

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** March 5, 2024

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
Rebecca Trevino, Chief Financial Officer

**FROM:** Georgia Sanchez, Development Fund Manager

**SUBJECT:** Funds Management Agreement for Texas Water Fund

### ACTION REQUESTED

Consider approving by resolution the execution of a Funds Management Agreement for the Texas Water Fund.

### BACKGROUND

During the 88th Regular Session, the Legislature passed Senate Bill (SB) 28 and Senate Joint Resolution 75, legislation which created the Texas Water Fund to assist in financing water projects in Texas. The Texas Water Fund may be used to transfer money to the New Water Supply for Texas Fund, the State Water Implementation Fund for Texas, the Clean Water or Drinking Water State Revolving Funds, the Rural Water Assistance Fund, the statewide water public awareness account, and to the Financial Assistance Account and State Participation Account within the Texas Water Development Fund II.

SB 30 authorized a one-time \$1 billion appropriation to the Texas Water Fund, contingent on approval of a constitutional amendment in November 2023, which was passed by the voters.

### KEY ISSUES

SB 28 required that money in the TWF be held and invested by the Texas Treasury Safekeeping Trust Company (TTSTC), and the fund is maintained at the direction of the Texas Water Development Board (TWDB) as described in Section 15.503 (c) of the Texas Water Code.

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A funds management agreement is needed in order to provide sufficient legal protection and guidance on the use of the Texas Water Fund. The funds management agreement generally provides for the timing and approval of funds transfers, reporting of information on the Texas Water Fund, the limitations on certain legal rights, and how the TTSTC will be paid for its services.

The TTSTC will be paid a monthly management fee based on the average daily balance of the Texas Water Fund, and additional service fees may apply, all of which will be deducted from the Texas Water Fund. The TTSTC will provide monthly financial statements to the TWDB, and additional reporting will be available through the Texas Trust Online system.

**RECOMMENDATION**

The Executive Administrator recommends approving by resolution the execution of a Funds Management Agreement between the Texas Water Development Board and the Texas Treasury Safekeeping Trust Company.

Attachment:

1. Resolution
2. Draft Funds Management Agreement

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AUTHORIZING THE EXECUTIVE ADMINISTRATOR  
TO EXECUTE A FUNDS MANAGEMENT AGREEMENT  
WITH THE TEXAS TREASURY SAFEKEEPING TRUST COMPANY

(24- )

Recitals:

Pursuant to Senate Joint Resolution 75, 88<sup>th</sup> Legislature, Regular Session (SJR 75), and the passage on November 7, 2023, of the constitutional amendment proposed therein, and Senate Bill 28, 88<sup>th</sup> Legislature, Regular Session (SB 28), the Texas Water Fund was created as a special fund in the state treasury outside the general revenue fund; and

Pursuant to Senate Bill 30, 88<sup>th</sup> Legislature, Regular Session (SB 30), SJR 75, and SB 28, \$1,000,000,000 was appropriated out of the general revenue fund to the Texas Water Fund to implement SB 28; and

Pursuant to SB 28 and Texas Water Code, Chapter 15, Subchapter H-1 enacted thereby, the Texas Treasury Safekeeping Trust Company (Trust Company) will hold and invest the Texas Water Fund, and any accounts established therein, for and in the name of the Texas Water Development Board (TWDB); and

The TWDB desires to adopt a Funds Management Agreement in form and substance substantially attached thereto, between itself and the Trust Company and take other actions as set forth below for management and investment of the Texas Water Fund; and

The TWDB finds that it is advisable and in the public interest to delegate to the Executive Administrator or his designee the authority to negotiate and execute the Agreement between the TWDB and the Trust Company and take other actions as set forth below for management and investment of the Texas Water Fund.

NOW THEREFORE, the TWDB resolves as follows:

1. A Funds Management Agreement between the TWDB and Trust Company, attached hereto in substantially final form, is approved. The Executive Administrator is delegated the authority to negotiate the Funds Management Agreement.
2. The TWDB's Executive Administrator, or his designee, is delegated the authority to execute the Funds Management Agreement between the TWDB and Trust Company.
3. As set forth in SB 28 and Texas Water Code § 15.503, the Trust Company shall hold and invest the Texas Water Fund, and any accounts established therein, for and in the name of the TWDB. Further, the Trust Company has full

discretionary authority to invest Texas Water Fund assets as a prudent investor, as needed to effectuate the Trust Company's investment of the Texas Water Fund in compliance with the Agreement, and applicable law.

