



# Town Council Agenda Report

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH NORWEST BANK, COLORADO, N.A., FOR A CUSTODIAL ACCOUNT AGREEMENT FOR THE TOWN'S MONEY PURCHASE PLAN ASSETS

**REPORT IN BRIEF:**

This resolution is necessary in order for the town to comply with federal and state laws governing the safe keeping of pension assets. The current custodian has resigned and the town sought competitive proposals and chose norwest primarily because of the their established relationship with Great West, who will be the recordkeeper for the pension plan.

**PREVIOUS ACTIONS:**

not applicable

**CONCURRENCES:**

not applicable

**FISCAL IMPACT:**

Is appropriation required?	<u>yes</u>
Funding appropriated?	<u>yes</u>
Account Name:	<u>retirement (various)</u>
Additional Comments:	<u>not applicable</u>

**RECOMMENDATION(S):**

Motion to approve the resolution.

**Attachment(s):**

Resolution  
Agreement

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH NORWEST BANK, COLORADO, N.A., FOR A CUSTODIAL ACCOUNT AGREEMENT FOR THE TOWN'S MONEY PURCHASE PLAN ASSETS.

WHEREAS, the Town provides a money purchase plan defined contribution pension plan for its covered employees; and

WHEREAS, as part of that plan the Town appoints a custodian to account for and safe keep the assets of the plan; and

WHEREAS, the current custodian of the §401(a) money purchase plan has resigned and given the Town notice of its intent to discontinue this service in the immediate future; and

WHEREAS, the Town has solicited proposals through its former benefits consultant and has completed its due diligence on the selection of the custodian ;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby authorizes the Town Administrator to execute the attached agreement, together with any other necessary documents, with Norwest Bank, Colorado, N.A.,

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1999

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1999

**SECTION 401(a)/(k) CUSTODIAL ACCOUNT AGREEMENT  
WITH NORWEST BANK COLORADO, N.A.**

Account No. \_\_\_\_\_ «Account\_Number»

**THIS SECTION 401(a)/(k) CUSTODIAL ACCOUNT AGREEMENT** is made by and between Town of Davie, a municipal corporation of the State of Florida (herein Employer) and Norwest Bank Colorado, National Association, a national banking association chartered by the Office of the Comptroller of the Currency with its principal place of business in the State of Colorado (herein Custodian).

**WHEREAS**, Employer maintains a qualified defined contribution plan (the "Plan") under section 401(a) of the Internal Revenue Code.

**WHEREAS**, Employer desires to set aside Plan assets to be held in a funded arrangement under section 401(a) of the Internal Revenue Code maintained for the exclusive benefit of Plan participants and their beneficiaries.

**WHEREAS**, section 401(a) of the Internal Revenue Code provides that custodial accounts described in section 401(f) of the Internal Revenue Code shall be treated as trusts pursuant to that section.

**WHEREAS**, Employer desires to engage the services of the Custodian to hold all assets and income of the Plan in a custodial account for the exclusive benefit of participants and their beneficiaries, as defined in section 401(f) of the Internal Revenue Code.

**WHEREAS**, the Custodian is willing to act as custodian and deemed trustee of the Plan as set forth in section 401(a) of the Internal Revenue Code to provide these services for the Plan on the condition that Employer has entered or is entering into a service agreement with Great-West Life & Annuity Insurance Company ("Great-West") whereby Great-West will provide recordkeeping services for all Plan assets held pursuant to this Agreement.

