

CUSTODY AGREEMENT

This Custody Agreement (the "Agreement") is between the City of Santa Rosa, a municipal corporation organized under the laws of the State of California ("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:

SECTION 1 DEFINITIONS

- 1.1. "**Account**" means (i) the custody account established in the name of Customer and maintained under this Agreement for the Assets (as defined below) and (ii) where the context requires, one or more Sub-accounts (as defined below).
- 1.2. "**Accounting Standards**" means Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 820, *Fair Value Measurement*, or Governmental Accounting Standards Board (GASB) Codification Statement No. 72, *Fair Value Measurement and Application*.
- 1.3. "**Assets**" means the securities, cash, and other property Customer deposits, or causes to be deposited, from time to time under this Agreement; investments and reinvestments thereof; and income thereon, as provided herein.
- 1.4. "**Cash-flow Analysis**" means a periodic written analysis of Customer's cash-flow history, short-term financial needs, long-term financial needs, expected levels and timing of deposits, expected levels and timing of distributions, liquidity needs (including but not limited to the anticipated liquidity required to make distributions), ability to provide future funding, and other significant information which could affect cash-flow or the exercise of discretion to manage the Assets.
- 1.5. "**CFR**" means the Code of Federal Regulations.
- 1.6. "**Client-controlled Asset**" means an asset that is neither registered in the name of Bank or Bank's nominee nor maintained by Bank at a Depository (as defined below) or with a sub-custodian nor held by Bank in unregistered or bearer form or in such form as will pass title by delivery.
- 1.7. "**Code**" means the Internal Revenue Code of 1986, as amended.
- 1.8. "**Depository**" means any central securities depository (such as the DTC), international central securities depository (such as Euroclear Bank SA/NV), or Federal Reserve Bank.
- 1.9. "**DTC**" means the Depository Trust Company.
- 1.10. "**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.
- 1.11. "**Guidelines**" means the written investment objectives, policies, strategies, and restrictions for the Account (or for any Sub-accounts therein), including but not limited to proxy-voting guidelines, as amended from time to time.

1.12. **“Harm”** means claims, costs, damages, delayed payment or non-payment on Assets sold, expenses (including attorneys’ and other professional fees), fines, interest, liabilities, losses, penalties, stockholders’ assessments (asserted on account of asset registration), and taxes.

1.13. **“Bank Indemnified Person”** means Bank and its officers, directors, employees, successors, and assigns. **“Customer Indemnified Person”** means Customer, and its officers, directors, employees, agents, successors, and assigns.

1.14. **“Investment Advice”** means a recommendation, or a suggestion to engage in or refrain from taking a particular course of action, as to (i) the advisability of acquiring, holding, disposing of, or exchanging any Asset or any securities or other investment property or (ii) the Guidelines, the Cash-flow Analysis, the composition of the Account’s portfolio, or the selection of persons to provide investment advice or investment management services with respect to the Assets.

1.15. **“Investment Company Act”** means the Investment Company Act of 1940, as amended.

1.16. **“IRS”** means the Internal Revenue Service.

1.17. **“Legal Action”** means any freeze order, garnishment, levy, restraining order, search warrant, subpoena, writ of attachment or execution, or similar order relating to the Account.

1.18. **“Messaging System”** means any financial-messaging system, network, or service acceptable to Bank, such as the Society for Worldwide Interbank Financial Telecommunication messaging system.

1.19. **“Plan-assets Vehicle”** means an investment contract, product, or entity that holds plan assets (as determined pursuant to ERISA Sections 3(42) and 401 and 29 CFR Section 2510.3-101).

1.20. **“SEC”** means the United States Securities and Exchange Commission.

1.21. **“State”** means the State of California.

1.22. **“Statement Recipient”** means Customer and anyone else Customer so designates.

1.23. **“Sub-account”** means a separate portion of the Account.

