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May 26, 2023

Monica Mezzapelle, Treasurer
State of New Hampshire Treasury
25 Capitol Street, Room 121
Concord, NH 03301

Re: Legal Opinion: BankProv's Ability to Accept Public funds under RSA 6:8, I-a(d)

Dear Treasurer Mezzapelle;

This firm represents BankProv (the "Bank"), a federally insured financial institution duly organized and existing under the laws of the Commonwealth of Massachusetts, headquartered in Amesbury, Massachusetts. The Bank maintains branch banking offices in Massachusetts and New Hampshire, with its New Hampshire branch offices located in Bedford, Exeter, Portsmouth, and Seabrook.

We have been asked by the Bank to provide to you our opinion regarding whether, under the laws of the Commonwealth of Massachusetts, a banking institution chartered under the laws of the State of New Hampshire (a "NH Bank") would be permitted to accept the deposit of public funds in Massachusetts in substantially the same manner and subject to substantially the same terms and conditions as is permitted to a bank chartered under the laws of the Commonwealth of Massachusetts (a "MA Bank").¹ In providing this legal opinion letter, we have reviewed Massachusetts and New Hampshire statutes, regulations, regulatory guidance, and conferred with the Deputy Treasurer of the Massachusetts Office of the Treasurer and Receiver General as necessary or appropriate. For the reasons set forth below, we are of the opinion that Massachusetts

¹ Pursuant to changes authorized in House Bill 545, in pertinent part, to RSA 6:7 and 6:8, federally insured banks chartered under the laws of states other than New Hampshire can accept deposits of New Hampshire public funds from the NH state treasurer and NH municipalities if, among other things, the out-of-state bank furnishes the Treasurer with an opinion of legal counsel that its chartering state would permit a New Hampshire chartered bank to accept deposits of public funds in substantially the same manner, and subject to the substantially same terms and conditions as would be required for banks chartered in that state. See RSA 6:8, I-a(d).

law does permit a NH Bank to accept the deposit of public funds in Massachusetts in substantially the same manner and on substantially the same terms as a MA Bank.

General Authority to Deposit Massachusetts Public Funds. As discussed in more detail below, Massachusetts law does not prohibit or limit the deposit of public funds in out-of-state banks, including New Hampshire chartered banks. Rather, the deposit and investment of such public funds is generally left to the discretion of the applicable public officer or governing body who apply statutory standards applicable to all banks regardless of origin.

Massachusetts State Funds. Under M.G.L. c. 29, §34, “[s]tate officers, departments, institutions and other agencies may, with the written consent of the state treasurer, deposit a portion of the public monies in their possession” in qualified banks that meet the approval of the state treasurer. The state treasurer is required to publish a list of approved qualified banks every six months. The statute provides that the “state treasurer shall not include on the list a state-chartered bank having a descriptive rating as described in clauses (d) or (e) of the sixth paragraph under section 14 of chapter 167 or any federally insured depository institution having an assigned rating of (C) or (D) under section 807(b) (2) of the Community Reinvestment Act of 1977, 12 U.S.C. 2901 et seq.” These requirements to meet Community Reinvestment Act goals are applied to all banks regardless of where the bank is chartered. The state treasurer’s office is on record as acknowledging that “there is no bright-line rule in statute that prohibits non-Massachusetts banks from receiving MA public funds” and, in fact, the most recent list of state treasurer approved banks includes two New Hampshire chartered banks, Bank of New England and Salem Co-operative Bank, which have branches in Massachusetts. The most recent list of state treasurer approved banks is attached to this legal opinion. The state treasurer’s office works with the Massachusetts Division of Banks to screen any bank which applies to be added to the approved list.

Massachusetts Municipal Funds. Officers of “a city, town, or district or regional school district” have the authority to invest and deposit public funds as set forth in M.G.L. c. 44, §§ 55 and 55B. These statutes provide broad latitude to municipal treasurers to invest or deposit in any “bank or trust company or banking company” regardless of where the bank is chartered but with restrictions such as (a) requiring satisfactory security if the amount deposited exceeds 60% of the capital and surplus of such bank institution, (b) avoiding bank institutions with which the treasurer of the municipality is associated as an employee or an officer, (c) requiring that they be insured by the Federal Deposit Insurance Corporation, and (d) investing prudently to make as

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much interest as possible. Notably, there are no specific prohibitions to deposits or investments in out-of-state chartered banking institutions.

Based on the foregoing Massachusetts statutes and other authorities, we are of the opinion that NH Banks are permitted under Massachusetts law to accept deposits of public funds from the Commonwealth of Massachusetts and other governmental units within Massachusetts in substantially the same manner, and on substantially the same terms, as is permitted for MA Banks. Accordingly, it is our opinion that the conditions of RSA 6:8, I-a(a), as provided in HB 545, have been satisfied by the Bank.

We understand that, in accordance with RSA 6:8, 1-a(d), you will confirm receipt of this legal opinion letter within 60 days and will make a copy of it publicly available by posting it on the New Hampshire State Treasury website. Please contact me (andreab@gcattorneys.com) or James G. Silva (james@gcattorneys.com) if you have any questions about this legal opinion or if you require additional information.

Thank you very much for your attention to this matter.

Sincerely yours,

GALLAGHER & CAVANAUGH, LLP



Andrea S. Batchelder

cc: Angelina Milano, Vice President, Compliance & CRA Officer (via email)