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

1. Establishment of Custodial Account.
  - a. In order to carry out the purposes of the Plan, Employer hereby creates and establishes a custodial account (the "Custodial Account"). The Custodian accepts the Custodial Account and agrees to act as Custodian hereunder, but only on the terms and conditions set forth in this Agreement. Subject to the terms and conditions of this Agreement, all right, title and interest in and to the Custodial Account shall be vested exclusively in the Custodian.
  - b. The Custodial Account shall include only those assets which the Custodian accepts. Only assets actually received by the Custodian will become part of the Custodial Account. The Employer acknowledges and agrees that it is responsible for effectuating the transfer of any Plan assets to be held in the Custodial Account to Custodian.
  - c. The Custodial Account established hereunder is intended to satisfy the requirements of section 401(a) of the Internal Revenue Code, and to be treated as a trust solely for purposes of applicable tax laws under rules similar to the rules under section 401(f) as contemplated by that section. In no event shall the Custodial Account be treated as a trust for purposes of state law. Notwithstanding anything herein to the contrary, it shall be impossible, prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries covered by the Plan, for any part of the funds of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of the participants or their beneficiaries as provided for in the Plan. Except as provided in the Plan and consistent with applicable law, the assets of the Custodial Account shall never inure to the benefit of the Employer and shall be held for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan and Custodial Account. The Employer agrees that it will abide by this provision and that it will not cause the Custodian to violate this rule either by its direction or otherwise.

2. Services to be Provided by Custodian and Obligations of the Parties. The obligations of the Custodian shall be limited to those expressly imposed upon it by this Agreement, notwithstanding any reference herein to the Plan, and no further duties or obligations of the Custodian, such as a duty to value Plan investments, determine the prudence or authorization of any Plan investment, or diversify Plan investments, shall be implied. The Custodian shall not be liable in discharging its duties hereunder if it acts in good faith and in accordance with the terms of this Agreement and in accordance with applicable federal tax laws, rules and regulations. The Custodian shall, upon direction from Employer, perform the following services; provided, however, that for purposes of this Agreement the Custodian may rely on direction by the Employer to Great-West Life & Annuity Insurance Company ("Great-West") pursuant to and consistent with the terms of the services agreement among the parties thereto:
  - a. Open and maintain a Custodial Account in the name of the Plan and hold in such an account all cash, securities and other property initially deposited plus any additional cash and securities that may be received from time to time for the Custodial Account. The Custodian shall have no duty or authority to ascertain whether any contributions should be made to the Custodial Account pursuant to the Plan, to determine the amount of any contribution to be made pursuant to the terms of the Plan, or to bring any action to enforce any obligation to make any contribution to the Plan.
  - b. Act upon written direction from the Employer or from one or more investment advisors duly appointed in writing by the Employer, as provided in Section 5 hereof. The Custodian shall have no duty to determine any facts or the propriety of any action taken or omitted by it pursuant to such directions.
  - c. Be responsible for the collection of all investment income relating to the assets in the account.
  - d. Make payments from the Custodial Account to participants or their beneficiaries as the Employer shall direct in writing, and amounts so paid shall no longer constitute a part of the Custodial Account. The Employer shall report withholding of any federal, state or local taxes that may be required to be withheld with respect to such payments and shall remit such amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and remitted.
  - e. The Employer shall pay or, if not paid by the Employer, shall direct the Custodian to pay from the Custodial Account, the reasonable expenses relating to the Plan and Custodial Account, including, without limitation, investment management, accounting, legal, actuarial expenses, and any expenses which have been approved by the Employer; provided, however that expenses paid pursuant to this section shall not include fees for custodial services to Custodian.
3. Powers of the Custodian. The Custodian is authorized and empowered to:
  - a. Hold assets in the name of the Custodian, which may include entering into depository arrangements for the safekeeping of records relevant to the ownership of such assets with any entity or entities as the Custodian may choose.
  - b. Invest the assets of the Custodial Account in such investment vehicles as directed by Employer or a duly appointed investment advisor, including annuity or insurance contracts issued by licensed insurance companies, and to enter into amendments to such annuity or insurance contracts as so directed. The Custodian shall have no duty or responsibility to determine the appropriateness of any Plan investment, or to cause such investments to be changed. The Employer shall be responsible to determine whether the Plan and the investments directed by it are authorized by state law. The Custodian shall forward all notices, proposed contract amendments, rate or fee changes or other communications regarding all annuity or insurance contracts held in the Custodial Account to the Employer, and shall act on behalf of the Custodial Account with respect to any such notice, proposed amendment, change, or other communication only as directed by the Employer. Any rights of a contractholder under any such group annuity contract to discontinue, amend, or otherwise modify the contract shall be exercised only upon the specific written direction of the Employer to the issuer of the contract or by the Custodian at the Employer's express written direction.

