologies.

8.2 Client-Controlled Assets. Customer may direct Bank from time to time to include specific assets in the Account statements despite the fact that those assets are neither registered in the name of Bank or Bank's nominee nor maintained by Bank at a Depository or with a sub-custodian nor in the physical possession of Bank nor otherwise in a place or form in which Bank can manipulate, access, or control them. In such a case, Bank has the right to exclude such assets from the Account statements or to include them with a statement-notation about control. To the extent Bank includes them, Customer hereby acknowledges that:

8.2.1 Customer is responsible for reviewing (i) Account statements to ensure that they include notations about the control of each such asset and (ii) any third-party reports made accessible by Bank to ensure that they do not inaccurately identify the holder of any such assets;

8.2.2 Bank is not responsible for performing the duties set forth in this Agreement (other than statement-reporting duties, as limited herein) with respect to such assets. By way of example and not limitation, Bank is not responsible for receiving, safekeeping, valuing, transferring, or releasing such assets or for settling trades with respect to such assets.

8.2.3 When furnishing Account statements or making third-party reports accessible, Bank may rely on information provided by Customer or by Customer's agents, affiliates, or representatives with respect to such assets (including, but not limited to, information on the units, value, or marketability of such assets) without questioning the information. To that end, Customer will cause each holder of such assets to provide Bank with a copy of such holder's periodic customer account statements with respect to such assets.

## **9. No Discretionary Authority.**

9.1 Customer and Bank acknowledge that, except to the extent the Assets are subject to a separate written investment management agreement signed by the parties, Bank is not a fiduciary with respect to any Asset or Customer. In addition, it is agreed that:

9.1.1 Bank shall have no duty to make any evaluation or to advise anyone of the prudence, suitability, or propriety of action or proposed action of Customer in any particular transaction involving an Asset or the suitability or propriety of retaining any particular investment as an Asset. Bank shall have no duty to review, question, approve, or make inquiries as to any investment directions received under this Agreement. Bank shall be under no duty to review the securities or other property held in the Account with respect to prudence or diversification.

9.1.2 Bank shall not be liable for any loss or diminution of Assets by reason of investment experience or for its actions taken in reliance upon a direction received under this Agreement.

9.1.3 Bank shall have no duty to monitor or otherwise investigate the actions or omissions of Customer or Customer's agents.

9.1.4 Bank shall have no responsibility for the accuracy of Asset valuations quoted by outside services or sources.

9.1.5 Bank shall only be responsible for the performance of such duties as are expressly set forth in this Agreement and no implied covenants, duties, responsibilities, representations, warranties, or obligations shall be read into this Agreement against Bank.

9.1.6 Bank shall have no duty to act as trustee of the Assets.

9.1.7 Bank shall have no duty to act as investment manager of the Assets, except to the extent the Assets are subject to Bank's discretion to manage under a separate written investment-management agreement (if any).

9.1.8 Bank shall have no duty to render investment advice with respect to the Assets.

9.1.9 Bank shall have no duty to determine, monitor, or collect any contributions to the Account or monitor compliance with any applicable funding requirements.

9.1.10 Bank shall have no duty to maintain or defend any legal proceeding in the absence of indemnification, to Bank's satisfaction, against all expenses and liabilities which it may sustain by reason thereof.

9.1.11 Bank shall have no duty to inspect or execute any contract, declaration of trust, lease, loan agreement, note, offering memorandum, subscription agreement, or other instrument which may establish rights to income, principal, or other distributions on an Asset.

9.1.12 Bank shall have no duty (i) to collect any income, principal, or other distribution due and payable on an Asset if the Asset is in default or if payment is refused after due demand or (ii) except as expressly provided herein, to notify Customer in the event of such default or refusal.

9.1.13 Bank shall have no responsibility for the risks, expenses or fluctuating exchange rates affecting collections or conversions related to foreign assets.

9.1.14 Bank shall have no duty to question whether any direction received under this Agreement is prudent or contrary to applicable law; to solicit directions; or to question whether any direction received under this Agreement by email, or entered into Customer's account in Bank's on-line portal, is unreliable or has been compromised, such as by identity theft.

9.1.15 Bank shall not be liable for a failure to take an action required under this Agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not and including existing wars), revolutions, insurrection, riot, civil commotion, acts of God, accident, fire, explosion, stoppage of labor, strike, or other differences with employees, laws, regulations, orders or other acts of any governmental authority or any other cause whatsoever beyond its reasonable control; nor shall any such failure or delay give Customer the right to terminate this Agreement.