APPROVED and ordered of record this 5<sup>th</sup> day of March, 2024.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Brooke T. Paup, Chairwoman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jeff Walker, Executive Administrator

**FUNDS MANAGEMENT AGREEMENT**  
**BETWEEN**  
**TEXAS WATER DEVELOPMENT BOARD**  
**AND**  
**TEXAS TREASURY SAFEKEEPING TRUST COMPANY**

**THIS FUNDS MANAGEMENT AGREEMENT** (the "Agreement") is made and entered into by and between the Texas Water Development Board, an agency of the state of Texas, (the "TWDB") and the Texas Treasury Safekeeping Trust Company (together with its successors in such capacity, the "Trust Company"), a special-purpose trust company organized under the laws of the State of Texas.

**RECITALS**

**WHEREAS**, the Texas Water Fund (the "Fund") is administered by the TWDB to implement the purposes of Article 3, Section 49-d-16, Texas Constitution and Texas Water Code, Chapter 15, Subchapter H-1; and

**WHEREAS**, the TWDB is authorized by Chapter 15, Subchapter H-1, Texas Water Code, to deposit funds with the Trust Company; and

**WHEREAS**, the Trust Company exists and functions under Chapter 404, Subchapter G, Texas Government Code, and is empowered to manage, disburse, transfer, safekeep, and invest funds and securities; and

**WHEREAS**, the TWDB has determined to select and appoint the Trust Company to manage, disburse, transfer, safekeep, and invest funds and securities for the TWDB under the provisions of applicable statutory and federal authority relating to the Fund, including without limitation, Section 15.503, Texas Water Code.

**NOW, THEREFORE**, the parties hereto contract and agree as follows:

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## AGREEMENT

### ARTICLE I DEFINITIONS AND INTERPRETATION

**Section 1.01. Definitions.** The following terms will have the respective meanings specified below for all purposes of this Agreement:

"*Account*" or "*Accounts*" means the account(s) or subaccount(s) within the Fund, which may be created and established pursuant to Section 2.01 hereof.

"*Agreement*" means this Funds Management Agreement.

"*Authorized Designator of the TWDB*" shall mean TWDB's employees who the TWDB's signatory to this Agreement, (or an Authorized Representative who is designated as an Authorized Designator), may designate in writing to act as an Authorized Representative and as further set out in Section 2.03.

"*Authorized Investments*" means and includes, with respect to the Fund, any investment described under Chapter 15, Subchapter H-1, Texas Water Code, as amended from time to time.

"*Authorized Representative(s) of the TWDB*" means the TWDB's duly authorized officers, and employees designated in writing by the TWDB's signatory to this Agreement to execute and submit a Letter of Instructions, who have specified access to Texas Trust Online, and may take other necessary actions under this Agreement on behalf of the TWDB, including to designate other individuals who may take specified actions, as further set out in Section 2.03.

"*Authorized Representative of the Trust Company*" means any employee of the Trust Company specifically authorized to act on behalf of the Trust Company by designation of the Trust Company.

"*Automated Clearing House*" or "*ACH*" shall mean the central distribution and settlement point for electronic clearing of debits and credits between financial institutions.

"*Fund*" means the Texas Water Fund created and established pursuant to Section 2.01 hereof.

"*Letter of Instructions*" means a written authorization and direction to the Trust Company signed by an Authorized Representative of the TWDB that contains information as set forth in Article II of this Agreement and that is submitted to the Trust Company by one of the following methods: (1) first-class mail; (2) email; (3) facsimile; or (4) Texas Trust Online (but only if the TWDB designates 'Update' Access for Texas Trust Online in Exhibit A).

"Person" means, but is not limited to, any individual, employee or vendor, public or private corporation, district, authority, municipality, political subdivision or other agency or entity of the State of Texas or the United States of America, and any incorporated city, town or village, whether operating under general or special law or under its home rule charter, and any partnership, association, firm, trust, estate, or any other entity whatsoever.

