

## BANK DEPOSITORY CONTRACT

This DEPOSITORY CONTRACT is made and entered into on the date last herein written by and between City of College Station hereinafter called "DEPOSITOR", and BANK of AMERICA, a national banking association, organized under the laws of the United States and authorized by law to do banking business in Texas and now conducting such business in said Texas, hereinafter called "BANK", and is as follows:

### I

DEPOSITOR, through action of its governing Board, hereby designates BANK as a depository for the period beginning 11/1/05, and continuing through 10/31/08.

### II

DEPOSITOR and BANK, by execution of this Depository Contract, hereby designate Bank of New York, hereinafter called "CUSTODIAN", to hold in an account maintained by the CUSTODIAN in the name of the BANK and subject to the control of DEPOSITOR, according to the terms and conditions of this Depository Contract and the attached custodial agreement, the collateral and substitute collateral described under said agreements.

### III

During the term of this Depository Contract, the DEPOSITOR will, through appropriate action of its governing Board, designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of the DEPOSITOR in any and all matters of every kind arising under this Depository Contract and to (a) execute and deliver to BANK an electronic fund or funds transfer agreement and any addenda thereto), (b) appoint and designate, from time to time, a person or persons who may request withdrawals, orders for payment or transfers on behalf of DEPOSITOR in accordance with the electronic fund or funds transfer agreement and addenda, (c) make withdrawals or transfers by written instrument, and (d) deliver to BANK the DEPOSITOR's collateral policy and evidence of approval by the DEPOSITOR's governing body of the collateral policy, the CUSTODIAN, this Depository Contract, and the attached custodial agreement.

### IV

BANK'S Deposit Agreement is incorporated herein for all purposes; however, to the extent that any provision therein conflicts with any provision herein, this Depository Contract will control.

### V

DEPOSITOR may arrange for time deposits, and BANK may accept and shall hold such deposits subject to payment in accordance with the terms of the deposit. Interest shall be calculated at the rate which BANK has bid in its submitted Application and Bid for Depository Services for the particular denomination and time period of said deposit. Time deposits will mature on or before the expiration of this Depository Contract. All Time Deposits that mature beyond the expiration of this Depository Contract will be at non-contractual interest rates negotiated at the time of purchase.

## VI

BANK will be compensated for any and all services rendered to DEPOSITOR under this Depository Contract. BANK agrees to offset monthly service fees against its customary earnings credit for balances in DEPOSITOR's non-interest bearing transaction accounts; provided, however, that if there is insufficient earnings credit against which such fees may be offset, DEPOSITOR will be charged for such services monthly. BANK's Application and Bid for Depository Services, including all exhibits and addenda thereto, is incorporated herein by reference. The total amount compensated for services rendered under this contract shall not exceed One Hundred Thirty Five Thousand and No/100 Dollars (\$135,000.00) for the core Treasury Management services and volumes responded to within the Request for Application.

## VII

All uninsured funds on deposit with BANK to the credit of the DEPOSITOR shall be secured by collateral as provided for in the Texas Public Funds Collateral Act and in other applicable law. The total market value of the collateral (which includes accrued interest or income to the extent it is not included in the market price) securing such deposits will be in an amount at least equal to the amount of such deposits plus the amount of any accrued interest thereon and less the amount that such deposits are insured by an agency or instrumentality of the United States government. The market value with respect to any securities (collateral) as of any date and priced on such date will be obtained from a generally recognized pricing source. When additional collateral is required to cover incremental deposits, BANK must receive the request for collateral prior to 10:30 a.m. central time on the day the deposits are actually received. Twenty-four hours notice is necessary on incremental deposits in excess of \$3 million.

## VIII

BANK has heretofore or will immediately hereafter deliver to CUSTODIAN collateral of the kind and character above mentioned of sufficient amount and market value to provide adequate collateral for the uninsured funds of DEPOSITOR deposited with BANK. Said collateral or substitute collateral, as hereinafter provided for, shall be kept and retained by CUSTODIAN in an account maintained in the name of BANK and subject to the control of DEPOSITOR so long as the depository relationship between DEPOSITOR and BANK shall exist hereunder, and thereafter so long as deposits made by DEPOSITOR with BANK hereunder, or any portion thereof, shall have not been properly paid out by BANK to DEPOSITOR or on its order. The BANK hereby grants a security interest in such collateral to DEPOSITOR.

## IX

BANK shall cause CUSTODIAN to accept said collateral and hold the same in trust for the purpose herein stated.

## X

Should BANK fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposit and the interest on such deposits or in any manner breach its contract with DEPOSITOR, DEPOSITOR shall give written notice of such failure or breach to BANK, and BANK shall have three (3) business days to cure such failure or breach. In the event BANK shall fail to cure such failure or breach within three (3) business days or should the BANK be declared insolvent by a Federal bank regulatory agency, it shall be the duty of CUSTODIAN, upon demand of DEPOSITOR (supported by proper evidence of any of the above-listed circumstances),

to surrender the above-described collateral to the DEPOSITOR. DEPOSITOR may sell all or any part of such collateral and out of the proceeds thereof, pay DEPOSITOR all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, accounting to BANK for the remainder, if any, of said proceeds or collateral remaining unsold.

XI

Any sale of such collateral, or any part thereof, made by DEPOSITOR hereunder may be either at public or private sale; provided, however, it shall give to both CUSTODIAN and BANK two (2) hours notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefor for cash. DEPOSITOR and BANK shall have the right to bid at such sale.

XII

If BANK shall desire to sell or otherwise dispose of any one or more of said securities so deposited with CUSTODIAN, it may substitute for any one or more of such securities other securities of the same or greater market value and of the character authorized by DEPOSITOR in its collateral policy, pursuant to the terms of the custodial agreement. Such right of substitution shall remain in full force and may be exercised by BANK as often as it may desire.

XIII

BANK shall cause CUSTODIAN to promptly forward to DEPOSITOR trust receipts covering all such collateral held for BANK, including substitute collateral as provided herein. BANK shall also maintain records relating to all such collateral held for the benefit of DEPOSITOR.

XIV

Either DEPOSITOR or BANK shall have the right to terminate this Agreement prior to the expiration date by advance written notice to the other of its election to do so, and this Agreement shall be void from and after the expiration of ninety (90) days after the receipt of such notice, provided all provisions of this agreement have been fulfilled.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the undersigned duly authorized officers of the parties hereto.

**FOR DEPOSITORY BANK:**

Melvin Atkinson  
(Signature)

Vice President  
(Title)

**FOR DEPOSITOR:**

\_\_\_\_\_  
Ron Silvia

\_\_\_\_\_  
Mayor, City of College Station

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

ATTEST:

\_\_\_\_\_  
Connie Hooks, City Secretary  
Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Glenn Brown, Interim City Manager  
Date: \_\_\_\_\_

*Caule A Robinson*  
\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Kersten,  
Finance & Strategic Planning Director