**10. Corporate Actions; Mandatory Exchange Transactions.** Notwithstanding anything herein to the contrary, Bank will, without providing notice, cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets (such as reorganization, recapitalization, redemption in kind, or consolidation) and will tender or exchange securities held for other securities, for other securities and cash, or for cash alone, pursuant to the terms of such transaction.

**11. Authorized Persons; Delivery of Directions.**

11.1 Authorized Persons.

11.1.1 Customer will identify:

11.1.1.1 Each employee of Customer who is authorized to act on Customer's behalf under this Agreement, by giving Bank (i) an authorized-persons certificate that names the employees who have such authority and provides their specimen signatures and email addresses and (ii) a secretary's certificate (or, if Customer is not a corporation, then a similar document from an officer exercising similar authority) with respect to such employees and the person who provides such authorized-persons certificate.

11.1.1.2 Each third-party agent that is authorized to act on Customer's behalf under this Agreement, by giving Bank an authorization letter setting forth the name of such agent; any limits on such agent's authority to act on Customer's behalf under this Agreement; and the names, specimen signatures, and email addresses of each employee of such agent who is authorized to act on such agent's behalf under this Agreement. Absent any such limits to the contrary, any such agent is authorized to exercise any right and fulfill any duty of Customer under this Agreement, including, but not limited to, any of Customer's authority under this Agreement to direct Bank. However, in no event is such agent authorized to withdraw Assets from the Account (unless (i) the recipient of the withdrawn Assets is Customer or a destination pre-approved by Customer, (ii) such agent has the authority to direct the purchase of Assets under this Agreement, directs a withdrawal, and indicates that the withdrawn Assets will be applied to purchase securities or other property for Customer, or (iii) Customer has provided affirmative written authorization to Bank to accept directions from such agent to withdraw Assets from the Account); to amend the Agreement; or to terminate the Agreement.

11.1.2 Bank may assume that any such employee or agent continues to be so authorized, until Bank receives notice to the contrary from Customer (or, with respect to any such employee of any such agent, from such agent).

11.1.3 Customer hereby represents and warrants that any such employee or agent was duly appointed and is appropriately monitored and covenants that Customer will furnish such employee or agent with a copy of this Agreement, as amended from time to time, and with a copy of any communications given under this Agreement to Customer. Customer hereby acknowledges that (i) such employee's or agent's actions or omissions are binding under this Agreement upon Customer as if Customer had taken such actions or made such omissions itself and (ii) Bank is indemnified, released, and held harmless under this Agreement accordingly.

11.2 Delivery of Directions.

11.2.1 Any direction, notice, or other communication provided for in this Agreement will be given in writing and (i) unless the recipient has timely delivered a superseding address under this Agreement, addressed as provided under this Agreement or (ii) entered into Customer's account in Bank's on-line portal.

11.2.2 Any direction received under this Agreement by email, or entered into Customer's account in Bank's on-line portal, is deemed to be given in a writing signed by the sender. Customer hereby represents and warrants



that Customer maintains commercially reasonable security measures for preventing unauthorized access to its portal account and the email accounts of its employees, agents, and agents' employees, and Customer hereby assumes all risk to the Account of such unauthorized access. Customer hereby acknowledges that Customer is fully informed of the protections and risks associated with the various methods of transmitting directions to Bank and that there may be more secure methods of transmitting directions than the methods selected by Customer and Customer's agents.

## **12. Compensation and Reimbursement.**

12.1 Fees; Expenses. Customer shall pay Bank compensation for providing services under this Agreement. A schedule of that compensation is attached as **Exhibit A (Fee Schedule)** hereto. Customer shall also reimburse Bank for expenses, fees, costs, and other charges incurred by Bank in providing services under this Agreement (including, but not limited to, compensation, expenses, fees, costs, and other charges (collectively "Additional Charges") payable to service providers hired under this Agreement). Fourteen days prior to incurring such Additional Charges Bank shall notify Customer in writing of the identity of the service provider and the service providers charges. Customer may within 7 days thereafter reject the service provider or terminate this agreement. To the extent of any overdraft in the Account, the Customer is mandated to provide compensation to the Bank to offset the debt.

