



October 12, 2021

**To: Board of Trustees**

**From: Christine M. Sweeney, Chief Legal Officer** *CS*

**Re: Agenda Item 6: Consider and Act on Matters Regarding City of Irving Pension Obligation Bonds**

On August 19, 2021, the City Council (“Council”) of the City of Irving (“City”) adopted City Ordinance No. 2021-10475, whereby the Council authorized the City to issue one or more series of the City of Irving, Texas General Obligation Pension Bonds, Taxable Series 2021 (the “Bonds”) pursuant to Chapter 107 of the Texas Local Government Code (“Chapter 107”). Chapter 107 allows a city to issue pension obligation bonds for the purpose of funding all or any part of the unfunded accrued actuarial liabilities owing to a public pension fund – in this case, TMRS.

Chapter 107, Section 107.003 requires that, before authorizing issuance and delivery of the Bonds, the governing body of the City must enter into a written agreement with the governing body of the public pension fund which written agreement “must state the amount of the unfunded liability and the date or dates on which the public pension fund will accept the net proceeds of the obligations to be issued in payment of all or a portion of the unfunded liability.” On September 16, 2021, the Council adopted City Resolution No. RES-2021-327, whereby the Council approved the proposed Agreement (defined below) between the City and TMRS and authorized the City Manager to execute the Agreement.

The City proposes to issue \$63,410,882 in Bonds and from the proceeds thereof: (i) make a lump sum contribution to TMRS in the amount of \$57,708,508 on or before December 31, 2021, and (ii) have the remaining \$5,702,374 of Bond proceeds placed with an Escrow Agent to be used by the Escrow Agent to make payments to fund the “prior service portion” of the City’s monthly required employer contributions to TMRS for the time period from January 2022 through December 2022.

Under TMRS Act §855.4065 and TMRS Rule §125.6, a city may make lump sum or periodic payments to TMRS in addition to, but not in replacement of, the city’s monthly required employer contributions. However under the Rule TMRS retains the right not to accept such a payment if, in the opinion of the Executive Director, acceptance of the payment would result in an unreasonable administrative or investment burden. TMRS staff have reviewed the City’s proposed lump sum contribution and escrow payments, and the Executive Director and the senior investment team have determined that they would not cause an unreasonable investment burden nor would they

cause an administrative burden. All such additional payments are to be deposited to the City's account in the TMRS Benefit Accumulation Fund ("BAF") and cannot be returned to the City.

TMRS Legal and Actuarial Staff have been working with the City's Chief Financial Officer and the City's Bond Counsel to provide the City with a clear explanation of the TMRS Act provisions and TMRS' operations that will allow the City to make a lump sum contribution in addition to, but not in replacement of, the City's monthly required employer contributions to TMRS.

The proposed Agreement Regarding City Pension Obligation Bonds between the TMRS Board and the City Council (the "Agreement") is attached as Attachment 1. The form of the Agreement is derived from Chapter 107 and is substantially similar to an agreement that TMRS entered in 2020 with the City of Arlington. The Office of the Attorney General also must give its approval of the Agreement, and the OAG gave its approval for the City of Arlington's substantially similar agreement in 2020.

The proposed TMRS Certificate of Authority and Resolution (the "Certificate") is attached as Attachment 2.

Although TMRS will not be a party to the Escrow Agreement between the City and the Escrow Agent, a copy of the draft Escrow Agreement is included as Attachment 3 for your information.

### **RECOMMENDATION**

Staff recommends that the Board approve the Agreement Regarding City Pension Obligation Bonds ("Agreement") and the Certificate of Authority and Resolution (the "Certificate"), in substantially the form presented; authorize the Board Chair to negotiate, execute, acknowledge and deliver the Agreement by and on behalf of the Board; and authorize the Executive Director to negotiate, execute, acknowledge and deliver the Certificate by and on behalf of the System; with such modifications or amendments to the Agreement or Certificate as are satisfactory to the Board Chair or Executive Director, respectively, such satisfactory terms and conditions to be conclusively evidenced by the execution thereof by the Board Chair and the Executive Director, respectively.

### **ATTACHMENTS - 3**

- 1 - Agreement Regarding City Pension Obligation Bonds
- 2 - Certificate of Authority and Resolution
- 3 - Escrow Agreement

## **AGREEMENT REGARDING CITY PENSION OBLIGATION BONDS**

This **AGREEMENT REGARDING CITY PENSION OBLIGATION BONDS** (this "Agreement") is entered into by and between the Board of Trustees ("Board") of the Texas Municipal Retirement System, a Texas public retirement system ("TMRS"), and the City Council ("Council") of the City of Irving ("City"), and will be effective for all purposes as of the date this Agreement is signed by the latter party to do so below ("Effective Date").

**WHEREAS**, pursuant to City Ordinance No. 225 dated September 28, 1954 the City became a participating municipality in TMRS for the benefit of its employees effective as of November 1954; and

**WHEREAS**, pursuant to City Ordinance No. 2021-10475 adopted August 19, 2021, the Council has authorized the City to issue one or more series of the City of Irving, Texas General Obligation Pension Bonds (the "Bonds") pursuant to Chapter 107 of the Texas Local Government Code ("Chapter 107") for the purpose of funding all or any part of the unfunded accrued actuarial liabilities owing to TMRS; and

**WHEREAS**, Chapter 107, Section 107.003 requires that, before authorizing issuance and delivery of the Bonds, the governing body of the City must enter into a written agreement with the governing body of TMRS, which written agreement "must state the amount of the unfunded liability and the date or dates on which the public pension fund will accept the net proceeds of the obligations to be issued in payment of all or a portion of the unfunded liability";