SECTION 2 APPOINTMENT AND ACCEPTANCE

2.1. **Appointment; Acceptance.** Customer appoints Bank to provide custody services in connection with the Assets. Bank hereby agrees to hold the Assets in the Account, upon the terms and conditions set forth below.

2.2. **Establishment of Account.**

2.2.1. Customer hereby deposits Assets, or causes Assets to be deposited, with Bank.

2.2.2. Customer hereby represents, warrants, and covenants as follows, and Bank may resign immediately if Customer breaches of any such representation, warranty, or covenant:

2.2.2.1. Customer holds good and valid legal title to all Assets.

2.2.2.2. None of the Assets is (i) an asset of any “plan” as defined in ERISA Section 3(3); any “plan” as defined in Code Section 4975(e)(1); any Plan-assets Vehicle; or any plan or entity not otherwise within the foregoing definitions that is subject to similar restrictions under federal, state, or local law; (ii) subject to SEC Rule 15c3-3; U.S. Commodity Futures Trading Commission Rules 1.20, 22.5, or 30.7; or any similar rule or regulation; or (iii) subject to a public-deposits, public-funds, or other State law that would require Bank to set aside any direct government obligations, government-guaranteed obligations, surety bonds, letters of credit, or other assets as security, regardless of the type or amount of capital of Bank, the amount of public deposits held by Bank, or the extent to which the Assets are not insured by the Federal Deposit Insurance Corporation or exceed federal deposit insurance limits.

2.2.2.3. Customer is neither (i) an “investment company” that is subject to registration with the SEC under the Investment Company Act, (ii) an “investment company” that is not subject to such registration pursuant to Section 3(c) thereof, (iii) an insurer, nor (iv) a reinsurer.

2.2.2.4. Customer is not a trustee of, and has no duty to engage a trustee for, the Assets.

2.2.3. As directed by Customer, Bank will establish one (1) or more Sub-accounts and allocate Assets among Sub-accounts. Customer hereby covenants not to direct Bank to establish any Sub-account for the benefit of any entity having a different tax identification number than Customer and acknowledges that each Sub-Account will have the same tax identification number as Customer.

2.2.4. Bank will keep the Assets (other than deposits at Bank) separate and apart from the assets of Bank.

SECTION 3 BOOKS, RECORDS, AND ACCOUNTS

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

3.1.1. Bank shall maintain adequate documentation to substantiate all charges.

3.1.2. Bank shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate and shall make such documents and records available to authorized representatives of Customer for inspection at any reasonable time.

3.1.3. Bank shall maintain all records related to the performance of this Agreement and shall allow Customer access to such records during the performance of this Agreement and for a period of five (5) years after completion of all services hereunder.

3.2. **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.

SECTION 4 ASSET DELIVERY, TRANSFER, CUSTODY, AND SAFEKEEPING

4.1. **Scope of Services.** Bank shall provide or agrees to provide as further specified in this Agreement: Asset Safekeeping, Accounting and Reporting, Online Portal Reporting, Cash management, Global custody, Securities Lending, Corporate Actions, Proxy Management, Consolidated Statements, Asset

Pricing, Performance Measurements, Benefit Payment Services, Investment Management, Securities Transaction Management, and, Income Collection.

4.2. 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.

4.3. **Account Statements.** Bank will furnish each Statement Recipient 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 and granted access thereunder to Statement Recipients, 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

4.4. **Confirmations; Notification by Agreement.** 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. Even so, Customer has the right to demand that Bank provide written notification of such transactions pursuant to 12 CFR Sections 12.4(a) or (b) at no additional cost to Customer.

4.5. **Corporate Actions.** Bank shall forward to any person authorized under this Agreement to direct the purchase or sale of an Asset information Bank receives with respect to the Asset concerning voluntary corporate actions (such as proxies, redemptions, or tender offers) and mandatory corporate actions (such as class actions, mergers, stock dividends, or stock splits).