"Signatory Authority" means a written delegation to a duly authorized officer of the TWDB to sign the Agreement (and any Amendment or Supplement) on behalf of the TWDB in the form of a Resolution or other similar document.

"State" means the State of Texas.

"Texas Trust Online" means the secure internet website maintained by the Trust Company through which clients may submit a Letter of Instructions, and submit, access and retrieve other account information.

"Treasury" means the funds of the State subject to the custody and control of the Comptroller of Public Accounts and available for appropriation by the Legislature of the State.

"Trust Company" means the Texas Treasury Safekeeping Trust Company, a special-purpose trust company organized under Section 404.102, Texas Government Code, and its successors and assigns.

**Section 1.02. Interpretation.** This Agreement and all its terms and provisions will be liberally construed to achieve its purposes.

**Section 1.03. Titles and Headings.** The titles and headings of the articles and sections have been inserted for convenience of reference only and are not to be considered a part of this Agreement and will not in any way modify or restrict its terms.

## **ARTICLE II**

### **CREATION AND OPERATION OF FUND**

**Section 2.01. Creation of Fund.** The TWDB hereby creates and establishes a fund known and designated as the Texas Water Fund (the "Fund") to implement and administer the provisions of Chapter 15, Subchapter H-1, Texas Water Code. The Fund shall be maintained as a separate and distinct fund held inside the Treasury, outside the general revenue fund. The Trust Company will hold and invest all money and securities of the Fund held inside the Treasury under its duties for investing the Treasury Pool. The Trust Company will hold and invest all money and securities of the Fund held outside of the Treasury Pool (the "TTSTC Fund Component") in accordance with applicable investment policies of the TWDB. The TWDB shall administer the Fund held inside the Treasury within the Treasury Pool through access granted by the Comptroller's Fiscal Division (the "TWDB Fund Component") in accordance with applicable and established policies for all agencies with funds held within the Treasury Pool. The provisions of this Agreement do not apply to the

TWDB Fund Component in the state treasury within the Treasury Pool.

The TWDB Fund Component will be invested by the TWDB in accordance with the Comptroller's investment policy until directed otherwise by the TWDB to the Trust Company through a Letter of Instructions to transfer proceeds from the TWDB Fund Component to the TTSTC Fund Component. The TTSTC Fund Component shall be held, administered, invested, and disbursed solely in accordance with Exhibit C, the provisions of this Agreement, and applicable law.

Using a Letter of Instructions, the TWDB may establish additional Accounts with the Trust Company to be held outside of the state treasury and eliminate inactive Accounts within the Fund from time to time, as appropriate.

**Section 2.02. Signatory Authority.** The TWDB will provide the Trust Company with evidence of its written delegation to a duly authorized officer to sign the Agreement (and any Amendment or Supplement) on behalf of the TWDB in the form of a Resolution or other similar document.

**Section 2.03. Authorized Representatives of the TWDB.** The TWDB's signatory to this Agreement will provide the Trust Company with a written designation of each of those employees or officers of the TWDB who may act as Authorized Representatives. Each designation will specify the Authorized Representative's authority to: (1) execute and submit a Letter of Instructions, (2) delegate Texas Trust Online user access and permissions, (3) take other necessary actions under this Agreement on behalf of the TWDB, and (4) designate other individuals who may take such specified actions as an "*Authorized Designator of the TWDB*".

The Trust Company is entitled to rely on the written designation of the TWDB's Authorized Representative(s) as conclusive evidence of an individual's specified authority to submit a Letter of Instructions concerning the TWDB and any particular Account(s).

**Section 2.04. Deposits.** The TWDB will remit to the Trust Company from time to time, funds or securities that the TWDB has received for deposit in the Fund.

Each Letter of Instructions will identify the Account into which such funds are to be deposited. If an uncertainty arises as to which Account the funds or securities are to be credited, an Authorized Representative of the Trust Company shall contact an Authorized Representative of the TWDB immediately regarding the disposition of the funds or securities. Upon written letter, email or facsimile clarification by the TWDB's Authorized Representative of such uncertainty, the Trust Company shall immediately deposit such funds into the appropriate Account.