- c. Make transfers among investment vehicles or disbursements from the Custodial Account as directed by the Employer or, if applicable, by the Plan participants.
  - d. Employ agents other than persons on its regular payroll and delegate to them such ministerial and other non-discretionary duties as it sees fit and to rely upon such information furnished by such agents.
  - e. Vote the proxies of any securities held in the Custodial Account as directed by the Employer.
  - f. Pay taxes of any and all kinds levied or assessed against the Custodial Account as directed by the Employer.
  - g. Delegate to Great-West, any or all ministerial duties arising out of this Agreement, and appoint Great-West as agent of Custodian for such purposes, including opening accounts with investment companies, and paying expenses and making distributions from the Custodial Account. In no event shall Custodian delegate to Great-West the right to hold title to the assets of the Plan or Custodial Account.
  - h. Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any other instruments that may be necessary or appropriate to carry out the custodianship duties and powers.
  - i. Hold uninvested such cash funds as may appear reasonably necessary based upon directions of the Employer to meet the anticipated cash requirements of the Plan from time to time and to deposit the same or any part thereof, either separately or together with other funds under the control of the Custodian, in its own deposit department or to deposit the same in its name as Custodian in such other depositories as it may select.
  - j. Institute, prosecute, maintain, or defend any proceeding at law or in equity concerning the Custodial Account or the assets thereof, at the sole cost and expense of the Custodial Account, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Custodial Account or of the Custodian; but the Custodian shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reasons thereof.
  - k. Retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
4. Reports. Custodian shall furnish to the Employer and any duly appointed investment advisors a periodic statement of account no less frequently than annually, reflecting an inventory of assets in the account, all activity during the previous period, and a market value for the assets of the account. The Custodian will furnish such other reports as the Employer may reasonably request, including reports to the Employer's accountants or other examiners as may be necessary.
  5. Authorized Persons. The Employer and any duly appointed investment advisor shall furnish a list to the Custodian (and from time to time whenever there are changes therein) of the individuals authorized to transmit instructions to the Custodian concerning the assets in the account and written direction regarding the form of such instructions. If the Employer has implemented the voice response system for participants, all participants are deemed to be authorized individuals solely for purposes of directing investment of their individual account balances. The Custodian shall be entitled to rely on instructions from participants received through the voice response system as well as on the oral advice as confirmed in writing or written advice of other authorized individuals. The Custodian shall treat as genuine and may rely on any notice or communication without further verification that it reasonably believes is from an authorized party, as defined above, and shall be protected in doing so by the Employer.