4.5.1. Notwithstanding anything herein to the contrary, Bank will, without providing notice, (i) cause Assets to participate in any mandatory exchange transaction that neither requires nor permits approval by the owner of the Assets and (ii) file any proof of claim received by Bank during the term of this Agreement regarding class-action litigation over a security held in the Account during the class-action period, regardless of any waiver, release, discharge, satisfaction, or other condition that might result from such a filing.

4.6. 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 or third-party recipient. Bank shall have no power or authority to assign, hypothecate, pledge or otherwise dispose of any Assets, except as provided herein or pursuant to such directions.

SECTION 5 POWERS OF BANK

5.1. In the performance of its duties under this Agreement, Bank shall have the power to:

5.1.1. **Sign Documents.** 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.

5.1.2. **Hire Service Providers.** 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.

5.1.3. **Do Other Things.** Perform other acts necessary to the proper discharge of its duties under this Agreement.

5.1.4. **Hold Assets Un-invested.** 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 deposit account of Bank, notwithstanding any sweep direction for the Account or Bank's receipt of "float" income from such un-invested cash.

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

5.1.6. **Retain Disputed Funds.** 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.

5.1.7. **Distribute Assets.** Distribute Assets as set forth herein.

5.1.8. **Safe-keep Assets.** Safe-keep Assets as set forth herein.

5.1.9. **Register Assets.** 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.

5.1.10. **Maintain Assets at a Depository or with a Sub-custodian.** Maintain Assets that are (i) book-entry securities at any Depository or with any sub-custodian and 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 (ii) physical securities at Bank's office in the United States and in a safe place.

5.1.11. **Collect Income.** Collect all income, principal, and other distributions due and payable on Assets. If Customer directs Bank to search the DTC's Legal Notice System for notice that a particular Asset is in default or has refused payment after due demand, then Bank will conduct such a search and notify Customer of any such notice Bank finds therein.

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

5.1.13. **Pledge.** Pledge the Account or any Asset as provided in any separate written control agreement among Customer, Bank, and any secured party identified therein.

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

SECTION 6 PURCHASES

6.1. 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.

6.2. **Sweep Direction.** 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.

SECTION 7 SALES

7.1. 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.

SECTION 8 SETTLEMENTS

8.1. 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.

8.2. 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.

8.3. 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.

**SECTION 9
VALUATION; CLIENT-CONTROLLED ASSETS**

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

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

9.1.2. **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).

9.1.2.1. To the extent the value of an Asset is so reported, Customer hereby represents and warrants as follows: (i) Customer received, read, and understood any governing documents (such as a limited liability company agreement, limited partnership agreement, trust agreement, or declaration of trust), offering documents (such as a fact sheet, offering circular, offering memorandum, private placement memorandum, prospectus, or summary description), and subscription documents (such as an adoption agreement or subscription agreement) for the Asset; understands the Asset's eligibility requirements, fees and expenses, transfer and withdrawal limitations, type, category, issuer, objectives, principal strategies and risks, current underlying investments, and 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 and the compensation they receive therefor. (ii) Such value reflects such documents, investment-related information, service-provider information, and fee-and-expense information.

9.1.2.2. 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.

9.1.3. **Limitations.** Customer hereby acknowledges that Bank is performing a routine, ministerial, non-discretionary valuation function; that the reported value might be neither fair market value nor fair value (under Accounting Standards or applicable law); and that the reported value is not a substitute for (i) investigating the Asset's value in connection with a decision to acquire, hold, dispose of, or exchange any securities or other investment property; (ii) obtaining and ensuring the reliability of an independent third-party appraisal with respect to such a decision; or (iii) obtaining Investment Advice.

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

9.2 **Client-controlled Assets.** Customer may direct Bank from time to time to include in the Account statements specific Client-controlled Assets that are registered in the name of Customer. In such a case, Bank has the right to exclude such assets from the Account statements or to include them with a notation about control. To the extent Bank includes them, Customer hereby acknowledges that:

9.2.1. Customer is responsible for reviewing (i) the 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;

9.2.2. Bank is not responsible for performing any duties under this Agreement (other than statement-reporting duties, as limited herein) with respect to such assets, and Customer assumes all such duties.