The Trust Company will deposit funds received before 2:00 p.m. Central time, into the appropriate Account immediately upon receipt. If funds are received after 2:00 p.m. Central time, the Trust Company will use its best efforts to deposit such funds before the end of the business day.

**Section 2.05. Transfers and Disbursements.** To transfer funds between the Accounts to pay expenses or other items authorized by the TWDB, or to disburse money in the Fund to any



Person's account or other fund of the TWDB, the TWDB will submit a Letter of Instructions to the Trust Company not later than 8:30 a.m. Central time, on the day funds are to be transferred or disbursed. If an Authorized Representative of the TWDB delivers instructions to the Trust Company after 8:30 a.m. Central time, the Trust Company will use its best efforts to complete the transfer or disbursement before the end of the business day.

The Letter of Instructions shall specify (i) the date for the transfer or disbursement, (ii) the amount of money to be paid in immediately available funds or as otherwise specified in the Letter of Instructions, (iii) the Account from which such funds will be transferred and the identity of the Person, Person's account or fund to which money in the Fund should be paid, and (iv) provide wiring, payment or transfer instructions identifying the recipient of the payment and the name and number of the account into which such funds are to be deposited.

If the transfer is between Accounts within the Fund, the Letter of Instructions will identify the Account to and from which such funds are to be transferred.

The TWDB acknowledges that the Federal Reserve Communications System is in large part beyond the Trust Company's control. Accordingly, the TWDB hereby agrees to save and hold harmless the Trust Company from any damages arising from any wire related failures, delays or defaults unless the failures, delays or defaults are caused by the Trust Company's own gross negligence or willful misconduct.

**Section 2.06. Reliance on Letter of Instructions.** The Trust Company may rely on and will not be liable for acting or refraining from acting in accordance with any Letter of Instructions submitted to it pursuant to this Agreement and believed by the Trust Company to have been submitted by an Authorized Representative. The TWDB agrees that any requests submitted by Letter of Instructions will comply with the Trust Company's disbursement and security policies as set forth in this Agreement or required by law. The Trust Company will promptly provide all its written general disbursement and security policies to TWDB, excepting any policies determined by the Trust Company to contain sensitive references to confidential accounts or systems.

If the TWDB designates "Update" Access to Texas Trust Online in this Agreement, the TWDB may submit a Letter of Instructions via Texas Trust Online and must identify an individual with user access rights as an approver to approve a Letter of Instructions submitted via Texas Trust Online. The TWDB agrees to comply with the Trust Company's Texas Trust Online Site Policies, which are subject to change from time to time.

The Trust Company will not accept a Letter of Instructions unless it is signed by a person who has been designated by the TWDB to act as an Authorized Representative, according to the TWDB's written designation provided to the Trust Company.

**Section 2.07. Issuance and Payment of Physical Items.** In accordance with a Letter of Instructions, the Trust Company may make a payment by check directly from the Fund.

**Section 2.08. Trust Company Duty of Care.** The Trust Company will hold all money and

securities under the terms of this Agreement in trust for the benefit of the TWDB. In managing the Funds, the Trust Company will be charged with the duty of care which applies to the Fund and to the Trust Company as trustee of funds held inside the Treasury.

**Section 2.09. Automated Clearing House.** As provided in Section 2.04 of this Agreement, the Trust Company shall deposit the funds received before 2:00 p.m. Central time into the appropriate Account immediately upon receipt, unless further research is needed, at which point the Trust Company will contact the TWDB. The TWDB shall be responsible for resolving all discrepancies, including failed ACH transactions.

The Comptroller and the Trust Company are required to comply with the applicable Operating Rules and Guidelines of the National Automated Clearing House Association (the "Rules"). The TWDB shall assist and cooperate with the Trust Company and the Comptroller in complying with the Rules. Further, the TWDB shall refrain from any act or failure to act that would result in noncompliance with the Rules by the Comptroller, Trust Company, or the TWDB. The Rules are incorporated herein to the extent consistent with Texas law.

The TWDB shall be solely responsible for the consequences of any acts performed by its employees or agents as such acts relate to the services and products provided under this section.