**NOW THEREFORE**, the Council and the Board enter into this Agreement pursuant to Section 107.003 of Chapter 107, as follows:

1. The Board certifies that:
  - (a) TMRS is a statewide public retirement system qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (IRC), providing retirement, disability, and death benefits to active and retired employees of municipalities that participate in TMRS; and
  - (b) TMRS is not:
    - (i) a program that provides only workers' compensation benefits;
    - (ii) a program administered by the federal government;
    - (iii) a plan described by IRC Section 401(d);
    - (iv) an individual retirement account consisting of an annuity contract described by IRC Section 403(b);
    - (v) an individual retirement account as defined by IRC Section 408(a);
    - (vi) an individual retirement annuity as defined by IRC Section 408(b);
    - (vii) an eligible deferred compensation plan as defined by IRC Section 457(b);  
or
    - (viii) a program for which benefits are administered by a life insurance company or for which the only funding agency is a life insurance company.

2. The Council and the Board acknowledge and agree that the City has a Unfunded Actuarial Accrued Liability owing to TMRS in the amount of \$63,410,882 as of the December 31, 2020 TMRS actuarial valuation (2020 UAAL).
3. The Council acknowledges and agrees that:
  - (a) this 2020 UAAL calculation was done by TMRS' consulting actuaries, Gabriel Roeder Smith (GRS) and was approved by the TMRS Board at its May 27, 2021 meeting;
  - (b) the full actuarial valuation report can be found on the TMRS website at [https://www.tmr.com/down/Actuarial\\_Valuations/2020\\_Actuarial\\_Valuation.pdf](https://www.tmr.com/down/Actuarial_Valuations/2020_Actuarial_Valuation.pdf);
  - (c) the City's individual rate letter dated June 4, 2021, produced by GRS, is attached hereto as Exhibit A;
  - (d) the City has requested to make a lump sum employer contribution to TMRS in the amount of \$57,708,508 to fund a portion of the 2020 UAAL from proceeds of the Bonds on the closing date of the Bonds, which shall be on or before December 23, 2021;
  - (e) the remaining portion of the 2020 UAAL equals \$5,702,374 and shall be referred to as the "Prior Service Portion" for purposes of this Agreement;
  - (f) from the proceeds of the Bonds, the City further desires to fund the Prior Service Portion through the payment of the prior service portion of its required employer contributions for the time period from January, 2022 through December 2022 (the "Prior Service Portion") from monthly deposits to TMRS pursuant to an escrow agreement (the "Escrow Agreement") between the City and a qualified escrow agent ("Escrow Agent"); provided, however, that the City shall remain responsible for paying to TMRS any portion of the Prior Service Portion of the required employer contribution rate that is not covered by the payments made pursuant to the Escrow Agreement;
  - (g) attached as Exhibit B is the City's schedule of estimated monthly payments for the Prior Service Portion;
  - (h) the deposit of \$57,708,508 pursuant to 3(d) and the deposit of \$5,702,374 pursuant to 3(e) equals the 2020 UAAL; and
  - (i) payments by the Escrow Agent to TMRS that are deposited to TMRS monthly pursuant to the terms of the Escrow Agreement from the proceeds deposited at the closing of the Bonds shall be in furtherance of payment of the Prior Service Portion, which Prior Service Portion will be calculated by the City as a percentage of payroll based on the prior service portion of the City's applicable required employer contribution rates for 2022 calculated by GRS. The proceeds of the Bonds deposited to the Escrow Agreement shall be for the benefit of TMRS and used solely for the purpose of funding the Prior Service Portion; provided, all amounts remaining in the Escrow Fund in December 2022 shall be deposited with TMRS in December 2022 even if such amounts are in excess of the actual amounts required to be deposited in December 2022 based on the prior service portion calculated as

a percentage of payroll of the City's required employer contribution rate for December 2022 calculated by GRS.

4. The Board acknowledges and agrees that:
  - (a) The Board agrees to accept the deposits set forth in 3(d), 3(f) and 3(i) when made;
  - (b) The Board has fiduciary responsibility for the assets of TMRS and has the duty to oversee the investment and expenditure of the assets of TMRS; and
  - (c) The Board agrees that such deposits, when made, shall be applied to the City's 2020 UAAL as determined in the annual actuarial valuation performed by TMRS' actuary.
5. The Council and the Board acknowledge and agree that, under Section 855.4065 of the TMRS Act (Title 8, Subtitle G, Chapters 851-855 of the Texas Government Code) and TMRS Rule §125.6 (Title 34, Part 6, Chapter 125, Texas Administrative Code), the City may make a lump sum employer contribution, in the above amount requested by the City, to TMRS on or before December 31, 2021, to be deposited in the City's account in the TMRS Benefit Accumulation Fund (BAF).
6. The Council further acknowledges and agrees, for itself and on behalf of the City, that:
  - (a) said TMRS Act §855.4065 and TMRS Rule §125.6 only authorize such a lump sum employer contribution in addition to, and not in substitution of, the monthly contributions the City is actuarially required to make to TMRS under the TMRS Act;
  - (b) in accordance with TMRS Rule §125.6, any such lump sum employer contribution deposited in the City's BAF account will be held in trust by TMRS and cannot be returned to the City;
  - (c) the City's required monthly employer contributions to TMRS, which include a portion attributable to the Prior Service Portion, must continue to be made during the remainder of calendar year 2021, as well as all of calendar year 2022, and in any future year or years that the TMRS actuaries determine an employer contribution is required under the terms of the TMRS Act;
  - (d) the City must still contribute its required monthly employer contributions to TMRS based on the full actuarially determined contribution rate of 14.93% and 14.53% for calendar years 2021 and 2022, respectively; and these rates reflect rates for both the TMRS retirement plan and the supplemental death benefit plan selected by the City under the TMRS Act;
  - (e) because there is a one year lag between the TMRS actuarial valuation date and when the City employer contribution rates become effective, any lump sum employer contribution made in calendar year 2021 would first impact the City's calendar year 2023 employer contribution rates and first be reflected in the City's prior service portion contribution rate for 2023 as determined in the December 31, 2021 TMRS actuarial valuation; and


(f) even if the City makes one or more lump sum employer contributions, the City will also be required to contribute the full actuarially determined employer contribution rate for future years beyond 2021.