9.2.3. 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.

9.2.4. The Assets are subject to **Exhibit A (Fee Schedule)** hereto.

SECTION 10 LIMITATIONS ON DUTIES

10.1. Customer hereby acknowledges that Bank does not provide any services under this Agreement (i) in a "fiduciary capacity" within the meaning of 12 CFR Section 9.2(e) or (ii) as a "fiduciary" as such term may be defined in State law or otherwise.

10.2. The duties of Bank will be strictly limited to those set forth in this Agreement, and no implied covenants, duties, responsibilities, representations, warranties, or obligations shall be read into this Agreement against Bank. Without limiting the generality of the foregoing, Bank shall have no duty to:

10.2.1. Evaluate 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; review, question, approve, or make inquiries as to any investment directions received under this Agreement; or review the securities or other property held in the Account with respect to prudence or diversification.

10.2.2. Act as trustee of the Assets.

10.2.3. Act as custodian of any assets other than the Assets.

10.2.4. 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).

10.2.5. Provide Investment Advice.

10.2.6. Determine, monitor, or collect any contributions to the Account or monitor compliance with any applicable funding requirements.

10.2.7. Inspect, review, or examine any Client-controlled Asset or governing, offering, subscription, or similar document with respect thereto, to determine whether the asset or document is authentic, genuine, enforceable, properly signed, appropriate for the represented purpose, is what it purports to be on its face, or for any other purpose, or to execute such document, regardless of whether Bank has physical possession of such asset or document.

10.2.8. (i) 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.

10.2.9. Provide notice of, or forward, mini-tenders (which are tender offers for less than 5% of an outstanding equity or debt issue) for any equity issue or, if any of the following is true, for any debt issue: The debt is not registered with the SEC. The debt issue has a “first received, first buy” basis with no withdrawal privilege and includes a guarantee of delivery clause. Or, the tender 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.

10.2.10. Question whether any direction received under this Agreement is prudent or contrary to applicable law; to solicit or confirm directions; or to question whether any direction received under this Agreement by email or Messaging System, or entered into Customer’s account in Bank’s on-line portal, is unreliable or has been compromised, such as by identity theft.

10.2.11. Calculate, withhold, prepare, sign, disclose, file, report, remit, or furnish to any taxing authority or any taxpayer any federal, state, or local taxes, tax returns, or information returns that may be required to be calculated, withheld, prepared, signed, disclosed, filed, reported, remitted, or furnished with respect to the Assets or the Account, except to the extent such duties are required by law to be performed only by Bank in its capacity as custodian under this Agreement or are expressly set forth herein.

10.2.12. Monitor agents hired by Customer.

10.2.13. 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.

10.2.14. Advance funds or securities or otherwise expend or risk its own funds or incur its own liability in the exercise of its powers or rights or performance of its duties under this Agreement.

SECTION 11 AUTHORIZED PERSONS; DELIVERY OF DIRECTIONS

11.1. **Authorized Persons.** With respect to this Agreement:

11.1.1. Customer will notify Bank of the identity of each (i) employee of Customer who is authorized to act on Customer’s behalf, (ii) third-party agent that is authorized to act on Customer’s behalf, and (iii) employee of each third-party agent who is authorized to act on such agent’s behalf. In no event is any such agent authorized to amend this Agreement or to terminate this 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 upon Customer as if Customer had taken such actions or made such omissions itself and (ii) Bank is indemnified, released, and held harmless 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, (ii) entered into Customer's account in Bank's on-line portal, or (iii) sent to Bank by Messaging System.

11.2.2. Any direction received under this Agreement by email or Messaging System, 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; to the email accounts of its employees, agents, and agents' employees; and to any Messaging System used by 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.