**Section 2.10. Security for Cash Balances.** Cash balances on deposit in the Fund from time to time, to the extent not insured by the Federal Deposit Insurance Corporation or a successor federal agency or instrumentality, will be continuously secured by the Trust Company in such manner and to such extent as are required by applicable laws and regulations regarding security for the deposit of funds held by the Trust Company on behalf of the State and its agencies.

**Section 2.11. Funds Management and Investment Services Procedures; Security Procedures.** The TWDB and the Trust Company agree to the procedures, including security procedures, set forth in this Agreement for the provision of funds management services by the Trust Company, as well as any other reasonable security procedures established by the Trust Company from time to time. With respect to Texas Trust Online, such procedures and security procedures include those set forth in its Site Policies.

In addition to the procedures, including security procedures, described above, the TWDB agrees to ensure that it and its Authorized Representatives will not give or make available their user name(s), passcode(s), personal identification number(s), RSA Secure ID# number(s), digital RSA Secure ID# display token, or related device issued in the future, or any similar identification number or device issued or elected under this Agreement, to any other persons or entities, and will take all customary and reasonable precautions to keep all such items secure.

**Section 2.12. Texas Trust Online-Designated Access.** The TWDB may designate the type(s) of access to Texas Trust Online features which may include 'View Only' or 'Update' access, and as such features may be updated from time to time in Exhibit A. The parties may change the type of access, or other Texas Trust Online features that may be available from time to time, by Supplement to Exhibit A, as set out in Section 5.02 of this Agreement. 'View Only' Access includes

the ability to view Trust Company reports and transaction history, among other items, but not the ability to update information or submit a Letter of Instructions via Texas Trust Online. 'Update' Access includes 'View Only' features, plus the ability to update information or submit a Letter of Instructions on Texas Trust Online.

### **ARTICLE III** **EARNINGS ON FUND BALANCES**

**Section 3.01. Earnings on Money in Fund Accounts.** Money held in the Fund and Accounts will be fully invested at all times and reinvested by the Trust Company in Authorized Investments; provided however, subject to Trust Company discretion under the prudent investment standard, money may not be fully invested from time to time based on market conditions. The Trust Company will select Authorized Investments at its own discretion, with judgment and care, under prevailing circumstances, considering the probable safety of capital and the probable income to be derived.

The Trust Company will credit earnings daily to the TWDB's Fund. Earnings will be compounded daily. Earnings accrued over a weekend or state holiday will be credited on the next business day.

The money and investments of the Fund may be commingled with other funds held by the Trust Company for investment purposes, only to the extent required, in the judgment of the Trust Company, to obtain the highest and best investment yield then available to the Fund as a whole, taking into account anticipated or required withdrawals of money that may restrict investment opportunities.

**Section 3.02. Earnings and Losses from Investments.** All earnings and profits from Authorized Investments will be credited to and deposited as received in the Fund or Account for which the investment was made. All losses resulting from any Authorized Investment will be charged against the Fund or Account for which the investment was made. If an investment is made for more than one Fund or Account, profits and losses will be credited or charged, as appropriate, pro rata among the Fund and Accounts for which the Authorized Investment was acquired.

**Section 3.03. Liability.** Neither the Trust Company, nor any Trust Company employee will be held liable for any action or omission to act under this Agreement unless such action or omission to act is due to gross negligence or willful misconduct.

### **ARTICLE IV** **RECORDS, REPORTS, FEES, AND INFORMATION**

**Section 4.01. Records.** The Trust Company will keep records and accounts in which complete and correct entries will be made of all transactions relating to the receipts, disbursements, allocations and applications of the money and Authorized Investments deposited to the Fund and all

proceeds thereof in accordance with generally accepted accounting principles. Such records will be available for inspection at reasonable hours and under reasonable conditions. The Trust Company will permit the TWDB at any reasonable time during normal business hours, to copy all or any portion of such records, and will furnish to the TWDB such information as the TWDB may reasonably request, all as may be reasonably necessary for assuring compliance with the requirements of this Agreement.