12.2 Advance of Funds or Securities: Outstanding Fees and Expenses. To the extent of (i) any advance of funds or securities under this Agreement; (ii) any outstanding compensation, expenses, fees, costs, or other charges incurred by Bank in providing services under this Agreement; or (iii) Customer's other indebtedness to Bank, Customer hereby grants Bank a first-priority lien and security interest in, and right of set-off against, the Assets. Bank may execute that lien and security interest, and exercise that right, at any time. Without limiting the generality of the foregoing, if Bank does not timely receive such compensation, expenses, fees, costs, or other charges, then Bank shall be entitled to deduct the same from the Assets. Furthermore, nothing in this Agreement shall constitute a waiver of any of Bank's rights as a securities intermediary under Uniform Commercial Code §9-206.

12.3 None of the provisions of this Agreement shall require Bank to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties under this Agreement, or in the exercise of any of its rights or powers under this Agreement, if Bank shall have reasonable grounds for believing that repayment of such funds, or indemnity satisfactory to Bank against such risk or liability, is not assured.

**13. Customer Responsibility.** Customer shall be responsible for the review of all reports, accountings and other statements provided by Bank, and shall within 90 days following receipt thereof notify Bank of any mistakes, defects or irregularities contained or identified therein, after which time all such matters shall be presumed to be ratified, approved and correct and shall not provide any basis for claim or liability against Bank.

## **14. Indemnification; Damages.**

14.1 Indemnification. Customer hereby indemnifies and releases Bank and its affiliates, and their officers, directors, employees, agents, successors, and assigns (each an "Indemnified Person") and holds each Indemnified Person harmless from and against, and an Indemnified Person will incur no liability to any person or entity for, any costs, losses, claims, liabilities, fines, penalties, interest, damages, delayed payment or non-payment on Assets sold, stockholders' assessments, taxes, and expenses (including fees of attorneys and other professionals) (collectively, "Harm"), that may be imposed on, incurred by, or asserted against an Indemnified Person by reason of the Indemnified Person's action or omission in connection with this Agreement or the Account (including, but not limited to, an action or omission that is consistent with directions provided under this Agreement), except to the extent that a court of competent jurisdiction has made a final judgment that the Harm resulted directly from the Indemnified Person's willful misconduct, gross negligence, or bad faith. The foregoing provisions shall survive the Indemnified Person's termination as such and the termination of this Agreement.

14.2 Damages. Bank is not liable for any indirect, incidental, special, punitive, or consequential damages arising out of or in any way related to this Agreement or Bank's provision of services under this Agreement. This limitation applies even if Bank has been advised of, or is aware of, the possibility of such damages.

## **15. Termination.**

15.1 This Agreement shall remain in effect until terminated by either party giving written notice of such to the other party 30 days in advance of the termination date.

15.2 Upon termination of this Agreement, Bank shall follow directions from Customer concerning the trade of Assets, provided that:

15.2.1 Bank shall have no liability for the costs of shipping and insurance associated therewith; and

15.2.2 Bank shall not be required to make any transfer until Bank has received payment or reimbursement for all (a) compensation, expenses, fees, costs, or other charges incurred by Bank in providing services under this Agreement, including any special termination costs, and (b) funds or securities advanced under this Agreement; and

15.2.3 If any Assets remain in the Account after termination, Bank shall require further transfer directions regarding delivery of Assets to Customer or a successor custodian. If a successor custodian is not appointed by Customer within 30 days after termination, Customer acknowledges and agrees that Bank may petition a court of competent jurisdiction regarding such appointment and charge the Account for fees and expenses involved therein.

15.3 Upon termination of this Agreement, all obligations of the parties to each other under this Agreement shall cease, except that all indemnification provisions herein shall survive with respect to any Harm arising from events prior to, or in connection with, such termination.

**16. Binding Obligations.** Customer and Bank each hereby represent and warrant that this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with the terms hereof; subject, as to enforcement of remedies, to applicable bankruptcy and insolvency laws, and to general principles of equity.

## **17. General Provisions.**

17.1. **Tax Duties.** Bank has no duty to calculate, withhold, disclose, report, or remit to the appropriate tax authorities or anyone else any federal, state, or local taxes that may be required to be calculated, withheld, disclosed, reported, or remitted with respect to the Assets or the Account, except to the extent such duties are required by law to be performed only by a custodian.