SECTION 12 FEES AND EXPENSES

12.1. **Fees.** Customer shall pay Bank fees for providing services under this Agreement, in accordance with the Fee Schedule attached as **Exhibit A** to this Agreement.

12.2. **Expenses.** Customer shall 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 payable to service providers hired under this Agreement).

12.3. **Outstanding Fees and Expenses.** To the extent of (i) any outstanding compensation, expenses, fees, costs, or other charges incurred by Bank in providing services under this Agreement or (ii) Customer's other indebtedness to Bank, Customer hereby grants Bank a 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.

12.4. **Advance of Funds or Securities.** To the extent of any advance of funds or securities under this Agreement, 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. Furthermore, nothing in this Agreement constitutes a waiver of any of Bank's rights as a securities intermediary under Uniform Commercial Code §9-206.

SECTION 13 INDEMNIFICATION

13.1. **Indemnification.**

13.1.1. Customer hereby indemnifies and releases each Bank Indemnified Person and holds each Bank Indemnified Person harmless from and against, and a Bank Indemnified Person will incur no liability to any person or entity for, any Harm that may be imposed on, incurred by, or asserted against a Bank Indemnified Person by reason of the Bank 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 a Bank Indemnified Person's willful misconduct, gross negligence, bad faith, or material breach of this Agreement.

13.1.2. Bank hereby indemnifies and releases each Customer Indemnified Person and holds each Customer Indemnified Person harmless from and against, and a Customer Indemnified Person will incur no liability to any person or entity for, any Harm that may be imposed on, incurred by, or asserted against a Customer Indemnified Person by reason of the Customer 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 a Customer Indemnified Person's willful misconduct, gross negligence, bad faith, or material breach of this Agreement.

13.1.3. The foregoing provision shall survive the Indemnified Person's termination as such and the termination of this Agreement.

13.2. **Force Majeure.** No party is liable for any delay or failure in performing its obligations under this Agreement caused by wars (whether declared or not and including existing wars), revolutions, insurrections, riots, civil commotion, acts of God, accidents, fires, explosions; stoppages of labor, strikes, or other differences with employees (other than Bank's disputes with its employees); laws, regulations, orders, or other acts of any governmental authority; or any other circumstances beyond its reasonable control. Nor will any such failure or delay give any party the right to terminate this Agreement.

13.3. **Damages.** No party shall be liable for any indirect, incidental, special, punitive, or consequential damages arising out of or in any way related to this Agreement or the performance of its obligations under this Agreement. This limitation applies even if the party has been advised of, or is aware of, the possibility of such damages.

13.4. **Statements.** Bank is not liable with respect to the propriety of Bank's actions or omissions reflected in a statement provided under this Agreement, except to the extent (i) a Statement Recipient objects to Bank within ninety (90) calendar days after delivery of such statement or (ii) such acts or omissions could not be discovered through reasonable examination of such statement.

SECTION 14 TERMINATION; SUSPENSION

14.1. **Termination of Agreement.** This Agreement terminates upon the effective date of Bank's resignation or removal under this Agreement.

14.2. Resignation; Removal.

14.2.1. Bank may resign under this Agreement by notice to Customer. Customer may remove Bank under this Agreement by notice to Bank. The resignation or removal shall be effective thirty (30) calendar days after delivery of the notice, except to the extent the parties agree in writing to a different effective date. By such effective date, Customer shall appoint a new custodian and notify Bank of the appointment. If Customer fails to do so, Bank shall have the right to petition a court at Account expense for appointment of a new custodian.

14.2.2. Upon receiving notice of such appointment, Bank will transfer Assets to the new custodian as directed by Customer or the court, as the case may be. However, Bank shall not be required to transfer any Assets 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 and (b) funds or securities advanced under this Agreement.

**SECTION 15
MISCELLANEOUS**

15.1. 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.