**Section 4.02. Reports.** The Trust Company will submit to the TWDB, promptly after the end of each month, financial statements relating to the Fund, Accounts, and money and securities held under this Agreement. The Trust Company will furnish the TWDB with such other information relating to the Fund, Accounts, and the money and securities held therein as the TWDB may reasonably request from time to time. The submission and furnishing of reports and information under this section by the Trust Company includes the Trust Company's provision of access to such reports and information via Texas Trust Online.

**Section 4.03. Fees and Expenses.** As contemplated under Section 404.103(f) and 404.107(b), Texas Government Code, the Trust Company will send the TWDB an itemized written monthly statement/invoice setting forth the services provided for the TWDB and the costs incurred for each Account each month. The TWDB will pay the Trust Company's monthly fees and expenses assessed under the Schedule of Fees and Expenses, attached as Exhibit B. Please See Exhibit B for available payment methods and timing of payment. Unless the TWDB specifies some other method, the parties agree that the Trust Company will automatically deduct the appropriate amount of monthly fees and charges from each account.

The TWDB may object to any item in the invoice within thirty (30) days of the date of receiving the invoice. The Trust Company may make any changes in the Fees and Expenses by Supplement to Exhibit B, as set out in Section 5.02.

**Section 4.04. TWDB to Maintain Current Information.** The TWDB will furnish the Trust Company information relating to its Signatory Authority, delegation of authority, a Letter of Instructions, Authorized Representatives, the Fund, Accounts, and the money and securities held therein as provided in this Agreement, and as the Trust Company may reasonably request from time to time.

The TWDB must keep its Resolution (or other documents evidencing signatory and/or designation authority) current, as well as its designation of Authorized Representatives and shall provide those documents to the Trust Company when any relevant changes occur, including a change in staffing or officers, as set out in Sections 2.02, 2.03 and 5.02.

## **ARTICLE V** **MISCELLANEOUS**

**Section 5.01. Notices.** Except as otherwise provided by this Agreement, all notices, requests, reports, and other communications under the Agreement will be deemed to be duly given if

hand-delivered, delivered by nationally recognized courier service, delivered by telephonic facsimile transmission equipment, sent by email, mailed interagency, or certified or registered mail with postage prepaid.

The Trust Company and the TWDB may change the address to which notices are to be delivered by giving to the other party not less than ten (10) calendar days prior written notice.

Notice may also be submitted in the form of a Letter of Instructions as provided in Section 2.06. For clarity, the TWDB may only submit notice to the Trust Company through Texas Trust Online in the form of a Letter of Instructions (as provided in Section 2.06) only if it has previously designated 'Update' Access to Texas Trust Online.

All such notices and communications will be deemed given when received, as evidenced by the signed acknowledgment of receipt of the person to whom such notice or communication will have been delivered by hand, a read receipt of an email, the confirmation of delivery rendered by the applicable courier service, the document transmission summary generated by the telephonic facsimile transmission equipment, the acknowledgment of receipt returned to the sender by the applicable postal authorities, if such receipt is requested. If the Trust Company and the TWDB amend this Agreement to designate 'Update' Access to Texas Trust Online, a Letter of Instructions or other notice submitted through Texas Trust Online by the TWDB will be deemed to be received when the notice of confirmation is generated by that system; however, the absence of the forms of documentary evidence of date of delivery referenced above, will not be interpreted by the Trust Company as invalidating the form of notice used.

**To the Texas Water Development Board:**

1700 North Congress Avenue  
Suite 600  
Austin, Texas 78701  
Attention: Rebecca Trevino  
Telephone: (512) 936-0809  
Telefax: (512) 936-2298  
Email: [Rebecca.Trevino@twdb.texas.gov](mailto:Rebecca.Trevino@twdb.texas.gov)

**To the Trust Company:**

Texas Treasury Safekeeping Trust Company  
208 E. 10th Street, 4th Floor  
Austin, Texas 78701  
Attention: Manager, Trust Services  
Telephone: (512) 463-2834

Telefax: (512) 463-0823  
Email: [ttstc.fin.trustservices@ttstc.texas.gov](mailto:ttstc.fin.trustservices@ttstc.texas.gov)

**Section 5.02. Amendments and Supplements.** (i) This Agreement may be amended in writing signed by both parties. (ii) The parties may supplement Exhibit A and Exhibit B under the terms of this Section 5.02.