7. In any lawsuit or legal dispute arising from the operation of this Agreement, the parties agree that the laws of the State of Texas shall govern, without regard to the principles of conflicts of laws. Subject to TMRS' sovereign immunity, to the extent it is necessary to resolve in a court any dispute under this Agreement, and if resolution by a court is consistent with the provisions hereof, courts of the State of Texas shall have jurisdiction over any and all disputes between the parties hereto, whether in law or equity, and exclusive venue in any such dispute shall be laid in Travis County, Texas.
8. This Agreement may be amended only by a written instrument executed by the parties hereto. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
9. The City acknowledges and agrees that in the event the deposit of \$57,708,508 pursuant to 3(d) is made after December 31, 2021, and during calendar year 2022, there will be an additional one-year lag beyond that specified in subsection 6(e) so that any lump sum employer contribution made in calendar year 2022 would first impact the City's calendar year 2024 employer contribution rates and first be reflected in the City's prior service portion contribution rate for 2024 as determined in the December 31, 2022 TMRS actuarial valuation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

CITY COUNCIL OF THE CITY  
OF IRVING, TEXAS

BOARD OF TRUSTEES OF THE TEXAS  
MUNICIPAL RETIREMENT SYSTEM

BY:  *Kyle Taylor, Mayor Pro Tem for Mayor Rickard #. 57998*  
NAME: Kyle Taylor  
TITLE: Mayor Pro Tem  
DATE: 10/5/21

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

Approved gliba  
Resolution # 2021-327

**EXHIBIT A**  
**CITY OF IRVING RATE LETTER**

A-1

EXHIBIT B

CITY'S SCHEDULE OF ESTIMATED MONTHLY PAYMENTS

City's Schedule of Estimated Monthly Payments For Calendar Year 2022					
Estimated City Payment to TMRS for January 1, 2022 to December 31, 2022 for Prior Service cost = \$5,702,374 Based on City Payroll times 4.59% Prior Service Rate					
Month	Payroll Periods	Prior Service Amount Per Pay Period	UAAL Amount		
January	2	219,322.04	438,644.08		
February	2	219,322.08	438,644.16		
March	2	219,322.08	438,644.16		
April	2	219,322.08	438,644.16		
May	2	219,322.08	438,644.16		
June	2	219,322.08	438,644.16		
July	3	219,322.08	657,966.24		
August	2	219,322.08	438,644.16		
September	2	219,322.08	438,644.16		
October	2	219,322.08	438,644.16		
November	2	219,322.08	438,644.16		
December	3	219,322.08	657,966.24		
<b>Total</b>	<b>26</b>		<b>5,702,374.00</b>		



## CERTIFICATE OF AUTHORITY AND RESOLUTION

The undersigned officer(s) of the Texas Municipal Retirement System (“TMRS”) hereby certifies as follows with respect to that certain Agreement Regarding City Pension Obligation Bonds (“Agreement”), between the Board of Trustees of TMRS (the “Board”) and the City Council of the City of Irving (the “Council”), pertaining to the issuance by the City of Irving of one or more series of its City of Irving, Texas, General Obligation Pension Bonds, Taxable Series 2021 (the “Bonds”):

1. At its Board meeting on October 28, 2021, the Board, by the affirmative vote of \_\_\_ of its six Trustees, authorized the Chairman of the Board, David Landis, to execute and deliver the Agreement, and authorized the Executive Director to execute and deliver this Certificate of Authority and Resolution, based on the following recommendation:

“Staff recommends that the Board approve the Agreement Regarding City Pension Obligation Bonds (“Agreement”) and the Certificate of Authority and Resolution (the “Certificate”), in substantially the form presented; authorize the Board Chair to negotiate, execute, acknowledge and deliver the Agreement by and on behalf of the Board; and authorize the Executive Director to negotiate, execute, acknowledge and deliver the Certificate by and on behalf of the System; with such modifications or amendments to the Agreement or Certificate as are satisfactory to the Board Chair or Executive Director, respectively, such satisfactory terms and conditions to be conclusively evidenced by the execution thereof by the Board Chair and the Executive Director, respectively.”

2. The following persons are the duly qualified and acting members of the Board:

David Landis	Chairman
Jesús Garza	Vice Chairman
Anali Alanis	Trustee
Juan Diego Huizar	Trustee
Bill Philibert	Trustee
Robert B. Scott	Trustee

3. The Agreement was executed on behalf of TMRS by the person named below and said person was at the time of executing the Agreement, and is now, the duly qualified and acting incumbent of such office and the signature appearing after such person’s name is a true and correct specimen of such person’s genuine signature.

