



BANK DEPOSITORY SERVICES AGREEMENT

HCC PROJECT NO. RFP 16-38

THIS BANK DEPOSITORY SERVICES AGREEMENT hereinafter called the "Agreement", is made and entered into on the date last herein written by and between Houston Community College, hereinafter called the "College", and _____ a banking association, organized under the law of the United States and authorized by law to do banking business in the State of Texas, hereinafter called the "Bank", and provides as follows:

1. **Designation of Depository.** The College, through action of the College Board, on September 15, 2016, hereby designates Bank as a primary depository bank for the period beginning December 1, 2016, and **continuing** through November 30, 2019, with the option for two (2) one-year extensions under the same terms and conditions.

2. **General.** All services rendered to College by Bank under this Agreement shall be performed in accordance with accepted commercial banking standards for public fund organizations and under the overall direction and instructions of College pursuant to Bank's standard operations, policies, and procedures.

3. **Scope of Services.** Bank agrees to provide those services as described in Houston Community College's Request for Proposal for Bank Depository Services released on June 30, 2016 hereinafter referred to as the "RFP". The RFP and Bank's response to the RFP, hereinafter referred to as the "Proposal", are incorporated herein by reference. Bank acknowledges that all services performed by Bank are subject to the approval of College.

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

5. **Custodian.** College and Bank, by execution of this Agreement, hereby designate _____ as custodian, hereinafter called "Custodian", to hold in trust, according to the terms and conditions of this Agreement, the collateral described and pledged by Bank in accordance with the provisions of this Agreement.

6. **Custodian Fees.** Any and all fees associated with Custodian's holding of collateral for the benefit of College will be paid by Bank and College will have no liability therefore.

7. **Entire Agreement.** The entire agreement between Bank and College shall consist of this Agreement, College's RFP (except to the extent Bank took specific exceptions in the Bank's Proposal), Bank's Proposal, the Custodial Agreement with Custodian, and other such bank service agreements, policies and documents as may be required and approved by the parties (together, the "Banking Agreements"), each incorporated by reference as they presently exist and each listed in governing order of precedence in the event of conflict among the documents. This Agreement supersedes any and all prior representations, statements, and agreements, whether written or oral. The terms and provisions of

this Agreement may not be amended, altered, or waived except by mutual agreement evidenced by a written instrument signed by duly authorized representatives of both parties.

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

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

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

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

If surety bonds or letters of credit are utilized, College shall agree as to the issuer and form of contract prior to the pledge. The amount of surety bonds or letters of credit will be at least equal to the minimum required amount as per College's Investment Policy. The termination or expiration of any surety bond or letter of credit shall be a minimum of two (2) business days after College anticipates withdrawing the secured deposit.

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

10. **Compensation.** College and Bank agree that any compensation for the performance of all duties and services is set forth in the Proposal accepted by College. Except as may otherwise be provided in the Banking Agreements, said compensation shall constitute full payment for all services, liaison, products, materials, and equipment required to provide the professional banking services, including services, materials, training, equipment, travel, overhead, and expenses. Fees shall be fixed for the term of the Banking Agreements, including all extensions.

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

12. **Counterparts.** The Banking Agreements may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

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

the party for whom the individual is signing and that each individual affixing his or her signature hereto is authorized to do so.

14. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Texas. Harris County will be the venue for any lawsuit arising out of this Agreement.

15. **Interpretation, Jurisdiction and Venue.**
The Contract shall be construed and interpreted solely in accordance with the laws of the State of Texas, without regard to its choice of law provisions. Venue of any suit, right or cause of action arising under or in connection with the contract shall be exclusively in a court of competent jurisdiction located in Harris County, Texas.

16. **Notices.** All notices by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid addressed as follows:

Bank: _____,

_____, _____

College: **Houston Community College:**
Procurement Operations, 11th Floor
3100 Main Street
Houston, Texas 77002
ATTN: Director, Procurement Operations

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

17. **Regulatory Notices:**

College: **Houston Community College:**
Treasury Operations, 11th Floor
3100 Main Street
Houston, Texas 77002
ATTN: Treasurer

The Bank shall notify the HCC Treasurer within ten (10) business days of any changes in Federal or State of Texas regulations or laws that would affect the Depository Services Contract.

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

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

20. **Continuation.** Unless this Agreement is terminated sooner, Bank's designation as the primary College Depository will remain continuously in effect through November 30, 2019, subject to execution of the extension options.

21. **Compliance with Laws.**

The selected contractor shall give all notices and comply with all Federal, State of Texas and local laws. Upon request, the selected contractor shall furnish to HCC certificates of compliance with all such laws.

22. **Taxes.**

HCC is tax exempt as a governmental subdivision of the State of Texas under Section 501C (3) of the Internal Revenue Code. Limited Sales Tax Number: 1-74-1709152-1. The contract shall not contain any requirement for HCC to pay sales or other taxes from which it is exempt under applicable law.