The TWDB's Signatory may send a proposed Supplement to Exhibit A in the manner provided in Section 5.01, and such change shall be effective upon the date of written notice or, at the election of the TWDB, a subsequent effective date. Such election will not be unreasonably withheld and will be provided by the Trust Company to the TWDB within ten (10) business days after receiving all required documentation and approvals. In either event of the preceding occurring, the Trust Company's Authorized Representative shall promptly request clarification, object to, or initial and date the Supplement to indicate receipt and acceptance.

The Trust Company's Signatory or Authorized Representative may send a proposed Supplement to Exhibit B in the manner provided in Section 5.01, at least thirty (30) days before the proposed effective date of such modification. The TWDB's Signatory or Authorized Representative shall initial and date it to indicate receipt and acceptance.

In each case, the recipient of a Supplement may request clarification or object to a Supplement in writing on or before its effective date. If the recipient fails to do so, then the Supplement will become effective upon its stated effective date. If the recipient objects in writing to the proposed Supplement on or before the proposed effective date, and the parties are unable to reach a timely resolution to the terms of the Supplement, then they must resolve the matter by way of an Amendment to this Agreement, rather than a Supplement.

**Section 5.03. Termination.** This Agreement may be terminated by either party, with or without cause, by (i) tendering thirty (30) days prior written notice in the manner set forth in Section 5.01; or (ii) agreeing to terminate it and supersede it on the effective date of a new Funds Management Agreement between the parties. This Agreement will remain in effect continuously unless terminated in accordance with this Agreement.

**Section 5.04. Limitation of Rights.** Except for the rights herein expressly conferred, nothing in or to be implied from this Agreement is intended or will be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement or in any of its covenants, conditions and provisions herein contained. This Agreement, and its covenants, conditions and provisions hereof are intended and exist for the sole and exclusive benefit of the parties hereto as provided for herein. The Trust Company will not be liable for any losses from investments made and transfers made in accordance with the procedures set forth in this Agreement.

**Section 5.05. Binding Agreement.** This Agreement will be binding upon the TWDB, the Trust Company and their respective successors and legal representatives and will inure solely to the

benefit of the TWDB and the Trust Company and their respective successors and legal representatives.

**Section 5.06. Severability.** In case any one or more of the provisions contained in this Agreement is for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

**Section 5.07. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, and is performable in Travis County, Texas.

**Section 5.08. Compliance.** The TWDB will be responsible for monitoring compliance with applicable laws governing the Fund, money and securities subject to this Agreement, including laws governing the procurement of goods and services by a state agency and laws governing travel expenditures and compensation.

**Section 5.09. Digital and Electronic Signature.** This Agreement and related documents, including Letters of Instructions, may be executed by digital and electronic signature, which shall be considered as an original signature for all purposes with the same legal force and effect. Without limitation, “digital and electronic signature” shall include faxed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf), or generally recognized e-signature technology agreeable to the parties (e.g., DocuSign or other), each of which has the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or the Texas Uniform Electronic Transactions Act.

**Section 5.10. Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be an original and all of which will constitute one and the same instrument.

**Section 5.11. Entire Agreement.** This Agreement and its Exhibits represent the entire agreement between the parties hereto and supersede any and all prior agreements between the parties, whether written or oral, that relate to the funds described herein.

**Section 5.12. Cooperation.** The TWDB and the Trust Company agree to cooperate as appropriate to implement this Agreement and achieve the purposes of the Texas Water Fund as set forth in Article 3, Section 49-d-16, Texas Constitution, Texas Water Code, Chapter 15, Subchapter H-1, and other applicable law.

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**IN WITNESS WHEREOF**, the parties have caused this Funds Management Agreement to be executed by their respective duly authorized officers effective on the date of the last signature written below.