**NAME**

**TITLE**

**SPECIMEN SIGNATURE**

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David Landis

Board Chairman

\_\_\_\_\_

**TEXAS MUNICIPAL RETIREMENT SYSTEM**

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

**Name: David Wescoe**

**Title: Executive Director**

**Date: October \_\_\_\_\_, 2021**

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ESCROW AGREEMENT

Between

CITY OF IRVING, TEXAS

and

THE BANK OF NEW YORK TRUST COMPANY, NATIONAL ASSOCIATION

Pertaining to

City of Irving, Texas  
General Obligation Pension Bonds,  
Taxable Series 2021

Dated as of \_\_\_\_\_, 2021

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## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of \_\_\_\_\_, 2021 (herein, together with any amendments or supplements hereto, called the “Agreement” or the “Escrow Agreement”), entered into by and between the CITY OF IRVING, TEXAS (the “Issuer”), and The Bank of New York Mellon Trust Company, National Association, a New York banking corporation organized under the laws of the State of New York, as escrow agent (herein, together with any successor in such capacity, called the “Escrow Agent”).

### WITNESSETH:

WHEREAS, the Issuer has determined to issue its General Obligation Pension Bonds, Taxable Series 2021 (the “Bonds”) in order to fund its Unfunded Accrued Actuarial Liability owing to Texas Municipal Retirement System (“TMRS”) in the amount of \$63,410,882 as of the December 31, 2020 TMRS actuarial valuation (the “2020 UAAL”) pursuant to Chapter 107, Local Government Code, as amended and an ordinance approved by the Issuer on August 19, 2021 (the “Bond Ordinance”) and the pricing certificate (the “Pricing Certificate”) authorized therein (the Bond Ordinance and Pricing Certificate together, the “Ordinance”); and

WHEREAS, the City will make a lump sum employer contribution to TMRS in the amount of \$57,708,508 to fund a portion of the 2020 UAAL from proceeds of the Bonds;

WHEREAS, the remaining portion of the 2020 UAAL in the amount of \$5,702,374 is referred to as the “Prior Service Portion”;

WHEREAS, the Ordinance authorizes the Issuer enter into an escrow agreement with a trust company or commercial bank that does not act as a depository of the Issuer with respect to the safekeeping, investment, administration and disposition of any such deposit, upon such terms and conditions as the Issuer and such paying agent may agree, provided that such deposits, if invested, may be invested only in securities (the “Authorized Securities”) authorized under Chapter 1207, Texas Government Code, as amended (“Chapter 1207”) and this Agreement and which may be in book entry form, and which shall mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payments to the TMRS as set forth herein; and

WHEREAS, the Issuer desires that, concurrently with the delivery of the Bonds to the purchasers thereof, a portion of the proceeds of the Bonds (the “Bond Proceeds”) in an amount equal to the Prior Service Portion shall be deposited to the credit of the Escrow Fund created pursuant to the terms of this Agreement and to establish a beginning cash balance (if needed) in such Escrow Fund; and

WHEREAS, the Authorized Securities shall mature and the interest thereon shall be payable at such times and in such amounts as will provide moneys which, together with the cash and cash balances from time to time on deposit in the Escrow Fund, will be sufficient to make the payments to TMRS to fund the Prior Service Portion as set forth in this Agreement; and

WHEREAS, to facilitate the receipt and transfer of Bond Proceeds the Issuer desires to establish the Escrow Fund at the designated office of the Escrow Agent; and

WHEREAS, the Escrow Agent is a party to this Agreement and hereby acknowledges its acceptance of the terms and provisions hereof;

NOW, THEREFORE, in consideration of the mutual undertakings, promises and agreements herein contained, the sufficiency of which hereby is acknowledged, and to secure the full and timely payment the amounts due to be paid to TMRS as provided herein, the Issuer and the Escrow Agent mutually undertake, promise, and agree for themselves and their respective representatives and successors, as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATIONS

Section 1.01. Definitions. Unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them below when they are used in this Agreement:

“Authorized Securities” means (1) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by the United States; (2) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of hereof, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent; and (3) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date hereof, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent.

“Beginning Cash Balance” means the funds described in Exhibit A.

“Escrow Fund” means the fund created in Section 3.01 of this Agreement to be administered by the Escrow Agent pursuant to the provisions of this Agreement.

Section 1.02. Other Definitions. The terms “Agreement,” “Issuer,” “Escrow Agent,” “TMRS,” “Bonds,” “2020 UAAL” and “Prior Service Portion” when they are used in this Agreement, shall have the meanings assigned to them in the preamble to this Agreement.

Section 1.03. Interpretations. The titles and headings of the articles and sections of this Agreement have been inserted for convenience and reference only and are not to be considered a part hereof and shall not in any way modify or restrict the terms hereof. This Agreement and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to achieve the intended purpose of providing for the refunding of the Refunded Bonds in accordance with applicable law.

ARTICLE II  
DEPOSIT OF FUNDS AND AUTHORIZED SECURITIES

Section 2.01. Deposits in the Escrow Fund. Concurrently with the sale and delivery of the Bonds the Issuer shall deposit, or cause to be deposited, with the Escrow Agent, for deposit in the Escrow Fund, the Beginning Cash Balance, if any, and the Bond Proceeds described in Exhibit A, if any, and incorporated by reference as a part of this Agreement for all purposes. The Escrow Agent shall, upon the receipt thereof, acknowledge such receipt to the Issuer in writing.

Section 2.02. Initial Authorized Securities. Upon receipt of the Bond Proceeds at closing of the Bonds, such proceeds shall be invested in Authorized Securities as directed in writing by the Issuer.