23. **Termination for Convenience.**

HCC may, at its option and discretion, terminate the resulting contract for convenience and, at its option and discretion, may reduce the statement of work or other requirements of the contract at any time, without any default on the part of HCC or the contractor, by giving ninety (90) calendar days written notice thereof to the selected contractor.

24. **Termination for Default.**

HCC may terminate the contract immediately for default, by giving written notice thereof to the contractor, if the contractor fails to execute the work properly; performs in a manner that is unsatisfactory to HCC, breaches any terms, conditions, covenants, or provisions of the contract or otherwise fails to meet its obligations under the contract. In the event of termination for default, HCC shall have against the contractor, all remedies provided by law and equity. HCC, in its discretion, may include a provision granting the contractor a reasonable opportunity to cure contractor's default depending on the nature of the breach or default.

25. **Third Party Rights.**

The resulting contract shall contain the following provision: Nothing in this Contract, whether express or implied, will be construed to give any person or entity (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy, or claim under or in respect of any terms or provisions contained in this Contract or any standing or authority to enforce the terms and provisions of this Contract. Nothing contained herein shall be construed to or operate to create any rights in any person, party, or entity who is not a party to this Contract including, but not limited to, any rights in the nature of a third-party beneficiary.

26. **Ethics Conduct.**

Any breach of any HCC ethics policies, rules or regulations; any violation of any ethics laws or prohibitions; and any direct or indirect actions taken to unduly influence competitive processes, to circumvent equal consideration for competitive proposers, or to disregard ethical and legal trade practices will disqualify vendors and contractors from current and future consideration for participation in HCC solicitations, proposal awards, orders and contracts.

27. **Conflict of Interest.**

HCC expects the Contractor to comply with Chapter 176 of the Texas Education Code and that failure to comply is grounds for termination of the Contract.

28. **Changes.**

HCC shall have the right, at any time, to make changes within the scope of the contract. If such change causes a material increase in the contractor's cost and/or the time for performance, the contractor shall so notify HCC in writing within ten (10) calendar days from the date of the

contractor's receipt of the notice of change, and an equitable adjustment in the price and/or the time of performance shall be mutually agreed upon between the parties. No such change shall be effective in the absence of express written acceptance and direction of HCC. Notwithstanding the foregoing, any increase in the cost or price under the contract of \$50,000 or more shall require approval by the HCC Board of Trustees before effective.

29. Insurance Requirements.

The Contractor agrees to comply with the insurance requirements contained in Exhibit E.

30. Indemnification.

The Contractor shall indemnify, defend and hold HCC, its agents, employees, trustees and other officers harmless from any and all losses, damages, harm of any type or character (including attorney's fees and costs of suit) regardless of the nature or theory of the claim, whether negligence, contractual, extra contractual, or otherwise arising from or by reason of any act or omission of the contractor, its agents, servants, officers, directors and employees in the performance of the contract.

31. Independent Contractor.

It is agreed and understood that the contractor shall be deemed to be an independent contractor in all its operations and activities hereunder; that the employees furnished by the contractor to perform the services required by the contract shall be deemed to be contractor's employees or independent subcontractors; that contractor's employees shall be paid by the contractor; that contractor and its employees shall be responsible for all obligations and reports covering social security, unemployment insurance, income tax, and other reports and deductions required by State and Federal law. The contractor shall indemnify, defend, and hold HCC, its trustees, officers, employees, agents, and representatives harmless from any claims relating to the payment of salary, compensation, benefits, worker's compensation, or taxes to contractor's employees or agents

32. Assignment.

The contractor may not assign or transfer any of its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of HCC. This contract shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

33. Order of Precedence:

In the event of conflict among any preceding provisions or documents, such provisions or documents shall govern in the following order of precedence: (1) HCC Contract and (2) HCC RFP.

34. Right to Cancel Contract:

In the event it would be illegal under the provisions of any Federal or State laws or regulations for the Depository Bank to comply with the requirements of this Depository Services Contract, then the college expressly reserves the right and privilege to cancel the Contract and re-solicit the requirements for depository bank services.

35. Right to Audit Records:

The Depository's Bank's records relating to the College's accounts shall be open for review during normal business hours by designated College staff members or College appointed independent auditors, in accordance with the Depository Bank applicable regulations that complies with the bank regulatory agencies.

36. Entire Agreement.

The resulting contract and its accompanying exhibits contain the entire understanding of the parties regarding the services or materials and subject matter contained in the contract and supersedes all prior agreements, oral or written, and all other communications between the parties relating to the

subject matter. This contract shall not be amended or modified, except by mutual written agreement between and signed by the parties to the contract.

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

HOUSTON COMMUNITY COLLEGE, TX

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:
By: _____
Name: _____
Title: _____

ATTEST:
By: _____
Name: _____
Title: _____

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