15.2. Binding Obligations. Customer and Bank each represent and warrant that (i) it has the power and authority to transact the business in which it is engaged and to execute, deliver, and perform this Agreement and has taken all action necessary to execute, deliver, and perform this Agreement and (ii) this Agreement constitutes its legal, valid, and binding obligation enforceable according to the terms hereof.

15.3. Complete Agreement; Amendment.

15.3.1. **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.

15.3.2. **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.

15.4. Governing Law; Venue. This Agreement will be governed, enforced, and interpreted according to the laws of the State without regard to conflicts of laws, except where pre-empted by federal law. All legal actions or other proceedings directly or indirectly relating to this Agreement will be brought in federal district court in the Northern District of California or the superior court of California, County of Sonoma. The parties submit to the jurisdiction of any such court in any such action or proceeding and waive any immunity from suit in such court or execution, attachment (whether before or after judgment), or other legal process in or by such court.

15.5. Successors and Assigns.

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

15.5.2. No party may assign any of its rights under this Agreement without the consent of each other party, which consent will 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.

15.6. **Severability.** The provisions of this Agreement are severable. The invalidity of a provision herein will not affect the validity of any other provision.

15.7. **No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the parties. No person other than such parties has any rights or remedies under this Agreement.

15.8. **Solvency.** Customer hereby represents and warrants that Customer is neither insolvent nor subject to any pending bankruptcy proceeding. Customer will promptly notify Bank of any such insolvency or proceeding.

15.9. **Tax-Lot Selection-Method.** For the purpose of complying with IRS regulations requiring cost basis reporting, Customer hereby designates the tax-lot selection-method for the Account:

- 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 the foregoing does not designate one and only one tax-lot selection-method, then Customer is deemed to have designated FIFO method. If Customer wishes to use a tax-lot selection-method that is different from what is selected above for an individual trade, then Customer may designate such other selection-method when executing the trade.

15.10. **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.

15.11. Abandoned Property. Bank will escheat Assets pursuant to the applicable state's abandoned property, escheat, or similar law, and Bank shall be held harmless therefrom. The provisions of this Section shall survive the termination of this Agreement.

15.12. 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 an 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.

15.13. 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.

15.14. Legal Action. If Bank is served with a Legal Action, then Bank will, to the extent permitted by law, use commercially reasonable efforts to notify Customer of such service. Customer will reimburse Bank for any expenses, fees, costs, or other charges incurred by Bank in responding to the Legal Action, including, but not limited to, any fees charged by an attorney of Bank's choice. If Customer notifies Bank that Customer is seeking a protective order to resist the Legal Action, then Bank will provide reasonable cooperation at Customer's request and sole cost and expense. In any event, Bank may comply with the Legal Action at any time, except to the extent Bank has received a protective order that prevents Bank from complying.

15.15. Reserved.

15.16. Representations and Warranties. Customer hereby covenants that, if any of the representations or warranties that it provides in this Agreement becomes inaccurate or incomplete, it will promptly notify Bank thereof and of any fact, omission, event, or change of circumstances related thereto.

15.17. Publicity. No party will disclose the existence of this Agreement or any terms thereof in advertising, promotional, or marketing materials without obtaining, in each case, the prior written consent of each other party.

15.18. 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).

15.19. Discrimination Prohibited. With respect to the provision of services under this Agreement, Bank agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.

15.20. Notices. Except as otherwise provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, shall be in writing and may be served by personal delivery to

the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

<u>Customer</u>	<u>Bank</u>
City Representative:	Consultant Representative:
Chuck McBride	Adrian Cardenas
City of Santa Rosa - Finance	US Bank
Department	1 California Street, Suite 1000, San Francisco,
631 First Street Santa Rosa, CA 95404.	CA 94111
Tel. 707-543-3089	Tel. 415-677-3674
Fax 707-543-3703]	Fax 866-490-9832

15.21. **Insurance.** Bank shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements." Maintenance of the insurance coverage set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Bank in exchange for Customer's agreement to make the payments prescribed hereunder. Failure by Bank to (i) maintain or renew coverage or (ii) provide evidence of renewal, may be treated by Customer as a material breach of this Agreement by Bank, whereupon Customer shall be entitled to all rights and remedies at law or in equity, including but not limited to immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Bank to maintain required insurance coverage shall not excuse or alleviate Bank from any of its other duties or obligations under this Agreement.