17.2. **Tax Lot Methods.** For the purpose of complying with Internal Revenue Service regulations requiring cost basis reporting, please select the tax lot selection method for Customer's Account. *Bank recommends that Customer consult with Customer's tax advisor if Customer is unsure of the option that is best for it.*

- ☐ **Minimize Gain** – Shares are sold from tax lots having the highest per unit federal tax cost with a holding period of more than one year.
- ☐ **First In First Out ("FIFO")** – Shares are sold from tax lots having the earliest federal tax acquisition date.
- ☐ **Last In First Out ("LIFO")** – Shares are sold from tax lots having the most recent federal tax acquisition date.
- ☐ **Highest Federal Cost First Out ("HIFO")** – Shares are sold from tax lots having the highest federal tax cost per share.
- ☐ **Lowest Federal Cost First Out ("LOFO")** – Shares are sold from tax lots having the lowest federal tax cost per share.
- ☐ **Specify Tax Lot** – Shares are sold from tax lots that you specify.
- ☒ **Average Federal Tax Cost** – Shares are sold across all tax lots using the average cost. If the Account holds investments for which this method is not permitted, the FIFO default method will be used, unless Customer directs otherwise.
- ☐ **Maximize Gain** – Shares are sold from tax lots having the lowest per unit federal tax cost.

If Customer does not specify a particular tax lot or method above, Customer acknowledges that the FIFO method will be used. If Customer wishes to use a tax lot selection method that is different from what is selected above, on an individual investment or transaction basis, Customer may make that selection when executing the trade.

17.3 Publicity. Neither party will (a) use the other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols, or brand names, or (b) otherwise refer to or identify the other party in advertising, publicity releases, or promotional or marketing publications, or correspondence to third parties without, in each case, securing the prior written consent of the other party.

17.4 Complete Agreement: Amendment.

17.4.1 Complete Agreement. This Agreement contains a complete statement of all the arrangements between the parties with respect to its subject matter and supersedes any existing agreements between them concerning the subject.

17.4.2 Amendment. This Agreement may be amended at any time, in whole or in part, by a written instrument signed by Customer and Bank. Notwithstanding the foregoing, if the terms of **Exhibit A (Fee Schedule)** hereto set forth a method for amending such exhibit, then such terms alone govern amendments thereto.

17.5 Governing Law; Venue. This Agreement shall be subject to, governed by, and construed in accordance with the laws of the State of Illinois (the "Jurisdiction") applicable to agreements made and to be performed in the Jurisdiction, without regard to the Jurisdiction's conflict of laws rules. All legal actions or other proceedings directly or indirectly relating to this Agreement shall be brought in federal court (when available, or state court when federal court is not available) sitting in the Jurisdiction. By execution of this Agreement, the parties submit to the courts of the Jurisdiction. To the extent that Bank or Customer may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, each hereby irrevocably agrees not to claim, and hereby waives, such immunity.

17.6 Successors and Assigns.

17.6.1. This Agreement binds, and inures to the benefit of, Customer, Bank, and their respective successors and assigns.

17.6.2. No party may assign any of its rights under this Agreement without the consent of the others, which consent shall not be unreasonably withheld. Customer hereby acknowledges that Bank will withhold consent unless and until Bank verifies an assignee's identity according to Bank's Customer Identification Program and, to that end, Customer hereby agrees to notify Bank of such assignment and provide Bank with the assignee's name, physical address, EIN, organizational documents, certificate of good standing, and license to do business, as well as other information that Bank may request. No consent is required if a party merges with, consolidates with, or sells substantially all of its assets to another entity, provided that such other entity assumes without delay, qualification, or limitation all obligations of that party under this Agreement by operation of law or by contract.

17.7 Separability. If any provision of this Agreement is invalid or unenforceable, the balance of the Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

17.8 No Third Party Rights. In performing its services under this Agreement, Bank is acting solely on behalf of Customer. No agency, contractual or service relationship shall be deemed to be established hereby between Bank and any other person or entity.

17.9 Legal Advice. Customer hereby acknowledges that it (i) did not receive legal advice from Bank concerning this Agreement, (ii) had an adequate opportunity to consult a licensed attorney of its choice before executing this Agreement, and (iii) executed this Agreement upon its own judgment and, if sought, the advice of such attorney.

17.10 Counterparts and Duplicates. This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument. This Agreement and any administrative form under the Agreement may be proved either by a signed original or by a reproduced copy thereof (including, not by way of limitation, a microfiche copy or an electronic file copy).