ARTICLE III  
CREATION AND OPERATION OF ESCROW FUND

Section 3.01. Escrow Fund. The Escrow Agent hereby creates on its books an irrevocable escrow account to be administered in accordance with the terms hereof and to be known as the City of IRVING, Texas POB Escrow Fund (the “Escrow Fund”) for the purpose of making payments to TMRS as set forth in Section 3.06 herein in order to pay the Prior Service Portion of the Issuer’s 2020 UAAL. The Escrow Agent hereby agrees that upon receipt thereof it will deposit to the credit of the Escrow Fund the Beginning Cash Balance and the Bond Proceeds set forth in Exhibit A hereto. Such deposit, all proceeds therefrom, and all cash balances from time to time on deposit therein (a) shall be the property of the Escrow Fund, (b) shall be applied only in strict conformity with the terms and conditions of this Agreement, and (c) are hereby irrevocably pledged to TMRS, payment thereof shall be made by timely transfers of such amounts at such times as are provided for in Section 3.06 hereof. When the final transfers have been made as set forth herein in Sections 3.06, 3.07 and 3.08, as applicable, the Escrow Agent shall thereupon be discharged from any further duties hereunder.

Section 3.02. Payment of Principal and Interest. The Escrow Agent is hereby irrevocably instructed to transfer, from the cash balances from time to time on deposit in the Escrow Fund, the amounts required to make the payments to TMRS as set forth in Section 3.06.

Section 3.03. Sufficiency of Escrow Fund. The Issuer represents that the deposit of the Bond Proceeds will assure that the cash balance on deposit from time to time in the Escrow Fund will be at all times sufficient to provide for the payments to TMRS as set forth in Section 3.06. Notice of any such insufficiency shall be given promptly as hereinafter provided, but the Escrow Agent shall not in any manner be responsible for any insufficiency of funds in the Escrow Fund or the Issuer’s failure to make additional deposits thereto.

Section 3.04. Trust Funds. The Escrow Agent shall hold at all times the Escrow Fund, the Bond Proceeds and all other assets of the Escrow Fund wholly segregated on its books and records from all other funds and securities on deposit with the Escrow Agent; it shall never allow the Bond Proceeds or any other assets of the Escrow Fund to be commingled with any other funds or securities of the Escrow Agent; and it shall hold and dispose of the assets of the Escrow



Fund only as set forth herein. The Bond Proceeds and other assets of the Escrow Fund shall always be maintained by the Escrow Agent as funds held in trust for the benefit of TMRS, and a special account thereof shall at all times be maintained on the books and records of the Escrow Agent. TMRS shall be entitled to a preferred claim and first lien upon the Bond Proceeds and all other assets of the Escrow Fund. The amounts received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the Issuer, and the Escrow Agent shall have no right or title with respect thereto except as a trustee and Escrow Agent under the terms of this Agreement. The amounts received by the Escrow Agent under this Agreement shall not be subject to warrants, drafts or checks drawn by the Issuer or, except to the extent expressly herein provided, by a place of payment for TMRS.

Section 3.05. Security for Cash Balances. Cash balances from time to time on deposit in the Escrow Fund shall, to the extent not insured by the Federal Deposit Insurance Corporation or its successor, be continuously secured by a pledge of direct noncallable obligations of, or noncallable obligations unconditionally guaranteed by, the United States of America, having a market value at least equal to such cash balances.

Section 3.06. Payments to TMRS. On or before the first (1) day of each month beginning in January 2022 and continuing through December 2022, the Issuer shall provide payment instructions to the Escrow Agent and certify in writing to the Escrow Agent the Issuer's calculation of the Issuer's prior service portion of the Issuer's monthly required contribution to TMRS, based on its payroll for the immediately preceding month, to be paid from the Escrow Fund. The certification shall state the amount to be paid to TMRS for payment toward the Prior Service Portion (on or before the next succeeding fifteenth (15) calendar day of that same month. Such monthly payments shall be made to TMRS until the Escrow Fund is depleted. The payment instructions from the Issuer shall also include the specific TMRS account information necessary for the Escrow Agent to deposit the monthly contributions to TMRS.

For example: The following example is solely for illustration purposes under Section 3.06. The actual amounts will be provided by the Issuer in accordance with Section 3.06. If the Issuer certifies to the Escrow Agent on January 1, 2022 that the amount due to TMRS on January 15, 2022 for the Issuer's prior service portion is \$1,500,000 as calculated by the Issuer, then the Escrow Agent shall pay \$1,500,000 to TMRS on or before October 15, 2022 from funds on deposit the Escrow Fund to be paid toward the Prior Service Portion.

Section 3.07. Shortfalls in Escrow Fund. No less than five (5) business day before the first (1) day of each month, the Escrow Agent shall notify the Issuer of the amount on deposit in the Escrow Fund and available for transfer to TMRS pursuant to Section 3.06 above. If the Issuer's written calculation of the amount due to TMRS in the next succeeding month is more than the amount available in the Escrow Fund for payment, then (i) the Escrow Agent shall deposit the funds on deposit in the Escrow Fund to TMRS on or before the next succeeding fifteenth (15) calendar day of the month and (ii) Issuer shall be required to make a deposit to TMRS no later than the next succeeding fifteenth (15) calendar day of the month, in an amount that would, together with the amount transferred or to be transferred by the Escrow Agent pursuant to (i), be sufficient to make the next payment to TMRS identified in the Issuer's calculation.