15.21.1. Bank agrees that any available insurance proceeds broader than or in excess of the coverages set forth in the Insurance Requirements in Attachment One shall be available to the additional insureds identified therein.

15.21.2. Bank agrees that the insurance coverages and limits provided under this Agreement are the greater of: (i) the coverages and limits specified in Attachment One, or (ii) the broader coverages and maximum limits of coverage of any insurance policy or proceeds available to the name insureds.

15.22. **Waiver of Rights.** Neither Customer acceptance of, or payment for, any service or performed by Bank, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

15.23. **Incorporation of Attachments and Exhibits.** The attachments and exhibits to this Agreement are incorporated and made part of this Agreement, subject to terms and provisions herein contained.

SIGNATURE PAGE TO FOLLOW

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

CITY OF SANTA ROSA
a Municipal Corporation

U.S. BANK NATIONAL ASSOCIATION
a national banking association

By: _____

By: _____

Print Name: _____

Print Name: Adrian Cardenas

Title: _____

Title: Vice President and Relationship Manager

Dated: _____

Dated: _____

APPROVED AS TO FORM:



Office of the City Attorney

ATTEST:

City Clerk

Attachments:
Exhibit A – Fee Schedule
Attachment One – Insurance Requirements

**EXHIBIT A
FEE SCHEDULE**

This Fee Schedule relates to the Account.

Account Name: City of Santa Rosa
Account Number: All Accounts

Administration fee: Provide account administration. The administration fee is calculated in tiers, based on the invested value of Account assets. The rates are as follows:

0.50 bps on all Account assets

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

Free receipts (per security) \$0

Free deliveries (per security) \$0

Foreign securities:

Free receipts and free deliveries (per security):

Developed markets \$0

Emerging markets \$0

Trade-processing fees Process purchases, sales, or other transactions with respect to Account assets. The

(FOR A DIRECTED ACCOUNT): rates are as follows:

DTC-eligible securities, including ETFs (per transaction) \$0

Fed book-entry securities (per transaction) \$0

Domestic open-end mutual funds (per transaction) \$0

Foreign securities:

Developed markets (per transaction) \$0

Emerging markets (per transaction) \$0

Certificates of deposit (per set-up, deposit, or withdrawal) \$0

Closely-held or restricted stock (per transaction) \$0

Collective investment funds (per transaction) \$0

Derivatives: Forwards, futures, options, or swaps (per transaction) \$0

Life-insurance or annuity contracts (per set-up or transaction) \$0

Loan agreements or notes (per set-up or transaction) \$0

Non-marketable/physical not otherwise listed here (per transaction) \$0

Private funds (per transaction with LP or LLC) \$0
Real-estate deeds, leases, or mortgages (per set-up or transaction) \$0

Distribution fees:
ACH payment to DDA at Bank (per ACH payment) \$0
ACH payment to non-Bank DDA (per ACH payment) \$0
Check (per check) \$0
Wire to domestic location (per wire) \$0
Wire to international location (per wire) \$0

Other fees:
Flat fee (per year) \$0
Minimum relationship fees (per year) \$7,500
Per-account fee (per year) \$0
Unitized-accounting fee (per unitized account) (per year) \$0

Extraordinary-services fee: Provide services described in neither this Fee Schedule nor the Agreement. The extraordinary-services fee will be calculated at an hourly rate or expressed as a flat fee. Bank will obtain the Customer's consent to the rate, which consent will not be unreasonably withheld.