17.11 Legal Actions Affecting Account. If Bank is served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant or similar order relating to the Account, (a "Legal Action") Bank will comply with that Legal Action and shall be protected, indemnified, and held harmless therefrom. Customer will reimburse Bank for all fees and expenses Bank incurs in responding to any Legal Action affecting the Assets or the Account (including but not limited to the fees of attorneys and other professionals).

17.12 Abandoned Property. Any Assets remaining unclaimed or abandoned by Customer for a period of time as is set forth in the applicable state's abandoned property, escheat, or similar law shall be delivered to the proper public official pursuant to law and Bank shall be held harmless therefrom. The provisions of this Section shall survive the termination of the Agreement.

17.13 Freedom to Deal with Third Parties. Bank is free to render services to others, whether similar to those services rendered under this Agreement or of a different nature.

17.14 Shareholder Communications Act Election. Under the Shareholder Communications Act of 1985, as amended, Bank must try to permit direct communications between a company that issues a security held in the Account (the "Securities-Issuer") and any person who has or shares the power to vote, or the power to direct the voting of, that security (the "Voter"). Unless the Voter registers its objection with Bank, Bank must disclose the Voter's name, address, and securities positions held in the Account to the Securities-Issuer upon the Securities-Issuer's request ("Disclosure"). To the extent that Customer is the Voter, Customer hereby (i) acknowledges that failing to check one and only one box below will cause Customer to be deemed to have consented to Disclosure and (ii) registers its (*check only one*):

- ☐ Consent to Disclosure.  
☒ Objection to Disclosure.

## 18. Automated Cash Management and Sweep Direction.

18.1 To the extent Bank has received no investment direction as to cash Assets held in the Account, Bank will use such Assets to purchase a position in the sweep vehicle identified in an **exhibit** hereto or, if none is identified, will hold such Assets un-invested.

## 19. Representations and Warranties.

19.1 Plan Assets. Customer represents and warrants that none of the Assets is an asset of any (i) "plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA"); (ii) "plan" as defined in the Internal Revenue Code of 1986, as amended, (the "Code") Section 4975(e)(1); (iii) entity whose underlying assets include assets of any such "plan" by reason of any such plan's investment in such entity; or (iv) plan or entity not otherwise within this definition that is subject to similar restrictions under federal, state, or local law.

19.2 Certain Securities Exchange Act and Commodity Exchange Act Rules. Customer represents and warrants that none of the Assets is subject to (i) SEC Rule 15c3-3; (ii) CFTC Rules 1.20, 22.5, or 30.7; or (iii) any similar rule or regulation.

19.3 Customer. Customer represents and warrants that Customer (i) is neither an "investment company" that is subject to registration with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, as amended, (the "'40 Act"), insurer, nor reinsurer; (ii) has no duty to engage a trustee for the Assets; (iii) holds good and valid legal title to all Assets; (iv) has the power and requisite authority to execute and deliver this Agreement; and (v) is duly authorized to, and has taken all action necessary to authorize it to, execute and deliver this Agreement.

19.4 Bank. Bank represents and warrants that it (i) is a national banking association; (ii) is duly organized, validly existing and in good standing under the laws of the United States; (iii) has the power and authority to transact business in which it is engaged; (iv) has the power and requisite authority to execute, deliver and perform this Agreement; and (v) is duly authorized to, and has taken all action necessary to authorize it to, execute, deliver and perform this Agreement.

19.5

20. **Headings for Convenience Only.** The section headings and subheadings within this Agreement are for convenience-of-reference only, and do not define, limit, or describe the scope or intent of any provision of this Agreement.

21. **Waiver of Jury Trial.** Each party hereby irrevocably waives all right to a trial by jury in any action, proceeding, claim, or counterclaim (whether based on contract, tort, or otherwise) directly or indirectly arising out of or relating to this Agreement.

22. **Effective Date.** This Agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

*[signature page follows]*

**IN WITNESS WHEREOF**, an authorized officer of each party hereby executes this Agreement on the date stated beneath that party's signature.