For example: The following example is solely for illustration purposes under Section 3.07. The actual amounts will be provided by the Issuer in accordance with Section 3.07. On September 26, 2022, the Escrow Agent notifies the Issuer that there is cash available in the Escrow Fund of \$1,000,000 for payment to TMRS. On October 1, 2022, the Issuer certifies to the Escrow Agent that the amount to be paid to TMRS for that month is \$1,500,000, as calculated by the Issuer. On or before the fifteenth calendar day of October (i) the Issuer deposits \$500,000 with TMRS from available revenues, and (ii) the Escrow Agent transfers \$1,000,000 to TMRS from funds on deposit in the Escrow Fund.

Section 3.08. Payment of All Remaining Funds In December 2022. If, after determining the amount to be paid from the Escrow Fund on December 15, 2022 pursuant to Section 3.06 above, there are excess funds to be remaining in the Escrow Fund, the Escrow Agent is directed to deposit all such remaining funds with TMRS on December 15, 2022 to be applied by TMRS toward the Prior Service Portion or, if the Prior Service Portion has been paid in full, toward the Issuer's account in the TMRS Benefit Accumulation Fund.

Section 3.09. Termination Escrow Fund. Once all funds on deposit in the Escrow Fund have been expended as set forth in Sections 3.06, 3.07 and 3.08 above, as applicable, the Escrow Agreement shall terminate, except for those terms stated to survive the termination of this Escrow Agreement.

#### ARTICLE IV SUBSTITUTION OF AUTHORIZED SECURITIES

Section 4.01. In General. Except as provided in Section 4.02 and 4.03 hereof, the Escrow Agent shall not have any power or duty to purchase Authorized Securities or make substitutions for the Authorized Securities, if any, or to sell, transfer, or otherwise dispose of such Authorized Securities.

Section 4.02. Purchase of Authorized Securities at Bond Closing. Concurrently with the sale and delivery of the Bonds, the Issuer, at its option, may substitute Authorized Securities for the deposit of Bond Proceeds.

Section 4.03. Purchase of Authorized Securities following Bond Closing. (a) At the written request of the Issuer, and upon compliance with the conditions hereinafter stated, the Escrow Agent shall purchase the Authorized Securities identified by the Issuer in such written request. Any such transaction may be effected by the Escrow Agent only if the Escrow Agent shall have received a certification from the Issuer (i) that the Authorized Securities to be purchased are in compliance with Chapter 1207 and the Issuer's investment policy and (ii) that such transaction complies with the Constitution and laws of the State of Texas.

Section 4.04. Substitution of Authorized Securities. (a) At the written request of the Issuer, and upon compliance with the conditions hereinafter stated, the Escrow Agent shall sell, transfer, otherwise dispose of or request the redemption of all or any portion of the Authorized Securities, if any, and apply the proceeds therefrom to purchase other Authorized Securities. Any such transaction may be effected by the Escrow Agent only if the Escrow Agent shall have received a certification from the Issuer (i) that the Authorized Securities to be purchased are in

compliance with Chapter 2256 and the Issuer's investment policy and (ii) that such transaction complies with the Constitution and laws of the State of Texas.

(b) The foregoing provisions of substitution notwithstanding, the Escrow Agent shall be under no obligation to effect the substitution of the Authorized Securities in the manner contemplated by Subsection 4.04(a) if the Issuer fails to deliver or cause to be delivered to the Escrow Agent no later than three Business Days prior to the proposed date such substitution is to be effected a written certificate setting forth in reasonable detail the maturity dates and maturity amounts of the Authorized Securities to be substituted and the proposed date such substitution is to occur.

Section 4.05. Allocation of Certain Authorized Securities. The maturing principal of and interest on the Authorized Securities may be applied to the payments to TMRS as set forth in Section 3.06 herein and no allocation or segregation of the receipts of principal or interest from such Authorized Securities is required.

## ARTICLE V APPLICATION OF CASH BALANCES

Section 5.01. In General. Except as provided in Section 2.01 with respect to the investment of the initial cash deposit with the Escrow Agent and in Sections 5.02 and 5.03 hereof, neither the Issuer nor the Escrow Agent shall reinvest any moneys deposited to or held as part of the Escrow Fund.

Section 5.02. Reinvestment in Authorized Securities. Cash balances in the Escrow Fund shall be reinvested as directed by the Issuer in written direction to the Escrow Agent. Absent such instructions, the Escrow Fund shall not be interest-bearing.

Section 5.03. Reinvestment of Cash Balances. At the written request of the Issuer, and upon compliance with the conditions hereinafter stated, the Escrow Agent shall permit or cause the reinvestment of cash balances in the Escrow Fund, pending the use thereof for payment to TMRS, in Authorized Securities which obligations must mature on or before the respective dates needed for payments to TMRS. Any such modification must include a certification from the Issuer (i) that the Authorized Securities to be purchased are in compliance with Chapter 1207 and the Issuer's investment policy and (ii) that such transaction complies with the Constitution and laws of the State of Texas.

## ARTICLE VI RECORDS AND REPORTS

Section 6.01. Records. The Escrow Agent will keep books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocations and application of the money and Authorized Securities deposited to the Escrow Fund and all proceeds thereof, and such books shall be available for inspection at reasonable hours and under reasonable conditions by the Issuer and the owners of the Refunded Bonds.

Section 6.02. Reports. While this Agreement remains in effect, the Escrow Agent at least annually shall prepare and send to the Issuer a written report summarizing all transactions relating to the Escrow Fund during the preceding year, including, without limitation, credits to the Escrow Fund as a result of interest payments on or maturities of the Authorized Securities and transfers from the Escrow Fund for payments to TMRS, together with a detailed statement of all Authorized Securities and the cash balance on deposit in the Escrow Fund as of the end of such period.