**TEXAS WATER DEVELOPMENT BOARD**

By: \_\_\_\_\_  
Jeff Walker  
Executive Administrator

Date: \_\_\_\_\_

**TEXAS TREASURY SAFEKEEPING TRUST COMPANY**

By: \_\_\_\_\_  
Mike Reissig  
Chief Executive Officer

Date: \_\_\_\_\_

**EXHIBIT A**

**TEXAS TRUST ONLINE ACCESS DESIGNATION**

For purposes of this Agreement, the TWDB designates (initial one choice below):

'View Only' Access to Texas Trust Online; or

'Update' Access to Texas Trust Online

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## **EXHIBIT B**

### **TEXAS TREASURY SAFEKEEPING TRUST COMPANY SCHEDULE OF FEES**

#### **I. Standard Billing Schedule.**

The Standard Billing Schedule is based on the Texas Treasury Safekeeping Trust Company's cost recovery in accordance with Sections 404.103(f) and 404.107(b), Government Code.

The Standard Billing Schedule includes investment management services, account maintenance (set-up of new accounts and subaccounts, general ledger accounting, monthly reports, transaction confirmations and research), Fedwire funds transfers and internal transfers. The standard fee will be calculated monthly based on an account's average daily asset balance.

In addition to the standard fee, the account will be billed for various transaction charges including: deposits (bank charges for ACH, processing physical checks and returns) and withdrawals (bank charges for ACH and checks paid) (See Section V, pass-through fees); as well as securities transfers, custody and safekeeping.

A \$10.00 minimum service fee will be applied monthly to each account.

#### **II. Standard Fee Schedule – Funds Management.**

<u>Average Daily Asset Balance</u>	<u>Annual Service Fee</u>
\$0.00 - 10,000,000.	.0006
\$10,000,001. - 20,000,000.	.0004
\$20,000,001. - 100,000,000.	.00025
\$100,000,001	.0002

### **III. Standard Schedule - Escrow Agent.**

Acceptance Fee: \$1,000.00 Covers review of documents, establishment of account, set-up of procedures and controls.

Annual Escrow Administration Fee: \$500.00

### **IV. Standard Schedule – Safekeeping.**

Security Pledging/Releasing: \$12.00  
The pledging, or release from pledging, of securities held in safekeeping account

Checks Written: Pass-through actual cost from bank  
Payment of interest or principal on securities held in safekeeping account by issuance of a check (Payment of interest or principal by wire transfer is included in Section II Standard Fee Schedule)

Asset Maintenance:  
\$1.00 per receipt held during the month  
\$3.50 per safekeeping account  
Safekeeping account maintenance fee for each safekeeping account maintained

### **V. Additional service fees:**

1. Accounts with GIC and/or Flex Repos  
\$150.00 per GIC or Flex Repo.
2. Securities transfer fees  
\$12.00 per transfer.

### **VI. Pass-Through fees (actual cost):**

1. Physical Checks Deposited/Checks written

2. ACH payments (outgoing, incoming)
3. Stop Payment on check written
4. Special Delivery/Express
5. Mailing of Checks written
6. GNMA Safekeeping Bank Cost
7. Dedicated Bank Account

## **VII. Miscellaneous Services.**

When special or unusual services are required, outside of the published fee schedule, our fee will include reasonable additional compensation, out-of-pocket expenses, or both, based upon the nature of services and the extent of the duties and responsibility assumed.

## **VIII. Available Payment Methods & Timing.**

1. **Method of Payment:** Agencies have the following options to pay fees and charges:
  - a. **Auto Payment:** The Texas Treasury Safekeeping Trust Company will automatically deduct the monthly amount of fees and charges due from an account held at the Texas Treasury Safekeeping Trust Company (preferred method).
  - b. **Manual Payment:**
    - i. Agency submits a Letter of Instruction to pay the monthly fees and charges due from an account held at the Texas Treasury Safekeeping Trust Company.
    - ii Agency submits the monthly fees and charges due from an external source via a check, warrant, ACH, or wire transfer.
2. **Timing of Payment:** Agencies will receive monthly billing statements reflecting the average daily asset balance, fees, and any additional transaction charges. Payment is due on a monthly basis. The Texas Treasury Safekeeping Trust Company may, in its sole discretion, choose to delay the payment of an agency's fees and charges to a subsequent due date.

**Exhibit C.**

**TEXAS WATER FUND INVESTMENT POLICY**

The Trust Company shall invest the Texas Water Fund in accordance with the Comptroller's Investment Policy for the management of funds in the state treasury, effective November 1, 2023, and as it may be updated from time to time.

DRAFT