**CUSTOMER**

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

U.S. Mail Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

**U.S. BANK NATIONAL ASSOCIATION**

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

Its: \_\_\_\_\_

Vice President and Relationship Manager

Dated: \_\_\_\_\_

U.S. Mail Address: \_\_\_\_\_

505 North 7<sup>th</sup> Street, SL-MO-T15C \_\_\_\_\_

St. Louis, MO 63101 \_\_\_\_\_

Email Address: \_\_\_\_\_

Sophia.flynn@usbank.com \_\_\_\_\_

# **CUSTODY AGREEMENT**

**Exhibit A**

**Fee Schedule**

## FEE SCHEDULE

Account Name: City of Wheaton

**Account Profile.** If the Account is a U.S. Bank National Association ("USBNA") trust account, then the undersigned is the trust's grantor; if the Account is a USBNA custody account, then the undersigned is the Account's owner (such undersigned, the "Client"). USBNA has discretion to invest Account assets to the extent (if any) provided in the Account's governing service contract(s) (to such extent, a "Managed Account"; otherwise, a "Directed Account").

**Fees.** See a mutual fund's prospectus and a 3(c)(1) or (7) fund's offering memorandum, summary description, subscription agreement, limited liability company agreement, limited partnership agreement, trust agreement, or declaration of trust, as applicable, for a description of any fees received by USBNA and its affiliates (collectively, "U.S. Bank") with respect to the investment of Account assets therein. The fees the Account pays directly to U.S. Bank (the "Account Fees"), which are in addition to fund-level fees and are paid directly to USBNA, are as follows.

**Investment-management fee  
(FOR A MANAGED ACCOUNT):**

The investment-management fee is calculated in tiers, based on the invested value of Account assets. The rates are as follows, except as may be otherwise indicated below:

N/A bps on the first \$ \_\_\_\_\_ of Account assets  
 \_\_\_\_\_ bps on the next \$ \_\_\_\_\_ of Account assets  
 \_\_\_\_\_ bps on the balance of Account assets

For assets invested in the First American Funds or in a deposit account at USBNA, the rate is 0 bps, and the assets are excluded from the tiers above.

**Administration fee:**

Provide account administration. The administration fee includes an asset-based fee which is calculated based on the invested value of Account assets as follows:

2.0 bps on the market value of Account assets

For Account assets invested in global securities, U.S. Bank provides account administration by way of a sub-contract between USBNA and a global custodian (the "Global Custody Sub-contract"). U.S. Bank compensates such global custodian for U.S. Bank's own fees; the Account does not pay fees in addition to the fees stated herein in connection with services provided by such global custodian. FOR A DIRECTED ACCOUNT, such assets are excluded from the administration-fee tiers above. Instead, the administration fee is calculated in tiers, based on the invested value of such assets. The rates are as follows:

N/A bps on such Account assets in developed markets  
 \_\_\_\_\_ bps on such Account assets in emerging markets

The administration fee also includes the following annual fees:

Flat fee	\$ _____
Minimum annual relationship fee	\$7,500
Minimum annual per-account fee	\$ _____
Unitized-accounting fee (per unitized account)	\$ _____

**Securities-transfer fees:**

DTC-eligible securities (including ETFs), Fed book-entry securities, or domestic open-end mutual funds:

Free receipts (per security)	\$ N/C
Free deliveries (per security)	\$ N/C

**Trade-processing fees  
(FOR A DIRECTED ACCOUNT):**

Process purchases, sales, or other transactions with respect to Account assets. The rates are as follows:

DTC-eligible securities, including ETFs (per transaction)	\$ N/C
Fed book-entry securities (per transaction)	\$ N/C
Domestic open-end mutual funds (per transaction)	\$ N/C
Collective investment funds (per transaction)	\$ N/C
ACH payment to DDA at USBNA (per ACH payment)	\$ N/C
ACH payment to non-USBNA DDA (per ACH payment)	\$ N/C
Check (per check)	\$ N/C

**Distribution fees:**

Wire to domestic location (per wire)	\$ N/C
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**Foreign-exchange fee**

Execute foreign-currency exchange ("FX") transactions related to Account



**(FOR A DIRECTED ACCOUNT):**

assets invested in global securities. This fee is built into the exchange rate for such FX transactions and reduces the amount of foreign securities purchased, the amount of proceeds from the sale thereof, or the amount of entitlement payments received with respect thereto, as the case may be. This fee varies from FX transaction to FX transaction, based on current market conditions. Even so, the exchange rate used for a particular FX transaction will not deviate by more than 3% from the interbank bid and asked rates for FX transactions of comparable size and maturity at the time of the FX transaction as displayed on an independent service that reports rates of exchange in the foreign-currency market for the currency. However, if USBNA has not obtained a direction to use its own FX department to execute FX transactions with respect to purchases and sales of global securities in the Account, then the aforementioned global custodian (rather than USBNA) executes such FX transactions by way of the Global Custody Sub-contract and receives the aforementioned built-in fee. Furthermore, if USBNA has not obtained a direction to convert into U.S. dollars any entitlement payments received by the Account with respect to global securities, then neither USBNA nor such global custodian provides such automatic-repatriation services or executes the attendant FX transactions.