## ARTICLE VII CONCERNING THE ESCROW AGENT

Section 7.01. Representations. The Escrow Agent hereby represents that it has all necessary power and authority to enter into this Agreement and undertake the obligations and responsibilities imposed upon it herein, and that it will carry out all of its obligations hereunder.

Section 7.02. Limitation on Liability. The liability of the Escrow Agent to transfer funds for payments to TMRS as set forth herein shall be limited to the proceeds of the Authorized Securities and the cash balances from time to time on deposit in the Escrow Fund. Notwithstanding any provision contained herein to the contrary, the Escrow Agent shall not have any liability whatsoever for the insufficiency of funds from time to time in the Escrow Fund or any failure of the obligors of the Authorized Securities to make timely payment thereon, except for the obligation to notify the Issuer promptly of any such occurrence.

The recitals herein and in the proceedings authorizing the Bonds shall be taken as the statements of the Issuer and shall not be considered as made by, or imposing any obligation or liability upon, the Escrow Agent. The Escrow Agent is not a party to the proceedings authorizing the Bonds and is not responsible for nor bound by any of the provisions thereof. In its capacity as Escrow Agent, it is agreed that the Escrow Agent need look only to the terms and provisions of this Agreement.

The Escrow Agent makes no representations as to the value, conditions or sufficiency of the Escrow Fund, or any part thereof, or as to the title of the Issuer thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters.

It is the intention of the parties hereto that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

The Escrow Agent shall not be liable for any action taken or neglected to be taken by it in good faith in any exercise of reasonable care and believed by it to be within the discretion or power conferred upon it by this Agreement, nor shall the Escrow Agent be responsible for the consequences of any error of judgment; and the Escrow Agent shall not be answerable for any loss unless the same shall have been through its negligence or willful misconduct.

Unless it is specifically otherwise provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the Issuer with respect to arrangements or contracts

with others, with the Escrow Agent's sole duty hereunder being to safeguard the Escrow Fund, to dispose of and deliver the same in accordance with this Agreement. If, however, the Escrow Agent is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Escrow Agent shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination the Escrow Agent shall be liable only for its own willful misconduct or its negligence. In determining the occurrence of any such event or contingency the Escrow Agent may request from the Issuer or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may make inquiries of, and consult with, among others, the Issuer at any time.

The Escrow Agent may consult with counsel reasonably acceptable to the Issuer, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

The Escrow Agent may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Escrow Agent. The Escrow Agent shall not be liable for the acts or omissions of its nominees, correspondents, designees, subagents or subcustodians selected by it in good faith.

The Escrow Agent may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

The Escrow Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Escrow Agent (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility).

Section 7.03. Compensation. Concurrently with the sale and delivery of the Bonds, the Issuer shall pay to the Escrow Agent the sum of \$\_\_\_\_\_ the sufficiency of which is hereby acknowledged by the Escrow Agent to pay its fee for performing the services of Escrow Agent hereunder and for all expenses incurred or to be incurred by it as Escrow Agent in the administration of this Agreement (including, but not limited to, fees and expenses of counsel to the Escrow Agent). In the event that the Escrow Agent is requested to perform any extraordinary services hereunder, the Issuer hereby agrees to pay reasonable fees to the Escrow Agent for such extraordinary services and to reimburse the Escrow Agent for all expenses incurred by the Escrow Agent in performing such extraordinary services, and the Escrow Agent hereby agrees to look only to the Issuer for the payment of such fees and reimbursement of such expenses. The Escrow Agent hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Fund for any fees for its services, whether regular or extraordinary, as Escrow Agent, or in any other capacity, or for reimbursement for any of its expenses.

Section 7.04. Successor Escrow Agents. (a) If at any time the Escrow Agent or its legal successor or successors should become unable, through operation of law or otherwise, to act as Escrow Agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent hereunder. In such event the Issuer, by appropriate action, promptly shall appoint an Escrow Agent to fill such vacancy. If, in a proper case, no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this section within three months after a vacancy shall have occurred, the Issuer or TMRS may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

(b) The Escrow Agent may at any time resign and be discharged from the trust hereby created by giving not less than 60 days' written notice to the Issuer; provided, that, no such resignation shall take effect unless: (i) a successor Escrow Agent shall have been appointed by the owners of the Refunded Bonds or by the Issuer as herein provided; (ii) such successor Escrow Agent shall have accepted such appointment; (iii) the successor Escrow Agent shall have agreed to accept the fees currently in effect for the Escrow; and (iv) the Escrow Agent shall have paid over to the successor Escrow Agent a proportional part of the Escrow Agent's fee hereunder. Such resignation shall take effect immediately upon compliance with the foregoing requirements. If within 60 days following the resignation of the Escrow Agent, no successor Escrow Agent shall have been appointed, the Escrow Agent may apply to any court of competent jurisdiction to appoint a successor Escrow Agent.

(c) Any successor Escrow Agent shall be: (i) a corporation organized and doing business under the laws of the United States or the State of Texas; (ii) authorized under such laws to exercise corporate trust powers; (iii) have its principal office and place of business in the State of Texas; (iv) have a combined capital and surplus of at least \$5,000,000; (v) subject to the supervision or examination by Federal or State authority and (vi) qualified to serve as Escrow Agent under the provisions of Chapter 1207.

(d) Any successor Escrow Agent shall execute, acknowledge and deliver to the Issuer and the Escrow Agent an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, subject to the terms of this Agreement, all the rights, powers and trusts of the Escrow Agent hereunder. Upon the request of any such successor Escrow Agent, the Issuer shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers and duties. The Escrow Agent shall pay over to its successor Escrow Agent a proportional part of the Escrow Agent's fee hereunder.