Minimum Relationship Fees. The Account is subject to minimum relationship fees. For each billing period, they apply as follows. Start with the minimum annual relationship fees stated above. Prorate that amount to reflect the length of the billing period elected below (the "Minimum Relationship Fees"). Find the sum of the Account Fees (other than the Minimum Relationship Fees) and the account fees owed with respect to the Customer's other Institutional Trust & Custody division accounts (excluding accounts that hold plan assets) for the billing period (the "Actual Relationship Fees"). If the Actual Relationship Fees are less than the Minimum Relationship Fees, then the Account Fees for the billing period are the Account's proportionate share of the Minimum Relationship Fees (rather than the Account Fees otherwise disclosed under this Fee Schedule). That proportionate share is based on relative account balances as of the end of the billing period or over the billing period, as applicable based on the balance method elected below.

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 Customer with instructions on how to remit payment, and the Customer hereby acknowledges that 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 Customer has not paid the invoice within sixty (60) calendar days of receiving it. /
Charged directly to the Account, with a subsequent advice to the Customer about the charges.

Expenses. Customer will reimburse Bank for expenses, fees, costs, and other charges incurred by Bank in providing services under the Agreement (including, but not limited to, compensation, expenses, fees, costs, and other charges payable to service providers hired by Bank under the Agreement.

Foreign Securities or Deposits (FOR A DIRECTED ACCOUNT). Bank may hold cash in the form of U.S. dollars or foreign currency in a deposit account at a bank other than Bank pending settlement of an FX transaction or foreign-securities purchase or for any other purpose related to the Account. If the other bank pays interest on such deposits ("Positive Interest"), then Bank will retain the Positive Interest as part of Bank's fees for servicing the Account. If the other bank charges interest on such deposits ("Negative Interest"), then Bank will charge the Negative Interest directly to the Account.

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

**ATTACHMENT ONE
INSURANCE REQUIREMENTS**

A. Insurance Policies: Bank shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to Customer.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 5 million per occurrence \$ 6 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage.
2. Business auto coverage	\$ 1 million	Coverage must be at least as broad as ISO Form Number CA 00 01 covering any auto (Code 1), or if Bank has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 10 million aggregate	If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Santa Rosa for all work performed by Bank, its employees, agents and subcontractors.
5. FI Bond (Crime)	\$ 10 million aggregate	Covering employee dishonesty, theft.
6. Cyber Liability	\$ 10 million aggregate	Covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

B. Endorsements:

1. The commercial general liability, automobile liability, and workers' compensation policies shall provide thirty days' written notice of cancellation to Customer in accordance with the policy provisions.
2. The commercial general liability and automobile liability policies shall provide or be endorsed to provide the following:
 - a. Bank's insurance coverage shall be primary and any insurance or self-insurance maintained by Customer shall be excess of the Bank's insurance and shall not contribute with it; and
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.**

C. Verification of Coverage and Certificates of Insurance: At the inception of this Agreement, Bank shall furnish Customer with certificates and endorsements effecting coverages required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by Customer before work commences and coverage must be in effect for the duration of the Agreement. During the term of this Agreement, Bank shall provide certificates of insurance to Customer upon request.

D. Other Insurance Provisions:

1. Bank hereby waives rights of subrogation with regard to the indemnitees for the general liability, automobile liability, and workers' compensation policies.
2. All insurance coverage amounts provided by Bank and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.
- 3.

Policies listed above in Section A of this Attachment One for which City is required to be listed as an additional insured and which contain any self-insured retention (SIR) provision ("SIR/Additional Insured Policies) shall provide or be endorsed to provide that the SIR may be satisfied by either Contractor or City. Contractor shall notify City of any SIR/Additional Insured Policies for which the self-insured retention amount exceeds \$75,000,000. In such event, City shall be entitled to terminate this Agreement upon notice to Contractor and without penalty upon either party.