**Securities-lending fee:**

Provide the Account with access to a securities-lending program and with the opportunity to earn additional investment income thereunder. The securities-lending fee is a percentage of that income. For a description of the percentage, see the governing securities-lending agreement.

**Corporate-actions fee:**

Process corporate actions (per corporate action)

\$ N/C

**Tax-preparation fee:**

Prepare, file, and furnish the following tax forms (per form):

Forms 1041 (if the Account is a USBNA trust account)

\$       

Forms 1099 (if the Account is a USBNA custody account)

\$       

**Extraordinary-services fee:**

Provide services described in neither this Fee Schedule nor the Account's governing service contract(s). The extraordinary-services fee will be calculated at an hourly rate or expressed as a flat fee. USBNA will obtain the Client's consent to the rate, which consent will not be unreasonably withheld.

**Manner of Receipt.** Account Fees will be calculated (*check one and only one*): ☒ Monthly / ☐ Quarterly / ☐ Semi-annually / ☐ Annually. Any asset-based Account Fees will be based on (*check one and only one*): ☐ the applicable Account balance (or portion thereof) as of the end of the billing period / ☒ the average applicable Account balance (or portion thereof) over the billing period. (The asset values used in such calculation may vary from the asset values reported on an asset statement because of timing issues, such as the posting of accruals or the late-pricing of securities.) Account Fees will then be (*check one and only one*): ☐ Billed and invoiced to the Client with instructions on how to remit payment, and the Client hereby acknowledges that U.S. Bank may, except to the extent expressly forbidden to do so in the Account's governing service contract(s), charge such fees directly to the Account if the Client has not paid the invoice within sixty (60) calendar days of receiving it. / ☒ Charged directly to the Account, with a subsequent advice to the Client about the charges.

**Expenses.** The Client will reimburse USBNA for expenses, fees, costs, and other charges incurred by USBNA in providing services under the Account's governing service contract(s) (including, but not limited to, compensation, expenses, fees, costs, and other charges payable to service providers hired by USBNA under such contract(s)).

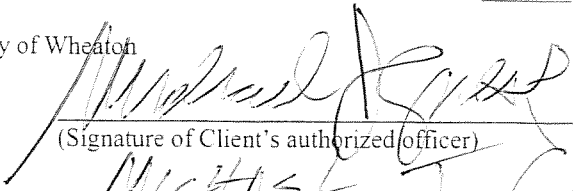
**Amendment.** USBNA may amend this Fee Schedule by delivering an amended and restated Fee Schedule or another written notice to the Client. Such amendment will be effective thirty (30) calendar days after such delivery.

**Approval.** The Client hereby acknowledges that it: (i) is independent of U.S. Bank and has authority to enter into, extend, and renew contracts for the services described herein and to approve the fees described herein; (ii) has received, read, and understands a fully-executed copy of the Account's governing service contract(s); (iii) understands and approves the services and fees described herein; (iv) agrees to the process described herein for amending the Fee Schedule; and (iv) FOR A MANAGED ACCOUNT, has received, read, and understands USBNA's Mutual Fund Compensation Disclosure.

Signature. The Client hereby executes this Fee Schedule as of this 3<sup>rd</sup> day of October, 2017.

Client: City of Wheaton

By:

  
(Signature of Client's authorized officer)

MICHAEL J GIESK  
(Printed name of Client's authorized officer)

Its:

Mayor  
(Title of Client's authorized officer)

Effective Date: October 1, 2017

Shares of registered investment companies, and units of private funds, are not deposits or obligations of, or endorsed or guaranteed in any way by, any bank, including any bank affiliated with U.S. Bancorp. Nor does the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other governmental agency insure such products. An investment in such products involves investment risks, including the possible loss of principal, due to fluctuations in each product's net asset value. Deposits products are offered by U.S. Bank National Association, member FDIC