6. Compensation Payable to Custodian. The Custodian shall be entitled to receive reasonable compensation for services provided under this Agreement in connection with the Plan. Such compensation shall be paid as set forth on the fee schedule attached hereto as Exhibit 1, and may be changed from time to time by agreement of the parties.
7. Amendment and Termination. This Agreement may be amended by written agreement of the parties at any time. This Agreement shall continue in effect unless or until terminated by either party upon 30 days' written notice to the other party; provided that Custodian shall continue to act as Custodian of the Custodial Account until a successor Custodian is appointed. If no successor Custodian is appointed within 90 days of such written notice of termination, Custodian shall be authorized to petition a court of competent jurisdiction for a declaration appointing a successor Custodian, and to charge the Custodial Account for the reasonable costs, fees, and expenses of such legal process. Upon termination, all securities held in the account shall be delivered by the Custodian to a successor custodian appointed by the Employer or as otherwise directed in writing by the Employer. Notwithstanding the foregoing, this Agreement shall automatically terminate in the event that a contract for the provision of one or more funding mediums for the Custodial Account and recordkeeping services through Great-West is discontinued or terminated without renewal, effective as of the date of such discontinuance or termination, with no further notice from or to either party; provided that Custodian shall continue to act as Custodian of the Custodial Account until a successor Custodian is appointed. If no successor Custodian is appointed within 90 days of such written notice of termination, Custodian shall be authorized to petition a court of competent jurisdiction for a declaration appointing a successor Custodian, and to charge the Custodial Account for the reasonable costs, fees, and expenses of such legal process.
8. Indemnification. Employer hereby agrees to indemnify and hold Custodian harmless from and against any and all claims, liabilities, and expenses (including attorney's fees), which Custodian may incur by reason of its acting as Custodian under this Agreement. Notwithstanding the foregoing, it is specifically understood and agreed that in the event Custodian has committed negligence or malfeasance in the exercise of its responsibilities hereunder, the indemnification provisions of this Agreement shall not apply.
9. Notices. Notices to the Employer shall be directed and mailed as follows:

Town of Davie  
6591 Orange Drive  
Davie, FL 33314

Attention: Christopher Wallace  
Budget Finance Director

Notices to the Custodian shall be directed and mailed as follows:

Norwest Bank Colorado, N.A.  
Employee Benefit Services, MS 8697  
1740 Broadway  
Denver, CO 80274-8697

10. Inspection Privileges. The books, records, documents, accounting procedures, and practices of the Custodian relevant to this Agreement are subject to examination by the Employer, including but not limited to an annual audit by the city auditor.
11. Governing Law. This Agreement and all transactions hereunder shall be governed by, interpreted, and construed and enforced in accordance with the contract laws of the State of Florida and the situs of the Custodial Account shall be Colorado.
12. Severability. In case any provisions of this Agreement shall be held illegal or invalid for any reason, their illegality or invalidity shall not affect the remaining parts of this Agreement, and this Agreement shall be construed and enforced as if the illegal and invalid provisions had never been a part of the Agreement.

13. Assignment. This Agreement shall not be assigned without the express written consent of all parties to this Agreement, which consent shall not be unreasonably withheld; provided, however, that this provision is subject to and shall in no way limit the effect of Section 3 hereof (relating to the power of Custodian to delegate certain duties to Great-West, and appoint Great-West as its agent for certain purposes).

14. Successors and Assigns. This Agreement shall be binding upon the respective successors and assigns of the Employer and the Custodian.

15. Effective Date. This Agreement shall be effective \_\_\_\_\_, 199\_\_.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

**EMPLOYER**

Town of Davie

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

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

**ATTESTATION**

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

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

***APPROVED AS TO FORM BY \_\_\_\_\_ ATTORNEY***

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

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

**CUSTODIAN**

Norwest Bank Colorado, National Association

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

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

***EXHIBIT 1***

***FEE SCHEDULE***

***NORWEST BANK COLORADO, N.A.***

***and***

**Great West Life & Annuity Insurance Company**

Schedule of Charges for Trustee/Custodial Services

This Schedule may be revised or modified at time of renewal of the Employer's Administrative Services Agreement with Great-West.

**Base Charge**

The Custodian's compensation for the custodial services being provided under this agreement is included in the fees being received by Great-West under the Administrative Service Agreement between the Employer and Great-West. Great-West will forward such custodial fees to Norwest Bank Colorado, N.A. at no additional cost to the Employer.

**Governing Law Charges**

\$2,000 Employer hereby agrees to pay an additional fee of \$2,000.00 annually for additional risk and expense associated with complying with local law. Employer agrees to pay such amount to Great-West within thirty (30) days of receipt of invoice. If Employer fails to pay such fee in a timely manner, it shall be deducted from the custodial account.