## ARTICLE VIII MISCELLANEOUS

Section 8.01. Notice. Any notice, authorization, request, or demand required or permitted to be given hereunder, shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid, addressed as follows:

To the Escrow Agent: The Bank of New York Mellon  
240 Greenwich Street  
New York, New York 10286  
Attention: Corporate Trust Administration  
Attention: Matthew Louis, Vice President  
Email: [matthew.louis@bnymellon.com](mailto:matthew.louis@bnymellon.com)  
Phone: +1 212-815-3219

To the Issuer: City of Irving  
825 West Irving Blvd  
Irving , Texas 75060  
Attention: Chief Financial Officer

To the Rating Agencies: Moody's Investors Service, Inc.  
2200 Ross Avenue  
Suite 4650 West  
Dallas, Texas 75201  
Attention: Public Finance Department

Standard & Poor's Rating Group  
25 Broadway  
New York, New York 10004

Fitch Investors Service, L.P.  
4514 Cole Avenue, Suite 600  
Dallas, Texas 75205

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery. Either party hereto may change the address to which notices are to be delivered by giving to the other party not less than ten (10) days prior notice thereof.

Section 8.02. Compensation. The Bank agrees and represents that the total compensation due to the Bank pursuant to this agreement shall not exceed the dollar limitation set forth in Section 2271.002, Texas Government Code, Section 2274.002(a)(2) of the Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) and Section 2274.002(a)(2) of the Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session).

Section 8.03. Sanctioned Countries. The Bank represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to enable the Issuer to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal or Texas law and excludes the Bank and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. As used in this Section, the Bank understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Bank within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit.

Section 8.04. Patriot Act Compliance, Etc. In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering and the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Escrow Agent must obtain, verify and record information that allows the Escrow Agent to identify customers (“Applicable Law”), the Escrow Agent is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Escrow Agent. Accordingly, the Issuer agrees to provide to the Escrow Agent upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Escrow Agent to comply with Applicable Law, including, but not limited to, information as to name, physical address, tax identification number and other information that will help the Escrow Agent to identify and verify the Issuer such as organizational documents, certificates of good standing, licenses to do business or other pertinent identifying information. The Issuer understands and agrees that the Escrow Agent cannot open the Escrow Account unless and until the Escrow Agent verifies the identity of the Issuer in accordance with its CIP.

Section 8.05. Form 1295 Exemption. The Escrow Agent represents that it is a wholly owned subsidiary of The Bank of New York Mellon Corporation, a publicly traded business entity, and therefore this Agreement is exempt from Section 2252.908, Texas Government Code, as amended.

Section 8.06. Termination of Responsibilities. Upon the taking of all the actions as described herein by the Escrow Agent, the Escrow Agent shall have no further obligations or responsibilities hereunder to the Issuer, TMRS or to any other person or persons in connection with this Agreement.

Section 8.07. Binding Agreement. This Agreement shall be binding upon the Issuer and the Escrow Agent and their respective successors and legal representatives, and shall inure solely to the benefit of TMRS, the Issuer, the Escrow Agent and their respective successors and legal representatives.



Section 8.08. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 8.09. Texas Law Governs. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

Section 8.10. Time of the Essence. Time shall be of the essence in the performance of obligations from time to time imposed upon the Escrow Agent by this Agreement.

Section 8.11. Effective Date of Agreement. This Agreement shall be effective upon receipt by the Escrow Agent of the funds described in the Report and the Authorized Securities, together with the specific sums stated in Section 7.03 for Escrow Agent and paying agency fees, expenses, and services.

Section 8.12. Modification of Agreement. This Agreement shall be binding upon the Issuer and the Escrow Agent and their respective successors and legal representatives and shall inure solely to the benefit of TMRS, the Issuer, the Escrow Agent and their respective successors and legal representatives. Furthermore, no alteration, amendment or modification of any provision of this Agreement (i) shall alter the financial arrangements made for the payment of Bond proceeds to TMRS hereunder or (ii) shall be effective unless such alteration, amendment or modification is in writing and signed by the parties hereto.

Section 8.13. Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Escrow Agent, its officers, directors, employees and agents for, and hold them harmless against, any loss, liability, or expense incurred without negligence or willful misconduct on their part arising out of or in connection with its acceptance or administration of the Escrow Agent's duties under this Agreement, including the cost and expense (including its counsel fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement, regardless of the whether such claim is brought by the Issuer, TMRS or any third party. The rights of the Escrow Agent under this Section 8.13 shall survive termination of this Escrow Agreement or the resignation or replacement of the Escrow Agent.

Section 8.14. Successors and Assigns of Escrow Agent. Notwithstanding anything herein to the contrary, any corporation or other company into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or other company resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any corporation or other company succeeding to the business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

[Execution Page Follows]

IN WITNESS WHEREOF, this Escrow Agreement has been executed in multiple counterparts, each one of which shall constitute one and the same original Agreement, as of the date and year appearing on the first page of this Agreement.

CITY OF IRVING, TEXAS

By: \_\_\_\_\_  
Authorized Officer

\_\_\_\_\_,  
as Escrow Agent

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

*Signature Page for Escrow Agreement  
General Obligation Pension Bonds*

EXHIBIT A

**DESCRIPTION OF BEGINNING CASH BALANCES AND AUTHORIZED  
SECURITIES**

I. Cash

\$5,702,374

II. Authorized Securities

N/A